DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

SIXTH ASSEMBLY

WEEKLY HANSARD

15 NOVEMBER

2005

Tuesday, 15 November 2005

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

Legal Affairs—Standing Committee
Scrutiny report 18

MR STEFANIAK: I present the following report:

> Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 18, dated 14 November 2005, together with the relevant minutes of proceedings.

MR STEFANIAK (Ginninderra) (10. 31): I seek leave to make a brief statement.

Leave granted.

MR STEFANIAK: Scrutiny report 18 contains the committee's comments on five bills, 37 pieces of subordinate legislation, four government responses and two regulatory impact statements. The report was circulated to members when the Assembly was not sitting. I commend the report to the Assembly.

Leave of Absence

Motion (by **Mrs Burke**) agreed to:

> That leave of absence be given to Mr Seselja for this sitting.

Planning and Environment—Standing Committee
Report 16

MR GENTLEMAN (Brindabella) (10. 32): I present the following report:

> Planning and Environment—Standing Committee—Report 16—Tenth Annual Conference of Parliamentary Environment and Public Works Committees—*Report on the Sustainability and Bushfire Recovery Conference, 28-30 September 2005*, dated 11 November 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.

MR GENTLEMAN: I move:

> That the report be authorised for publication.

Question resolved in the affirmative.

MR GENTLEMAN: I move:

That the report be noted.

I have tabled in the Assembly today the report of the Standing Committee on Planning and Environment on the Tenth Annual Conference of Parliamentary Environment and Public Works Committees, which the standing committee hosted in Canberra. Held over the last three days of September, the conference theme was "Sustainability and bushfire recovery". The previous year's conference, held in Melbourne in mid-July 2004, had accepted an offer from the then chair of the Fifth Assembly's Standing Committee on Planning and Environment, Ms Roslyn Dundas, for the ACT to host the 2005 conference. It was noted that the ACT had experienced a devastating natural disaster with the bushfires of 2003 and that the conference could focus on the challenges and opportunities for change following disasters and on the public works and environmental issues involved in recovery. This theme was pursued in the 2005 conference.

The sustainability and bushfire recovery conference provided an opportunity for participants to learn of the numerous strategies for managing recovery, sustainability and future bushfire risk that have been adopted by several governments, as well as by ACT business and community organisations in recent years. Counterpart Australian state and territory parliamentary committees were represented at the conference. There is a list of delegates in the report.

Some of the keynote speakers at the conference included Mr Jon Stanhope, ACT Chief Minister and Minister for the Environment; Mr Stuart Ellis AM, chair of the national bushfire inquiry; Mr Sandy Hollway, chair of the Shaping our Territory working group; Mr Jim Gould, the CSIRO forestry and forest products organiser; and Mr John Mackay, CEO of ActewAGL. Some of the outstanding women presenting papers included Ms Lyn Breuer of South Australia; Dr Susan Nicholls, from the University of Canberra; and Ms Mary Porter from the ACT.

During the opening session on Wednesday 28 September in the Legislative Assembly chamber, delegates from around Australia were welcomed to Ngunnawal country by elder Louise Brown. Later, delegates enjoyed guided walks in the Australian National Botanic Gardens, which focused on the adaptation of Australian flora to fire. There was a formal welcome by the Speaker of the Assembly, Mr Wayne Berry; and there was a performance by Wiradjuri Echo, a local Aboriginal dance group. Delegates also enjoyed the fine hospitality provided by Hudsons in the Gardens.

On Thursday 29 September the committee decided to shorten the planned conference field trip because of inclement weather, but not before delegates learnt about the numerous recovery initiatives on and around Mount Stromlo and visited Tidbinbilla nature reserve. On the lower slopes of Mount Stromlo, delegates toured the Mount Stromlo water treatment plant and the General Manager, Water, ActewAGL, Mr Asoka Wijeratne, highlighted the features of the 250 millilitres a day capacity of the $39.3 million water treatment plant built following the adverse impact of the 2003 bushfires and the drought on the catchment's water supply.

Greening Australia ACT and south east New South Wales executive officer, Mr Toby Jones, and environmental services manager, Ms Susie Wilson, outlined the extraordinary contribution ACT volunteers have made to Greening Australia's recovery plantings. They explained that more than 2,800 community volunteers, supported by volunteer bushfire brigades and ACT emergency services, have participated in propagation, planting, watering and other activities. By mid-2005 more than 31,400 native trees, shrubs and grasses had been planted along riparian areas and steep parts of the landscape.

A new native revegetation guide has been published and 53,000 native plants grown. At the summit of Mount Stromlo, the director of the Mount Stromlo Observatory, Professor Penny Sackett, greeted the delegates, who learnt of the post-bushfire recovery works, including demolition, clearing and salvage works, new domes, and plans for the new advanced instrumentation and technology centre.

