DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

SIXTH ASSEMBLY

WEEKLY HANSARD

25 AUGUST

2005

Thursday, 25 August 2005

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

Petitions

The following petition was lodged for presentation by **Ms Porter**, *from 21 residents:*

Horse paddocks

> To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory.
>
> This petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly that:
>
> The current management of the ACT Government Horse Paddocks by the ACT Horse Farms has resulted in the endangerment of people and horses. Further there has been a deterioration of the facilities designed for ongoing public use.
>
> We therefore request the Assembly to:
>
> Remove Horse Farms ACT and its current management from the acceptable list of business applying for the forthcoming tender for ongoing management of the ACT Horse Paddocks.

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

Leave of absence

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

> That leave of absence be granted to Mr Hargreaves for the remainder of this sitting week.

Territory plan—variation No 237

DR FOSKEY (Molonglo) (10.32): I move:

> That this Assembly, in accordance with subsection 29 (4) of the Land (Planning and Environment) Act, rejects Variation No 237 to the Territory Plan, Deakin, Section 12 Blocks 9, 13 and 19—Embassy Motel redevelopment—Proposed residential use.

Mr Speaker, one does not move a disallowance motion lightly. In this case, after careful consideration, I felt that it was necessary that the Assembly look in more detail at variation to the territory plan No 237. One of the consistent features of hostile community response to this government now is distrust on both sides. That is not to say

that this government is a bad government but I think that, as the years go by, an increasing number of people are becoming disillusioned with the notion of partnership, the building our community idea, that has been a feature of this government's rhetoric.

The surprise and dislocation felt by parents and children about the Ginninderra high closure are a case in point. Many of those people may in the end enjoy better education and activities than the existing set-up can give them, but it is proving very hard for them to accept the offer and get down to negotiating a good deal when they feel so shocked and disempowered by the timing and the nature of the announcement.

We have seen the ACT government ignore the bulk of expert community feedback, which, by the way, it sought, to proceed with a human rights commission that is more than a model of convenience. Similarly, for those people who are engaged in the physical shaping of our community, the sense of frustration has grown over the past few years. There are many such people in Canberra and we should appreciate the profound value of the unpaid work that so many of them do.

They have seen the end of local involvement in planning matters through LAPACs, they have watched the government seemingly abandon its commitment to neighbourhood planning, they have seen the contentious core area development fail to deliver viable local centres and sustainable communities—rather in some cases promising the reverse—and the notion of high-quality sustainable design seems to have fallen into a netherworld of something better later on. We have also seen the government hand over a massive slice of Civic West to the ANU without ensuring a good return to the people of Canberra.

Mr Corbell: I take a point of order on relevance, Mr Speaker. This disallowance motion is in relation to a variation to the territory plan, variation No 237. So far, Dr Foskey has yet to mention that in any of her statements and she has been going for a number of minutes. I would ask you to draw her to order.

MR SPEAKER: Yes, I think the reference to relevance is a good point. Remain relevant, Dr Foskey.

DR FOSKEY: I am setting the scene here, providing a context. I have almost got there. I will try this and see whether Mr Corbell thinks that it is irrelevant, too: now, the extraordinarily opaque planning review documents suggest, on close examination, that the revamped system will be more bluntly biased in favour of development interests, presumably—

Mr Corbell: I take another point of order, Mr Speaker. Dr Foskey is attempting to turn this debate into a broader one about planning policy in the ACT. I am very happy to debate a broader planning policy if such a substantive motion is put before the Assembly, but the motion before us is in relation to disallowance of variation 237 to the territory plan and Dr Foskey really should do the Assembly the courtesy of addressing the substantive matters which she has sought to raise in the Assembly this morning.

DR FOSKEY: Thank you for that, Mr Corbell. I understand; point taken.

MR SPEAKER: I hope that it is, because you are required to remain relevant. In the context of a debate about a planning issue, it is appropriate for you, Dr Foskey, to refer to generic planning issues, I would think, but you need to come back to the issue central to your motion.

DR FOSKEY: Thank you. Variation 237, which I am seeking to disallow today, replaces the entertainment and leisure land use policy with a residential land use policy for those blocks in Deakin on which the Embassy Motel is sited. The key issue here is that, despite contentions to the contrary, this variation will prohibit that existing use from being continued. Furthermore, there is the unresolved issue of the potential height of the future development on this block, something not to be dismissed lightly when you recall that this variation is proponent initiated.

Last year, I attended a meeting organised by Save our Suburbs. Yes, we may have our doubts about the motivation of that group, which was so active prior to the election, but there can be no doubt that the people who attended the meeting in Deakin had real concerns. At this meeting, the proponents stood in front of residents and extolled the virtue of their development. It looked to me as though Mr Corbell stood firmly behind them, while at the same time he was reassuring residents that they would have their opportunity to express their concerns to the inquiry that the planning and environment committee would be obliged to conduct. In the light of his obvious enthusiasm for the development, Deakin residents, understandably, probably were already feeling cynical about their potential to influence the process.

The minister's tabling statement of last week made the point that the six submissions made in June last year about the draft variation did not oppose the change to allow for residential development. He did not mention, although the variation does, that they raised objections to the proposed height of the proposed development, nor did he acknowledge that a group of Deakin residents got together to represent the people of Deakin and hundreds of Deakin residents signed a petition against the proposed development.

I can recall significant agitation and objections being raised through the media in regard to this proposal. That concern is reflected in the planning and environment committee's report on its inquiry into the draft variation. Indeed, as the significance of the proposed variation and subsequent development began to be understood, opposition to both the relaxation of the height limit and the change of land use policy has hardened. That is sometimes the way of community involvement, but it is wrong to dismiss growing concern as ill founded. Rather, it often reflects better information.

The concerns which residents, nearby businesses and schools have raised publicly through the media and with the planning and environment committee have been that this proponent-initiated variation is based on a seven-storey residential development; that the argument that the current use of the site as a hotel/motel is unsustainable, as put by the proponent, has not been proven and there is considerable argument available to suggest that such an assumption is unfounded; that the loss of employment and activity at that site will affect the viability of the other entertainment and leisure sites around Deakin; and that the development of a seven-storey residential unit complex may encourage similar development both across the road and in the Deakin centre, raising fears of

a proponent-led transformation of Deakin into a Kingston, despite the fact that Deakin was not identified by ACTPLA as a suburb targeted for future development.

Of course, one of the key areas of confusion regarding the height issue is that aspects of Adelaide Avenue are in the domain of the National Capital Authority and any development permitted by the ACT must also be consistent with parameters set by the National Capital Authority through the national capital plan. Whilst at present the current development control plan establishes development of "predominantly three and a maximum four storeys", the NCA has advised that it will review the height provisions of its development control plan.

Given that the proponent for development, which has an option on the purchase of the motel, has put on the public record its belief that seven-storey development is needed for the Embassy site development to be viable and given that we can expect that the proponent will have spoken to the NCA as well as to the Deakin community, ACTPLA and all, one would be naive not to imagine that the proponent in fact anticipates a change to those height limits. In other words, unless the ACT government is prepared itself to put a limit on the permissible height, then we can expect a protruding residential complex very soon, with perhaps a number of others to follow in good time.

That is why I believe that we are dealing here with an issue of trust. I believe that the minister's tabling statement is disingenuous. His Pontius Pilate approach of simply arguing that the NCA has height controls for development fronting Adelaide Avenue and that the development control plan states that the building would be limited to four storeys makes no acknowledgment that the NCA has advised that it will review those provisions. The minister makes no mention of the fact that the NCA will make decisions, as he is well aware, with little reference to ACT priorities. Whitegoods at the airport springs to mind. But this will be especially so if the ACT government does not itself emphasise the need for height controls.

It would not be inconsistent with the national capital plan if the ACT put a height limit of, say, four storeys on this development, but the minister has not done that, nor has he made any statement suggesting that that is what the ACT government, on behalf of its constituents, would want. The only reason for the government not to put such a limit on this variation or express such a view is that it is perfectly happy to accept seven storeys, but it is pleased that it can dodge the heat from the issue by hiding behind big brother, the NCA; it is as simple as that. While both ACTPLA and the planning and environment committee seem to accept a shift towards residential land use, such a shift, as I have said, is based on an analysis of economic viability for the current use put forward by the developer. Most of the figures and analysis available can be fairly easily contested at the very least.

One underlying question, which appears not to have been considered in any depth, is the opportunity cost of the long-term loss of such a use of the land. It has been argued by a range of parties that some leisure and commercial accommodation in and around that part of south Canberra is an important resource and that sacrificing this site to multiunit development will, in the long run, denude Deakin of some of its vitality. Without major attention to roads and lots of effort to get people onto bikes and public transport, this development, as envisaged by the proponent, will be a traffic horror, experienced as

inconvenience for local residents and perhaps expensive for the ACT government to remedy for the sake of this developer.

We must also consider the proliferation of multiunit residential developments being built in or planned for our city—generally, these are at the high end of the market, and the Deakin development will be at the very high end of the market, according to the developer—when what we need in this town is more affordable housing, even almost next door to the Lodge. We have never done the sums about whether we need all these dwellings, and a glut would be bad for developers and owners alike. Shouldn't this kind of planning come under the planning portfolio?

Given that no such analysis appears to have been conducted prior to the acceptance of the proponent's economic modelling, it is perhaps understandable that Deakin residents have hardened their opposition to the proposed residential development. Nonetheless, the key argument for this debate is a much finer point. It has been argued that this final variation, as opposed to the draft variation, has been amended specifically to allow for a continuation of the existing business, or something similar, on the site, residential development or not.

The minister stated in his tabling statement that "to recognise the existing motel and to retain the potential for this type of development on the site, commercial accommodation was added to the B15 area specific policy". In the actual written statement for the variation to the plan, however, commercial accommodation units were added to the land use controls, and the possibility of a ground floor restaurant. Current uses including bars and function rooms would not be permitted. It might even raise questions as to the continued operation of the Embassy Motel now that this variation is in force.

In summary, Mr Speaker, I have moved for disallowance of this variation because of the duplicitous process through which it has evolved; because it is a developer-led variation to the plan without research justification; because the amendment to this variation fails to deliver the continuity of purpose which it promised; and because the government has ignored the recommendations of the planning and environment committee and washed its hands of the height issue.

MR SESELJA (Molonglo) (10.47): The opposition will be supporting this motion by Dr Foskey. I would just like to make a few general points. They go to a lot of the discussions and a lot of the deliberations, which I will not go into in detail, of the planning and environment committee when it looked at this issue.

The general theme of the committee and the unanimous conclusion of the committee in looking at this draft variation was that it was not completely opposed to residential development in the area. The committee drew a line around development that was deemed to be out of character with the surrounds, taking into account the strong concerns of Deakin residents and others in the area and other stakeholders. We took into account certainly the 450 signatures on a petition.

It was not that there was a flat-out rejection of residential use of this site. I think Ms Porter and Mr Gentleman would agree that that was basically the conclusion we came to. But there was a concern about the height. There is no doubt that the proponent

has proposed a seven-storey complex for the site. That is really at the heart of our concerns and that is part of why we will be supporting this disallowance motion.

The planning minister said in November, I think, that he gave in-principle support to a seven-storey complex on the site. He was quoted in the *Canberra Times* as giving in-principle support to a seven-storey apartment complex development on the site of the Embassy Motel. So the planning minister has made clear that he supports this development. That is fine. That is for him to argue. But it is interesting—I will come back to this—that since the tabling of this draft variation the minister has said, "We don't have any control over height. Whether it is seven storeys or whatever, it's got nothing to do with us. That is an NCA issue." As I will come back to, that is not completely true.

This variation was a proponent-initiated variation, as stated in the relevant documents. The reason for the variation was an approach from the developer seeking to construct a seven-storey residential unit block on the site, which is not allowed under current land use policy and would not be allowed under any land use policy that applies to Canberra at the moment other than in a few specific places, such as in town centres and along Northbourne Avenue.

Obviously, there has been a bit of a difference in approach by the minister from the one he had when he was in opposition to the one he had when he was in a minority government and the one he has now as a member of a majority government. We are seeing an increasing propensity not to listen to some of the concerns of residents and an increasing propensity to reject others.

As I stated before, there are a couple of important points to be made here. One is in relation to the unanimous decision of the P&E committee that development on this site should not go above five storeys. Mr Corbell is going to come back and say that the NCA has control and a maximum of four storeys, so that does not matter. As Dr Foskey pointed out, it would not be inconsistent for there to be height controls.

The NCA could turn around tomorrow and increase the height levels for the Embassy Motel site. In fact, the NCA could turn around and say that it does not have a problem with there being 10 storeys or 20 storeys on that site or anywhere along Adelaide Avenue and, as this variation stands, there would be nothing in ACT legislation that would prevent there being taller buildings, whether they be seven storeys, 10 storeys or whatever the NCA decided.

Currently, there is a control of three to four storeys for the site, but the NCA could turn around at any time and change that. I think the minister is in an interesting position in that he has supported a seven-storey development, but he has done nothing about getting the relevant controls of the NCA changed. I assume that he is assuming that those will change so that a seven-storey development can go ahead, but he proposes no controls at a territory level.

The NCA, as I said, could turn around tomorrow and agree to 10 storeys or 15 storeys and, according to this draft variation, there would be nothing to stop it, no territory controls on height, on plot ratio or anything else. That is a significant concern and that is where the P&E committee was coming from in its unanimous decision. It came to the conclusion that residential development may be appropriate on this site, but there should

be some controls. As I said, my colleagues on the committee, Mr Gentleman and Ms Porter, and I unanimously agreed that there should be some controls and we responded to some of the concerns of Deakin residents. I think that it is important that Mr Corbell do the same.

My other concern in this regard is in relation to the lack of consultation with the NCA. From talking to the NCA about it, there has been no approach from the ACT government on this issue. So I do not quite know what is the ACT government's position. As I said, they have said that they backed the seven storeys; Mr Corbell said that. They have proposed this draft variation specifically so they can go ahead in the knowledge that the NCA will need to change things, but they have done nothing about it. I look forward to Mr Corbell letting us know exactly what the government's position will be as to how the territory law operates in relation to the NCA. That is of particular concern.

We are supporting this disallowance motion because we think that ACTPLA and the minister need to go away and have a think about what we actually want for this site. The minister said seven storeys. The minister is proposing that we just hand over control of any height restrictions completely to the NCA, whereas that is just not the case. I am sure that the minister will get up and argue that it would be inconsistent with the national capital plan.

That is just not the case. If the national capital plan has a maximum height limit and the territory plan has a maximum height limit that is somewhere below the other one, that would not be inconsistent. They could still apply. They could sit side by side and those controls at territory level, on behalf of the people of the territory, could be put in place. But the draft variation, as it stands, does not do that and does not contemplate that. In addition, there has been no consultation with the NCA.

The whole thing is a bit of a mess-up and it leaves everyone without any certainty. It leaves the proponent without any certainty; it leaves Deakin residents without any certainty; and it leaves the wider community without any certainty as to what might happen, and it puts things fairly and squarely in the control of the NCA. This government has consistently said that the ACT should have more control over planning issues in the territory and the NCA should have less. I do not completely disagree with that position.

I think there is a place for the territory and for the people of the territory to have more of a say in how the city is planned. I think the NCA will continue to play an important role. But I think that it is incumbent upon the ACT government to talk to the NCA about some of these issues where there is a crossover of jurisdiction. It seems that there has not been any real communication between the ACT government and the NCA on this issue.

I do not quite understand where the minister is coming from, but I am concerned that he is not proposing any restrictions, being aware that the NCA was planning to review its polices. I understand that it is not going to at the moment, but I imagine that at some stage there will be an approach, either from the ACT government or from the proponent, for the NCA to review that. I would have thought that these discussions would have been well at hand and that the ACT government could have worked with the NCA.

Mr Corbell has said in the newspapers in response to this matter that the ACT government does not control height. That is not completely true. The ACT government

does have some control of height, provided it is not inconsistent with the national capital plan. That is where there is a fine distinction here and that is where I think we are being let down by this draft variation. That is why the Liberal opposition will be supporting the disallowance motion.

As I said, we are not saying that there should not be any residential development here. Our policy is that there should be some densification around transport corridors, but it needs to be done consistent with the character of the area and it needs to be done in a way that the people of Canberra can accept. I think that it has become clear that, for the people of Deakin, the prospect of a seven-storey development in their area, where currently there is nothing above one or two storeys, is out of character and that it is of concern to them.

That is where this variation has got it wrong. It has not put in any safeguards and controls for the people of Canberra. It has passed the buck and allowed the NCA to have control and it has left a lot of uncertainty. That is why we will be supporting the disallowance and we call upon the minister to work with ACTPLA and the NCA to get a better solution that gives certainty to the residents and to developers. What we have ended up with here is actually the worst of both worlds and it is just handing it to the NCA to decide what will happen in that area.

MR CORBELL (Molonglo—Minister for Health and Minister for Planning) (10.59): As an Assembly, as a government, as a community, we are all extremely focused on the issues to do with more sustainable patterns of development in our city. As a community, we are focused very strongly, at least in our rhetoric, on putting in place planning and development policies that encourage the development of a built form that creates a more sustainable city. But when push comes to shove, unfortunately, on all too many occasions, some members of this place decide that it gets a little bit too hard.

The Labor Party's policy in opposition and in government has always been to support intensification of development where it supports more sustainable transport use and where it supports activity in our town centres, group centres and local centres. This development achieves all of those outcomes. This proposal to change the land use achieves all of those outcomes. This is not a proposal to change the territory plan to permit multistorey development in the middle of a residential area. It is not a proposal to change the territory plan that will see a single residential dwelling destroyed for a larger-scale development. It is not a proposal that in any way will result in the overshadowing of any existing residential area in the city. It is a change to the territory plan that will create a higher density of development along a key public transport route in our city.

The territory plan, in its objectives and principles, argues that higher density development should occur in locations around our town centres, around Civic and along public transport corridors within the objectives and the principles of the territory plan. It is also consistent with the thinking of the government's own strategic planning framework, the spatial plan, to encourage intensification of use along public transport corridors and around centres. This government has never supported, and previously in opposition did never support, isolated, standalone development proposals that did not meet those broader planning objectives. But this proposed change to the territory plan does exactly that.

What I am most disappointed about with this debate is that the opposition to a proposal that is consistent with all the planning philosophies that drive a more sustainable built form of our city comes from the Greens. The Greens talk about sustainable development, they talk about making the hard decisions, they talk about encouraging development patterns which encourage greater public transport usage down the path, encourage the viability of centres, but when a development proposal comes along that achieves and fits perfectly into those objectives, they do not support it. There is a contradictory and hypocritical position, regrettably, from Dr Foskey in this instance.

This variation has been significantly consulted upon and a significant number of people have had their say, both through the formal exposure of the draft variation during last year and through the planning and environment committee's investigation into the variation, both of which, of course, are mandatory processes under the land act.

It seems from the debate today that the argument has been about height. I want to make very clear that the ACT government, the territory, does not have statutory responsibility for the maximum height of this development, of development on this site, and that is what I have said consistently since the variation was tabled. This variation has been supported, the change to residential land use has been supported, unanimously by the Assembly's planning and environment committee. It has been supported by Mr Seselja, it has been supported by Mr Gentleman and it has been supported by Ms Porter. They have unanimously agreed that residential development on this site is an appropriate land use and should proceed.

They have reflected in their recommendations the concerns raised in the committee hearings by community members about the potential height of development in this area. That issue of height is an issue for the National Capital Authority. Adelaide Avenue is a national approach route under the national capital plan. They have statutory responsibility for the maximum height of development in those areas, the maximum height on those approach routes. It is not the role of the ACT government to set height in regard to this site. I am very happy to remain on the record as saying that, as planning minister, I support seven-storey development on the site, but the bottom line is that it is not a matter for the ACT government to determine.

If you want to get into the technicalities of this, you should look at the recommendation of the planning and environment committee. The planning and environment committee recommended in recommendation No 1 that the B15 area specific policy include a requirement that the height of the residential buildings on the site be generally no higher than three to five storeys. That recommendation is inconsistent with the existing development control plan set by the National Capital Authority for the site. The National Capital Authority's requirements for the site are that any development on the site should be predominantly three storeys and a maximum of four storeys in height. The planning and environment committee recommended three to five storeys. So even the planning and environment committee's recommendation is inconsistent with the existing development control plan for the site.

The government's view is that the matter of height is, regrettably, a matter for the National Capital Authority. They have statutory responsibility for setting the maximum height for this site. The ACT government will not be making any representations in

relation to the potential height of development on that site. It is a matter for them to determine, consistent with their responsibilities under the national capital plan.

One other issue raised in this debate by Dr Foskey was wrong. Dr Foskey has argued that the territory plan change will exclude the existing commercial accommodation uses on the site. That is incorrect. The reason it is incorrect is that already the B15 area specific policy permits a range of uses on this site, including restaurant, business agency and shop. In addition, the variation includes provision of commercial accommodation units. That means that the variation permits the continuation, for as long as the lessee chooses to do so, of the existing uses on the site; commercial uses, restaurant uses and bar uses can all continue on the site. The area specific B15 policy permits it with the amendment outlined in the variation as a result of the committee's recommendations.

As an Assembly, we have to back up our words with action. If we believe that higher density development is appropriate in group centres and town centres along public transport corridors to support over time more viable and more sustainable transport uses and to keep development out of low-rise residential areas, we should be supporting changes like this to the territory plan. We should not be supporting changes to the territory plan that permit wholesale redevelopment of existing low-rise, single storey residential areas away from shops, away from public transport routes, but we should be supporting changes to the territory plan that achieve all of the objectives we set ourselves in this place. For those reasons, the government will not be supporting this disallowance.

MR DEPUTY SPEAKER: The minister's time has expired.

MR GENTLEMAN (Brindabella) (11.09): Draft variation No 237 proposes to change the land use policy for the Embassy Motel site to allow for redevelopment to provide for a diverse range of housing options and contribute to policies contained within the Canberra spatial plan, including reducing pressure on urban expansion, promoting urban infill in appropriate locations and reinforcing the viability of local centres. The fundamental reason for a variation to the territory plan is to change the land use policy to facilitate proposals that are supported by the authority and considered to be consistent with the ACT government's planning policies. The variation does not give effect to any particular development form as defined by height, floor area or design.

The variation proposes to create a new area specific policy under the residential land use policy of the territory plan. The new area specific policy will not only allow for residential use but, as you have heard, will also enable uses such as restaurant, business, agency and shop. A mixed-use environment will encourage activity on the ground floor level, which, in turn, can provide for passive surveillance of the local area.

The Embassy Motel was constructed in the 1960s and serves the budget end of the tourist market. As Canberra has developed and new accommodation facilities established in both Woden and the city, the viability of this style of motel is proving increasingly difficult. Occupancy rates have steadily declined from 60 per cent in 1998 to 52 per cent in 2003. The study of the economic viability of the Embassy Motel suggests that the occupancy rates of high rate commercial accommodation will continue to decline. While redeveloping the site the opportunity is there to provide medium and high-density residential development closer to commercial centres and major transport corridors. The proposed development of the site for residential use is not permitted in the entertainment,

accommodation and leisure land use policy area. The changes contemplated by this variation will enable either a residential building or a continuation of the existing use. Whilst the main issues raised in submissions relate to design issues, those associated with building height are the responsibility of the National Capital Authority.

Mr Seselja: Who do you reckon wrote this speech? He's going against his own recommendations as chair.

MR GENTLEMAN: Given that the site is adjacent to an approach route under the national capital plan, it is therefore subject to the special requirements—and I will talk to you about that in a minute, Mr Seselja—of an approved development control plan. As the territory plan cannot be inconsistent with the national capital plan, the question of dealing with the height limit through this variation is academic and possibly wrong.

The development control plan states that buildings at the crossing of Hopetoun Circuit by Adelaide Avenue should be predominantly three storeys and a maximum of four storeys in height. The orchestrated hype that has been built up by a few members of the local community about this variation—

Mr Seselja: What a disgrace! That is a disgrace—the orchestrated hype! That is what you are saying to the residents of Canberra—"orchestrated hype"! There is genuine concern—450 residents.

MR GENTLEMAN: Mr Deputy Speaker.

MR DEPUTY SPEAKER: Order!

Mr Seselja: That is a disgraceful comment!

MR GENTLEMAN: and accusations of no opportunity to comment are misleading. I believe that, whilst the planning and environment committee has expressed a view on height, we did support the variation after having considered the views of all concerned. Mr Seselja raised the issue of consultation, which he has just raised again. I will quote directly from the committee's comments in the report in 3.2, comments that, of course, Mr Seselja was an active party to and supported unanimously. It reads:

> The Committee does not accept the Deakin Residents' Association's assertion that the proponent and the ACT Planning and Land Authority have not consulted adequately about this proposed development. The Association's view is not consistent with the evidence available to the Committee.

This variation is consistent with the government's policy direction stated in the spatial plan, to direct residential development to locations with a high level of accessibility to facilities and services, thereby reducing dependency on vehicle use. The committee worked in a bipartisan manner in supporting the recommendation in this variation. I support the variation in the form in which it has been tabled, as it deals with those issues that the territory plan can play a role in. It provides for greater flexibility in the types of uses that can occur on this site. It is consistent with the government planning policies, and it pays due regard to the views of the planning and environment committee.

DR FOSKEY (Molonglo) (11.14), in reply: In replying to the other speakers and closing the debate, I want to say that it is possibly a brave but I hope not futile exercise to put up a motion that I am quite sure the government, with its numbers, will vote against. Nonetheless, I think it is my role as a crossbencher—as, I guess, part of the opposition sometimes and part of the government support sometimes—to raise these issues and make sure they are talked about in the Assembly, majority government or not.

First of all, in responding to the other speakers, I thank you very much for your considered contributions to this debate because it is really important that we debate. I was very interested to hear the two versions of what happened in the planning and environment committee, or of the planning and environment committee's conclusions, from two members. I did not hear from Ms Porter but I guess I can assume she concurs with Mr Gentleman. I emphasise the point made by Mr Seselja that the National Capital Authority could turn around tomorrow: the fact that there are now no territory controls to such a turnaround leaves the NCA and the community without certainty.

Mr Corbell spoke at some length about sustainability and accused me of being contradictory and hypocritical. Nowhere in the Green's policies does it say that we support seven-storey developments around neighbourhood centres. That is what we are talking about here. Deakin happens to be relatively close to the city and it happens to be near a major road with all the different planning controls that apply to that. But basically, to the people who live there, it is a neighbourhood, it is a suburb and assumedly it is being treated like other neighbourhood centres.

I believe development in Deakin can be sustainable without being seven storeys high. I also believe there was the potential for the government and the community to reach a satisfactory compromise if we could have had agreement on the height. I believe the community would have been willing to go there—I think that was being said—even though there were really strong concerns about the change of use from a tourism sort of land use policy—entertainment, accommodation and leisure land use policy—to residential. It has not been proven that the Embassy Motel is not viable. That has been said there but I would like to see the hard evidence. That is a claim made by the proponents and conveniently used by both the government and Mr Gentleman to back up a decision. On the other hand, I believe ACTPLA itself was concerned about the lack of sites capable of commercial tourist accommodation which once lost are not easily replaced, especially at that site. That is the opportunity cost that is referred to later.

It being 45 minutes after the commencement of Assembly business, the debate was interrupted in accordance with standing order 77. Ordered that the time allotted to Assembly business be extended by 30 minutes.

DR FOSKEY: When we first started having conversations in the early 1990s the word "sustainability" started out as a very strong word with certain qualities attached to it. I believe it has become a sort of weasel word that can be pulled up and used by anyone who wants to justify a particular action. I believe that sustainability has become a tool of this government to justify, in this case, a development where we have no idea at all about its sustainability with regard even to the use of public transport. We are talking about what the proponents themselves say is the luxury upper end of the market. I do not know

that such people catch buses with great alacrity; I do not see them jumping on their bikes, even though Deakin is a reasonable distance from the city. But are they going to the city?

I feel that the word "sustainability" here is a word after the fact and that it is being used to justify a development rather than the government saying, "We want to make sustainable development our aim here; what kind of development will best suit that?" Anyone who lives near that site will know it is going to be an absolute nightmare with people coming and going, as everyone in Canberra does, between 8 o'clock and 9.30 in the morning. Our roads are quite peaceful after that but at that time of day it can be sheer hell being on the road. That is a spot where it is already extremely difficult.

I think "sustainability" is a bit of a furphy here. Of course I believe in sustainability; and our policies state that we should have medium density development around neighbourhood centres of a certain kind. But we believe that has been interpreted far too broadly in a number of cases and that, in this case, it does not fit at all. If the government is concerned about the viability of the Embassy Motel, assumedly it is concerned about every other business in the ACT that is experiencing difficulty. Anyway, where is the evidence that shows that the Embassy Motel is unviable? There is quite a lot of accommodation on the north side—on Northbourne Avenue—but, as far as I can see, the south side lacks such accommodation. The Embassy Motel has been on the map for a long time. We should think very seriously about whether we should replace it.

I guess we come back to the height issue here. Mr Corbell has stated emphatically—and it is good to hear it in black and white—that he supports a seven-storey development. He certainly indicated that last year, when he spoke before the election. Mr Gentleman has now come along and said that he does not seem to mind either, even though he is the chair of a committee that recommended a height of between three and five storeys.

To conclude, it is disappointing that the work of the planning and environment committee has been dismissed. It was reasonably supportive of the development. We had potential for compromise with a four-storey limit that I think would have led to a much greater degree of trust between the government and the residents. I think the government will need to work very hard to rebuild that trust and show residents that it is committed to sustainable development, and that that sustainability does not just include the environment. That of course will mean—I am quite convinced—that this development will be water and energy efficient in every way. It means social and economic sustainability as well. I have not seen any evidence at all that this development will satisfy those areas.

Question put:

> That **Dr Foskey's** motion be agreed to.

The Assembly voted—

Ayes 6		Noes 7	
Mrs Burke	Mr Smyth	Mr Berry	Ms Porter
Dr Foskey	Mr Stefaniak	Mr Corbell	Mr Quinlan
Mr Pratt		Mr Gentleman	Mr Stanhope
Mr Seselja		Ms MacDonald	

Question so resolved in the negative.

Standing orders—suspension

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

> That so much of the standing orders be suspended as would prevent notice No 6, Private Members' business relating to a code of conduct for Members, being called on forthwith.

Members code of conduct

MR BERRY (Ginninderra) (11.28): I move:

> That the Code of Conduct for Members, as detailed below, prepared by the Standing Committee on Administration and Procedure (Fifth Assembly) be adopted as a resolution of continuing effect:
>
> **Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory**
>
> **Preamble**
>
> Members of the Legislative Assembly acknowledge their diversity of background and personal beliefs and that of Australian society, and maintain their loyalty to the Commonwealth of Australia and the people of the Australian Capital Territory.
>
> In so doing, Members agree to respect and uphold the law, not discredit the institution of Parliament, and maintain their commitment to the public good through personal honesty and integrity in all their dealings.
>
> **Duties as Members of the Assembly**
>
> Members should avoid any decision or action which may depreciate the reputation of the Assembly and, endeavour to reasonably adhere to the Assembly's code of conduct to ensure that their personal conduct meets generally accepted standards and does not discredit or call into question their office or the Assembly.
>
> Members acknowledge that they have an obligation to electors to make decisions on their behalf and as such place emphasis on their dedication to this obligation. As elected representatives, Members will act honestly in all their dealings to maintain the public trust placed in them.
>
> **Code of Conduct**
>
> **Conflict of interest**
>
> Members have an obligation to use the influence conferred upon them in the public's interest and not for personal gain.
>
> Notwithstanding the provisions set out in section 15 of the *Australian Capital Territory (Self-Government) Act 1989* and standing order 156 of the Legislative

Assembly, Members are individually responsible for preventing personal conflicts of interest or the perception of a conflict of interest, and must endeavour to arrange their private affairs to prevent such conflicts arising or take all reasonable steps to resolve any conflict that does arise.

(i) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private interest or will improperly and dishonestly further the private interest of another person.

(ii) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public, or a broad class of persons.

Disclosure of pecuniary interests

The actions and decisions taken by Members are accountable through the Assembly to the people of the Australian Capital Territory. Member's actions and decisions should be transparent and bolster public confidence in the Assembly and the legislative process. In accordance with this transparency, Members are required to disclose their pecuniary interests pursuant to the resolution of the Assembly "Declaration of Private Interests of Members" Agreed to on 7 April 1992 (as amended 27 August 1998 and 17 March 2005).

Receipt of any gifts, payments, fees or rewards

Members must register all gifts, payments, fees or rewards valued at more than $250 received from official sources, or at more than $100 where received from other than official sources. This does not include gifts, payments, fees or rewards received by Members, the Member's spouse, immediate family or personal friends in a purely personal capacity, unless it may pose a conflict of interest. Registration should be made in accordance with the Member's Statement of Registrable Interests.

Advocacy/bribery

In accordance with the provisions of section 14 of the *Australian Capital Territory (Self-Government) Act 1989*, Members must not solicit, accept or receive any remuneration, benefit or profit in exchange for services rendered in the Assembly or one of its committees other than the remuneration and allowances provided for pursuant to section 73 of the Act.

Use of confidential information

Members are reminded of their obligations pursuant to the standing orders concerning the publication of confidential information.

Members in the course of their duties often are also the recipients of information which is either confidential or unavailable to the general public. Members are privileged to receive this information. It is provided to assist them in their decision making for the benefit of the Territory. The status of this information should not be compromised.

Members are not to misuse any confidential information received, particularly for personal gain or the personal gain of others.

Conduct as employers

Members will observe the obligations placed on them as employers with respect to the terms and conditions of those who work for them. Members should extend these obligations to consultants (however employed or recruited). Members need to be aware of the requirements of following policies: occupational health and safety; discrimination, harassment and bullying; equal employment opportunity; acceptable use of information technology and any other relevant policies and legislation.

Members should make employment decisions that are in the best interests of the Member and the Assembly. Members are advised to carefully consider the implications of employing persons in close relationships where there may be perceived conflicts of interest.

Members must ensure that their staff are aware of and abide by the relevant codes of conduct applicable to Members' staff.

Members must ensure that, where relevant, their staff also comply with the Members Code of Conduct and that they are aware that they are obliged to support the Member's compliance with the code.

Use of entitlements

Members have a personal duty to ensure that entitlements and allowances of office pursuant to Remuneration Tribunal Determinations and as summarised in the Member's Guide are used appropriately in the service of the people of the Australian Capital Territory and not for personal gain.

Members should familiarise themselves with the entitlements available and must ensure the accuracy of all claims made in accordance with the guidelines outlined in the Members' Guide. Members should be aware that items purchased using a Members' allowance remain the property of the Assembly.

Use of public resources/property or services

Members must ensure that the resources provided to them at a public expense as Members of the Legislative Assembly for the ACT, are only used for legitimate parliamentary and electorate purposes. Members must not misuse or permit the misuse by any other person or body of these resources.

Members shall not misuse monies allocated for official purposes.

Continuing support

This code of conduct has been established to assist Members as they serve and represent the people of the Australian Capital Territory. The Legislative Assembly respectfully requests that former Members support the spirit of this code as private citizens.

This resolution have effect from the date of its passage in the Assembly and continue in force unless and until amended or repealed by this or a subsequent Assembly.

Ms MacDonald: Mr Deputy Speaker, I wish to raise a point of order. Could you ask that the gallery be cleared, or that people take their seats and cease their conversations. They are being disorderly.

MR DEPUTY SPEAKER: Order! I call for order in the gallery please. A little bit of quietness would not go astray.

MR BERRY: I am moving this motion today because I believe that, with this Assembly having being in existence for some 16 years, the time for a code of practice for Assembly members is long overdue. The matter has had a long history in the Assembly. As early as 1991 the then Standing Committee on Administration and Procedure recommended that the Assembly adopt a code of conduct for members. For one reason or another that recommendation was never taken up.

In the Third Assembly, the matter was again considered by the Standing Committee on Administration and Procedure. That committee was not able to finish its inquiry during the life of the parliament, and made a statement in the closing days of the Third Assembly urging members of the Fourth Assembly to take the matter up again. In the Fourth Assembly the Standing Committee on Administration and Procedure undertook a further inquiry into a code of conduct, as well as looking at whether the Assembly needed a parliamentary ethics adviser. That committee reported in August 2001 and recommended that a code of conduct be adopted. It also recommended that a parliamentary ethics commissioner not be appointed at that time. That recommendation for a code of conduct was also not taken up.

In the Fifth Assembly, the Standing Committee on Administration and Procedure conducted an inquiry into the appropriateness of a code of conduct for members and their staff. It reported in August of last year and it, too, recommended that a code of conduct be adopted for members, with slight modifications made to the code proposed back in 1991. So you can see that this issue has been discussed for a long period of time, much longer than the gestation period of an elephant. In the meantime there have been codes of conduct for ministers in place since May 1995, when the Carnell government tabled a ministerial code of conduct. The Stanhope government has also adopted a code of conduct for the executive and staff.

I have moved this motion today not only because I think it is time that there was a code of conduct for members of the Legislative Assembly but also because I believe there is a consensus for it amongst members. Codes exist in several other parliaments: Victoria, New South Wales, Queensland and Tasmania. In its report in 2001, the Standing Committee on Administration and Procedure cited research from the respected social commentator, Hugh Mackay, where he stated that:

> Australians view the honesty and ethics of Members of both State and Federal Parliament as only slightly better than those of car salesmen. Only 7 per cent of Australians believe that Members of both State (down 2 per cent, since 1997) and Federal (down 2 per cent) Parliament are of high or very high standards of honesty and ethics. The only profession rating lower than Members of Parliament is car salesmen…

It is quite daunting to read such a statement out in a place like this. It can be reasonably drawn from this, I think, that the standing of the respective legislatures is negatively affected by the standing of politicians. The adoption of this code is about this Assembly's demonstrating its willingness to put in place performance measures aimed at improving the standing of this legislature as the central part of the territory's parliamentary democracy. The institution of parliament is a cornerstone of our democratic principles and values, which will be improved with the adoption of a code of conduct for members. The onus falls on us, as parliamentarians, to show our commitment to the institution and to the people by our adherence to the code. The code I propose today is that contained as appendix D in last year's report. It covers the following areas.

The preamble, where members acknowledge their diversity of background and personal beliefs and that of Australian society and undertake to maintain their loyalty to the commonwealth of Australia and the people of the Australian Capital Territory. There is also a commitment to agree to respect and uphold the law, not discredit the institution of parliament, and maintain commitment to the public good through their personal honesty and integrity in all their dealings.

Duties as members of the Assembly: whilst we do not routinely see a duty statement for members before we seek office, it is important to set out the altruistic principles which should guide us in our work so that our electors can judge us. These include high standards of personal behaviour, not bringing the institution into disrepute, and acting honestly in all our dealings to maintain the trust placed in us.

Conflict of interest, or a perception of conflict of interest, is an area that causes a lot of controversy in the community and leads to poor perceptions of politicians. We will have seen in our lifetime, or even in the period of our lives as politicians, many controversial issues that have grabbed the headlines in the newspapers and the various media outlets about the private and public antics of politicians, which, in turn, as I said earlier, bring the institution into disrepute. This code reminds us of our obligations to use the influence conferred on us in the public's interest and not for personal gain. There are of course also requirements placed on us by the Australian Capital Territory (Self-Government) Act 1988 and Standing Order 156.

Disclosure of pecuniary interests is another area where we politicians need to earn the trust of the community. We are required to complete the statement of registrable interests. The adoption of this code will demonstrate our commitment to transparency and accountability. Receipt of any gifts, payments, fees or rewards is also a requirement covered under the statement of registrable interests.

Advocacy and bribery: this area relates to the requirement of the Australian Capital Territory (Self-Government) Act 1988 that the only remuneration, benefit or profit that members can receive for their Assembly work is that determined by the Remuneration Tribunal.

Use of confidential information: we are required to safeguard confidential material we gain access to as part of our duties as members. Access to information not available to ordinary members of the community is a privilege of office and we need to understand

the impact that misuse of such information can have. We must certainly not use information gained as part of our office for personal gain.

Conduct as employers: we have two major areas of responsibility as employers. Firstly we must ensure that we provide all the support and safeguards for our employees that we expect of other employers in the territory. In this regard we should be model employers. The other area is as people spending taxpayers' money to support our work as MLAs. We must be scrupulous, and accountable for how that money is spent; we must recognise that the community expects value for their money; and we must also accept that the community wishes us to be seen to be delivering value for their money.

Use of entitlements: similarly we must ensure that we do not abuse the entitlements we receive as members. They are there to assist us in our work for the community, not for our personal use. This applies equally to the use of public resources, property or services.

Continuing support: a final area covered is continuing support. We hope members will continue to support the code after they complete their service as members of the Assembly. One's life as a politician does not end with service. If there are any controversial issues, as members will note, the second thing that appears in the headline is "former member of" or "former parliamentarian". That continuing support for the code is an important issue as well.

The code is a public statement for all members. It aims to ensure that we support the high ideals expected of us by the community. I do not think the adoption of a code should have as its central aim the improvement of the popularity of politicians per se. If we think that is what it is all about, we have failed at the first hurdle. By adopting this code we demonstrate our commitment as elected representatives to the ACT to act honestly in all our dealings, to maintain the public trust placed in us and to seek to enhance the standing of the Assembly—this democratic institution—in the community that elects us.

When I was first elected to this Assembly we were the most unpopular parliament in the country. I think all of us who were here in those days would remember it. Over my years here I have hoped that one day that image would be improved. I think it has been improved; I believe that, generally, this Assembly has served the community well. The signals we send of our fidelity to the electorate are, of course, a bit of a work in progress. I think this code of practice contributes to that further work, and there will be more work in the future. I make the point here that the committee which recommended this code of practice, which I chair, also recommended that this code of practice be reviewed before the end of this Assembly to see how its operation has served the Assembly and the people of the ACT. As I say, this sort of thing has to be a work in progress, and this is a starting point.

The fact is that our democracy cannot be seen to be successful if our parliamentary institution is not held in high regard and respect out there in the community. So I trust that this code, although I do not think it is the full answer to all of the issues that concern the community, is an important step in the right direction. I commend the code to the Assembly.

MR SMYTH (Brindabella—Leader of the Opposition) (11.40): The opposition will be supporting this motion today. We thank the Speaker for bringing forward the code of

conduct for members of the Legislative Assembly of the Australian Capital Territory. As he said, it has been a long time coming. As he was speaking I wrote down in my notes, "long gestation, like elephants" and, lo and behold, the speaker said it has had a longer gestation than an elephant's! In fact it has been about five times longer than that gestation period.

I think gestation is sometimes part of the process of maturity. Whilst it is now the Sixth Assembly that will pass this code, it is built on what has happened before us. There were attempts to do it in the First Assembly but, for whatever reason, that Assembly did not feel they should move on it. The Third Assembly recommended that the Fourth Assembly should do something and the Fourth Assembly came up with some interesting suggestions for the code and suggested an ethics adviser. Again, for reasons that only history and a read of *Hansard* will reveal, they did not proceed on that.

The Fifth Assembly obviously felt it was more appropriate and that the time was right and made their recommendation which, as the Speaker has said, was annex D to their report. Here we are, the Sixth Assembly, moving to accept this code of conduct. I think it shows what the Speaker was saying about how we have gained acceptance in the community. He is quite right; the First Assembly was not something the majority of Canberrans wanted. But here in the Sixth Assembly we are putting in place signs and symbols that we want to work towards continuing to gain the acceptance of our community. I think the Speaker is right; we have gone a long way towards that.

Indeed, to the Speaker's credit, an "Assembly practice", not unlike the *House of Representatives Practice*, will soon be available to us all. That is another of the signs of maturity of the parliamentary process that I hope will go a long way towards dispelling some of the fears of the community. As the Speaker has said, this has been endorsed by the administration and procedure committee, which is chaired by the Speaker. All groups are represented on that committee. So this comes forward with the support of the membership of the Assembly.

It will be an ongoing code, which, as the Speaker has also said, should be reviewed. The suggestion is that it be reviewed before the end of this Assembly, and we agree with that. When you put codes in place it is always important to finetune them. I note that Dr Foskey intends to move some amendments—the finetuning process begins, before we have even adopted the code. I think it is important to understand that this is a living document. As parliaments, practices and countries change, the standards will change. We need to ensure, from this point in time, that we reflect those standards as put forward by the community.

I will not go through the document again as the Speaker did. It covers the important things such as duties as members and conflict of interest, which is always of interest to the community and something members need to be aware of. Our conduct as employers is very important because we employ staff, and the relationship with the Assembly staff is also of importance. I note that in the preamble we acknowledge the diversity of backgrounds and personal beliefs of members and those of Australian society. I think that is a good thing. Some of us speak with different accents; some of us were born in other countries; and some of us come from the southern part of Canberra rather than the northern part. I think it is that diversity that makes us strong. The preamble starts by

acknowledging that, like our society, this place is quite diverse, just in terms of names, ethnic backgrounds and accents, for instance. It reads:

> Members agree to respect and uphold the law, not discredit the institution of parliament and maintain their commitment to the public through personal honesty and integrity in all their dealings.

That is important. If we, as members, do that we can only make this place better. If we make this place better then, hopefully, we will govern it wisely and make the ACT a better place to live.

DR FOSKEY (Molonglo) (11.44): I will be supporting the code of conduct and seek leave to move amendments to the motion.

Mr Berry: This is probably not a point of order but I will do my best to make it sound like one. Dr Foskey need not be troubled by this being dealt with separately, except that some of the elements of her amendments will be opposed. If we were to deal with them together, we would have to separate them later in order to do that.

MR DEPUTY SPEAKER: Dr Foskey, you may move that all those amendments be grouped. Mr Berry, you might then like to move that they be dealt with separately.

Mr Berry: You are suggesting it would be a better idea for me to grant leave for them to be dealt with together and they can then be broken up. That is sound Clerk's advice!

Leave granted.

DR FOSKEY (Molonglo) (11.46): I move the following amendments:

1. In the section **Conduct as employers:**

   After the words "*obligations to*" add "*contractors and*"

2. In the section **Conduct as employers:**

   After the words "compliance with the Code." insert a new paragraph:

   "Members must accept responsibility for the actions and decisions of staff in the performance of their work or duties."

3. In the section **Conduct as employers:**

   After the words "compliance with the Code." Insert a new paragraph:

   "*Members must ensure that staff members declare their position when participating or raising questions at public meetings, consultations and community events, and in the media.*"

4. Immediately after the section **Conduct as employers** insert new section:

   "**Conduct toward Assembly staff**

> *It is expected that Members and their staff will extend professional courtesy and respect to all staff of the Assembly. Members should ensure that through their own conduct and that of their staff, reasonable employment conditions for all building occupants are maintained.*
>
> *If problems or concerns with the performance or conduct of an Assembly staff member arise these should be dealt with through appropriate policies and procedures."*

I support the introduction of the code of conduct. It is important to be specific, where possible, as to the expectations of behaviour we have of each other. Employees of the public service are indeed governed by a number of acts. The public service management act springs to mind, and associated best practice notes. This code of conduct, developed over some time, very clearly and simply puts similar expectations on the record.

Politics is an ancient occupation, and behaviour within it is governed by a kind of common law. I do not think we will be imposing on people by putting some sort of framework around those understandings and giving us all a reference point from which to judge ourselves and each other as necessary. I believe it will assist the Speaker, the administration and procedure committee and indeed any privileges committee we may need to set up from time to time. It will put us all on a fairly explicit, equal footing with shared understandings.

The reason I wanted to move my amendments together is because in this speech I want to talk about my amendments. I believe the Speaker has done an excellent job of speaking to the code of conduct, and there is nothing to be gained from repeating his points. I believe the government is supporting some, but not all, of my amendments. It is a little surprising that they will not all be supported but I expect that will be explained in due course.

The first amendment is a simple one, which I trust is acceptable. It simply adds the word "contractors" to the word "consultants" as those to whom MLAs owe a duty to behave ethically when we engage them. My second and third amendments would appear to be more contentious. They ask MLAs to accept responsibility for our staff in the conduct of their work and duties, and not to misuse their position of power and influence. It has been said that, with regard to ministers, this is already an inherent responsibility under the Westminster system that we in the ACT in part adhere to.

I think the children overboard affair, among many others recently, has made it obvious that one cannot just assume that such conventions exist. If members are not prepared to support this amendment, one has to ask how we can assume that they and their staff would behave any more properly in similar situations. It is also a fact that the ACT's Occupational Health and Safety Act, for example, would have difficulty recognising the Westminster system.

I will listen carefully to the arguments that will be raised against these amendments but I would have thought they were written carefully enough to ensure that a chief minister, for example, would not be held to account over the out of hours uncountenanced private activities of an adviser with a spray can for instance, and neither would a Leader of the Opposition be held accountable for the secret collection of a minister's emails by

a volunteer staffer, given that such an activity was not part of his duties and the leader was neither aware of it nor condoned it.