Delegates were then rotated in groups through various activities, including a guided tour of the Mount Stromlo Observatory, led by staff from the Australian National University's research school of astronomy and astrophysics. Research/outreach officer, Mr Vince Ford, and publicity officer, Ms Natalie Aked, assisted. A presentation was given about the rebuilding of Stromlo Forest Park by renowned marathon runner Mr Robert de Castella and former Australian road cyclist and Atlanta Olympian Mr Stephen Hodges.

The Executive Director of Strategic Projects and Implementation of the Chief Minister's Department, Mr George Tomlins, and CMD consultant Mr Ron Maginness assisted with those presentations. Many delegates also braved the inclement weather and participated in the planting of native saplings and seedlings with Greening Australia staff and volunteers before departing Mount Stromlo.

On the journey to and from Tidbinbilla nature reserve, delegates heard expert commentary from Ms Jocelyn Plovits, Senior Manager of the Shaping our Territory working group, about the impact of the fires on Canberra and recovery initiatives. At the conference dinner on Thursday evening at the national museum, John Mackay, who is the Chief Executive Officer of ActewAGL, spoke about ActewAGL and his personal experience following the 2003 bushfires. After dinner, several interstate and local delegates explored Canberra's nightlife.

For the duration of the conference a sustainability and bushfire recovery conference display was mounted in the University House common room. This was open to the public on Wednesday 28 September and Thursday 29 September. Entry was free. Displays included the winning design for the Canberra international arboretum and gardens; the concept design for the ACT bushfire memorial and layout; Tidbinbilla redevelopments; plans for Stromlo Forest Park; the redevelopment of Uriarra and Stromlo villages; ecowise maps of recovery in catchments and by vegetation communities; information from the Australian Native Plants Society Canberra Region; Yarralumla Nursery display of fire-retardant plants; and information about Centrelink's role in responding to emergencies.

On Friday 30 September delegates heard from Mr Jim Gould of the CSIRO, who also spoke on behalf of co-author Dr John Raison, about the likely increase in bushfires

because of more common periods of drought and extreme weather events due to climate change. Ms Lyn Breuer MLA, presiding member of the South Australian Environment, Resources and Development Committee, addressed the conference on the 2005 Wangary fires on the Lower Eyre Peninsula in South Australia.

Conference delegates then heard from Mr Hilton Taylor, Acting Director of ACT Forests, who provided an overview of the impacts of the 2003 bushfires on the ACT forests sector and the recovery process. He discussed roadworks, erosion control, debris removal, revegetation and ongoing forward planning. Mr Taylor stressed the need for the community to be involved in recovery efforts, particularly plantings.

On Friday 30 September, following the first keynote and panel session, delegates divided into two streams, focusing loosely on public works, the built environment and community engagement. In stream one Mr Paul Lewis of the ACT Planning and Land Authority reflected on the challenges faced by fire-affected residents rebuilding after the fire and the actions, strategies and information products the ACT government has developed to assist them. Mr Peter Galvin, from the ACT department of arts, heritage and environment, took delegates through the ACT government's vision for the new Tidbinbilla nature reserve, which delegates had the chance to visit on Thursday. Mr Barton Williams, of VicUrban, introduced delegates to the sustainability benchmarks VicUrban is working with in partnership with the private sector.

In stream two, Ms Mary Porter MLA discussed the issues of spontaneous volunteers, how to successfully manage post-disaster volunteers, and future opportunities. Dr Susan Nicholls of the University of Canberra presented a case study of the ACT government's communication strategy after the 2003 bushfires. Ms Chris Healy, Ms Jo Matthews and Mr Graham Fuller then presented a case study on community involvement in recovery, focusing on the efforts of the Mount Taylor community here in Canberra after the 2003 bushfires. In concluding stream two, Mr Chris Stamford of the Phoenix Association spoke about his experience as a volunteer and the emotional aspects of helping others.

Throughout the duration of the conference there was a display where organisations showcased their responsibilities, or achievements, in responding to the catastrophe of a minor or major bushfire, or to highlight risk-reducing strategies and their success in integrating sustainability principles into recovery initiatives.

I would like to take this opportunity to thank all those involved in making the conference the resounding success I believe it was. The committee thanks all the speakers, conference chairs, caterers, display contributors and ACT Assembly staff who assisted with the organisation of the conference. Officers of the ACT Legislative Assembly who made significant contributions to the success of the conference included Dr Hanna Jaireth, Ms Linzi Lamont, Mr Bob Hill, Ms Judy Munday, Ms Judy Moutia, Mr Tom Duncan, Ms Celeste Italiano, Ms Tamara Smallhorn, Ms Melissa Riches, Ms Libby Camp, Ms Ellie Eggerking, Ms Lauren Hutchins and Mr Ian De Landelles. The ACT has set a very high benchmark for next year's conference, which will be held in Queensland and hosted by the Queensland Public Works Committee.