The details of my third amendment go to specific instances where staff members present themselves as anonymous individuals at public meetings, consultations, special events and in the media, or they may declare their name but people outside this place do not know of their role in the Assembly. I would have thought it incumbent on members' staff to declare their position and distance themselves from the political or policy position of their member if they chose. I believe, however, that it is the responsibility of members to ensure that their staff are aware of that expectation and do not manipulate their privileged position of information and influence and thus be supported in taking action to dismiss such staff if they do. I can see no justification for the Assembly to fund MLAs to run a secret service staff. I think it should be very clear that staff work for a particular MLA.

My fourth and final amendment is again stating the obvious to an extent. Strangely, though, the obvious does not always happen. I believe it is important for members to work respectfully with all staff in this institution. It is a privilege to fill the position of a member of the Assembly and to be supported in that work, as we are by staff of this place. No-one could argue that everyone gets on easily and well with everyone else—we would not be human if we did—but the basis for any constructive approach to work is that we treat each other respectfully. Of course that is particularly pertinent with regard to a member's relationship with the non-partisan staff in this building who are duty-bound to provide exemplary service to every member, irrespective of their attitude, experience or creed.

When substantive problems arise there are policies and procedures in place in the Assembly that can and ought to be followed. It seems to me that this Assembly does not have such a strong collegiate approach as I believe has been in evidence in previous assemblies. I suspect the fact that we now have a smaller crossbench, a majority government and an opposition which can no longer raise the numbers to advance its motions might have something to do with that.

I do not mean to cast aspersions on any individuals in the Assembly, nor to overrate any previous members. It is, I believe, that we are not obliged to work with each other to the degree that various assemblies have required, and that may lead to a deterioration in behaviour. I have sometimes seen that in this place. I do, however, use this debate as an opportunity to emphasise that the territory and the reputation of the Assembly profit from a collegiate and collaborative approach. In that spirit I commend what I think are intelligent, moderate amendments to every member of the Assembly.

MR BERRY (Ginninderra) (11.54): Mr Deputy Speaker, I wish to respond to the amendments. I thank Dr Foskey for her support for the code of conduct. I want to make the point first of all that the administration and procedure committee, in recommending the adoption of the code, said that there ought to be a review of the code some time in this Assembly to see what the experience has been and whether there ought to be any amendments. So I have an inherent resistance to too much change before we get to the point of the review.

I will deal with the issues that Dr Foskey raised and then at some point deal with the amendments seriatim. In the first amendment, Dr Foskey asks for the inclusion of the words "contractors and". This is consistent with the words set out in the LA(MS) Act, whereby members are entitled to employ contractors and consultants. I think that was anticipated by the committee because the code contains the words "however employed or recruited". I have no objection to the inclusion of the words "contractors and" proposed by Dr Foskey's amendment because they are consistent with words in the LA(MS) Act, although I think in that case they are expressed the other way round, that is, "consultants and contractors". So the words are fine.

The next amendment proposes that members must accept responsibility for the actions and decisions of staff in the performance of their work or duties. I take the view that members' staff are faceless people so far as the politics of this place are concerned but that they have employment obligations to their employers, the members. Members have to accept their vicarious liability for the actions of their staff, in a political sense anyway. I do not think this needs to be said because the code states:

> Members must ensure that, where relevant, their staff also comply with the Members Code of Conduct and that they are aware that they are obliged to support the Members' compliance with the code.

That is fair enough in itself but it goes without saying that members must accept responsibility for the actions and decisions of staff in the performance of their work or duties. That is unnecessary verbiage and I just do not think the code needs to be amended to incorporate those duties. They do this anyway in a political sense. I cannot think of an experience that I have had in the years that I have been in this place which would require that sort of obligation. If it could be shown that it was necessary, I would be perfectly happy to agree to this proposition, but I do not see any practical need for the inclusion of those words.

The third amendment states:

> Members must ensure that staff members declare their position when participating or raising questions at public meetings, consultations, community events, and in the media.

Again, members cop this anyway if things go wrong. I have seen instances where there has been some political flack when members' staff—or even relatives of staff, as we have seen in more recent weeks—have involved themselves. But I think it is taking it a bit too far once you start treading on what could be private lives by way of a code of practice for members. In my own heart, I cannot justify support for that particular amendment.

I do not have any difficulty with the fourth amendment. I think it goes to the issue of paying reasonable courtesy to employees in this Assembly who are not LA(MS) Act staff. When we come to vote, I recommend that amendment No 1 be agreed to, that amendments Nos 2 and 3 be rejected, and that No 4 be accepted.

MR SMYTH (Brindabella—Leader of the Opposition) (11.59): Mr Deputy Speaker, the opposition has some concerns about the first amendment. I raised them with the Clerk,

who sought some advice. I think the advice is that this is a code and therefore it is not law as such. The code says:

> Members will observe the obligations placed on them … with respect to the terms and conditions of those who work for them. Members should extend these obligations to consultants …

We are being asked in amendment 1 to extend these obligations to include contractors. I have some concerns that we may be being asked to expand the cover we offer in respect of things like workers compensation claims and public liability claims and that this may come back to haunt the Assembly. If the Speaker is saying he can live with it, I will accept that.

I have an old copy of the other amendments that Dr Foskey has put forward. Amendment 2 proposes that members must be responsible for the actions and decisions of their staff. It was put to me that this has not been run past staff. We now suddenly have before us a number of amendments that look at what staff do and how staff operate in this place. Dr Foskey raised the question of standards and things like the children overboard and email affairs. This is a code of conduct for members. If a code of conduct is wanted for staff, I think we should have a separate code. Perhaps that is a discussion we need to have. The document we are now considering is intended to be a code of conduct for members. However, suddenly we are being asked to add some onus on the staff as well.

The second amendment states:

> Members must accept responsibility for the actions and decisions of staff in the performance of their work or duties.

I think we do that naturally. But if a staffer has a brain snap or a bad day and punches somebody out, are we responsible for that? I do not think we are and I do not think we ever can be. So we would have difficulty with amendment 2.

Amendment 3 is interesting, particularly given the letter writing—the love letters that were written—in the recent couple of days. We actually do agree with amendment 3. If staff are attending meetings, must declare their position when participating or raising questions. If they are attending as your representative or as part of the political process, we certainly do agree with amendment 3. We think that would be fine.

In regard to the fourth amendment, which relates to conduct towards Assembly staff, I would expect and work to ensure that all my staff extend professional courtesy with respect to all staff of the Assembly. However, I have a problem with the words "employment conditions" in the second sentence of the first paragraph of the amendment. I would use the word "workplace". The wording would then be "reasonable workplace conditions for all building occupants". I cannot ensure that any reasonable employment conditions Mr Gentleman might negotiate with his staff will be maintained. I see employment there as being a particular relationship between the member and their staff. So I am not particularly comfortable with the word "employment" but, again, I have had a discussion with the Speaker and he seems to think it is okay. I will just put that concern on the record.

So we certainly can support amendment 1, we would be interested in supporting amendment 3, and we certainly support amendment 4.

MR CORBELL (Molonglo—Minister for Health and Minister for Planning) (12.03): Mr Deputy Speaker, the government's view is consistent with the view put forward by Mr Berry. The concern that government members have in considering Dr Foskey's amendments predominantly relates to this: at what point does a code of conduct for members become a code of conduct for members' staff? The Labor Party's view is that there is a very clear framework within which the responsibilities and obligations of staff are set out, that is, through the Public Sector Management Act and through the relevant industrial bargaining arrangement.

Indeed, Labor would argue quite strongly that if we wish to impose conditions or expectations on our staff, which as employers we should in terms of the appropriateness of their conduct and approach to their professional employment, staff themselves should have the opportunity to engage in that discussion and should be part of the negotiations relating to what are their expectations and what are the employer's expectations of them. So at a basic level of industrial democracy we believe that the more appropriate framework for explicitly setting out the expectations and obligations of staff members is within the relevant employment arrangements that exist, either through the Public Sector Management Act or through the relevant industrial bargaining framework—enterprise bargaining agreements and so on. That is where the detail of these matters should rest.

That said, there are a number of amendments that the government supports. Clearly, the addition of the word "contractors" in amendment 1 is a sensible change and one that is certainly acceptable, as is amendment 4, which deals with conduct towards Assembly staff. Conduct towards Assembly staff is something which is worth emphasising because it is again about the obligation of members in engaging with staff in this place and, I guess, formalising what has always been a very important convention in this place that the staff of the Assembly are extended courtesy and respect for the services that they offer to us as members.

In relation to amendments 2 and 3, the government has the same concerns as those that have been outlined by Mr Berry.

Ordered that the amendments be divided.

Amendment No 1 agreed to.

Amendment No 2 negatived.

Amendment No 3 negatived.

Amendment No 4 agreed to.

Motion, as amended, agreed to.

Public Accounts—Standing Committee
Report 3

DR FOSKEY (Molonglo) (12.09): I present the following report:

> Public Accounts—Standing Committee—Report 3—*Report on 2003-2004 Annual and Financial Reports*, dated 24 August 2005, together with a copy of the extracts of the relevant minutes of proceedings.

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

Leave granted.

DR FOSKEY: I move:

> That the report be authorised for publication.

Question resolved in the affirmative.

DR FOSKEY: I move:

> That the report be noted.

In the absence of the chair of the public accounts committee, Mr Mulcahy, who is not in the chamber for personal reasons, I take pleasure in presenting the report of the Standing Committee on Public Accounts on annual and financial reports for 2003-04. I do not know if Ms MacDonald, the other member of the committee who is present, wishes to speak. I commend the report to members.

MS MacDONALD (Brindabella) (12.11): Mr Speaker, it was not my intention to speak to the report. However, I will give a brief summary. This, of course, is the last report on annual and financial reports for 2003-04. As members would be aware, hearings were held in February and March for a number of departments and government agencies under the purview of the public accounts committee. These included the ACT Auditor-General, the ACT Gambling and Racing Commission, the ACT Government Procurement Board, the ACT Insurance Agency, the Legislative Assembly Secretariat, Actew Corporation, ACTTAB, the Australian Capital Tourism Corporation, the Australian International Hotel School, the Chief Minister's Department, the Commissioner for Public Administration, Exhibition Park in Canberra, the Independent Competition and Regulatory Commission, the Stadiums Authority, Totalcare Industries Ltd, and the Department of Treasury. We also took on board the annual and financial reports of the ACT Cleaning Industry Long Service Leave Board, the ACT Construction Industry Long Service Leave Board, the Office of the Occupational Health and Safety Commissioner and ACT WorkCover.

As I said, in February and March we had a number of hearings with a number, but not all, of these departments and agencies. The report has seven recommendations, which I would suggest are not too bruising. However, I would suggest that some of them are useful. I will leave it at that, Mr Speaker. I commend the report to the Assembly.

Question resolved in the affirmative.

Australian Capital Territory (Self-Government) Act 1988
Application of section 15

DR FOSKEY (Molonglo) (12.13): Mr Speaker, I seek leave to move a motion regarding my involvement in the debate on the Justice and Community Safety Legislation Amendment Bill 2005 (No 2).

Leave granted.

DR FOSKEY: I move:

> That the Assembly:
>
> (1) noting the provisions of section 15 of the Australian Capital Territory (Self-Government) Act 1988 and those of standing order 156 which provide that the Assembly may decide how those provisions may be applied;
>
> (2) decides that, notwithstanding that Dr Foskey, MLA has a residential tenancies agreement with the ACT Government, it is in the public interest to allow Dr Foskey, MLA to participate in any future discussion, or vote on a question, in relation to the Justice and Community Safety Legislation Amendment Bill 2005 (No 2).

MR SPEAKER: Dr Foskey, would you like to speak to the motion?

DR FOSKEY: I have nothing to add. I will engage in the debate when my turn comes. I have already moved the motion. Would you like me to explain it?

MR SPEAKER: Members may not have the motion in front of them and they might like to hear from you.

DR FOSKEY: This motion notes that I have a tenancy agreement with the ACT Commissioner for Housing. It makes reference to section 15 of the Australian Capital Territory (Self-Government) Act 1988 and notes that under standing order 156 it is incumbent upon me to seek leave of the Assembly to speak on any matter that may involve residential tenancies. I intend to refer to that matter when I speak in the debate on the Justice and Community Safety Legislation Amendment Bill 2005 (No 2).

Question resolved in the affirmative.

Justice and Community Safety Legislation Amendment Bill 2005 (No 2)

Date resumed from 30 June 2005, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (Ginninderra) (12.15): Mr Speaker, the opposition will be supporting this bill. This is the 13th bill in a series of bills dealing with legislation within the justice and community safety portfolio. As usual, the bill before us makes a number of technical amendments, some of which I think are significant but nevertheless minor. For example, under the Civil Law (Wrongs) Act and the Civil Law Wrongs Regulation, the amendment will enable a complainant who might be delayed due to undertaking conciliation of a relevant related health complaint not to be penalised by a court. I think it is eminently sensible that the bill ensure that someone who is seeking conciliation is not penalised. Also, a list of specific "reasonable excuses" is prescribed for not meeting the time frame, and that in itself is sensible.

The bill also addresses concerns by the ACT Law Society about the time frame in which the first step of the pre-court procedures is taken by people in respect of personal injury claims. Currently, this first step must be met a month after the date the claimant instructs a lawyer. That time frame has been extended to four months and I think that is a fairly sensible and more realistic change.

The Corrections Reform Amendment Act cannot be repealed as there is legislation on the table which has not yet been debated. The bill before us simply extends the commencement date to 6 September 2006, which again I think is sensible. The pruning back of the independent legal advice a solicitor gives under the Domestic Relationship Act is also sensible. I think it is pretty dangerous for solicitors to be expected to provide financial advice. They often do not have the expertise to do so.

This bill prunes back the nature of advice to ensure that a solicitor gives advice in areas in which they have expertise. The bill makes a sensible amendment to the Powers of Attorney Act to ensure that enduring powers of attorney made in other Australian jurisdictions are recognised here. Similarly, a minor amendment is made to the Residential Tenancies Act.

The bill also amends the Standard Time and Summer Time Act. Apparently last year all the states and territories agreed to implement the National Time Commission recommendation to replace references to Greenwich mean time, GMT, in legislation with coordinated universal time, which is called UTC. I am told that the two time scales are approximately equivalent and the difference between them is minute, but that the change is important for computer programs that use high speed data transfers and in universal synchronisation applications. Apparently UTC is also the recognised legal standard under the commonwealth's National Measurement Act of 1960 and is the only time scale supported by a technical infrastructure.

Perhaps the attorney can tell me whether satellites are on UTC or Greenwich mean time and whether there are any problems with that. Being a traditionalist and having grown up and become used to Greenwich mean time, I think that it is a bit sad that we are getting rid of such tried and proven terms, but we are following a consistent pattern with other states and jurisdictions. Although I say with some reluctance that this change is a sign of the times and it is a pity we are not on Greenwich mean time any more, this amendment obviously is to ensure that we comply with everyone else and, indeed, the commonwealth National Measurement Act.

A sensible amendment is being made to the Supreme Court Act to ensure that the Court of Appeal constituted by a single judge can strike out appeals for want of prosecution or a failure to comply with procedural requirements, or strike out appeals that are scandalous, vexatious or unintelligible. You certainly do not want the full court of three judges, which is normal, sitting on fairly minor matters like that. There are also some amendments in relation to judges' remuneration which, I take it, sort out some problems which probably go back 10 years or to the early 1990s when the courts transferred from the commonwealth. The bill contains a couple of other minor amendments. Again, Mr Speaker, I indicate that the opposition will be supporting this bill.

DR FOSKEY (Molonglo) (12.19): The Standing Committee on Legal Affairs noted in its scrutiny report of 15 August that the Justice and Community Safety Legislation Amendment Bill 2005 (No 2) makes minor or technical amendments to a number of laws administered by the ACT Department of Justice and Community Safety. The committee made no further comment. We have not found any significant issues within the bill and thus I will be supporting it today. However, I would like to outline briefly the reasons for my support of some of these amendments.

The amendment to the Administrative Appeals Tribunal Act 1989 cleans up some of the interaction between the Land (Planning and Environment) Act and the new Heritage Act passed by the Assembly last year. The previous regime saw all heritage cases torturously dealt with through amendments to the Land (Planning and Environment) Act itself. The new system is intended to work more effectively, with heritage matters dealt with alongside planning issues.

The introduction of the Heritage Act last year was fraught with problems. Despite the extensive lead-up time, a number of issues were still not resolved, including protocols to deal with Aboriginal heritage objects and some of the appeal processes. Due to the minority status of the government at the time, passage of the bill was held up until some of these matters were better addressed. This amendment is a minor continuation of that process.

The bill also amends the Civil Law (Wrongs) Act 2002 and the Civil Law Wrongs Regulation 2003. Under the legislation relating to personal injury claims, I support the government's proposed extension of the time allocated for the first step of pre-court procedures from one to four months, the inclusion of a list of reasonable excuses for not undertaking a legal claim within the time frame, and exemption of pre-court procedures if a claim for compensation has been made under section 116 of the Workers Compensation Act 1951. I support these moves because they encourage greater flexibility within the system and recognise that the legal process is not always a swift one and can be pursued through a variety of mechanisms.

In respect of the Domestic Relationships Act 1994, I agree that it does not seem reasonable to ask solicitors to give detailed financial advice or advice on whether a domestic relationships agreement is prudent or fair. However, it does concern me that such advice is available to people, particularly women, who might be contemplating entering such an agreement. I am not sure that there is a need for a legislative remedy to this. Perhaps the government might consider developing some written guidance that

might be provided to parties considering entering such agreements, with advice as to where such advice might be looked for.

I support the proposed changes to the Powers of Attorney Act 1956, with particular reference to recognising enduring powers of attorney made interstate. It seems sensible to avoid involving the Public Advocate when clear arrangements have been made for substitute decision making in another jurisdiction. It is very common for people to live in one state or territory and own property or conduct business in another. It is also likely that, with an ageing population, the use of enduring power of attorney will become more common. I believe that New South Wales has recognised enduring power of attorney made interstate since 2003. It is appropriate that we have reciprocal legislation, particularly when we see Canberra as serving the region and not just the territory.

I also support the safeguard that the enduring power of attorney has effect in the ACT only to the extent that the powers it gives under the law of the other jurisdiction could validly have been given by an enduring power of attorney made under ACT legislation. This would not be necessary if we had uniform powers of attorney legislation across the country instead of significant variations across states and territories. I understand that the Australian Guardianship and Administration Committee is suggesting that, while progress is being made, there is still much work to be done to achieve cross-jurisdictional consistency and uniformity in relation to these matters. I trust that the government is participating in ongoing work to this end, especially given the fact that Canberra, perhaps more than any other jurisdiction, has people who consider themselves permanent residents elsewhere.

I turn to the Residential Tenancies Act 1997. It appears appropriate to manage bonds collected from occupiers who have entered occupancy agreements in the same way that we manage bonds collected from tenants who have entered residential tenancy agreements. I assume that this ensures that occupiers have access to the Residential Tenancy Tribunal to resolve any disputes arising over bonds lodged with the Office of Rental Bonds.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for Environment and Minister Arts, Heritage and Indigenous Affairs) (12.25), in reply: This bill is the 13th bill in a series of bills dealing with legislation within the justice and community safety portfolio. The bill makes a number of minor and technical amendments to the portfolio legislation. The bill makes amendments to the Administrative Appeals Tribunal Act, the Civil Law (Wrongs) Act, the Civil Law Wrongs Regulation, the Conveyancing Act, the Corrections Reform Amendment Act, the Domestic Relationships Act, the Legal Practitioners Act, the Partnership Act, the Powers of Attorney Act, the Remuneration Tribunal Act, the Residential Tenancies Act, the Standard Time and Summer Time Act, the Supreme Court Act, the Trustee Act, the Trustee Companies Act and the Trading Stamps Act.

Of particular note are amendments to the Civil Law (Wrongs) Act 2002 and the Civic Law Wrongs Regulation 2003 to ease the limitation periods for people who may wish to make civil claims in injury cases but may also wish to attempt alternative dispute resolution methods first, such as conciliation of medical complaints. Acknowledging the specific circumstances in which limitation periods should be extended will ensure fairness in the civil law system as well as encouraging plaintiffs to seek alternative

dispute resolution. Other amendments to the act will eliminate any possible doubling up of recall procedures for claimants who bring action under both the Workers Compensation Act and the Civil Law (Wrongs) Act, thus ensuring greater efficiency and cost effectiveness for claimants seeking action for injuries.

Another amendment of note is the amendment to the Powers of Attorney Act to ensure that enduring powers of attorney arrangements made in other jurisdictions can be recognised in the ACT to the extent that the same powers can be given under a similar document in accordance with ACT law.

Mr Speaker, for the sake of history to some extent, if no other, I think it is worth commenting again on the Standard Time and Summer Time Act 1972, which the shadow attorney also referred to. Greenwich mean time, the basis of world time for the last century, will, on the passage of this legislation, no longer determine the time in Australia. With the passage of this legislation, as from 1 September this year all Australian jurisdictions will move to replace the measure with the more accurate coordinated universal time, UTC. With this amendment, the ACT government is today moving forward with that global trend in adopting UTC.

In 1884, Greenwich in England became the home of Greenwich mean or meridian time, GMT, which represents the average time that the earth takes to rotate from noon to noon. The name hails, obviously, from the town of Greenwich where the Greenwich meridian line at the Royal Observatory is located and which has marked the starting point of every time zone in the world.

GMT and UTC are approximately equivalent, with the difference between the two time scales being miniscule. However, rapidly advancing technology depends on the accuracy of UTC for computer programs that use high speed data transfers or universal synchronisation applications. UTC is also kept by time laboratories around the world, including the US Naval Observatory. The International Bureau of Weights and Measures also makes use of highly precise atomic clocks to provide the international standard UTC, which is accurate to approximately a nanosecond or one billionth of a second per day.

Countries worldwide, including the US, have adopted UTC and, as I indicated, all Australian jurisdictions plan to switch to UTC on 1 September 2005. However, the change will not obviously affect the actual time kept. I think it is worth noting in an historical sense that to some extent we will regret the passing of institutions such as our reliance on GMT.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Sitting suspended from 12.30 to 2.30 pm.

Ministerial arrangements

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs): For the information of members, my colleague the Minister for Urban Services, Mr John Hargreaves, is on business elsewhere today. He is unable to be in question time. I will take questions that members may wish to direct to his portfolio responsibilities.

Visitors

MR SPEAKER: Before we get on with question time, I welcome 75 Canberra Girls' Grammar School students from year 10.

Questions without notice

Policing—Civic

MR SMYTH: My question is directed to the Chief Minister in his acting capacity as the Minister for Police and Emergency Services. Yesterday in question time, Mr Hargreaves was asked about an assault on a university student in Civic in the early hours of Saturday morning. In particular, he was asked why his spokeswoman had said:

> … I urge everyone to take responsibility for their own actions …

In reply he said:

> There are facts about this case that, in the interests of the privacy of that particular victim, shall not be made public.

The implication is that these facts somehow contributed to the student being assaulted. The parents of the student who was assaulted have reaffirmed that their son was acting in a responsible manner prior to the assault, was in a well-lit area and that, despite these precautions, he was attacked.

Chief Minister, what did this student do wrong? What facts are there that demonstrate that there was more he could do to protect himself?

MR STANHOPE: I have received a brief today as the minister who would take questions on behalf of the Minister for Police and Emergency Services. The specific issues that the Leader of the Opposition raises in his question are not dealt with in the brief; they have not been drawn to my attention.

What I can advise members, consistent with what I have been advised today, is that police are investigating a serious assault that occurred in Akuna Street on 20 August in which a 22-year-old man received a serious head injury. I am advised that he is now in a stable condition in Canberra Hospital. Police are investigating the assault and any possible linkage between the assault and any other assault that may have occurred in the city area in recent times.

I am advised by the police in respect of other issues raised—issues of grave concern quite rightly raised around the safety of any resident or citizen acting lawfully, or indeed simply being present in the city or any other area of Canberra—that there has been a steady decrease in the number of reported assaults. I do not say this to in any way suggest that this particular assault is not the most serious issue and is not receiving the full attention of the police—it is. It is being vigorously investigated. The police are following leads and information currently available to them but, of course, would welcome the continuing assistance of the community in relation to their investigation of this particular matter.

Always, of course, when there is a serious assault such as this that gains significant media attention—as it quite appropriately does and has—there are concerns about the extent to which ours is a safe community. Compared to other major metropolitan areas in Australia, Canberra continues to be a very safe place.

Mr Smyth: Mr Speaker, I rise on a point of order. I did not ask whether Canberra was a safe place; the question was, "What did this student do wrong? What facts are there that demonstrate that there was more he could have done to protect himself?" The Chief Minister is not answering the question.

MR SPEAKER: Mr Smyth, you understand the standing orders as well as I do. The Chief Minister is remaining relevant. And he has five minutes in which to respond to the question that you have asked.

MR STANHOPE: In fact, I did respond to that specific part of the question. I indicated initially that I did not have that information or advice, and I don't. Even if I did, as a result of the operational requirements of the police investigating a crime such as this, it is not information that would be provided. Indeed, in the context perhaps of the privacy of the individual involved, I had answered that question. I thought perhaps the Leader of the Opposition would be interested in other aspects of issues around assault and safety. I was simply addressing those particular issues. Mr Smyth obviously is not interested. He may choose not to listen to the rest of the answer.

The issue I conclude on is this: in recent times the number of reported assaults in Civic has dropped quite dramatically. For instance, the weekly assault rate for the city over the period 27 June to 21 August is two, two, three, eight, seven, seven, five, four, four, two, two. In each of the last two weeks there were two reported assaults in the city, dropping from a high of eight, with two weeks of seven just six weeks ago.

MR SMYTH: Mr Speaker, I have a supplementary question. Chief Minister, do you stand by the comments of Mr Hargreaves that this student should have taken additional actions to protect himself?

MR STANHOPE: I was not aware of any comment that the minister made to that effect. I am simply not in a position to respond to what it is the minister may or may not have said. I have given the Assembly today the advice available to me in relation to this matter. That advice is that this is a very serious assault with very serious consequences. The ACT police are investigating it most vigorously. They have certain information available to them. They look forward to continuing cooperation from anybody that may

have any information that bears on the assault. Of course, we all hope for a speedy resolution of that investigation. We hope that those who perpetrated this mindless act of violence are apprehended and charged and face the full force of the law. We wish the unfortunate and innocent victim of this assault a speedy recovery.

Asbestos task force

MR GENTLEMAN: My question is to the Minister for Industrial Relations. Minister, on Tuesday you tabled the report by the ACT asbestos task force entitled "Asbestos management in the ACT". The government, in its response, agreed to all the recommendations but one. Minister, why didn't the government agree to that recommendation?

MS GALLAGHER: The report I tabled on Tuesday is a major achievement for the ACT—it may even be a world first—in that it examined asbestos from the point of view of not only government but also the residential and non-residential sectors. It presents the government with a practical, cost-effective and balanced approach to the management of asbestos in the ACT.

Essentially, the government has agreed to all of the 25 recommendations contained in the report. However, the task force identified that sections 47K and 47L of the Dangerous Substances Act required significant changes. These sections, which have not yet commenced, require property owners and occupiers to provide asbestos reports when listing their property for sale or when undertaking high-risk activities. These sections are due to commence on 16 January 2006, meaning members of the community will soon begin preparing for their introduction.

The task force identified a number of issues associated with the mandatory requirements for a survey report. In particular, the task force thought that these provisions were impractical, given the amount of resources that would be required to implement them at the point of sale for every transaction. There could be in the order of 2,500 transactions per month at any one time in the ACT and there are simply insufficient competent asbestos assessors in the ACT currently to supply the required reports.

A survey of over 600 houses undertaken by the task force revealed consistent results and information relating to the location of building materials containing asbestos in ACT homes. From this survey, the government has compiled generic advice that gives a strong overall picture of where asbestos is likely to be in Canberra homes.

The task force recommended amending these sections to create three separate approaches for the future management and control of asbestos in our community, targeting the residential sector, the non-residential sector and those trades and asbestos industry groups that handle materials containing asbestos on a regular basis. Together, these alternative approaches offer a more effective way of providing information and protecting people at risk than the current legislation.

The task force had recommended delaying their commencement until a later date. However, the government felt that this could create uncertainty in the community. Instead, these sections will be repealed in the spring sittings and, shortly thereafter, replaced with the enhanced regime recommended by the task force. Again I stress that

the government has not walked away from the policy initiatives contained in these sections.

The requirement for specific asbestos surveys under sections 47K and 47L will be removed and replaced by more cost-effective generic advice, an example of which appears in appendix 2 of the report. A more comprehensive site specific asbestos survey will become an option for property owners to pursue if they choose. Coupled with better training for tradespeople to identify and work with asbestos and community education, these measures will provide suitable and practical management approaches for the residential sector. These approaches will also remove the possible negative impact of asbestos reports on property values and the cost to property owners and significantly diminish the risk of personal liability that might accrue to owner occupiers.

In the non-residential sector, owners will be required by legislation to establish asbestos registers and active asbestos management plans and to make these available to tradespeople and buyers at the point of sale. These approaches are currently considered to be best industry practice and are endorsed by the National Occupational Health and Safety Commission.

To complement these regimes, there will be increased emphasis on the safe management of high-risk activities, with education, training and awareness programs provided for those groups which regularly undertake high-risk activities with materials containing asbestos, namely, tradespeople and do-it-yourself home renovators. Regardless of the law, tradespeople handle asbestos as part of their daily work activities. A new asbestos certificate of competency will be developed which will authorise trade groups to handle a limited amount of asbestos. This will be a first in Australia and will be recognised throughout the country by virtue of the mutual recognition regime for skills and competencies.

Targeted awareness and education will be provided for do-it-yourself home renovators so that they will be aware of the right pathways to advice and services. Restrictions also will be placed on the scope of the activities they can undertake with materials containing asbestos in order to reduce incidences of people working with asbestos materials without adequate training and protection. Minimum training and operating standards for asbestos assessors and surveyors are also proposed to ensure greater consistency and reliability in the identification and assessment of asbestos.

MR SPEAKER: The minister's time has expired.

MR GENTLEMAN: I have a supplementary question. I wonder whether you could talk to us about section 47J of the Dangerous Substances Act.

MR SPEAKER: You have to ask a question. "I wonder whether you will talk to me." I suppose that is a question.

MR GENTLEMAN: Minister, could you advise the Assembly about section 47J of the Dangerous Substances Act?

MS GALLAGHER: Section 47J of the Dangerous Substances Act remains in force. This section commenced in April 2005 and will remain in operation until amended in

2006, as part of the changes I have foreshadowed. That section currently requires owner occupiers to provide written advice on what they know about asbestos in their property. It will ultimately be replaced with the provision of generic advice at key transaction points for homes built prior to 1985. However, as this section has already come into force and is consistent with an owner occupier's duty of care, the government feels that it should remain in place until further changes are made.

The asbestos provisions of the dangerous substances legislation were the first of their kind in Australia, and internationally, to place a requirement on residential property owners when managing asbestos. The report of the task force continued this groundbreaking work. The government remains committed to protecting the Canberra community as far as practical from the risk of exposure to asbestos and I look forward to further improving our asbestos regime following the excellent work of the asbestos task force.

Environment grants

DR FOSKEY: My question is directed to the Minister for the Environment. It concerns the ACT environment grants program.

Given that last year's environment grants allocation was fully expended and excess funds were rolled back into Environment ACT; that last Monday's announcement of the 2005-06 environment grants is for a total of $113,000 only; and that Environment ACT is itself dealing with an overall cut in funding for the year, could the minister please advise the Assembly of the full allocation for environment grants this year and assure us that those grant funds will be completely expended on community-based projects and not directed internally to assist Environment ACT cope with its overall cut in funding. Could the minister also assure us that there are no plans to discontinue this successful environmental grants program next year?

MR STANHOPE: I regret that I am not aware of the detail of amounts and payments in relation to the environment grants program. I know that the successful applicants, or grantees, very happily received the payments made to them for a broad range of projects. I think somewhere in the order of 14 or 15 successful recipients received their contracts and payments in the last few days at an event most capably hosted on my behalf by Mr Gentleman. I will have to take the detail of the question on notice and respond to the member. I am afraid I simply do not know the dollars and cents and the detail of the questions that were asked by Dr Foskey.

DR FOSKEY: I have a supplementary question. Hopefully, it will be answered or taken on notice. Does the government still support the public funding of peak non-government advocacy and policy organisations, such as the Environmental Defender's Office, or is the fact that 10 out of the 11 grants this week were clearly for practical applications or education on the environment a sign of things to come?

MR STANHOPE: I will take some advice on the issue. The selection process that was employed in relation to the environment grants program was a process based on merit. The applications were received and assessed against a set of criteria and decisions were made. In relation to the successful applications, they were applications that I approved. I approved them on the basis of recommendations that I received. They were not

applications in relation to which there was any assessment of relative merit undertaken by either my office or me. This was a process that was delivered at arms-length from me as minister and from my office.

I would assume and hope and expect, and have no reason to doubt, that the process was rigorous and that the decisions that were made ultimately were decisions made on the basis of the respective environmental merit and deliverables of each of the applications that were made. To stand here and say, "Well, an applicant of previous years applied again and was not successful this year and this represents some policy deviation," is simply not a proposition that I would accept.

The applications were made. They were assessed by community representatives and members of Environment ACT. Recommendations were made to me. I accepted those recommendations on face value, in other words, as recommendations based on a rigorous assessment of the competing merits of the programs. That is as it should be. I do not at this stage propose to intervene in the process to say, "In future I want applications from this particular applicant to receive some priority consideration," because they think that their environmental credentials are better than the environmental credentials of somebody else doing work within the community. That is a philosophy that applies to all of our grants schemes, not just to environmental grants.

In relation to this government's commitment to supporting peak organisations, I think it needs to be said that the Conservation Council of the South East Region & Canberra, the Environment Centre and the RSPCA are organisations that are significantly supported by this government. As I have previously reported to members of the Assembly, payments made to those organisations were quarantined from efficiency dividends, which members know are being asked of other organisations, indeed of government agencies, at cost, of course, to other parts of those particular agencies. To the extent that we quarantine any part of an organisation from an efficiency dividend, that means that the paying of the efficiency dividend is then simply directed to another agency or another organisation.

So, yes, we support the peak organisations. We particularly support the conservation council and the Environment Centre and, where we can, we support the Environmental Defender's Office. The decision that we have taken to exclude organisations like the conservation council from the 5 per cent efficiency dividend that has been demanded across the board of Environment ACT needs to be understood by those organisations that benefited from that policy decision. That cost is being borne by other organisations, such as, perhaps, the Environmental Defender's Office.

Disaster planning

MR PRATT: My question without notice is directed to the Chief Minister. On 8 August you said in your media release relating to the debate on terrorism:

> … in the wake of the public release by NSW Premier Morris Iemma of the evacuation plan developed for Sydney, it was timely to reassure Canberrans that a similar, comprehensive evacuation plan was already well-developed for the ACT.

This morning on ABC radio Emergency Services Commissioner, Mr Dunn, when asked about your statement regarding Canberra's well-advanced plans that were meant to be

based on the Sydney plan—if this was the original thinking for evacuation plans—said:

> No, we did not have that thinking. We were considering whether or not we required one in that sort of event.

How can the Canberra community have confidence in your government producing a terrorist evacuation plan when you clearly were making policy on the run? You cannot make up your mind whether or not to have specific evacuation plans.

MR STANHOPE: As I indicated yesterday, the ACT government, through the Emergency Services Authority, has in place detailed plans to respond to emergency situations, including terrorist incidents. Following the Sydney event it is true that I said we had plans or a plan in place. I think I went on to state that I expected it to be finalised within the next few weeks—I cannot quite remember; I would have to refer back to the particular event.

The difficulty in the debate that we are having—which is becoming extremely pedantic and somewhat ridiculous—is the suggestion that because there is no concrete document or piece of paper that is the plan, there is no plan.

Mr Pratt: A book with pictures?

MR STANHOPE: Mr Pratt, I have a plan for how my government is going to win the next election. The plan, which I have not yet published, is simply that at the time of the next election I will ask the people of Canberra, "Do you honestly want this man to be the minister for police and emergency services?" I have not reduced that plan to writing. I do not have a document and it is not something that I have yet formulated or for which I have created the words. That plan is in my head at this stage.

Perhaps the plan will involve a publication at the time. It will contain a photograph of Mr Pratt and it will state, "Do you want this man to be the minister for police and emergency services? Do you want to put your safety in this man's hands? Would you travel to Europe with this man? Would you visit Yugoslavia or Serbia with this man?" That is the plan. I have absolutely no doubt that the plan will work, but I have not yet reduced it to paper. Similarly, there is a suggestion that because there is no piece of paper that states, "This is the plan for Civic" we do not have a plan. We have a detailed plan for what will occur in the event of an emergency.

MR PRATT: I ask a supplementary question. Chief Minister, when will you be able to reassure the Canberra community that you have proper evacuation plans in place, rather than the spin that we are getting? When will you brief members of the community on what to do in the event of a major emergency, other than to remind them to carry the yellow pages with them on a daily basis? What else do you have?

MR STANHOPE: The commissioner for the Emergency Services Authority and the deputy chief of police for the Australian Capital Territory covered this issue in detail yesterday. I do not know the extent to which the shadow minister understands this issue. I do not know whether or not he understands it. Perhaps I am presuming too much when I say that Mr Pratt and the Leader of the Opposition understand this issue and the essential nature of the plan in process.

For the information of members, today I wrote to the Leader of the Opposition, on the basis of the obvious lack of confidence that he and the shadow minister have in Commissioner Peter Dunn, in ACT policing, or the Emergency Services Authority, to invite them, following their next briefing with those who are responsible for security within the ACT, our Emergency Management Committee, to produce their plans. In a letter that I forwarded to Mr Smyth today I invited him to provide the government with a response.

Issues around security require bipartisan support; they require full community cooperation. If the Leader of the Opposition and Mr Pratt have better ideas than Commissioner Peter Dunn and Chief Police Officer Audrey Fagan about how to ensure the safety of the people of Canberra, we would welcome their contribution. Today I formally wrote to the Leader of the Opposition and asked him to provide the government with his wisdom and all the support he can supply to provide a better emergency services response than the response that is currently being provided by Commissioner Peter Dunn and Chief Police Officer Audrey Fagan.

In a spirit of bipartisanship and cooperation I look forward, as we all do, to Mr Pratt's plans for making us safe. I hope that they do not end up seeing us all in court, along with all those others that Mr Pratt previously sought to save.

Education Amendment Bill 2005

MR SESELJA: My question is to Mrs Dunne, the shadow minister for education. Mrs Dunne, I note you have introduced an amendment to the Education Act. When will you be bringing on your amendment bill for debate and what is the reason for this timing? Can you explain the genesis and motivation for this amendment?

Mr Corbell: Mr Speaker, I rise on a point of order. This question relates to a matter on the notice paper. I think, for that reason, you cannot ask a question in relation to it.

MR SPEAKER: Questions can be asked about business pending on the notice paper but you cannot get involved in a debate about the issue.

MRS DUNNE: I thank Mr Seselja for his question, his ongoing interest in the matter of consultation and the ongoing and continued support of my colleagues on accountability in relation to the Education Act. Mr Speaker, in line with *House of Representatives Practice*, I will restrict my reply to public matters connected with the business of the Assembly for which I have charge. I shall not debate the substance of the bill but confine myself to explaining what I intend to be the timing of the debate and the reasons for that timing.

In response to the first part of the question, I will attempt to have the Education Amendment Bill 2005 debated in this place at the first possible opportunity—that is, 21 September. The reason is that the bill concerns not only a matter of public importance but of great urgency. It has to do with the very meaning of a crucial section of the Education Act 2004 and its immediate practical implications for a significant number of parents, students and teachers in the ACT. I refer to section 20 (5) and the provisions for community consultation before the closure or amalgamation of government schools.

As I explained in this place yesterday, the amendment is designed to ensure that a minimum six-month period of community consultation should occur before any decision is made on closure or amalgamation. It should not be allowed to occur afterwards, by way of a literal, Jesuitical reading of the relevant section. In short, I seek to bring the letter of law in line with its spirit, in line with the ordinary meaning of the relevant words and with general community understanding.

Why is this urgent? It is simply because, in the case of Ginninderra district high school, the government has opted for the Jesuitical reading to keep the school community completely in the dark until it feels it is safe to go in for ex-post facto consultation. But I am not going to debate—

MR SPEAKER: Mrs Dunne, I am prepared to be fairly flexible on these sorts of things but I make it very clear to you that you are not permitted to debate the issue. You are debating the issue and you will cease; otherwise I will order you to sit down.

MRS DUNNE: Mr Speaker, I was about to say that I would not be going on to debate the apparent influence of the Society of Jesus on the Stanhope government here today.

MR SPEAKER: I think you have been.

MRS DUNNE: Secondly, the bill is urgent because it is evident from the replies to questions at estimates committee that the minister for education is under the impression that the verb "consult" does not mean "ask for, and consider the advice of"—

MR SPEAKER: I have asked you not to debate the issue—

MRS DUNNE: And I am not going to debate the minister's semantics—

MR SPEAKER: Sit down! Supplementary question.

MR SESELJA: Mrs Dunne, why have your drafted clause 4 of the amendment in such a way?

MR SPEAKER: Mrs Dunne—taking particular note of my requirement that you are not to debate the issue.

MRS DUNNE: Yes. The objective of clause 4, Mr Speaker, for Mr Seselja's information, is simple: it is to clarify the intended meaning of section 20 (5) with regard to a closure or amalgamation. Until recently, the clear understanding—and most people anticipated that—was that consultation would happen before a decision was made. As a result of the recent actions, I am seeking to have this clause passed to restore a sense of good faith in the community, to make clear the ordinary meaning of the section's words, which the general community takes on its face.

The amendment adds two words—"deciding to". It will say, if passed, "before deciding to close a school". That is done so that people will understand when the consultation should take place.

Mr Corbell: On a point of order, Mr Speaker: Mrs Dunne is debating the substance of the motion and advocating it in this place, and it is not consistent.

MR SPEAKER: No, I don't think so. I think she was going to—mind you, I could tell that she was tempted to stray, but she won't respond to that temptation; otherwise she will be ordered to sit down, again.

MRS DUNNE: But, Mr Speaker, members on the other side are tempted to stray from the relevance of their questions and answers on all occasions.

MR SPEAKER: Never mind that; just get on with the response.

MRS DUNNE: As I was saying, this amendment—and it is in line with Mr Seselja's question—adds two words "deciding to". It would make it perfectly clear that, before deciding to make any closure, the government must undertake consultation, which is what people thought the act currently means, but the current experience at Ginninderra district high school has cast doubt on that.

Stromlo reconstruction

MRS BURKE: Mr Speaker, my question is to the Chief Minister. Chief Minister, when will the government commence reconstruction at the Stromlo settlement, given that plans were supposed to be released in early August 2005?

MR STANHOPE: Unfortunately, I do not have a note on the exact timing but let me assure members that planning for both Stromlo and Uriarra is very well advanced. I understand that tenders have been sought and that there is a shortlist process in place in relation to the second round of tenders for both Uriarra and Stromlo. Most of the planning work has been done. Both the Land Development Agency and ACTPLA are heavily involved in both the delivery of and planning for the replacement rural villages for Stromlo and Uriarra.

There has been a range of quite complex issues in both a planning and development sense. In relation to Stromlo in particular there were some issues concerning the border of the Stromlo village vis-a-vis its impact on some commonwealth land. The ACT government has been in negotiations with the commonwealth in relation to that. It is my understanding that the issues concerning the border of the village have been resolved or are about to be resolved. I am happy to provide a detailed written brief for Mrs Burke and other members of the Assembly on progress on the delivery of reconstruction in both Stromlo and Uriarra, but let me assure members that work is proceeding extremely well; it is being driven at this stage primarily by the Land Development Agency, which has frontline responsibility for land development within the ACT. ACTPLA of course are involved in the planning sense, as is the major projects unit within the Chief Minister's Department. I cannot give specifics or dates but I will be happy to do that in writing later, along with all other information currently available.

MRS BURKE: Mr Speaker, I have a supplementary question that may also need to be taken on notice. Chief Minister, why has the government been stalling on delivering the

redevelopment plans to ensure, as indicated by your government, that reconstruction will commence on the site at Stromlo as soon as possible after the 2003 bushfires?

MR STANHOPE: We have not been stalling at all. The government's response is that the needs of the residents of Stromlo village have always been uppermost in our planning and priorities. It is a major priority for the Chief Minister's Department, for the Land Development Agency and for ACTPLA. There have been tremendous levels of cooperation between all agencies and indeed with the NCA and the commonwealth government, including the Department of Defence, which is a neighbour. That was the issue I referred to earlier in relation to some of the issues about the site of the Stromlo village.

There has been no stalling at all. There is a whole range of quite complex issues around the availability and ownership of the land and there is a whole range of planning issues. It is a top priority for the government and, as I just indicated, progress has been substantial. It is getting to the stage now where contracts will, I think within the very near future, be let for the construction of homes.

Crime—statistics

MS PORTER: My question is directed to the Chief Minister. There has been recent comment in the media about crime in Civic and elsewhere in Canberra. Can you tell the Assembly if there is evidence to back assertions that crime is on the increase?

MR STANHOPE: I thank Ms Porter for the question. It is a very important question. I am very pleased that the most recent Australian Federal Police statistics do not support the assertion that violence is on the increase in Canberra. In fact, they do the opposite. I am happy to give members details of the latest crime statistics for the Australian Capital Territory.

I will deal first with assaults, that is, acts intended to cause injury. In June 2005, assaults were 14 per cent lower than they were in March 2005. The year-to-date comparison shows a five per cent fall, with 1,860 assaults reported from September 2004 to June 2005 and 1,900 assaults reported between September 2003 and June 2004.

Sexual assaults dropped to 50 in June 2005 from 59 in March 2005, a 15 per cent fall. Year-to-date comparisons show a decrease of 14 per cent in sexual assaults. Burglary and break and enter offences for June 2005 increased by eight per cent, but the year-to-date comparisons show a fall of 24 per cent. Robbery decreased by 17 per cent in June and the year-to-year comparisons show a decrease of 15 per cent.

Motor vehicle thefts increased by 24 per cent in the March quarter, but the year-to-year comparisons show a 20 per cent decrease for the year ending June 2005. Property damage and arson decreased by 16 per cent in the June 2005 quarter. The year-to-year comparison reports a drop of seven per cent in property damage. Weapons offences decreased by 12.5 per cent in the March quarter and year-to-year comparisons show a drop of three per cent.

It is very pleasing that the year-to-year comparisons for each of the major indicators of crime, assault, sexual assault, burglary, break and enter, robbery, motor vehicle theft,

property damage and weapons offences show a very significant decrease in every single area of crime. The one increase in the latest quarter was an increase in burglaries and break and enter offences but, even with that increase, the year-to-year comparisons show a decrease. In every one of those areas of crime, in both the last quarter and for the year to date, there has been a significant decrease.

We can go as well to other crime statistics, such as prison population. The daily average prison population in the ACT has remained steady at 113 in the June quarter. Year-to-date comparisons show no change, with a monthly average of 115 between September 2004 and June 2005.

Belconnen Remand Centre admissions increased by 34 per cent in June 2005 after the March quarter, but year-to-year comparisons show a five per cent decline in admissions. New receptions at Quamby decreased by 30 per cent in the June quarter and year-to-year comparisons show a decline of 27 per cent in admissions.

In relation to indigenous crime results, it is very pleasing that the monthly average of indigenous adult prisoners sentenced was just three in the June quarter, a reduction from a very small base of five. Year-to-date comparisons show a 40 per cent decline in indigenous adult prisoners sentenced, which is a pleasing result for the territory.

Belconnen Remand Centre indigenous admissions rose in June 2005, but the year-to-year comparisons show an overall drop in indigenous admissions to the Belconnen Remand Centre of 10 per cent. Indigenous admissions to Quamby, pleasingly, but from very low base, also declined for the quarter quite significantly. The year-to-date comparisons show a 12 per cent decrease in indigenous admissions, and similarly at Quamby.

In relation to crime statistics overall, both on the basis of quarterly and year-to-year comparisons, in our prison population, our remand population and, pleasingly, in relation to our indigenous remandees and others, there have been very significant decreases in the commission of crime overall in the ACT.

Gaming taxes

MR STEFANIAK: My question without notice is directed to the Treasurer and Minister for Economic Development and Business. Minister, as a result of changes to gaming and other legislation and increased gaming taxes in recent years, clubs are starting to feel the pinch. For example, the Vikings group recently reduced its payments to 55 affiliated sporting clubs by 40 per cent. I understand that other clubs similarly have reduced payments to sporting teams, community groups and the charities that they support.

What action, if any, does the government proposes to take to assist the sports, community groups and charities that are affected?