MS PORTER (Ginninderra) (10.43): As Mr Gentleman has already outlined, the Tenth Annual Conference of Parliamentary Environment and Public Works Committees, hosted by the ACT Standing Committee on Planning and Environment, focused on

sustainability and bushfire recovery. Many speakers highlighted strategies employed in sustaining the environment after the devastation of the bushfires. As Mr Gentleman has said, the message we heard day after day was that we can indeed recover after such devastation, but the overwhelming message that I heard over and over again was the importance of people in recovery.

Many people talked about volunteers. Greening Australia showed us Mount Stromlo and discussed the fact that volunteers had come to the fore then and since to participate in the replanting and restoration of our environment. They explained that 2,800 community volunteers, supported by volunteer bushfire brigades and ACT Emergency Services, have participated in propagation, planting, watering and other activities. Indeed just last Saturday Mr Gentleman and I were busy at the botanic gardens propagating thousands of plants. There were 27,000 plants propagated this weekend towards this effort. We have also been out on Mount McDonald and Pine Island planting trees, as many members of this place probably have done over the past few weeks and months.

Ironically, the field trip day treated us to the exact opposite weather that we experienced in January 2003, with the temperature down to six degrees, and I am sure much lower if you take into account the windchill factor. Braving the wild, windy and wet weather, travelling to many sites affected by the fires and viewing many recovery initiatives firsthand, even on that day we planted trees. It was a pity that this field trip had to be cut short due to the weather. Notwithstanding that, I suspect this day will stay in the memories of those who attended the conference long after the words are forgotten. The human experience of bushfire and recovery was emphasised by speakers over and over again. Volunteer groups from bushfire-affected areas talked about how, since January 2003, their communities have been brought together to heal, and to restore their urban environments, forming new community bonds.

Many people learnt for the first time the value of the wonderful experience of volunteering as they spontaneously came forward to offer help wherever they could. Many of those people could not be utilised at the time because plans were not in place to handle such an outpouring of community goodwill. That is not unusual, as one of the lessons learnt after September 11 is that it is necessary to harness the human spirit in a far more efficient manner.

Since 2003 the ACT has developed an excellent plan to manage spontaneous volunteers. This plan stands us in good stead, as it is one of the leading plans in the world of disaster recovery. I would recommend that all members have a look at that plan, which can be found on the Volunteering ACT website. I offer thanks to all those who planned with us and supported us through that conference. I can only echo your words, Mr Gentleman, in saying that we had a wonderful team behind us that enabled us to deliver such a conference. I am looking forward to the next one.

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

Standing orders—suspension

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

> That so much of the standing orders be suspended as would prevent order of the day No 3, Private Members' business, relating to the Sentencing and Corrections Reform Amendment Bill 2005, being called on and debated cognately with orders of the day Nos. 1 and 2, Executive business, relating to the Crimes (Sentencing) Bill 2005 and the Crimes (Sentence Administration) Bill 2005.

Crimes (Sentencing) Bill 2005

[Cognate bills:
Crimes (Sentence Administration) Bill 2005
Sentencing and Corrections Reform Amendment Bill 2005]

Debate resumed from 7 April 2005, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR SPEAKER: I understand that it is the wish of the Assembly to debate this bill cognately with executive business order of the day No 2, Crimes (Sentence Administration) Bill 2005 and private members business order of the day No 3, Sentencing and Corrections Reform Amendment Bill 2005. That being the case, I remind members that in debating order of the day No 1, executive business, they may also address their remarks to order of the day No 2 executive business and order of the day No 3 private members business.

MR STEFANIAK (Ginninderra) (10.49): Speaking cognately, I will firstly address the government's bill. I note that, even though I would normally close debate on my own bill, because it is a cognate debate there might be some problem in relation to that. I will make a few comments on that. The government has issued a sentencing paper—I wonder how many groups outside the ones listed it actually spoke to—and has come up with two consolidated bills. Twelve bills have been truncated into two.

The opposition will be supporting the government's bills. They basically replicate the laws in relation to sentencing—especially the Crimes (Sentencing) Bill. Several changes have been made and we do not have a particular problem in relation to those. Basically, the government indicated that the bills aim to get courts to act in a consistent and objective way. This is rather difficult. It is the bane of sentencing throughout Australia and certainly in the ACT. I doubt very much that the bills will do that. Nevertheless, it is handy to have consolidated bills.

There have been a couple of additions, which we do not have any problem with—for example, the home detention system, which started in 2001. Thirty-five people qualified and only 25 completed the course properly. That is very time consuming and takes a certain amount of money. When it was introduced some of us in government had considerable concerns, but it was worth a go. It does not appear to have worked and, accordingly, we do not have any great problem with the government not including it in this particular bill.