MR QUINLAN: In recent times there has been a decline in poker machine takings. Mr Stefaniak would probably know that in the past few years they have been quite high. They have come back to single-figure percentages. Anybody who thought about it would realise that that would be the case; that there would be a decrease in poker machine takings. If, as Jan MacMillan's studies show, there is a correlation between problem gambling, the existence of note accepters and the speed with which one can be parted

from one's hard-earned money, it is axiomatic that there would be some decline in poker machine takings. That is the case.

I am also aware at this point in time that clubs are stating quite openly they are reducing the support they are giving here and there as a result of that. I think the club industry has to come to terms with the fact that at this stage it is selling alcohol at subsidised prices—I think it is $2.80 for a schooner. One would not get it for that price by any means at any pub, tavern or up-market hotel. Of course, clubs are also subsidising food and other services that they are providing to members. I think it will take some time for this to shake out.

When full smoking bans are in place we will see a further decline in poker machine takings, as a higher than normal proportion of pokies players smoke. They will have to go outside to smoke. However, a sensible compromise has been reached in relation to the provision of smoking spaces. That has been criticised but I think a sensible plan and code have been put together. So the clubs will be faced with difficulties.

The downside is: what do we do? Do we just allow the problem gambling issue to go unaddressed? No. Do we allow smoking in enclosed places, which will have a negative impact on non-smokers? No, we do not.

In the short term the government will evaluate—I have already given instructions for such an evaluation—the impact of changing and ramping down note accepters. What effect has that had on problem gambling as opposed to the effect that it has had overall? The process has not yet been in place for a year. Right now we are setting up the procedures and prescription for that examination to be carried out immediately so that we can confirm, or not confirm, the fact that the measure taken in relation to note accepters has had a genuine impact on problem gambling, as opposed to an impact on club takings.

In the main I think most clubs should be able to manage their affairs with a 5 per cent or 6 per cent margin off the top of their poker machine takings. Some clubs, by virtue of their capital structures, internal structures and the regime that they had, were fairly highly geared and are feeling the pinch. This Assembly unanimously voted for that legislation.

MR STEFANIAK: I ask a supplementary question. In light of these disturbing developments, will the government reconsider its proposed additional gaming tax to take effect in 2007-08?

MR QUINLAN: That is on the long finger. It is on the long finger because we know there will be an impact from note accepters. Members should remember that we were putting the budget together not long into the period of the reduction of note accepters.

We know from experience elsewhere that there will be an impact as a result of the smoking bans. Those things will be taken into account. That is why those taxes were not implemented immediately. When that tax is introduced, clubs in the ACT will pay a tax regime that is equal to the lowest in Australia—a tax regime that was set at the Victorian level.

Since that time the Victorian government has imposed a levy on providers of poker machines. Tabcorp and Tattersalls own and provide machines to all the pubs, taverns and clubs that use them in Victoria. I think it has placed a substantial surcharge of about $950—I cannot remember the exact figure; a direct hypothecation to its health system in recent times. In all likelihood that will flow through to the tax regime applied to clubs and pubs. I do not know what will be the final shake out.

At this point in time clubs in the ACT are paying the lowest level of taxation on poker machines in Australia and have a monopoly on poker machines. They do not have competition from hotels and taverns. Clubs in the ACT are in a more favourable position than any other clubs in Australia right now.

The note accepter question has been addressed by other states and there has been considerable debate. We will take action in relation to note accepters and in relation to imposing taxation in the longer term in light of the sensible and independent examinations that are done through the Gambling and Racing Commission. That is our intention. We do not intend to say, "We know what is best for everybody." We accepted recommendations from the commission in the first place and imposed them via legislation.

Those recommendations were based on some studies, in particular those conducted by Jan MacMillan. Even Jan would say that the studies she has done in relation to note accepters, ATMs and those sorts of things could have been more sophisticated. We will ensure that those sorts of studies are done in a more sophisticated way.

In everything we do we remain open to change, given the circumstances. Nothing is fixed. We think that is the right thing to do. Even though we expose ourselves to an extended debate it is still right to telegraph the fact that we intend to increase taxation on poker machines or to bring it up to the lowest level charged anywhere else in Australia. We have done that but we have also recognised that there is a genuine need for some respite between now and the application of that taxation.

Teddy Bears Child Care Centre

MRS DUNNE: My question is to the minister for education. The Teddy Bears Child Care Centre, currently located in Curtin with the Emergency Services Authority, has sought use of a wing of the Lyons primary school, which formerly housed the bushfire recovery centre. Minister, why have you rejected the request for this childcare centre to move to the Lyons primary school, away from the apparent security risk at Curtin?

MS GALLAGHER: I was originally approached by the owner of the Teddy Bears Child Care Centre at a cabinet community meeting. He requested use of the Lyons recovery centre for his childcare centre to operate in. In fact, he wrote to me subsequent to that meeting indicating that he would like to buy it from the government over a 10-year period and be allowed to use it in the meantime.

I sought advice from my department. I was aware at the time I spoke to Mr Gillett that the Lyons recovery centre was occupied. I have had numerous requests from community organisations over a number of months since the recovery centre operations closed down

to use that centre for their services. In fact, a number of non-government providers in the Woden area have sought that space as well.

The advice from the department, which was my understanding, is that there is a number of teachers working from that area who use the Lyons infants school as a location for their work outside that centre, including the literacy and numeracy support teams and a group of itinerant teachers. Whilst the school is used by teachers providing education services to students in our government system, I think that those services should take priority in terms of the space required. Really, I am not going to boot out teachers providing education to students in our school for a childcare centre that is looking for another place from which to operate.

It was as simple as that. In fact, I said to Mr Gillett that, should that space become available, he would have to apply, as all organisations apply, for use of government space, government facilities, and that he would be in a long line, because my understanding is that at least four or five other organisations have sought that space from us previously.

MRS DUNNE: I have a supplementary question. Minister, what steps are you, as the minister for family services, going to take to ensure that there are still 108 childcare places available to the Woden community when the lease on the Teddy Bears centre runs out in February?

MS GALLAGHER: My obligations under the Children and Young Persons Act in relation to the licensing and accreditation of childcare services are quite clear. My responsibilities concern licensing, accrediting and making sure that the programs there meet standards. My responsibilities are not to create childcare places. Having said that, I think we have to put the matter in perspective. My understanding is that the Teddy Bears Child Care Centre has a six-month lease and that discussions will occur with government during that time. The government is not about not providing assistance where it can to resolve this issue.

The involvement Mr Gillett sought from me previously had to do with giving him the Lyons infants school for his use and he has not sought any further assistance. Really, it is a matter for Minister Hargreaves, with his responsibilities of managing government assets. The government does not create childcare places. We do not provide childcare benefits for families; that is a matter for the commonwealth. We will be sensitive to the needs of the families involved in the Teddy Bears Child Care Centre, but we need to understand that it is not the government's responsibility to find a location for this business to operate.

If we took on that responsibility, we would have to apply that to every other organisation that requested the government to provide them with a location to offer their services. We do not do that for anyone else. Having said that, of course we will be in negotiation and discussion with the Teddy Bears Child Care Centre; but, as far as the Lyons infant school goes, the building is occupied by department of education teachers. To kick them out and to give this service priority over a number of other community organisations that have sought that space would be unfair and wrong.

Bushfires—coronial inquest

MS MacDONALD: Mr Speaker, my question is to the Chief Minister, Mr Stanhope. Is the Chief Minister aware of reported comments by ANU academic Hugh Selby in relation to the current coronial inquiry into the January 2003 bushfires and the concept of the separation of powers?

MR STANHOPE: Yes, I am indeed aware of Mr Selby's reported comments on this issue. Mr Selby, a highly respected academic from the Australian National University school of law, has been reported more than once on the issue. In fact, members may recall that I mentioned one of those reports during the debate in the challenge yesterday that led to the censuring of Mr Stefaniak. As long ago as 30 October last year the *Canberra Times* reported Mr Selby as saying:

> … arguments the Government is politically interfering in the inquiry are baseless and claims that a … separation of powers is occurring are nothing more than a red herring.

In this morning's *Canberra Times* there is another report of Mr Selby's comments that is worth quoting. The *Canberra Times* report today of the censure of Mr Stefaniak says:

> Australian National University academic Hugh Selby was among the experts in coronial law who believed the Government had not threatened the independence of the judiciary, executive and legislature by testing its concerns about Mrs Doogan in the Supreme Court.

There is a reference to Mr Selby. It continues:

> He said individuals and governments had a right to test a decision from a lower court in a higher court.

He went on to say:

> If we start saying that some people shouldn't exercise that right and others should, then where does that leave the notion of justice to all?

I will repeat that:

> If we start saying that some people shouldn't exercise that right and others should, then where does that leave the notion of justice to all?

That is what Hugh Selby, an expert in coronial law, had to say about so-called political interference. But Mr Selby had even more pointed comments to make about the suggestion that supported the notion that by joining the Supreme Court action against the coroner the government had breached the separation of powers. Again, the *Canberra Times* today reports Mr Selby as saying this:

> Mr Selby said he believed Chief Justice Higgins's comments had been misrepresented by the Opposition.

Well, fancy that! Mr Selby refers to the opposition—that is the Liberal Party in the ACT—and goes on:

> It has blown a sensible comment about avoiding trouble made by the chief justice, it has taken that and quite inappropriately tried to attach it to the person of the attorney and the Chief Minister and, frankly, that is bloody nonsense.

That is what a leading Australian expert says about the Liberal Party—that its attitude and behaviour in relation to this matter has been inappropriate and that the conclusions it has drawn and peddled are, "frankly, bloody nonsense". I think it is worth noting that it is not just the opposition that was the only party to misunderstand the chief justice. I hope the *Canberra Times* is reflecting on its front page story of last Saturday where it claimed, "Judiciary freedom put at risk; judge blasts govt." That was a *Canberra Times* interpretation of Justice Higgins's speech that I think Dr Hugh Selby would also categorise as "bloody nonsense".

MR SPEAKER: Supplementary question, Ms MacDonald.

MS MacDONALD: Can the Chief Minister explain to the Assembly how the comments of Mr Selby on this important issue contrast with the position of the opposition?

MR STANHOPE: I certainly can. There is a stark contrast, a stark divide, between the opposition's position of convenience and that of expert commentators such as Mr Selby. Mr Stefaniak rails against Mr Selby, and is doing it now. We do recall Mr Stefaniak's assertion yesterday that of all these members of the profession—

Mrs Dunne: Is there a connection between the two—

MR SPEAKER: Order! Chief Minister, you should not reflect on yesterday's vote.

MR STANHOPE: Thank you, Mr Speaker. In the past I have heard, inside and outside this place, Mr Stefaniak refer to the legions of legal practitioners who support his view on the separation of powers. I invite him, before the close of business today, to table their opinion—if not their opinion, their names so that I might discuss with them their opinion on the separation of powers.

But of course I think we do need to reflect that just as Mr Selby has a long publicly recorded history of comment on the issue so, as we know, painfully, does the opposition spokesperson, Mr Stefaniak. And we need to acknowledge that Mr Stefaniak has been consistent—wrong, but consistent, or at least consistently wrong. On 8 December last year, Mr Stefaniak was asserting in a media release that in joining the appeal "the government had threatened the separation of powers." On the same day, he ran the same line in the Assembly. He said:

> We say … he—

Meaning me—

> has exceeded his role by intervening here. It goes contrary to the role of the Attorney-General as it is generally understood in the Westminster system …What

> we are talking about here, though, is a fundamental principle in relation to the separation of powers.

He cited in support of that argument another expert in coronial law, Dr Ian Freckleton, La Trobe University. But he made the same mistake—the grievous error, as he did—in misconstruing the words of the Chief Justice. He, of course, verballed Dr Freckleton. Yes, Dr Freckleton did enter the public debate in expressing his view that the government's intervention was unusual. And of course Mr Stefaniak went on to quote with great glee that particular part of Dr Freckleton, but he did not then go on to provide the context. The next sentence of Dr Freckleton's, and the write up, was that, yes, the action was unusual but it was neither invalid nor unlawful—perhaps unusual, but neither invalid nor unlawful. But let us not worry about the detail. Let us not worry about the truth or the context—

Opposition members interjecting—

MR SPEAKER: Order! Members of the opposition will maintain order.

MR STANHOPE: Of course, we say it is the trap Mr Stefaniak falls into, and the trap he fell into yesterday. It was not a trap at all—

MR SPEAKER: Please do not reflect on yesterday's debate.

MR STANHOPE: Cheers. But it is a trap that he fell into on Monday of this week when he put out another media release reflecting on Justice Higgins's comments of last Friday. He said, and it is worth repeating to emphasise what it is that he has done on this issue:

> These comments from the ACT's most senior judge confirm what community groups and the ACT Opposition have been saying since the Government involved itself in the appeal ...
>
> It's time now for the Attorney-General to acknowledge that he has compromised the separation of powers between the executive and the judiciary, through his action in joining the ACT Government.

As we all know, and as Mr Selby reaffirmed yesterday, in his "bloody nonsense" comment, the comments of an expert, that those comments by Mr Stefaniak were wrong, and he knows they were wrong. His position, the position he leads for the Liberal Party, is wrong, and it has been ever since he attached himself to it. The contrast between that position and reality is stark. It is time for Mr Stefaniak to acknowledge his mistake and to apologise. Mr Stefaniak has been rightly censured in this place for blatantly and repeatedly misleading the public, and the Assembly, and it is time he apologised for what he has done.

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

Supplementary answer to question without notice
Policing—Civic

MR STANHOPE: I received a question today from the Leader of the Opposition in which he claimed that Mr Hargreaves had in question time made a certain claim in

relation to an assault upon a young man in Civic. This is my response: I have read the transcript of yesterday's proceedings. I can find absolutely no reference to the words which Mr Smyth claims Mr Hargreaves used yesterday. I will table that part of the transcript of yesterday. I am afraid I cannot respond to the question asked because I simply cannot find anywhere in the transcript the words which Mr Smyth alleges Mr Hargreaves used. I present the following paper:

> Policing in Civic—Extract from *Hansard*, 24 August 2005—Answer to question taken on notice from Mr Smyth (Leader of the Opposition).

Matters raised by Mrs Burke
Statement by Speaker

MR SPEAKER: I have received a letter from Mrs Burke in relation to certain matters. The first relates to points of order. That is unusual because points of order are generally raised in the chamber and I deal with them as they are raised. The letter goes to matters that were part of a debate in this place on 23 August. I will deal with them in the reverse order to which Mrs Burke presents them to me.

The last one that she raised with me was in relation to standing order 55—personal reflections. She pointed to a number of matters that the Chief Minister raised in this debate on 23 August. It seems to me that these are either matters of fact or matters that the member, Mrs Burke, might dispute by way of avenues available to her through her membership of this Assembly. If it went to the inaccuracy of these issues, she would be able to raise them with me by way of standing order 46, for which I would gladly grant leave. I go further and say that there are often things said in this place that are not well received by members, but there are often responses that are potent and robust. I expect that practice to continue.

Another matter raised by Mrs Burke was the right of an unnamed person seeking a right of reply, which the Chief Minister mentioned in the course of the debate. It is true that a person has raised with me a matter of a right of reply. I can say that, in the course of debate, people can mention that I have received it—it does not trouble me at all—but I am bound by the Assembly's resolution of 4 May 1995, which is a resolution of continuing effect and which gives me the riding instructions, if you like, on how citizens' right of reply references to me are to be dealt with. I have received one, and I will deal with it in accordance with the resolution of continuing effect made by the Assembly.

Another matter which was raised by Mrs Burke mentions some comments made by the Chief Minister when he was commenting on some actions that she was involved in and when he used the words "inherently racist attack". I think those words imply racism and are therefore disorderly. I would ask the Chief Minister to withdraw them.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for Environment and Minister Arts, Heritage and Indigenous Affairs): I did not for one minute—and I do not for one minute—wish to impute that Mrs Burke was involved in a racist attack. In the comment I made—and if I may just quote the sentence—I was responding to representations that had been made to me by a Ngunnawal elder. I will withdraw the comment, but I do wish to give some context. A prominent Ngunnawal elder has responded to me on comments that Mrs Burke had made publicly. I said:

> A prominent Ngunnawal elder has responded by seeking a right of reply in this place to debunk what she regards, I think, as an inherently racist attack on her very existence, on her Aboriginality ...

That is precisely what the Ngunnawal elder told me she thought of the comments of Mrs Burke. But I withdraw unreservedly any suggestion or imputation that I was alleging that Mrs Burke was racist. The comment that was made to me by the Ngunnawal elder was that she thought Mrs Burke's comments were inherently racist. But I accept your ruling, Mr Speaker, and withdraw.

Mr Smyth: On a point of order, Mr Speaker: the normal form of this place is simply to withdraw the comment.

MR SPEAKER: But there have often been occasions when people have a comment to make about points of order. I merely make the point that it remains unparliamentary to use in this place words from another person's mouth. Thank you for withdrawing that, Chief Minister.

Papers

Mr Stanhope presented the following papers:

> ACT Criminal Justice Statistical Profile—June quarter 2005.
>
> Cultural Facilities Corporation Act, pursuant to subsection 24 (8)—Cultural Facilities Corporation—Business Plan—2005-2006.

Mr Quinlan presented the following paper:

> Territory-owned Corporations Act 1990—Pursuant to subsection 19 (3)—Statement of Corporate Intent—ACTEW Corporation Ltd—2005/06 to 2008/09.

Mr Corbell presented the following paper:

> ACT Mental Health Strategy and Action Plan 2003-2008—Progress Report—July 2005, dated August 2005.

Health—Standing Committee
Report 8—government response

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

> Health—Standing Committee—Report 8—*A pregnant pause: the future for maternity services in the ACT (Fifth Assembly)*—Government response, dated August 2005.

I move:

> That the Assembly takes note of the paper.

Question resolved in the affirmative.

Paper

Mr Corbell presented the following paper:

> Petition which does not conform with the standing orders—Alternative low-cost accommodation for students—Currong Apartments—Mrs Burke (144 citizens).

Community tolerance
Discussion of matter of public importance

MR SPEAKER: I have received letters from Ms Porter and Mr Pratt proposing that matters of public importance be submitted to the Assembly for discussion. In accordance with standing order 79, I have determined that the matter proposed by Ms Porter be submitted to the Assembly, namely:

> The importance of maintaining tolerance and respect within the Canberra community, particularly in times of unease and confusion resulting from international terrorism.

MS PORTER (Ginninderra) (3.48): Today in this place we moved to adopt a code of practice. The preamble to this newly adopted code said:

> Members of the Legislative Assembly acknowledge their diversity of background and personal beliefs and that of Australian society ...

Canberrans, like all Australians, are global citizens. We live in an interconnected world that is rich in diversity. Indeed, in Canberra we are fortunate to live in such a place, rich in diversity of different cultures. We must all remember, however, with the benefits of that diversity, be they economic, social or cultural, come responsibilities, in particular a responsibility to protect and celebrate that diversity so that all within our community can feel accepted.

Recently, Mr Hargreaves announced the enhancement of next year's multicultural festival with the addition of a harmony parade. This government has also continued to support our multicultural community radio stations, and November will see the new multicultural centre open across the way in the North Building. The multicultural centre will house the peak multicultural organisations, such as the ACT Multicultural Council and the Migrant Resource Centre, as well as providing shared office space for 21 new and emergent communities. It will also offer a function room and meeting room facilities for use by the broader multicultural community in Canberra.

The Stanhope government, I am proud to say, is a government that at every opportunity celebrates and sustains diversity. We do this through our framework for a multicultural ACT, our strategic plan addressing racism and unfair discrimination, the Canberra social plan and the Human Rights Act. Despite the efforts of governments like ours, Mr Speaker, I am sad to say that we still live in a time when we are experiencing more and more international terrorism.

Whilst violence, unfortunately, has been a part of our daily lives for a long time, acceptance and tolerance of difference are also a part of the Australian way of life. However, in recent times it seems that many more of our fellow beings are using their different values as an excuse for such violence and using difference as a motivating factor for unspeakable acts of terrorism.

This violence, of course, is as terrible as it is hard to bear. The world seemed to wake up to this horror on September 11, 2001; and of course we all keenly felt the Bali bombings. However, acts of terrorism by different people across the world did not just suddenly emerge on September 11. Recently, we all mourned those who died or were injured in London as a consequence of the suicide bomb attacks. On behalf of the Stanhope government, I attended the memorial service for victims of that tragedy held in Canberra. I felt the pain keenly as a person who spent her childhood as a Londoner.

During this time of reflection on my London youth and the tragedy that has befallen the city still very close to my heart, I reflected, as many others did, on the global spread of terrorism. We do not just mourn those who died in London; we mourn those who die or are injured daily in acts of intolerance, war or terrorism throughout the world—in Iraq, Africa, Israel, Palestine, Egypt and the United Kingdom. Of course, I could add many more countries to that list.

Unfortunately, the cowardly perpetrators of terrorism seek to increase the divide between people and between nations by falsely claiming religious and cultural justification for their appalling acts. This simply will not work. That which unites us as global citizens of a tolerant and free world is much greater than that which divides.

Canberra has long set an example in the application of such tolerance. We consistently seek to celebrate difference and cultural diversity through community and government collaborations. The internationally renowned National Multicultural Festival continues to go from strength to strength, for instance.

I lived in the Northern Territory for many years, in remote indigenous communities. There, I was the different one. I looked different. I spoke differently. I ate different food. My children were certainly a different colour to the majority of their school friends. I now realise, to my regret, that the organisation I worked for at the time was probably partly responsible for the undermining of their wonderful culture and their way of life.

Despite this, from day one, my family and I were completely accepted, loved and cared for by the indigenous people that we lived with. At no time was I required to give up my values or my way of life. I was just shown, by their example, the way people from diverse cultures can live together in harmony.

Values based on respect do not necessarily evolve from any particular religion. In my experience, they are more often based on a development of human conscience that every human being develops over their lives. We are an active, vibrant community—one that encourages community participation and community involvement, that celebrates the many achievements of our wonderful volunteer work force, a place where just a few people getting together can make a difference to so many. I have raised this matter of public importance in order to discuss with members of this place the communal values of

tolerance and respect and the responsibility we have as community leaders to promote these values at every available opportunity.

I am proud to be a member of the Canberra community, for many reasons. But in the world that confronts us, none seems more appropriate than the way in which we celebrate the richness and diversity of our community. Canberra is a place where we can truly be proud of our culture and religious freedoms, the respect we have consistently shown for the beliefs of others and the way we encourage free and unfettered debate in our community.

The acts we are now seeing around the world are not motivated by faith, as we understand it; these acts are motivated by extremism. It is imperative, then, that the actions of a few extreme people are not allowed to destroy our community's tolerance and our acceptance of religious and cultural diversity. As I said, the acts we are referring to when we speak of international terrorism are not acts of religious expression and therefore cannot be combated by seeking to engage in a debate about faith. These acts are discriminate in their nature and ruthless in their destruction; they seek to generate fear and are designed to totally disrupt people's normal daily lives.

The perpetrators of these crimes are totally indiscriminate in selecting their human targets. Who are killed and injured is none of their concern. Indeed, that the indiscriminate nature of the attacks can kill and injure people of any race or religion is merely a matter of who is unfortunate enough to be in a particular place at a particular time.

At a time like this it is very easy for us to become like the perpetrators and meet their force and their hate with like behaviour. As leaders in our community, we would do well to reflect on the words of those around the world and those from many religions who attended the memorial service for the London bombings. These leaders reminded us that we all have the capacity to hate and at the same time the capacity to love. The choice is ours. The remedy for preventing these attacks can be found within this choice. Indeed, the number of religious and political leaders who are raising their voices to urge us to combat intolerance by supporting acceptance is growing daily.

However, unfortunately, some in our community would express their fear by seeking to silence dissent, by attempting to impose their own beliefs in a strident manner, by seeking to deny members of the community their right to free speech or their right to free expression. Instead of turning on each other in anger and with blame, instead of looking for a particular religion or way of life to blame, instead of banning free speech or banning the publication of material, we need to show by example our understanding, our acceptance, our tolerance for all parts of our community. At the same time, of course, those who perpetrate such crimes against the human race will face the ultimate force of the law.

We have an obligation to engage in the debate of ideas rather than condemning those ideas to the bonfires of history. We can show our multicultural community that we do not seek to blame diverse faith or culture for this terrorism. We can demonstrate, by our leadership, that we know these acts are based on hatred, not religion, and that we can continue to celebrate the rich contributions of our diverse cultures. Those of us that dress differently, speak differently, maybe eat differently, worship differently or, indeed, are of

a different colour are the same people, perhaps, who work alongside us, catch the same bus, play in the same footy team, walk in the same park, meet in the same cafe, and whose children go to the same school. It is within the reach of every man, woman or child to accept and celebrate diversity and to engage in debate about why diversity should be encouraged and celebrated and not result in violent competition or international terrorism.