Periodic detention continues. That has been shown to be a very useful tool but I think the government also needs to ensure that more is done if people breach detention and do not attend. Figures obtained over the last few years indicate that often up to 30 or 40 per cent of people breach those orders. Some of them are fairly minor technical breaches—if

someone is sick they certainly cannot attend but that is regarded as a breach—but some are more substantive. Community service is a privilege, not a right. It is an alternative to imprisonment and people on it need to honour the detention orders. I think there is still a lot more to be done in respect of breaches of those orders.

I am pleased to see that the government has included in this bill some of the very sensible provisions made in a corrections bill the opposition put before the Assembly last year. In fact, my colleague Mr Smyth, who then had responsibility for corrections, put those provisions before the Assembly. We have no problem with that. We do not mind anyone plagiarising any good stuff we put out. It is good to see a lot of that in this bill, but a couple of provisions were not taken up by the government in its consolidated approach. I will be moving those when we come to the detail stage of the Crimes (Sentencing) Bill.

Combination sentences have considerable merit. For example, someone sentenced to a term of imprisonment serves two years. They might then be ordered to do one year of periodic detention and then placed on, say, a two-year good behaviour bond with some community service conditions attached. That is, I think, a good step to ensure that sentences are tailored to suit the offence and indeed tailored to suit the needs of the offender. That is a good innovation that I am glad to see has been taken up.

I note that the new bill deals with good behaviour bonds and suchlike—section 403 of the Crimes Act. One of the criticisms of sentencing we often hear is that criminals or people who get bonds do not have regard for the bonds and basically say, "I got off." You often need something more attached to it, be it a community service order or a fine. In New South Wales, where I started practising law, I found that for not-so-serious offences fines are often an excellent way to bring home to the person the fact that that type of conduct is not acceptable. At times the people did not have much ability to pay, but at least they seemed to accept that they had to pay the impost. I often found that to be a very good way of bringing home to them the fact that it is not sensible to continue down the same path, committing offences like that.

From experience and practice, perhaps the courts here in the ACT do not appreciate the benefit of one of those tiers of sentencing—fines—which is at the lower end but nevertheless very important, certainly in respect of the criminal law. There are very big fines provided for traffic infringements and suchlike now, but fines are not used very much in sentencing for criminal offences. I suppose that is pretty hard to legislate for. I make those comments because I would encourage the courts to make more use of fines when looking at issues around whether someone should get a bond or not.

There are other new parts of the bill that also appear to have been taken up from what we suggested last year. Regarding non-association and place restriction orders, we feel that that is a good piece of legislation for the purpose of assisting victims and ensuring that the accused person sticks to the straight and narrow path. Strong orders like that play a very important part in the ultimate rehabilitation of an offender.

It is interesting to see that the government has now codified the Griffiths bond into deferred sentence orders. It is called the Griffiths bond in the ACT but around 20 years ago it was probably given the new name of the "Gallop bond" because Mr Justice Gallop used it quite often in drug matters. I remember acting in a number of drug matters where

he did that. Sadly, the offenders would invariably reoffend and it fell out of practice, especially with His Honour, who was quite frustrated afterwards.

When you look at the sentences handed down by Mr Justice Gallop over the decades, they are probably an indication of good sentencing. It is a very difficult thing to do. Mr Justice Gallop certainly pioneered that and seemed to apply it very well. I do not know quite how well those bonds work, but the idea is a good one and we have no problem with a deferred sentencing order being codified. Obviously if the accused continues to offend or does something wrong during the period of deferment, the full force of the law should come down on them. But if it does work, then of course the court has a number of other options that may well be applicable.

In respect of victim impact statements, I am pleased to see that the penalty regime has come down. Previously an offence of assault occasioning bodily harm, or something more serious, had to carry five years or more. That has come down to one year for offences—that basically means any indictable offence—and summary assaults have a maximum of six months. Again, because they are violent offences, there are often victims who suffer grievously as a result. That is a positive step.

Turning to new clause 52, victims have been concerned about this for a while. I thank the Victims of Crime Assistance League and other people who were victims in respect of the development of the amendments in my bill. There was a fairly extensive consultation process in relation to that. One of the points they were very concerned about was the fact that, in the past, it was very hard because victims or their representatives were neither able to give oral evidence before the court nor to read out a victim impact statement. I see that that has now occurred in clause 52. That means that, when we come to the detail stage, I will not be proceeding with amendment No 20 because that is covered effectively there. We will wait and see how that works in practice, as to whether there is any further requirement.