Through election to office, members of this place have been given a significant responsibility, as I said. We are leaders in our community and have been given the opportunity to shape our community. In these times of unrest and uncertainty we need to balance our condemnation of the actions of others with the prevention of vilification of our citizens. This country is internationally renowned for its cultural acceptance and for its free exchange of ideas.

I implore every member of this place to be an ambassador for this acceptance and tolerance and to foster positive debate about the ills of terrorism and the misguided nature of those who justify its use. I implore you all not to advocate the silencing of dissent by control, not to encourage those who seek to instil fear in others. Rather, the approach we should take is the one of positive acceptance and celebration of diversity of the community in which we live. If we do not, then it is all of us who will suffer the consequences.

DR FOSKEY (Molonglo) (3.58): I am pleased to join this discussion today on the importance of maintaining tolerance within Australia, against the background of the current war against terrorism that is being led by a number of First World countries, including our own. I believe that the rhetoric of leaders such as US President Bush and our own Prime Minister, John Howard, is very mistakenly being guided by a book that was published in 1996, written by Samuel Huntington, called *The clash of civilisations*. Whilst this book has been disproved and critiqued very extensively in academic international relations circles, it is very unlikely that Mr Bush, who is not well known for reading widely, has read the critiques. In fact, I would be very unsure that he has even read the book.

Nonetheless, this book does form a very strong political purpose and falls right into the agenda of both Bush and, sadly, our own Prime Minister. I am sure that most members are well aware of the book, but what it does is present a posit, an idea, that after the Cold War we were divided into two main political, global segments. Now we are divided into five or so related to religion. According to Huntington, we have Confucianism, we have Muslims, we have Christians, we have Hindus and I think we have Buddhists—we all know how warlike they are—and it provides a very neat way of looking at the world.

Indeed, I contend that these kinds of approaches form a sort of lens—we could even say blinkers—which allows us to see certain things but blocks out other things; it allows our ears to hear certain things or to hear them in certain ways and it blocks out other things. I am deeply concerned about the application of that kind of lens to the world that we live in today.

What it does, of course, is justify things like concerns about the Middle East as a whole. First of all, we invade Iraq; and then we look as though we might invade Iran. I do not know if we will, but it must suit somebody's purpose for us to look as though we will.

What it means in Australia is that anyone of a particular religion is branded as part of this broad-brush approach to the world.

While this operates in the global sphere, it also percolates down to our communities. In Australia and, I am quite sure, in many other Western countries, it is the Islamic communities that are currently experiencing the impact of this clash of civilisation's rhetoric. With every passing decade, a different cultural group perhaps faces the same fate in Australia. People of my mother's generation, for instance, remained racist to the end about Japanese people—my mother did—because of experiences of the war. What happens is an experience is extrapolated across a whole nation. We are reasonable people. We know that that does not work.

The Australian Greens believe that genuine security does not rest on military strength but on cooperation, just, economic and social development, environmental sustainability and respect for human rights and that pre-emptive invasion is very rarely justified. I am not game enough to say "never" because there is always that exception that I do not know about yet, but that may occur. It saddens me greatly that human rights, which was the great global conversation of the 1990s, has, I think, fallen down in a heap. My great fear is that the so-called war on terrorism has become the great justification for the erosion of human rights.

Terrorism, of course, is a real thing. It has been with us for a long time. I am not sure that there are more acts of terrorism now; there is more focus on acts of terrorism. Again, it suits a certain political agenda to focus on that. Mind you, I am not saying it does not exist or there is not a concern; do not misread me. As far as I am concerned, terrorism is premeditated acts of violence directed at non-combatant targets, with the aim of intimidating others to agree to a particular political, social, cultural or religious demand. Such acts, whether they are carried out by isolated militants, political organisations or governments themselves, are terrorism. The Australian government has followed the example of the United States and others in using fears of terrorism to force through attacks on basic, hard-won civil liberties and in justifying military action such as the invasion of Iraq.

What concerns me as much as the fact that our civil liberties are being eroded in the name of national security is that the community is not concerned enough about it. I am quite sure that most people do not even know what is being done in the name of national security and that it might turn back and bite them one day. The Greens recognise the need for action to address the legitimate economic and social grievances which exist in many parts of the world and which provide fertile breeding grounds for terrorist ideologies. I believe that ignorance is the bed for terrorism. I believe that, where people are denied certain information and are being fed overwhelmingly other kinds of information, we have the ability for ideologies that are harmful to society in general to thrive.

We should oppose attempts by governments and other authorities to use the threat of terrorist acts as justification for undermining civil liberties and promoting other antidemocratic agendas. But similarly, that means that our aid programs should involve making sure, for instance, that in many countries girls go to school. We know that we still have a problem with girls having less access to schools than boys, simply because it benefits families more economically to educate boys because of the prevailing gender

division which is, of course, perpetuated by that very approach. If other countries are antidemocratic, then I think there are ways that we can work against that without going to war with them. But we have a responsibility to make sure that our own country remains democratic.

Yesterday, the Prime Minister convened a summit of selected, I think they were called, leaders. I think it is like many other communities: leaders are often self-selecting. We know governments prefer to talk to leaders and it is much more difficult to get down to the ordinary people. Yesterday a group of people representing, so the government thought, the Islamic community met with the Prime Minister. The Prime Minister said afterwards that intelligence agencies would be monitoring mosques, prayer halls and Islamic schools to the extent necessary as part of the federal government's counter-terrorism policy.

Even more worryingly, education minister Brendan Nelson said that Muslims in Australia who did not want to accept local values should clear off. We can ask the question: what are local values? We have been having this values debate in Australia for a year or two. We all know that it is code for another conversation. It depends who defines what the values are. Frankly, I do not want Brendan Nelson defining my values.

In response to these comments, Waleed Kadous, the convenor of the Australian Muslim Civil Rights Advocacy Network, said that the comments were ill advised and that it makes the community feel isolated. He said that people talk about integration, but it is a two-way street; that if you feel there is hostility, then you will want to be with your own people; that hostility makes people crowd together as, under adversity, people will.

I think that the opinion piece in today's *Canberra Times* by Professor Maley put a very good point. Thank goodness for people like Professor Maley. He wrote:

> Muslim Australians, like all Australians, are required to obey the law. But if what they are doing does not contravene the law, there is no basis for arguing that they should be required to adjust their own values, attitudes and practises to match those of others.

I think we have seen a change in our approach to and in our definition of multiculturalism over the last decade or so. I do believe that Pauline Hanson had a bit to do with that, but I think that suited a certain agenda of Howard's. What we have now is a definition of multiculturalism that says that multiculturalism should emphasise the things that unite us as people, our common membership of the Australian community, our shared desire for social harmony, the benefits of diversity, our evolving national character and identity.

A lot of that is really good and we can agree with it. But when we hear or see words like "our evolving national character and identity", we should ask: are these words that leave other people out? Who defines what is our national character and identity? Is it Simpson and the donkey? That was nearly 100 years ago. I think that each generation would have their own ideas about what it was.

What we face today is a choice of community exclusion or inclusion. I would like to think that our local Canberra community is choosing inclusion. We should be celebrating

our cultural differences, treating every cultural group with respect and promoting peace. There are practical ways that we can practise these approaches at an ACT level. Some of these, the government is already doing. When I say "celebrate our cultural differences", I feel as though that is a problematic area as well because we do have certain standards that, as a society, we do share. We do want a peaceful society, we do want an equitable society and so on. I do not think that any culture is naturally warlike, naturally aggressive or anything like that. I do not think they belong to cultures; I think they belong to something else, which I believe education is part of overcoming.

The first manner by which we can practise social inclusion is building neighbourhoods. While I support larger regional events, I think we should also have more local festivals. I think that supporting and getting to know your neighbours is more than just "Neighbour for a day". I think that planning helps with it; I think that community events help; and I think that keeping local shops and schools open is a help, too.

The second method is to celebrate our cultural differences via, for instance, the annual multicultural festival and the inclusion of teaching multicultural issues in the curriculum. I do note that there has been an abandonment of the ministerial advisory council. I am wondering about the wisdom of that. This government talks a lot about the disbanding of ATSIC. ATSIC had problems. The Ministerial Advisory Council on Multicultural Affairs had problems. But there may be other ways of dealing with them rather than disbanding the whole council.

Something that the Greens are involved in—in fact, probably were the spur for—is the ACT Peace Coalition, which is currently being developed by a number of groups. Coalition is going to be a very important way for us to go. We need to show our solidarity with particular people. This coalition of peace groups is made up of the ACT Churches Council; the Greens; the ACT Network Opposing War; Australians for Justice and Peace in Palestine; the Construction, Forest, Mining and Energy Union, ACT branch; the left caucus of the ALP; Now we the people; the Quaker Peace Committee; the Socialist Alliance; UnionsACT; and the Women's International League for Peace and Freedom. So you can see it is a very broad-ranging group.

We need to be very watchful about building up nuclear practices in Australia. If there is terrorism, we need to reduce the opportunities for that. Finally, we need to remember that there has not yet been a terrorist act on Australian shores. Often I think our huge reactions are in response to other countries' problems. I do believe we could be taking an entirely different approach while building our community and making it a much safer place for us all to be.

MRS BURKE (Molonglo) (4.13): Mr Speaker, I am pleased that Ms Porter has raised this very important issue in the Assembly today. It is very timely indeed, and no more so in terms of how we treat each other in the Canberra community and, closer to home, in this place. I most definitely agree that it is extremely important to maintain tolerance and respect within the Canberra community. I would say that this should be observed and practised at all times and, most importantly, it should start right here in this Assembly. Indeed, only this morning we adopted a code of conduct for members which, in the preamble, says:

> Members of the Legislative Assembly acknowledge their diversity of background and personal beliefs and that of Australian society, and maintain their loyalty to the Commonwealth of Australia and the people of the Australian Capital Territory.

As an Australian citizen, I am very proud to stand up and say that I agree. Each of us in this place has a responsibility to ensure that the major tenets of Ms Porter's motion are upheld at all times. It would be safe to say that, compared to many other countries in the world, we in Australia, particularly in Canberra, live in a tolerant and respectful society. However, sadly, the place where one would most expect leadership in this vital area to emanate from—the ACT Legislative Assembly and, more importantly, the government—there has been in recent times an element of personal attack in the area of what can only be seen to be racially motivated comments at times, and that is disappointing.

Focusing particularly on the first part of today's MPI—the importance of maintaining tolerance and respect within the Canberra community—there has been, I would suggest, a breach in the observance of generally accepted parliamentary practice or conduct in an effort, it would appear, to satisfy personal agendas. It is from within the ACT Legislative Assembly that members should be setting a sound example at all times to the rest of the Canberra community about the importance of maintaining respect and tolerance for all with whom we come into contact. This should happen irrespective of whether we are faced with times of unease or confusion as a result of dealing with the uncertainty or unpredictability of threats of all forms of terrorism, be they local or international.

This MPI is certainly an opportunity to call for the continued tolerance and respect of believers of all faiths, all religions, and those that are conscientious and mindful of other people's beliefs and values. Regardless of our race, creed or colour, if we all practise and afford each other the level of respect with which each of us expects to be treated regardless of our own personal belief systems, we will be more open to the opportunity to engage in measured debate to project a viewpoint without the risk of discrimination and have the real prospect of seeing the validity of another person's viewpoint.

Regardless of racial background, colour, creed or religion, we all should feel that the opportunity is always there to speak our minds, to enter into a debate without fear of vilification or a personal attack, so that as a society we are capable of determining what issues are of most importance to the Canberra community. I highlight that in this Assembly an unfortunate pattern is emerging whereby the government has oft times sought to shut down debate or berate and criticise alternative viewpoints that do not promote their social engineering plans. It is more likely that there will be an attempt to indoctrinate this community with a belief system of its own that in no way seeks to promote healthy debate or embrace differing views.

Sure, there will always be differences of opinion and perhaps a distinct line drawn in the sand when political ideology is brought into question. However, we as members must lead by example and avoid the unfortunate scenario of adversarial politics creeping into general debate. For example, it is sad and unfortunate that I have been berated in this place for being "a migrant to Australia, a member of an ethnic community and a person who speaks with a foreign accent". Those may be the facts, but those were uttered by

a person sitting on the other side of the house who, when it suits, espouses human rights, antidiscrimination and inclusiveness.

I am sure that members would agree with me that this insulting outburst by the minister for indigenous affairs did nothing to embrace people from other backgrounds and cultures. I am certainly pleased that Ms Porter has bought this matter to the attention to the Assembly. I sincerely hope that others who come from a different country and who have a different background and speak with an accent do not have to endure the same vilification I have had to endure.

I have been accused in this place of compounding the angst of a member of our Aboriginal community because I am a migrant, I am a member of an ethnic community, I am somebody who speaks with a foreign accent and, the fourth point that was made here, I am somebody who holds and travels on a foreign passport. This is interesting. I agree with your ruling: the first three are facts, absolutely, but the last point is incorrect. If the Chief Minister and minister for indigenous affairs knew anything, he would obviously know that I would not be standing here if I did not have an Australian passport.

The pity of all of this was that it was not said in a matter of fact way, but was said in such a way as not to show tolerance or respect. How is that, coming from a minister who espouses multiculturalism? It is quite sad. Again, I am certainly pleased that Ms Porter has brought the matters to the attention of the Assembly. I also want to say that tolerance and respect for one another must be our continued focus and, as elected members, the responsibility must be on our shoulders to demonstrate exemplary behaviour in this area.

It is rather unfortunate that those things were said. I hope that the Chief Minister and minister for indigenous affairs will listen to the speeches this afternoon and reconsider his position and the things that he said, because he really is not attracting to politics people who come from different countries, who speak with an accent and who migrate to this country. What he forgets, as members might realise, is that I chose this country to be my home. I am very proud to be an Australian. I am very proud to hold an Australian passport. I am proud to be able to maintain tolerance and respect for all of you.

I could say that the Chief Minister speaks with a funny accent. Let's just do away with that childish behaviour from here on in. I do not expect an apology from the Chief Minister because I doubt that I will get one. I just want the Chief Minister to know that I forgive him. I will look him in the face right now and say that I forgive him for those comments. But let's please make sure that the tenets of Ms Porter's motion are upheld to the utmost in this place, and let it start with the Chief Minister.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (4.20): I believe that humanity has evolved with an instinct for tolerance and a native curiosity about diversity. I also believe that this is an instinct that can be blunted by emotions such as fear and uncertainty.

War is the greatest generator of fear and uncertainty known to mankind and war does dreadful things to our instinct for tolerance. It persuades us to think that someone wearing a different coloured uniform to our own is different, inherently different from

us. War persuades us to believe that those who look different or sound different also bleed differently, feel pain differently, love their children differently, care for each other differently, enjoy friendships that are qualitatively different, and have a sense of justice and injustice that is less keen than ours.

As former US President Woodrow Wilson famously said, "Once lead this people into war and they will forget there ever was such a thing as tolerance." War comes in different forms. In our time, it takes the shape of formal war, such as the war being waged in Iraq. It also takes more diffuse forms, such as the war on terrorism. In both forms, it blunts our instinct for tolerance and encourages us to look sideways at those who dress or sound unlike us. It makes us doubt the good intentions of those who believe in a different god to ours.

Just in the past week we have had the federal education minister, Dr Brendan Nelson, saying that he intends to meet the Australian Federation of Islamic Councils to discuss ways in which Australian values can be inculcated into Muslim school students. Why would he imagine for one minute that Muslim students would be any more lacking in these values than, say, Christian students, agnostic students or atheistic students? Where is the evidence for it, and just what are these values to which we must all cleave?

On local talkback radio earlier this week, some callers were suggesting that immigrants ought to be taught how to eat a pie at the football. One caller suggested that an understanding of our national personality could be achieved only by reading our national canon, listening to the music of our domestic composers and contemplating Australian art. Dr Nelson thinks that he knows what Australian values are. He was quoted as saying, in the context of inculcating Muslims with the right set of values:

> If you want to be an Australian, if you want to raise your children in Australia, we fully expect those children to be taught and to accept Australian values and beliefs. We want them to understand our history and our culture, the extent to which we believe in mateship and giving another person a fair go, and basically if people don't want to support and accept and adopt and teach Australian values then they should clear off.

The question is: why should we assume that these values are any less of a priority in Muslim schools than in the schools run by various Christian denominations, or the schools that operate according to the educational principles of Maria Montessori or Rudolph Steiner, or, indeed, the secular schools run by the states and territories?

Another question worth asking is: why should we assume that the values we cherish as Australian values are peculiar to us? Do we truly believe that other nationalities do not hold dear the value of mateship, even if they call it by a different name? Where is the evidence that those who arrive from other parts of the world with the desire of making Australia their home are somehow value free, or value deficient, in need of a crash course in mateship and a fair go?

I believe that for the overwhelming majority of those who make up our multicultural society, tolerance is a value that is held dear. But I believe that there is a risk of tolerance being allocated a lower position in the ranking of Australian values as we resort more and more to platitudes to describe what it means to be, think like or feel like an Australian.

Tolerance, born of respect, mateship, a fair go: we all know what these words mean in practice and we do not need to have swum at Bondi Beach, eaten a meat pie at the football or gone to Sunday school to have absorbed these values into the core of our being. We can learn them in the synagogue, the temple, the mosque, from the example of our parents, from our teachers, from our friends, from public figures, from any number of sources.

We can learn from history too, of course. Dr Nelson believes that among the true-blue stories that ought to be taught to Muslim school students is the story of Simpson and his donkey. Why not? Good choice, Dr Nelson. John Simpson, whose real name was John Simpson Fitzpatrick, actually a Scot, was a man of distinctly antiauthoritarian bent. John Simpson Fitzpatrick was a sailor who arrived in Australia after jumping ship at Fremantle. John Simpson Fitzpatrick was an illegal immigrant. Somehow, despite all that, the hero of Anzac embodies things we believe to be important.

There are many sources from which we can learn values such as respect and tolerance of diversity. It is important, of course, that a community sees that these values are afforded some value at an official level. These are among the values the ACT government foster through our framework for a multicultural ACT, our strategic plan addressing racism and unfair discrimination, the Canberra social plan and, of course, the Human Rights Act.

The sentiments, attitudes and behaviours that are encouraged by these social documents are helping us to build an inclusive community in which each of us has the opportunity to reach our potential and each of us contributes to the life and personality of the society we share. More than a fifth of those who call Canberra home were not born in Australia. Nearly a fifth of the children in our schools either were born overseas or have a parent born overseas. Over the past half a century our community has been transformed by diversity.

This is a community that cannot survive without tolerance and respect. It is a community of many vocabularies, but each of them has its own terms for tolerance, respect, mateship and a fair go. The war on terror has made us doubt that. We must remind ourselves of it, and I am grateful for the opportunity today to be able to take part in that process.

MR PRATT (Brindabella) (4.27): Mr Speaker, this motion is all about a fine principle, and I thank Ms Porter for bringing it on. However, I have to think that in some ways it reflects a certain hypocrisy on the part of Mr Stanhope, who has had a lot to say in recent times about intolerance and disrespect. One would hope that we would see a broader approach to these sensitive issues.

The Chief Minister has failed in his fundamental duty to community safety, above which he puts not only his own self-preservation but also the rights of dangerous and radical minority elements. This government does not possess a serious management culture in relation to emergency planning. They fly by the seat of their pants in what is purely reaction-based governance. They lack the ability to think proactively that is greatly needed in order to protect our community and they lack the leadership to deal with radicalism.

We should not be too worried that we might offend the rights and liberties of radical and extremist minority groups. We just heard the Chief Minister criticising Dr Nelson for tackling this very issue. We should not be concerned about challenging such groups that sympathise with terrorism, and there are people in the community across this country who do. There are not too many in the ACT, but there are across the eastern seaboard of this country, and no community is immune. The inability to tackle this issue is what contributes to intolerance and disrespect in times of unease and confusion.

If the government does not take a stand against extremist elements—and the government is on record as absolutely proving that—members of the community often take it upon themselves to do so, which breeds deeper levels of mistrust and unrest. Of course, we cannot tolerate that either. We cannot allow such vacuums to exist that cause people to be so concerned that they carry out stupid actions against minorities in our community. But that is what happens when you have a failure of leadership to take on those sorts of challenges.

I think that this motion is really an attempt by the government to deflect attention from the fact that it is unable to significantly protect the ACT community from any sort of terrorist threat, if one were to emerge, and instead put the onus back on the community to bear the brunt of the responsibility for the government's failings. This is simply an opportunity for the Chief Minister to do a bit of federal government bashing and for others to get off their chest their frustrations about Australian foreign policy.

Indeed, Mr Stanhope's insulting response to the increased tightening of antiterrorist laws in the wake of the London bombings was about his concern for the human rights and protection of those who might be singled out for their Islamist extremist behaviour, rather than for the protection of the community at large. What about the rights of those people amongst our population who would be affected by acts of terrorism and who deserve to be protected from those who choose to be sympathetic to terrorist acts or to support or carry them out?

Should they not have the right to feel safe and feel that their public representatives have done everything they can to protect the community? Should they not feel respected and tolerated by their own Chief Minister, instead of being castigated for what this Labor government claims is a lack of tolerance towards dangerous extremists? When people question the motives of radical Muslims, why are their rights to do so not tolerated by Labor?

Most Australians do tolerate and respect people of all faiths, religions and cultures. So the debate we are having here now to defend the Stanhope government's claims that tolerance and respect have gone out the window is perhaps a little bit insulting to the greater majority. The real lack of tolerance comes from the Chief Minister's failure to consider the human rights of the hardworking, honest, tolerant and respectful majority, Muslim, Christian or otherwise.

The Australian government is no doubt in possession of secret information to which not all are privy. In fact, the Chief Minister would be more privy to it than I am. They and other state and territory leaders, well advised by sensible and experienced people, moved

quickly in the aftermath of the second wave of attempted bombing in London to flag new counter-terrorist measures in Australia.

In contrast, the local government's first instinct, via Jon Stanhope's vitriolic comments in an ABC radio interview on 26 July this year, was to declare state-wide government statements about tightening counter-terrorism laws as draconian and knee-jerk reactions. In that vein, the Stanhope government failed to call for the censorship of hate books and bomb-making books and the banning of hate preaching so influential on impressionable young Muslim men across this country.

Whether we have amongst our 5,000 Muslims a component of young men who feel that they are operating in a vacuum and therefore are vulnerable to that sort of hate preaching is unknown. It is probably not quite the case. But if we are going to conform with all jurisdictions in the country in tackling what really are national challenges, we need to see our Chief Minister locked in step with other state leaders and the federal government.

The Chief Minister apparently has accused me of wanting to see large-scale book burning. It is quite clear that I supported the removal of terrorist hate preaching and bomb-making books from bookstores and libraries. I did not call for book burning and I certainly did not call for the burning of the Koran, as purported by Mr Stanhope and some of his more radical supporters. Seeking an act of censorship against those sorts of books is exactly the same sort of thing as seeking to censor pornography in relation to young teenagers.

The Chief Minister thinks that these people should be allowed to spread their views and that their views can be dismantled by rational dialogue. Tell that to the families of the victims of the September 11 attacks on New York or of the Bali or London bombings and to the families of Iraqi victims of crazed Ba'athist and foreign al-Qaeda terrorists. You do not rationally discuss anything with extremists who have already made up their minds. The aim here is to help younger people who might become affected by that sort of extremist preaching.

Thankfully, the Labor government does encourage engagement through Muslim communities with young, disaffected Muslims. So there is hope yet. The government does do the right thing by demonstrating solidarity with the Muslim community. This could go some way to promoting tolerance and respect. But, given the golden opportunity to do so, Jon Stanhope failed to condemn unequivocally all forms of extremism by all faiths and communities against all other faiths and communities and he failed to call on all community and faith leaders to follow suit. I am talking about the public comments that he made on 26 July on ABC radio, which he chose to make from the Canberra mosque. He did not express the sorts of concerns that have been expressed by other state leaders.

Tolerance and respect throughout the community must be built on a bedrock of solid, sensible governance so as to remove the sorts of ambiguities that create tensions, intolerance and confusion. I would say to the Chief Minister that we all support tolerance and respect. These are confusing times. Events are moving quite quickly internationally, which sows seeds of concern and confusion. That simply means that we have to be unambiguous in stating that we support and respect all communities, we support, respect and defend the rights and the power of the Muslim majority to do what they want to do,

which is to marginalise the radicals in their communities. That is a golden step forward to exercising community safety. The Chief Minister has a duty of care to take that approach to these sorts of problems.