It is also good to see that people close to the victim can now give a victim impact statement. Victims often do not want to do that because it brings back all the trauma. The secondary victims are often the family and loved ones. In many instances, other people would be better able to give a victim impact statement in evidence to the court. I am pleased to see that they will now have the ability to do so. I note that, as part of the consultation process, Victims Services were spoken to. I hope the Victims of Crime Assistance League were spoken to as well. That is not apparent from the Attorney's speech. I certainly found them helpful in developing my draft legislation.

I now come to sentence administration, a bill we will be supporting. That modernises a range of existing laws and provides for the management of new sentencing options created by this particular bill. It sets out how to manage sentences, the consequences of failing to meet the obligations and how the administration of sentences applies. I have not had a great chance to go through all the amendments the attorney has made. We have only just had the supplementary explanatory statement dropped on the table, so I will listen with interest to what he says in relation to that. Some of them seem to be okay at first glance but it would have been handy to have had those earlier to allow people to look at them.

I come now to what the government package lacks and to speak in relation to my bill and the thrust of my amendments. My bill basically introduces several additional new offences which we have in New South Wales which police here have been trying to get in relation to the offence of car-jacking, and also some offences in relation to assaulting police and making threats, and intimidation towards police officers. Being a police officer is a particularly difficult job. I think it is essential that there be sufficient legislation to help protect them when they are attacked by wrongdoers.

It is very important to replicate what has occurred in New South Wales. According to the Australian Federal Police Association when I was drafting my legislation and going through the processes, what applies in the ACT in the view of police is simply not sufficient. They would be very keen to see the New South Wales provisions, which are replicated in my bill, adopted by the Assembly. They feel that that would give them much greater protection. They are at the front line of crime fighting in the territory and deserve all the assistance and protection they can get. Another thing that both police and victims have told me over the years is that often one of the most frustrating things for police and one of the most hurtful things for victims is to go through lengthy court proceedings, only to see the offender basically walk free with a totally inadequate sentence—what appeal courts call "weakly merciful" sentences.

I think it is important in the construction and confines of our justice system to have guidelines in place to assist lower courts. In New South Wales—my amendments talk about this—for a number of years the Court of Criminal Appeal has had the ability to issue guideline judgments. For example, they might pick a certain judgment and say, "Okay. This is probably fairly common to a number of types of armed robberies we see. These are the considerations and this is the type of penalty we would deem appropriate for that sort of offence." It does not take away from the discretion the trial judge or a lower court would have but it issues a guideline—and a guideline in light of community expectations as well—which is terribly important.

New South Wales had gone further. When I was initially taking instructions and working out my package, they introduced recommended or standard non-parole periods, again with a list of aggravating circumstances or mitigating circumstances that courts could take into account. All things being equal, if there were no strong mitigating circumstances or strong aggravated circumstances, a court would have regard for the standard non-parole period. I see, from regularly reading the paper, that the standard non-parole period in New South Wales now for murder, which is the most serious of all offences, is 20 years. Up until 10 years ago the standard around the country was about 12 years. There was great concern among a lot of people in the community and among victims that 12 years was really inappropriate when a person deliberately planned to kill somebody else. I think 20 years is far more realistic. That applies in New South Wales. The courts there are operating very effectively under their standard non-parole period regime.

You will see variations, as you should, because, contrary to what those officers have said on a number of occasions, it is not mandatory sentencing. The courts have a discretion, which is quite clear from the legislation. You will sometimes see in New South Wales, even for murder, a much lower sentence when the circumstances warrant it and, on occasions, you will see a much higher sentence because of the heinous and aggravated

nature of the murder. But the standard is 20 years and you will see that as well. I know the other side are going to pooh-pooh all this and will not support it. They go against what their comrades in New South Wales have done quite successfully, which has been largely accepted by the legal profession there and seems to work very well.

Bob Carr was keen to see that introduced and ensured that it was introduced by his government. That is something that I am sure Morris Iemma will continue to refine further. It is certainly something that I imagine the opposition can live with. Indeed they have indicated that they would like to see more, but we are not suggesting more; we are suggesting that there is a need for consistency. I would like to see it across Australia, but at least in the ACT. If we have consistency on sensible sentencing laws with the jurisdiction which surrounds us—New South Wales—that would be a very positive step. That is something both the police and victims want to see. I suggest a significant number of the legal profession have no problems with that either. It is certainly something that I believe the community would like to see. It is ridiculous that someone who commits an offence in Queanbeyan is probably going to be up for a stiffer sentence than they would be if they committed the same offence in Canberra.

People have often asked me why someone got three years for an armed robbery in New South Wales when, over here for an almost identical offence, that person might well get off with a suspended sentence and not go to jail at all. I stress it is important to ensure that what our courts do—especially the Supreme Court—is consistent with other states. Sensible laws such as I am proposing here today will help in that regard.

To bring us into line with New South Wales, my bill also increases the maximum penalty. The maximum penalty is not the be-all and end-all. Victims and others will tell you that the most important aspect is the bottom—the time for which someone is sentenced to imprisonment. But the maximum is important. It gives a greater range for a court. In recent times we have seen big disparities between the maximum penalties imposed in New South Wales and those imposed here. For example, manslaughter—remember that one—attracts 25 years in New South Wales and attracts 20 years here.

The industrial manslaughter bill initially specified 25 years. That was amended to 20 years to make us consistent with the general rule of manslaughter. Perhaps that was a bit of a Freudian slip by the government. We have 25 years for industrial manslaughter, which is the same as manslaughter in New South Wales, yet we have 20 years for ordinary manslaughter. I think that shows the inconsistency of the government's approach. Another example is one of the nastiest offences possible—rape in company, with injuries—pack rape. Not all that long ago New South Wales increased the maximum possible penalty to life imprisonment. That enabled the New South Wales courts to give out strong deterrent sentences in relation to some horrific rapes that had occurred in that community.

In respect of maximum penalties, it is very easy for politicians just to put those up and say "Aren't we tough! We have done that." Whilst, by itself, that does not do anything to stop a court which is mindful of imposing a very light penalty from doing so, it is a useful tool because it gives the system a broad range of penalties to consider for serious offences. It is important that we are consistent with the state that surrounds us in that regard. Fundamentally, that is what my package does.

That alleviates the need for me to speak in closing debate on my own bill. However, it shows up what the government's package lacks. I think it is important for this government to realise that a large number of Canberra citizens are not happy with weak sentences being imposed by courts, especially for crimes of violence. I remind you all again of the survey the *Canberra Times* did in late September 2003, where 83 per cent thought that our Supreme Court was far too lenient when it came to sentencing violent offenders; 12 per cent thought it was probably too lenient, and five per cent thought that it had got it about right. People were less concerned about property offences; they were concerned about violent offences. That is pretty horrendous.

Even today I saw an article in the paper—admittedly his own counsel said it was a cowardly act; he did not inflict any damage on the victim but the victim apparently ended up in hospital quite severely hurt—where a fellow was given just a bond. There was no further penalty. I am not suggesting the court should have jailed him or anything like that, but perhaps that could have been upped a bit—maybe a fine or a suspended sentence would have been more appropriate—because the community abhors violent offences. If you knock out the sensible measures put up by the opposition, as I know you will, you will be flying in the face of your responsibility to the community to have a sentencing regime that reflects proper, sensible community standards.

DR FOSKEY (Molonglo) (11.09): I support the government's Crimes (Sentencing) Bill and Crimes (Sentence Administration) Bill as they represent a consolidated, modernised and flexible approach to sentencing. Interested non-government organisations have shared with my office their general support for the Crimes (Sentencing) Bill as it will promote and allow for creativity in the formulation of the best sentencing package available to suit the community's need and the needs of the individual.

The extension of the Griffiths remand option is an important tool being promoted in this case, as it can encourage rehabilitation of the offender by giving them an opportunity to address their behaviour before facing sentencing. Greater flexibility for community service orders is also an important tool to encourage the offender's rehabilitation while benefiting the community. The extension of victim impact statements to close friends and relatives of the victim acknowledges the impact a crime can have on a small community and family and recognises the important support that these people provide for the victim.

I had three major concerns with the bill before us. The first was to do with the non-association and place restriction conditions. Some legal organisations raised with my office their concerns about these provisions on the basis that they have the ability to interfere with basic human rights and civil liberties. However, since these concerns were first raised with the ACT government earlier this year, the government has made a number of welcome changes to part 3.4 of the bill. I have been assured by departmental officers in briefings that the non-association and place restriction orders will now apply only to cases involving personal violence and that these orders must be reasonably proportionate to the gravity and nature of the behaviour under consideration.

In addition to these changes, ACT courts must interpret all laws in a manner consistent with human rights so far as it is possible to do so, thus diminishing the chance of individuals' human rights and civil liberties being curtailed. I am now more confident

that these provisions will not impede an offender's human rights, while providing protection for victims of violence and the community.

My second concern was regarding issues raised by the scrutiny of bills committee about confidentiality. Part 4.2 provides for the making by an assessor of a presentence report about an offender. The report is provided to the sentencing court. However, there appeared to be no restriction on the use the assessor might make of the information obtained. In his response to the committee, however, the Attorney-General outlined that the assessor of the information would be governed in their actions by the Public Sector Management Act 1994 and, as such, is required not to unlawfully disclose any information acquired as a consequence of their employment. As a result of this advice, I consider that the Attorney-General has satisfied my concern about this particular privacy issue.