MR TEMPORARY DEPUTY SPEAKER (Mr Gentleman): The member's time has expired.

MS MacDONALD (Brindabella) (4.37): Edmund Burke said, "The only thing necessary for the triumph of evil is for good people to do nothing." Social cohesion in the ACT, as demonstrated by tolerance and respect for all cultures and religions, continues to be strong. Fortunately, we have not experienced the significant incidences of racial or religious intolerance that other cities have experienced. I sincerely hope that we never do.

Multiculturalism, and the active participation of diverse cultures in the city's governance, is alive and well here and it underpins the success our community has had in maintaining a harmonious environment for all. That these are uncertain times makes it all the more important that we reassert our commitment to fostering social cohesion. The ACT government is continuing to provide opportunities to the people of Canberra to do just that.

I thank Ms Porter for submitting this matter of public importance for discussion. It gives us the opportunity to discuss today the issues that surround these matters. Yes, these are uncertain times and there is a certain amount of confusion, but I think that it pays for us to have the conversation, to discuss publicly the issues that actually underpin our foundations as a society, which is what we are doing here today.

Members will be aware that the ACT government has enacted Australia's first Human Rights Act, which is a policy to ensure dignity and respect for all Canberra citizens through the protection and promotion of their human rights. It is founded on the premise that human rights are not a reward that is bestowed on selected people in the community. They are fundamental and universal rights.

The government's antiracism strategic plan, entitled "Facing up to racism: a strategic plan addressing racism and unfair discrimination 2004-2008", provides the framework within which ACT government agencies will advance initiatives, programs and services designed to address racism and discrimination.

The ACT government provides funding through the multicultural grants program to support cultural events and participation in the National Multicultural Festival, which encourages organisations to foster a climate of inclusion based on their culture. The festival, over 10 days, showcases Canberra's rich tapestry of cultural diversity. As Minister Hargreaves has reported to the Assembly, participation in the National Multicultural Festival is increasing, with the festival this year attracting 125,000 people from all backgrounds at over 76 events. The ACT government also provides funding for community language skills so that members of the multicultural community can teach their respective cultures and languages.

It is abundantly evident to me that Canberrans, whatever their beliefs or background, have a strong sense of community and look after each other. Canberrans are keen to

improve their knowledge and understanding of cultures and religions, as demonstrated by their strong attendance at functions and events put on by the diplomatic missions in Canberra. As a Canberran, I am proud to say that Canberrans welcome cultural and religious differences. We embrace the differences and we celebrate the differences. The ACT government, for its part, provides support and creates opportunities for Canberrans to welcome, embrace and celebrate diversity.

Of course, social harmony does not just happen. The ACT is home to more than 200 multicultural and multireligious groups, which undertake activities promoting social harmony, tolerance and respect. There is also a collection of individuals who together make up Canberra's 2,800 community groups, usually volunteers from all backgrounds who contribute to community life in Canberra. The message here is that social harmony can only be achieved by working together and that it is the responsibility of every individual to promote the principles of equality and respect.

The ACT government is meeting its responsibilities by supporting the multicultural community, particularly the new and emerging communities. The most recent demonstration of that was the funding for the development of a multicultural centre which will house the peak organisations and provide office space for the new and emerging communities, a prayer room and a functions room. The activities centred upon the multicultural centre will provide opportunities for positive interactions between communities and the promotion of understanding of each other, leading to respect for each person and to respect for other cultures.

Respect is born out of understanding and usually follows listening. The ACT government has placed a high priority on providing the opportunities for communities to voice their concerns. One of these strategies involves the new and emerging community groups meeting directly with the minister for multicultural affairs in a small group context. This has proved to be a very effective way of addressing concerns in the new and emerging community groups.

As I have said, the strong social cohesion in the ACT is no accident. It is the result of working together and listening to each other. It is a result of mutual respect. Of course, in uncertain times, we cannot be complacent and the ACT government will continue to assist the promotion of cultural and religious tolerance and respect in order to maintain social harmony in the territory.

Mr Temporary Deputy Speaker, I have spoken about what the ACT government is doing, but I would also like to make a couple of comments from a personal perspective. Members, of course, know of my Jewish heritage. They would not necessarily be aware of the fact that I grew up in a household with a mother who was born Jewish and a father from almost a typical country Australian family who converted to Judaism.

My grandparents and my father were from the Mudgee region and you did not really get too many people who were Jewish, Islamic or not of a WASP background—I suppose that would be the way of describing it—in that region, so it was a bit of a cultural shock for my father's family when my father married my mother and then converted to Judaism.

For me, it meant that I grew up in a household that had a very interesting mix. On the one hand, all of my family from my father's side would celebrate Christmas and I understood the significance of Christmas. I have cousins who are Catholics and cousins who are Protestant of some form or other. On the other, of course, I grew up celebrating many of the Jewish holidays and, as a good Jewish friend of mine says, most Jewish celebrations involve "They tried to kill us and we survived; let's eat."

So, for me, the whole idea of a multicultural Australia is very significant. I spoke earlier in the week about the B'nai B'rith *Courage to care* exhibition, which I would still encourage people to go along to, and I did not get to finish a quote concerning Pastor Niemoller, a Protestant minister in Germany in the 1930s. Pastor Niemoller was opposed to the ideas and methods of Nazism and at the end of the war helped issue a document called the Stuttgart confession, an acknowledgment that the clergy had not done enough in the struggle against the Nazis. He said:

> In Germany they came first for the communists, and I didn't speak up because I wasn't a communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the trade unionists, and I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics, and I didn't speak because I was a Protestant. Then they came for me—and by that time no-one was left to speak up.

That quote shows the importance of speaking up and of encouraging tolerance within our community. With Nazi Germany, we saw the impact of what happens when we stray from having a tolerant society. So it is a duty of all of us to continue to encourage the promotion of tolerance within our society.

MR SMYTH (Brindabella—Leader of the Opposition) (4.47): I would like to make a few points in clarification of a couple of things that the Chief Minister said. The Chief Minister is always twisting things. I guess it is because he is blinded by that light on the hill. Today, he failed to get the basic facts right. He spoke about a John Simpson Fitzpatrick. I think he meant John Simpson Kirkpatrick. It is a basic thing; we are taught that at school. Perhaps Jon should have paid more attention at school to learning about the fundamentals of what it is to be an Australian.

He also said that Simpson—Simpson and the donkey, as he is known—was a Scot. He was not. He was born on 6 July 1892 in South Shields, England. Get your facts straight, Chief Minister.

MR TEMPORARY DEPUTY SPEAKER: Mr Smyth, the time has expired for the discussion on the matter of public importance.

Public Sector Management Amendment Bill 2005 (No 3)

Debate resumed from 16 August 2005, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR SMYTH (Brindabella—Leader of the Opposition) (4.48): Despite what the government may say and despite the addition of a raft of technical amendments, we all

know that this bill arises as a result of the debacle that is now commonly referred to as the Tonkin affair. Indeed, this bill should be titled the Rob Tonkin memorial bill. Some members may have forgotten the events that led up to the Tonkin debacle, so I will recap on the benchmark the government has set in being opaque, unaccountable and unfair in its decision making.

By late 2003, the Chief Minister and the chief executive of the Chief Minister's Department, Mr Robert Tonkin, in the words of the Chief Minister himself, no longer could see eye to eye. There is no question that Mr Tonkin's performance was up to scratch, as Mr Stanhope told us in the Assembly earlier this year, "Mr Tonkin is a very senior, very experienced and extremely good public servant." Nonetheless, the relationship between the two had become so poisonous that Mr Stanhope sought a method by which he could rid himself of this turbulent chief executive.

So, in November 2003, the Chief Minister announced that Mr Robert Tonkin, the chief executive of the Chief Minister's Department, was to be seconded to the commonwealth Department of the Prime Minister and Cabinet to "lead the secretariat for the Council of Australian Governments (COAG) national bushfire inquiry". The announcement made it clear that Mr Tonkin would be departing permanently, as it noted that Mike Harris would be acting in the position pending permanent filling. So much for secondment! Mr Tonkin, despite being on secondment to the commonwealth government, continued to receive his full salary as a senior executive level 3.12 in the ACT public service.

Jumping forward to February 2004, the Chief Minister made a notifiable instrument—NI2004-34, Administrative Arrangements 2004 No 1—the sole purpose of which was to provide for the creation of the Office of Special Adviser, Council of Australian Governments and Inter-governmental Relations, as a new administrative unit under the Chief Minister's portfolio. The role of chief executive in this new instrumentality fell to the special adviser. While it was not stated in the instrument, the special adviser was, of course, Mr Tonkin.

In March 2004, Mr Tonkin and the Chief Minister signed a schedule D variation to Mr Tonkin's contract that reassigned him to the position of special adviser to the Council of Australian Governments and Inter-governmental Relations. Then, in April 2004, the Treasurer made a disallowable instrument—DI2004-56, Financial Management Amendment Guideline 2004 No 1—which inserted a new section 24A in the Financial Management Guidelines 2002. This new section prescribes as a department the Chief Minister's Department and Office of Special Adviser, Council of Australian Governments and Inter-governmental Relations. The purpose of this amendment to the guidelines appears to have been to circumvent the need for the Office of Special Adviser to produce a full annual report.

In September 2004, a transmittal letter on Chief Minister's Department letterhead and signed by Mr Tonkin appeared as an annexed report in the Chief Minister's Department's annual report for 2003-04. A half-page account of Mr Tonkin's activities followed. Then, in February 2005, the opposition discovered the rort and referred it to the Auditor-General for investigation. In May 2005, the Auditor-General reported, finding amongst other things:

> The role and functions of the Office were not well documented, and since April 2004 there is only a tenuous connection to the outputs of the Chief Minister's Department.

The report went on to say:

> Accountability arrangements were unclear.

It also said:

> The Special Adviser's Annual Report for 2003-04 did not fully meet the requirements of the Annual Reports Act or the Annual Reports Directions.

It continued:

> The funding of the Office of Special Adviser, while legal, may not be justified on merit on its own nor reflect good public management.

It continued:

> The situation, if continued, increases the risk for inappropriate uses of authority.

It really was a remarkable series of events. It reads like a script from *Yes, minister*. Mr Speaker, can you imagine creating a whole department for the sole purpose of sending a troublesome chief executive to the commonwealth? Chief Minister, why didn't you just send him on gardening leave?

As well as making it easier for the Chief Minister to redeploy chief executives he does not like very much, there are some other elements to this bill that are worthy of comment. I draw members' attention to the changes to short-term contract arrangements. Currently, a short-term contract can only be for six months—hence the term "short-term"—with the possibility of a three-month extension. Short-term contracts effectively allow executives to act in higher positions. As I noted in a question without notice last week, this government regularly breaches the requirement for these contracts not to exceed nine months. I can name no less than four senior executives who have been in their temporary positions for somewhat longer than nine months. In all of these cases, there does not seem to have been any sort of merit process.

The opposition will be introducing amendments to the clauses of the bill that allow short-term contracts to be extended to two years. It will do so on two grounds. Firstly, it is a well-known rule of thumb that, if a position needs to be acted in for more than 12 months, it needs to be filled permanently. The need to extend the length of contracts to two years is simply poor management. Secondly, as the current limit of nine months is not being adhered to, what guarantee do we have that the two-year limit also will not be breached? What little remains of the merit principle in regard to temporary assignment of executives will be completely gone if this change goes through.

I foreshadow that in the detail stage I will be moving two amendments that will reduce the proposed period from two years to a more sensible 12 months. The other changes are

mostly technical, although there is some new scope to increase the pay of executives as their responsibilities increase. We will be supporting those changes.

DR FOSKEY (Molonglo) (4.55): Before I embark on my response to the bill, I would like to pick up on something that the Attorney-General mentioned in his tabling speech. In February 2003, the previous Commissioner for Public Administration presented a report to the government titled *Review of the Public Sector Management Act 1994*. On 16 August 2005, the Attorney-General stated in the tabling speech for this bill, "The government is considering the response to the commissioner's report." It has taken the government some 2½ years to develop a response to this report. I would appreciate it if the Attorney-General could outline in his closing speech why it has taken this long for a response to be presented to the Assembly.

Moving on to the bill before us today, I support the amendments to chief executive and executive employment conditions as they do not appear to make major changes to the ACT public service and they seem to be consistent with current practice. The Commissioner for Public Administration has stated that the amendments before us are in the interests of good public administration. The CPSU has noted that it is not opposed to the amendments as they do clarify some grey areas. But I think that the bill is a bit of a knee-jerk reaction to the Tonkin affair. We should be cautious of awarding too much power to the executive in the case of public service employment. I can understand why the government reacted the way it did to the Tonkin matter, but this could take its powers too far in the future.

I would also like the Assembly to note that the bill before us is only a small step, one small part of the government's response to the commissioner's report of 2½ years ago. It is interesting that the report recommends that chief executives continue to be employed on term contracts, but that executives should be given more permanency to ensure the provision of free and frank advice. It also recommends that there be a clear framework of due process for the removal of a chief executive when his or her relationship breaks down with a minister. These issues have not really been responded to in today's bill. The real work and discussion are yet to come, and I look forward to that.

Finally, I would like to express my concern that the government has used its powers to introduce and debate this bill within one sitting period without providing a strong reason for its urgency. Such a move is disrespectful to the scrutiny of bills reporting procedures, to the opposition and to me as a crossbencher as it allows little time to digest and articulate the intricacy of arguments that a bill may present. The latest scrutiny of bills committee report, 22 August 2005, was able to investigate and provide opinion on the Public Sector Management Amendment Bill No 3, but we should be aware that it was published only three days ago. A government response to its concerns arrived in my office at 12 o'clock today, only a few hours ago.

I think we should return to the practice of holding off on debate at least until the opposition and crossbench have been given appropriate time. I should just add that that response was received a few days ago, because we had this speech ready a couple of days ago. Unless there is a legitimate reason for the urgency of a bill—and there is not in relation to this one—I think we should return to the practice of holding off on debate at least until the opposition and crossbench have been given appropriate time to consider the government response to scrutiny of bills committee concerns.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (4.59), in reply: The purpose of the bill is to make changes to contract employment arrangements for chief executives and executives in the ACT public service that will improve the management and responsiveness of the service. The bill also clarifies the employment powers of certain executives in government agencies and instrumentalities who are given powers equivalent to those of a departmental chief executive in relation to staff who are deemed to be covered by the Public Sector Management Act.

The bill makes a small number of core changes to address some of the more restrictive elements of the current chief executive and executive employment framework to facilitate the management of the public service and improve responsiveness, as well as enhancing career planning for executives to some extent. The government is committed to developing a strong executive service based on sound public service values and principles. We want to achieve an executive service grounded in sensible management arrangements and practices. We also realise that work force management and planning is not just about recruitment, but also about building and sustaining the work force.

The government must therefore provide market competitive conditions that retain our executives and recognise their contribution to the ACT public service. The public sector values essential for creating a strong executive service are supported by initiatives within the public service, such as the executive capabilities introduced in August 2002 and the executive leadership development program that commenced in 2003. A further program, "Take the lead", develops staff at the manager level, both to retain those staff and to contribute to the development of the future executive cohort.

The bill will ensure that the legislative framework for the public service fully supports these initiatives. It will contribute to the development of an effective executive culture by improving career planning while supporting mobility across the service. The bill also recognises that project work, made up of cross-agency teams, was developed as a key strength to achieve government outcomes. The importance of project-based responses to emerging issues is likely to continue in the future. A limited set of changes is proposed to address these issues, which focus on increasing the workability of the framework, rather than altering the fundamental nature of the executive employment framework.

The first set of changes consists of new arrangements to facilitate executive mobility. The amendments provide for the transfer of chief executives and executives across the public service to support greater mobility within the service. Under the changes, chief executives can be transferred at level or to lower level positions, as needed. If a chief executive is transferred to a lower level position, his or her current remuneration at the higher level is retained for the contract term. This makes sense, given the small number of jobs at chief executive level in the public service. Other executives can be transferred at level.

The approach under the bill recognises the need for flexibility in deploying senior managers, but it also ensures that the individual's views are appropriately taken into account. This reflects transfer arrangements that apply to other staff. The current gazette notification provisions are also extended to transfers to ensure that the Assembly and the public are informed about executive transfers.

The second set of changes provide for notice of or compensation for non-renewal of contracts. As members may be aware, on expiry an executive contract either can be renewed or a decision can be made not to renew and to advertise the position. Currently, executives are not entitled to notice that their contract will not be renewed; nor are they entitled to any compensation for non-renewal. The effect is that senior officers who move into executive positions under a five-year contract must forgo the benefits of tenure. For these executives there is no payment to reflect long service, other than their accrued leave, when their executive contract expires.

The new provisions provide for a three-month notice period or equivalent payment if notice of non-renewal is not given before a contract expires. This change provides a sensible and reasonable entitlement to staff. A consequential change is also made to section 248 of the act to apply the existing prohibition on re-engaging executives during the period covered by a redundancy payment to the three-month period.

The third main change to the act provides for short-term contract arrangements of up to two years. The current act limits short-term executive contracts to nine months, which means that the only way to deploy key staff to project teams for more than nine months is to provide a longer-term contract. Under the law presently, a contract for more than nine months will override any other employment arrangements where there is a pre-existing five-year executive contract or tenure as a senior officer, with the result that persons who accept such contracts face uncertainty when those contracts expire.

Another effect of the current law is that projects over nine months in duration cannot reasonably be sustained by either a short-term contract or a long-term contract. The amendments overcome these problems without undermining the merit principle. It should be noted that a merit process is still required for all executive contracts longer than nine months.

The fourth change to the act provides for increases in remuneration through contract variations where such an increase is prescribed by the public sector management standards. This amendment modifies an existing prohibition in the act that contract variations cannot be used to increase executive pay. The current prohibition reflects the current 12-point executive pay framework in which a job evaluation methodology sets job levels which, in turn, link to remuneration tribunal determination of matching pay levels. The existing arrangements do not reflect the reality that executive jobs often increase in size and responsibility, whether through organisational changes or the reality that, as executives develop in positions, they often attract new functions.

The new arrangement balances the importance of maintaining a consistent, service-wide pay structure for executives with the need to reflect increased responsibilities with pay increases. Clearly, there should be brakes on such increases. Limits on permissible increases will be provided through the public sector management standards. The standards will make sure pay increases are supported by a job evaluation and will place ceilings on pay progressions that are not the result of a merit process. Instead, they will permit a form of incremental advancement within the first two executive pay zones and a maximum increase of two pay points in the upper pay zone. This approach balances sensible and fair management arrangements with the need to maintain a merit-based executive service with a consistent service-wide pay framework.

A number of other technical changes are also being made. For example, references to the title of Calvary Hospital are being updated. The bill also clarifies the employment powers of certain executives of government agencies and instrumentalities, where those executives are given the powers of a chief executive in relation to staff of the agency or instrumentality that are deemed to be covered by the act.

To provide certainty about existing employment and employment decisions, the bill confirms the validity of appointments made by such executives pursuant to those employment powers before the commencement of the revised provisions. It also makes consequential amendments to other legislation to ensure the relevant terminology is used consistently. The changes under the bill will apply to all existing chief executives and executives, as there will be no prejudicial impact on current entitlements.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MR SMYTH (Brindabella—Leader of the Opposition) (5.06): I seek leave to move both of my amendments together.

Leave granted.

MR SMYTH: I move amendments Nos 1 and 2 circulated in my name *[see schedule 1 at page 3294]*.

The amendments remove, in two proposed new sections, the phrase "two years" and insert "12 months". Two years for a temporary contract seems an incredibly long time. There are consequences for an individual taking up a two-year contract as well as for the person that backfills their position. If it is a short-term contract, as listed, we believe that 12 months is an adequate period for the work to be carried out. If it is for more than 12 months, obviously it is an ongoing job and it should be continued as a permanent position.

Question put:

> That **Mr Smyth's** amendments be agreed to:

The Assembly voted—

Ayes 6		Noes 7	
Mrs Burke	Mr Smyth	Mr Berry	Ms Porter
Dr Foskey	Mr Stefaniak	Mr Corbell	Mr Quinlan
Mr Pratt		Ms Gallagher	Mr Stanhope
Mr Seselja		Mr Gentleman	

Question so resolved in the negative.

Amendments negatived.

Bill, as a whole, agreed to.

Bill agreed to.

Hotel School (Repeal) Bill 2005

Debate resumed from 16 August 2005, on motion by **Mr Quinlan**:

> That this bill be agreed to in principle.

MR SMYTH (Brindabella—Leader of the Opposition) (5.11): The opposition will be supporting the bill. I think we all understand that the Australian International Hotel School has had an interesting history since it was established in 1994. It culminated some years ago when the Treasurer told them that they had to find other means to support themselves and that the funding from the government purse would no longer continue. Since that time, the government has found a buyer for the school, the Blue Mountains International Hotel School, which will continue trading the facility that is currently situated in the Hotel Kurrajong operating as the Australian International Hotel School.

The opposition has been informed in a briefing that the Blue Mountains school will take over all operations of Hotel Kurrajong, the tertiary institution, the hotel and the restaurant. It is not certain that the Blue Mountains school will continue to operate the hotel and restaurant in the long term. That should not pose a problem as long as the territory is not lumbered with an ongoing bill.

The bill does not contain significant financial implications, except that it will take some of the pressure off the government purse. The sale price has not been disclosed. The main benefit is that there will now be no ongoing need for a cash subsidy. The opposition will be supporting the bill.

MR QUINLAN (Molonglo—Treasurer, Minister for Economic Development and Business, Minister for Tourism, Minister for Sport and Recreation, and Minister for Racing and Gaming) (5.13), in reply: I thank members for their support. I think the Assembly is fully aware that the government has entered into an agreement with the Blue Mountains International Hotel Management School Pty Ltd. The government itself will cease operation of the hotel school. We will also cease operation of a hotel in the Hotel Kurrajong and the associated restaurant. The date for the transfer of business to take place will be as soon as is practicable once the transfer documentation is finalised. We have lawyers involved, so I cannot give any precise guarantees as to the exact date. But there does need to be a specific date in order to satisfy some of the arrangements.

The key features of the transfer will be that existing students will have the opportunity to complete their degrees. All staff will have the opportunity to be employed by Blue Mountains International Hotel Management School under the same terms and conditions as their existing employment. The Hotel Kurrajong, the building itself, will

continue to be owned by the territory, having been purchased last year. The heritage status of the Hotel Kurrajong will be maintained. The school will continue to operate as the Australian International Hotel School at the Hotel Kurrajong under a long-term sublease with the territory. Existing ACT government financial support will no longer be required beyond 30 June 2007.

The opposition, for some reason, was looking for an assurance that we were not going to operate the hotel or continue to operate the thing as a hotel or restaurant. That is the intention of the government at this stage. We will lease the building to the Blue Mountains Hotel Management School. We will become, effectively, the landlord and we will be receiving a rental. There is other detail to the arrangement, which is purely of a business nature, but it is, I think, a very satisfactory arrangement.

Before I sit down, I would like to thank a couple of people who have seen us through during a time when there has been uncertainty for the school and students. In particular, I would like to thank John Walsh, Tony Hays and Greg Wood for the work that they have done and are doing at this stage to ensure that we are able to make this arrangement. It is a very difficult process. It is not something that can be just switched off overnight. There are continuing commitments, both contractual and moral, and we have said right from the outset that we would honour both our contractual and our moral commitments. It has been through the work of those people that we have been able to do so.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Human Rights Commission (Children and Young People Commissioner) Amendment Bill 2005
Detail stage

Debate resumed from 23 August 2005.

Clause 14 agreed to.

Clauses 15 to 37, by leave, taken together and agreed to.

Schedule 1.

MR STEFANIAK (Ginninderra) (5.17): I move amendment No 1 circulated in my name *[see schedule 3 at page 3295]*.

Both Mr Seselja and I spoke on Tuesday in relation to the ombudsman. I reiterate our position. I also again refer members to the scrutiny of bills committee report 14 of 15 August, in which these concerns were expressed. Without repeating myself, I commend this amendment to the Assembly.

MS GALLAGHER (Molonglo—Minister for Education and Training, Minister for Children, Youth and Family Support, Minister for Women and Minister for Industrial Relations) (5.18): The scrutiny of bills committee raised a concern about the restriction of the power of the ombudsman in part 1.2 of the bill, which amends section 5 (2) (n) of the Ombudsman Act 1989. This concern is the one that Mr Stefaniak seeks to address in his amendment.

The short answer to the concerns of the committee is that the ombudsman is only excluded from reviewing the specialist deliberative functions of the Human Rights Commission. These functions include the investigation of complaints by commissioners with specialist expertise, such as the Children and Young People Commissioner. The scrutiny of bills committee did not mention the fact that section 5 (2) (n) enables the ombudsman to investigate the administrative functions of the Human Rights Commission. For example, the ombudsman could investigate the conduct of a commissioner or the time it took for a complaint to be resolved. This is consistent with the ombudsman's oversight of other government agencies.

The amendments to section 5 (2) (n) of the Ombudsman Act 1989 are consequential amendments flowing from the provisions in the Human Rights Commissioner Bill 2005 and mirror amendments to that section in the Human Rights Commission Legislation Amendment Bill 2005 at clause 1.115. Currently, section 5 (2) (n) of the Ombudsman Act 1989 excludes the ombudsman investigating anything that would fall within the jurisdiction of the Community and Health Services Complaints Commissioner. In addition, current provisions in section 5 (2) (i) prevent the ombudsman from investigating any action of any kind by the Community and Health Services Commissioner.

As I have already mentioned, the amendments to section 5 (2) (n) update the provision to exclude investigation by the ombudsman of the Human Rights Commission's deliberative functions, but not its administrative functions. The ombudsman will now have more power than previously, especially in relation to administration of the oversight of health services.

The government's position is that it is not appropriate for the ombudsman to review the specialist deliberative functions of the Human Rights Commission, as this would effectively provide a duplicated oversight process. However, the government does support administrative oversight by the ombudsman because administrative oversight ensures that proper processes are employed. Amendments to the Ombudsman Act to achieve that outcome are included in this bill in schedule 1, part 1.2, and the Human Rights Commission Legislation Amendment Bill 2005.

I can advise the Assembly that the power of the Human Rights Commission to investigate matters is broad. This power derives from the definition of "service", which includes services that are outside the government's purview, for example, in clause 7 of the bill. This broad power ensures that many people in the ACT who receive services for disability or ill-health, children and young people and older people may complain to the Human Right Commission. Because of the breadth of the functions of the commission, including its capacity to consider issues without the need for formal complaint, it is

unlikely that any agency action in the relevant area will be excluded from its consideration.

Any administrative action taken in relation to issues raised with it, even if not ultimately accepted as a complaint, would be reviewable by the ombudsman. The government considers that creating an additional statutory oversight process by the ombudsman would have detrimental effects on the matters that fall within the scope of the Human Rights Commission functions. There is, for example, the real risk of forum shopping. For these reasons, the government opposes the amendment.

Amendment negatived.

DR FOSKEY (Molonglo) (5.22): I move amendment No 5 circulated in my name *[see schedule 2 at page 3294]*.

This bill proposes amendments to section 5 (2) (n) of the Ombudsman Act 1989 to restrict the jurisdiction of the ombudsman in relation to complaints about services provided to children and young people, with similar restrictions to complaints about health services, disability services and services to older people introduced in the Human Rights Commission Bill.

The scrutiny of bills report No 14 raised concerns regarding the potential for jurisdiction disputes arising as a result thereof, which could result in some complaints not being handled by either the ombudsman or the Human Rights Commission. We believe it is important to avoid this and our amendment seeks to omit section 5 (2) (n) of the Ombudsman Act, leaving that office with jurisdiction over any complaint that is not dealt with by the Human Rights Commission.

Section 6B of the Ombudsman Act 1989 requires the ombudsman to refer any complaints more appropriately dealt with by the Human Rights Commission to the commission, thus avoiding duplication or confusion, without limiting the jurisdiction of the ombudsman. This amendment is a little similar to Mr Stefaniak's but certainly one we prefer. Since his amendment failed to gain the support of the Assembly, I commend my amendment to members.

MS GALLAGHER (Molonglo—Minister for Education and Training, Minister for Children, Youth and Family Support, Minister for Women and Minister for Industrial Relations) (5.25): The government will not be supporting Dr Foskey's amendment, for the reasons I outlined when speaking to Mr Stefaniak's amendment.

MR STEFANIAK (Ginninderra) (5.25): The opposition will be supporting Dr Foskey's amendment.

Amendment negatived.

Schedule 1 agreed to.

Title agreed to.

Question put:

That this bill be agreed to.

The Assembly voted—

Ayes 8		Noes 5	
Mr Berry	Mr Gentleman	Mrs Burke	Mr Stefaniak
Mr Corbell	Ms MacDonald	Mr Pratt	
Dr Foskey	Ms Porter	Mr Seselja	
Ms Gallagher	Mr Stanhope	Mr Smyth	

Question so resolved in the affirmative.

Bill agreed to.

Public Advocate Bill 2005

Debate resumed from 30 June 2005, on motion by **Ms Gallagher**:

That this bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

DR FOSKEY (Molonglo) (5.29): I move amendment No 1 circulated in my name *[see schedule 4 at page 3295]*.

This amendment is about schedule 1 changes to section 6B of the Ombudsman Act 1989 as it relates to mandatory referral to the Public Advocate. Section 6B of the Ombudsman Act 1989 contains an obligation of mandatory referral of complaints by the ombudsman to another statutory agency. One of the listed agencies is the more appropriate agency to investigate the complaints. The amendment adds the Public Advocate to the list of agencies the ombudsman can refer complaints to.

MS GALLAGHER (Molonglo—Minister for Education and Training, Minister for Children, Youth and Family Support, Minister for Women and Minister for Industrial Relations) (5.30): The amendment proposed by Dr Foskey to the Public Advocate Bill to amend section 6B (1) of the Ombudsman Act would add the Public Advocate to the list of agencies to which the ombudsman must refer a matter for investigation, if the ombudsman decides that the matter would be more appropriately investigated by that agency.

The inclusion of the Public Advocate in the list of agencies in section 6B is a departure from the current situation, as the Community Advocate is not mentioned in that provision. However, this proposed amendment would operate consistently with other

provisions of the Public Advocate Bill. It would also be consistent with amendments made in the Human Rights Commission Legislation Amendment Bill as a consequence of the establishment of the Human Rights Commission. Because of that, the government will support the amendment.

MR STEFANIAK (Ginninderra) (5.31): The opposition will be supporting Dr Foskey's amendment.

Amendment agreed to.

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

Bill, as amended, agreed to.

Adjournment

Motor sports

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

> That the Assembly do now adjourn.

MR GENTLEMEN (Brindabella) (5.32): This evening I would like to inform the Assembly about some exciting news for Canberra, especially for those avid motor sport fans like myself. A small team of engineers in Canberra with a restricted budget has successfully completed an engineering feat which the biggest car companies in the world have difficulty in achieving—the reverse engineering and combining of two totally different vehicles. Not only that, the new hybrid vehicle is winning in competitions at world-class level.

This small team of engineers calls Canberra home. Neal Bates Motorsport, also known as Toyota Team Racing, has been involved in the building and racing of Toyota rally cars in the Australian Rally Championship for more than 15 years, having won the national title three times. What makes this current project unique is that, whereas previous cars were similar to those used by the Toyota World Rally Championship team, the current car has been designed and developed exclusively by TTR right here in Canberra and is the only one of its kind in the world. It is the first car to meet the new group N (P) regulations created by the Confederation of Australian Motor Sport. Toyota Team Racing has taken the humble Corolla hatchback and transformed it into a four-wheel drive, turbopowered rally machine by combining present and past technologies.

The self-funded project commenced in 2002, before receiving formal Toyota Australia assistance, and the ongoing development program of the three-car team has continued ever since. The Toyota team racing Corolla was first seen in action in late 2002. It was no match for the works Subaru Imprezas and Mitsubishi Lancers in 2002 and 2003. Engineering improvements saw podium finishes in 2004 and, at the start of the 2005 season, Toyota Team Racing scored a 1-2 finish. Just two weeks ago, Toyota Team Racing beat all other manufacturers in heat one in South Australia, which now puts the team into a positive position to take the manufacturers championship of the Australian Rally Championship at the end of the year.

During this period the Canberra-based engineering motor sports team has grown to eight full-time personnel. Neal Bates has provided exciting employment opportunities for young people from Canberra and regional areas, including Bega, and an apprentice who graduated from Wodonga TAFE. The hard work, dedication and innovation displayed by TTR has not gone unnoticed. Canberra's own Toyota Team Racing is a finalist in the Engineers Australia engineering excellence award in the small business venture projects section.

The engineering excellence award seeks to recognise and reward outstanding achievement, eminence in the practice of engineering and conspicuous service to the engineering profession. For TTR to have been nominated is in itself a great accomplishment. To have been selected as a finalist is exceptional, especially considering that the nomination of TTR was a covert operation, with owner Neal Bates knowing nothing of it. Keenly aware of Neal's modesty, his close friends nominated TTR on the sly. When the awards judges came to inspect Toyota Team Racing's workshop they were introduced to Neal and the team simply as car enthusiasts. The plan came unstuck later when the time came to convince Neal to don a black tie for a night away in Sydney.

Such national and international recognition can only advance Canberra as the knowledge capital of Australia. I am proud to have been involved in a sport that encouraged such a manufacturing success right here in our own backyard. Further, Toyota Team Racing is a success that has raised employment opportunities for constituents in my own electorate of Brindabella and raised the profile of Canberrans as a whole in this world-famous sport.

I would like to take this opportunity to congratulate our Canberran team of Neal, Coral, Steve, Geoff, Mark, Chris, Jay, Matthew, Anthony, Trent and Anthony again for their achievements in the field of engineering. I wish Toyota Team Racing the best of luck for November, when the winner of the Engineers Australia engineering excellence award is announced. I also wish them well for the remainder of the 2005 World Rally Championship and in any future endeavour this remarkable team embarks upon.

Youth detention centres

MR SESELJA (Molonglo) (5.36): On Tuesday I was honoured to be the subject of a dorothy dixer from Ms MacDonald to Ms Gallagher. I note that Ms Gallagher has been speaking a lot about me lately and I am certainly flattered. I am very happy that she spends so much time reading my press releases. In answer to the question, Ms Gallagher said:

> Youth detention centres are not prisons and their residents are not inmates. Whilst punishment is a factor of their operation, their overriding purpose is rehabilitation to ensure that young residents do not find themselves in prisons later in life. I have enormous concerns about Mr Seselja's rhetoric on this issue. I hope that it is due to his inexperience and not choosing his words carefully.

I certainly thank Ms Gallagher for her advice. I do choose my words carefully. She may wish to check the meaning of words herself before going off half-cocked. I note her struggle to understand the word "consult". I think that, when you accuse someone of

error due to inexperience, you need to get your facts straight otherwise you end up looking pretty silly. I think that is exactly what happened here.

The *Macquarie Dictionary* defines "prison" as "a building for the confinement or safe custody of criminals and others committed by law" or "a place of confinement or involuntary restraint". What part of that definition does not apply to a youth detention facility? *Roget's Thesaurus* lists "detention centre" as an alternative to the word "prison". "Inmate" is defined by the *Oxford Dictionary* as "an occupant of a hospital, prison, institution" and by the *Macquarie Dictionary* as "one of those confined in a hospital, prison, etc".

Once again, which part of those definitions does not apply to residents of Quamby? I am not sure whether it was experience or inexperience which caused me to be right in this case, but I was certainly right on both counts. Ms Gallagher had a staged dixer and an army of staffers and public servants to prepare the answer for her, but there was not a dictionary or accurate statement in sight. I always find it interesting when we have government ministers coming here armed to the teeth with briefs and they cannot get simple things like the meanings of words correct.

Ms Gallagher's comments about experience got me thinking about the minister's experience. Some people say that Ms Gallagher is inexperienced, but I disagree. I think she has had all sorts of interesting experiences. For instance, with Vardon, there was a statutory reporting requirement in relation to abused children. This was ignored by the government. The Community Advocate highlighted this requirement and it was again ignored. Who cops the blame? A public servant! Watch out, public servants!

There were the breaches of the Education Act by Ms Gallagher and her failure to understand what was meant by the term "ask for and consider the advice of". Ms Gallagher also managed to set up a working group in record time one day after being asked a question in estimates, but nine months after it was recommended.

There are the breaches of sections 19 and 20 of the Human Rights Act that go on as we speak at Quamby under the watch of this minister. I am happy to give a bit of free advice to Ms Gallagher. If you are going to tell people they are wrong, for whatever reason, I think you had better get it right. In launching those kinds of attacks, I think you may also face closer scrutiny of your performance as minister.

Mobile phones

MR SPEAKER: Order! There is a mobile phone somewhere; I have no idea where it is. Will somebody throw it into a bucket of water? I think we will have to get into the practice of not bringing those things in here because members forget to turn them off. It is highly disorderly to have proceedings interrupted by electronic devices. I wish Mr Pratt were here so I could give him a bit of stick.

Minister for Health

MR SMYTH (Brindabella—Leader of the Opposition) (5.40): During yesterday's adjournment debate we all got a bit of a treat: we had a rare sighting of that exotic

beast—the lesser spotted, sanctimonious Simon. What a performance that was, full of mock outrage and wounded ego, poor blossom.

Mr Corbell: I wish to raise a point of order, Mr Speaker. Mr Smyth knows the standing orders. If he wants to have a go at me and my conduct as minister, that is fine, but I would ask that he do me the courtesy of referring to me by my proper title and not by some inappropriate name.

MR SPEAKER: Fair point. Refer to him by his proper title.

MR SMYTH: Mr Corbell seems to have forgotten that this is a parliament, not a tea party, and that, as a matter of course, the opposition holds the deepest disdain for his abilities as a minister. Let us not forget that last year the same member—this pure aesthetic upholder of parliamentary virtue—was censured by the Assembly for persistently and wilfully misleading the Assembly. Who can forget the mislead on the issue of nursing scholarships, or the deliberate mislead on mental health funding? Best of all, the minister, the same pious parliamentarian of last night, made up a quote from *Hansard*.

Mr Corbell: Mr Speaker, I rise on a further point of order. Mr Smyth is suggesting that I have deliberately misled the Assembly on a number of occasions. That is highly disorderly and you should ask him to withdraw it.

MR SMYTH: You were censured for it.

Mr Corbell: No, I was not.

MR SMYTH: You were censured for persistently and wilfully misleading the Assembly.

MR SPEAKER: Order!

Mr Corbell: On the point of order: that does not entitle Mr Smyth to decide that, on every occasion when he does not agree with me, I have deliberately misled the Assembly. If he wants to refer specifically to proceedings in the previous Assembly, he should be accurate in doing that but should not cast the net wider.

MR SPEAKER: Mr Smyth, you can refer to the fact that Mr Corbell has been censured but you cannot continue to declare that Mr Corbell has misled the Assembly.

MR SMYTH: That was the nature of the finding.

MR SPEAKER: I am just not going to allow this sort of stuff. This leads to disorder in the Assembly. There is no point in allowing it. There has been a motion passed in the Assembly; it is a matter of fact and you can refer to it; but I am not going to have people hurling abuse across the floor by way of accusations that are misleading, forever, because a motion has been passed, in the future. You can refer to the motion as a matter of fact but no more than that.

MR SMYTH: The point is that there was no research or reasoned argument from Mr Corbell when he raised the *Hansard* that he had invented. It was a case that, if you needed a quote to pursue your argument, you just made it up.

Mr Corbell was upset about a question I asked yesterday, and I make no apology for it. The opposition learnt that there had been an incident at the PSU involving a knife, so we asked a question to see if the incident had indeed occurred. For what other purpose does question time exist but to ask questions? The fact that the incident at the PSU did not exactly occur as it had been reported to the opposition proves that the question was completely valid.

This is not the first time Mr Corbell has leapt up shrieking high dudgeon over the opposition asking questions. Not long ago—on 9 March to be exact—my colleague Mr Stefaniak asked the following question:

> Have any cases of cryptosporidium been reported to ACT Health recently? And if so, has the source of the infection been identified?

The question was taken on notice, and Mr Stefaniak's supplementary asked whether pools or drinking water had been infected. Quoting from *Hansard*, Mr Corbell's response was:

> I am concerned that the opposition continues to assert, at least indirectly, that there are problems with the safety of Canberra's water supply. That is a serious assertion, even if made indirectly in the way that Mr Stefaniak just did. If Mr Stefaniak believes that there is a problem he should say so and he should explain why. But to suggest indirectly, as some sort of snide assertion that there is a problem with Canberra's water supply, is alarmist and dangerous.

Putting aside the interesting leap of logic taken by Mr Corbell, what was the answer that was eventually and quietly provided in writing to Mr Stefaniak's question? Guess what? There were three notifications of cryptosporidium. Two of these could not be traced and the other was suspected to have come from a private swimming pool. That question was completely valid, as was yesterday's. The next time the minister does one of these holier-than-thou performances, I advise those members with an interest in physics to remember Flanders and Swan's application of Boyle's Law to politics—I know you will like this, Mr Speaker—"The greater the external pressure, the greater the volume of hot air."

David Hunter memorial lecture

DR FOSKEY (Molonglo) (5.45): I want to talk about an event I went to last night, which was the David Hunter memorial lecture. I do not know if anybody here knew David Hunter—one of our great citizens that, sadly, we have lost. One of the founding members of Australians for Native Title and Reconciliation and the Journey of Healing in the ACT, he was an enormously supportive and inspiring activist on indigenous issues.

David died in December 2003 after a three-year battle with multiple myeloma. To remember him and his very enthusiastic work, he is commemorated by the David Hunter memorial lecture and, of course, we have now had two of those. Last night the speaker

was an Aboriginal woman called Vicky Walker, who is the coordinator of the Aboriginal Catholic Ministry in Melbourne. However, she comes from New South Wales. She is a descendant of the Mutti Mutti tribe, which is based around the Mungo national park area and Balranald.

I have had the privilege of travelling to that country in recent months. Having travelled there, I understand a little of what she means when she says that her country is Balranald and going there is like entering her mother's womb. That is as good a description of what it might feel like for an Aboriginal person to return to their country as I have come across. A graduate in theology from the Nungalinya College in Darwin, Vicky is an excellent speaker and spirituality is very important to her. It is interesting that she can be a Catholic and also an Aboriginal person who believes in and is committed to the idea of the dreaming at the same time. I think that, if we are going to talk about multiculturalism, hybridism, tolerance and religious understanding, this is as good an example as you will get.

She took a very positive and upbeat approach. She said it is not true that reconciliation is not happening in this country any more; that, for sure, the federal government has put an end to active efforts to make it happen, but she cited some instances. She said it is now routine for most progressive thinking organisations to do a "welcome to country". There are signs up saying that we are entering traditional lands, as we have here, "Welcome to Ngunnawal country."

We have development agreements with Aboriginal people; we have Aboriginal people in parliaments around Australia, especially following the Northern Territory election recently. We are seeing Aboriginal people skilled up; and we are seeing much truer education about Aboriginal people in our schools. However, she made some points, such as that native title is not land rights and we must not think that native title solved the land rights problem. In fact, she feels that perhaps it has torn families and communities apart, as people have to prove against another group of people that they have more right to the land than another. As for "that mob on the hill", as she kept saying, she said we have to forget about that mob and just get on with it.

One of the things she advocates and is highly involved in is the Opening the Doors Foundation, which raises money to give Aboriginal children a choice in education. Much as we are committed to public education, it must be realised that indigenous children often have no choice but that and often it is not the best choice for them because there are different needs. Because education is so important to her community, the Opening the Doors Foundation assists children to go to schools other than state schools in their area, if that is going to be best for their education. I know you were not all at the lecture last night so I thought I would bring the lecture to you.

ACT rugby league grand final
Awards and decorations

MR STEFANIAK (Ginninderra) (5.50): On this weekend the grand final of the local rugby league competition will be held, with the Belconnen team—the West Belconnen Warriors—playing against the Queanbeyan Blues. Hopefully, the result will be very good for Belconnen and Canberra, with the Warriors winning. They had a fairly narrow loss to United several weeks ago. I had the pleasure of being down at Kippax to watch

that game, although it was not much of a pleasure seeing them lose. I would like to extend to them my very best wishes for that grand final against their old enemies, the Queanbeyan Blues.

Earlier today we talked a bit about traditions, with Greenwich Mean Time going and universal time coming in. One thing worried me. My mind was jogged on this when Mr Stanhope and Mr Smyth were talking about Simpson and his donkey, and a little bit of historical correction there. I know that we do not have the Victoria Cross any more. I thought that it was replaced by the Star of Courage, but I always thought that "Victoria Cross" had a much nicer ring to it. Just going through the stuff Mr Smyth had on Simpson and his donkey—and I certainly hope this is right—I was delighted to learn that a Victoria Cross for Australia was established on 15 January 1991. It is the highest Australian operational gallantry award and supersedes but is physically identical to the Victoria Cross instituted by Queen Victoria in 1856.

To date, no Victoria Cross for Australia has ever been awarded. In a way, one might hope that they will not need to be awarded. That would mean we would be living in a much more peaceful world, but only time will tell. It can only be awarded for the most conspicuous gallantry, daring or pre-eminent act of valour, self-sacrifice or extreme devotion to duty in the presence of the enemy. Throughout history, of course, Australian soldiers, sailors, airmen and airwomen have performed brilliantly and on many occasions have won a Victoria Cross. It is probably relevant to note that, as we recently celebrated the 60th anniversary of the end of World War II and victory in the Pacific.

Leader of the Opposition

MR CORBELL (Molonglo—Minister for Health and Minister for Planning) (5.53), in reply: In the adjournment debate this evening Mr Smyth responded to some criticisms I made of him in the adjournment debate last night. I think that, in all of his commentary, Mr Smyth has ignored one very basic fact—that, as leader of the opposition and, indeed, as a shadow minister in this place, you certainly do have the right to ask, and test, the government on issues of policy and administration of the territory but you also have some obligations. One of those obligations is to ensure that, when you exercise that right, you do so in a way that is in some way tested, that in some way has some substance to it.

In raising matters in question time you put the allegation on the public record. If you make an allegation without in any way having checked it, then you give it a credence it would not otherwise have if even the basic modicum of investigation had been undertaken. That is what happened yesterday and that is what happened earlier this year in relation to the claims Mr Stefaniak made about problems with our water supply and infection in our water supply.

These are serious allegations. I have no difficulty with serious allegations being made in this place if there is a reasonable level of confidence that there is some truth in the assertions. The reality is that there is no truth in the assertions. To suggest that Canberra's water supply is in some way affected and to be advised down the track that one person has got sick, in a way that can be identified from a private swimming pool, is not exactly the same as suggesting that Canberra's water supply is under threat.

To say that someone was searched in the PSU, found to have a knife and had the knife removed from them and then to suggest that there was a stabbing are two very different things. That is exactly the point I was seeking to make in the adjournment debate yesterday—that in asking questions you have rights and responsibilities, being conscious of your position; that you have the opportunity to ask the government questions and raise allegations, but you should do so in a way which is responsible, which is considered and which has some basis in fact.

The difficulty with what we have seen from the opposition in the past 12 months in particular is that increasingly they do not care about the facts and increasingly they do not care about whether something is right; they just want to make allegations. We saw that in relation to Mr Stefaniak the other day when he deliberately misconstrued the comments of the Chief Justice in relation to the separation of powers and was censured in this place by a majority of this Assembly for his behaviour.

That is unfortunately the increasing trend we are seeing from the Liberal Party in this place. It does not matter about the facts; it does not matter about whether there is any truth in the allegation. Make it; it sounds good; someone will give it a run somewhere. Those are not the actions of a responsible opposition that is trying to gain credibility in this place as an alternative government; those are the actions of a desperate opposition prepared to throw anything to make the point and damn the consequences, let alone the truth.

Question resolved in the affirmative.

The Assembly adjourned at 5.57 pm.

Schedules of amendments

Schedule 1

Public Sector Management Amendment Act 2005 (No 3)

Amendments moved by Mr Smyth

1
Clause 14
Proposed new section 30A (2)
Page 10, line 9—

omit

2 years

substitute

12 months

2
Clause 28
Proposed new section 76A (2)
Page 17, line 7—

omit

2 years

substitute

12 months

Schedule 2

Human Rights Commission (Children and Young People Commissioner) Bill 2005

Amendments moved by Dr Foskey

5
Schedule 1
Amendment 1.2
Page 16, line 11—

omit amendment 1.2, substitute

[1.2] Section 5 (2) (n)

omit

Schedule 3

Human Rights Commission (Children and Young People Commissioner) Bill 2005

Amendment moved by Mr Stefaniak

1
Schedule 1
Part 1.2
Page 16, line 10—

omit

Schedule 4

Public Advocate Bill 2005

Amendments moved by Dr Foskey

1
Schedule 1
Proposed new part 1.7A
Page 24, line 12—

insert

Part 1.7A Ombudsman Act 1989

[1.19A] Section 6B (1) (c)

substitute

(c) the essential services consumer council;

(d) the public advocate.