My final concern was with regard to the court's ability to convert a fine to imprisonment if the fine is defaulted upon by the convicted person, as per clause 73 of the bill and division 3.9.2 of the Magistrates Court Act. These provisions illustrate that, if the convicted person defaults on paying the fine placed before them by the courts, they may be committed to prison for a period that pays off the fine at $100 a day. Although the courts may allow the convicted person more time to pay the fine, to provide security for the fine, or to pay the fine in instalments, I am greatly concerned that sending the convicted person to prison might not be the best available option for the community's needs or for the individual's needs. Rather, I would like to see the courts provided with the option to order the individual to pay off the fine by completing community work, as that might provide a greater benefit to the community, the government and the individual involved, always understanding that that individual may have people dependent upon him or her.

In addition, I am also concerned that when a fine is ordered an individual's ability to pay that fine will be greatly impacted upon by their financial status and their ability to access large sums of ready cash. Such a provision surely is not fair or equitable. A logical corollary is that low income people are more likely to default on their fines and therefore spend time in jail more often than those on higher incomes. That will just increase their already fragile economic viability.

I am aware that today's debate is not the appropriate place to make amendments regarding fines under the Magistrate Court Act. However, I understand that the government will be undertaking further work on criminal legislation next year. I hope that the government will include such amendments in this work.

Turning to the Crimes (Sentence Administration) Bill, my office had a number of concerns with this bill initially, but departmental officers have provided us with an excellent briefing and have handled our concerns well. I take this opportunity to thank them. The main concerns we had with this bill related to obscurity in some provisions, the recognition of rights of victims, and inappropriate delegation of legislative power to the executive.

One of the obscure provisions was subclause 28 (2), relating to allowing full-time detainees not to complete community service work if they were considered incapable. This subclause was very obscure in outlining how this incapacity was determined.

However, I now understand that this subclause is purposely obscure as it is extremely difficult to cover all the reasons that a detainee may be incapable and thus, by not outlining the reasons, it provides a greater level of flexibility for the determination of a detainee's incapacity.

The issue of victims' rights came across through chapter 13, regarding the release of a detainee on licence, remission and pardon. Under this chapter, there is no requirement, firstly, for the Sentencing Administration Board to record submissions of a victim in or accompanying a recommendation of the board to the executive as to whether the executive should release an offender; secondly, for the executive to give an opportunity to the victim to make representations to it when determining whether to act on a recommendation of the board as to whether an offender should be released; and, thirdly, for the executive to give any reasons for its decision on whether or not to act on a recommendation of the board.

Departmental officers explained that this did not limit the victim's ability to make representations through this process. Victims can still make representations if they feel it is necessary. The rationale behind these clauses is to allow the executive to provide mercy to a detainee if they feel it is appropriate. It is a sensitive, complicated and serious matter and there is great responsibility placed on the executive when such a decision is made.

There is an argument that, by requiring a victim's submission to be sought and included in all cases, there is greater political and public burden placed on the executive that may operate to limit their ability to provide for mercy. This is a difficult point to argue for or against, but the provisions that have been included in chapter 13 are of a progressive nature and I do not wish to oppose them as, by doing so, I would be opposing the ability for a detainee to be granted mercy in the most necessary and serious circumstances.

Finally on the Crimes (Sentence Administration) Bill, my office was at first alarmed to read subclause 9 (4) of the bill, which may provide an inappropriate delegation of legislative power to the executive as it states in relation to treatment of other people in custody:

> A regulation may make provision in relation to the application of this Act (other than this section) to the person, including modifications of the Act in its application to the person.

My office was wondering whether the executive would need to exempt this legislation from applying to one particular person, but then it was explained by way of example that the power is needed in cases where a person is detained in the ACT under commonwealth laws—for example, under the Migration Act—and the detainee's right to be treated in accordance with the ACT Human Rights Act may need to be clarified.

I will not be supporting Mr Stefaniak's Sentencing and Corrections Reform Amendment Bill. The Greens' response is based upon our strong support for maintaining the separation of powers between the legislature and the judiciary. I believe that telling judges and magistrates how they must sentence offenders is a dangerous step towards narrowing this important safeguard of our freedom and rights.

What is different about this bill and the two government bills is its specific focus on the period of imprisonment for specific crimes and, as such, it brings into question the values of the parties in this house, what they consider to be fair and what they consider to be the most effective means of minimising criminal behaviours. The Greens' approach to that is very different from that of the big "L" Liberal Party.

The Greens see much criminal behaviour as indicative of society's failure to care for all its members and we are much more interested in seeing more effort being directed at crime prevention strategies, including reintegration and rehabilitation measures, support for families, and early intervention in child abuse, rather than more punitive and revenge motivated penalties. We believe that community policing would be much more effective in creating a safer community than increased penalties.

Crime prevention is best achieved by fostering a real sense of community, by reducing poverty, by overcoming disadvantage, drug and alcohol abuse, and by addressing the causes of violence and abuse. Adequately funded community services and public health facilities, employment and a healthy involved society are key prerequisites for reducing crime.

It would have been helpful if an explanatory statement had been provided with this bill as there appear to be discrepancies between the tabling statement and the bill itself, as well as a number of unexplained amendments to the Crime (Sentencing) Bill. I would also have liked to have seen an illustration of the research and evidence behind this bill and the Crimes (Sentencing) Bill amendments as I am very concerned that there is little to back it up or prove its effectiveness.

I would like to see hard evidence for the claims that increased sentences lead to changed behaviour for the better or for a safer community. Mr Stefaniak, in his speech earlier today, continually cited New South Wales's tough on crime approach with minimum sentences. The proof of such an approach would be rehabilitated offenders and a reduction in crime. I heard no such evidence in Mr Stefaniak's speech.

I will not be supporting his bill as I would prefer to see greater emphasis in our community placed on addressing the reasons and causes for criminal behaviour, rather than ever more punitive measures which reduce the capacity of judges and magistrates to adjust the punishment to fit the crime and to improve an offender's chances of rehabilitation. The rationale behind sentencing decisions must extent beyond retribution. As any good firefighter knows, fires are best fought by directing one's efforts to the base of the flames or, better still, removing the source of ignition.

MR PRATT (Brindabella) (11.22): Mr Speaker, I stand to speak essentially about the impacts of the government's bill on policing and to support Mr Stefaniak's amendment bill, which I think would add some substance to the government's bill. I support the government's bill in general. Clearly, it is aimed at strengthening existing protocols. But I think that it omits a number of very significant matters, particularly those relating to the support that government must be giving ACT Policing. Consequently, I do commend Mr Stefaniak's bill.

Fundamentally, my concerns revolve around the fact that our police are simply not being well supported by the government's bill. Mr Stefaniak's bill and his amendments do go a long way to providing better measures of support for ACT Policing. I refer to pages 6 and 7 of Mr Stefaniak's bill and the clause there about assault and stalking of police officers. I want to talk about that. I think it is very important that we increase penalties in the ACT to send a very strong message to our community that we will see here the same standards applied to those who assault police as are exercised in other states. That is a good example of how we ought to be conforming with New South Wales in this regard, not only because we share the same landscape as the state of New South Wales, but also because in this case New South Wales has set a benchmark as to at least a minimum standard that we should be aspiring to achieve.

I think it is very important that the community in general and the government in particular send a very strong message to our police that we do damn well support them. It is important that police, as they go about their everyday duties, have the certainty and the confidence to be able to do their job as safely as possible. Police are at the front line of a government's desire to ensure that appropriate community standards apply, that community safety is paramount and that, for want of a better term, there is a reasonable law and order regime in place to ensure that members of the community can go about their jobs and lives daily feeling quite confident that they can do so safely and without disorder. Therefore, the community needs to have an effective police force, the police force needs to know that it is backed by government, and our policemen must know when they do wade into trouble that they are going to be backed up.

I would put it to you, Mr Speaker, that, particularly of a Friday night in Manuka or Civic, when a couple of our younger policemen have to make a decision as to whether they should wade into a brouhaha of some proportion they need to have confidence that the people that they are about to confront know that if they do assault police officers there will be serious repercussions. I would also put it to you that right now lots of people in our community have no idea that there are serious repercussions if they assault police officers. People are less likely to assault police officers if they know that there are serious consequences for doing so. That is why we must put in place in our legislation stronger penalties for those who do so.

I would also point out that there has been an increasing propensity for people to assault police officers. We are seeing in our schools growing disrespect amongst a minority of students for teachers, authority and schools. We are seeing a similar pattern of police abuse emerge amongst a small minority of people in the ACT community. If the police are going to exercise their authority to question, detain, arrest, break up or move on people who are causing some trouble, they must know that their authority is backed up by strong laws. Policemen must know that if somebody spits in their face, laughs at them, pushes them over or assaults them, members of the community consider that to be a very serious issue. It is important that police have those powers and have the confidence not to hold back when they are confronted with issues which seriously affect the community's safety.

I will now talk about Mr Stefaniak's proposal concerning the stalking of police, proposed new section 35A. The amendment about the stalking of police is incredibly important to our legal system. It is so important for policemen to know that if they are going to put

themselves on the line, step forward and break up trouble, their families are not going to be victimised by the fact that they have had to do something somewhat difficult. A policeman must have confidence that he and his family, particularly his family, are going to be quite safe in the knowledge that he, the policeman, is carrying out his duties in a diligent way. That is why it is so important to have an offence for the stalking of police.

It is also the case that people who go out of their way to obtain information about a policeman who has, for example, arrested, detained or questioned them should know that the law will come down upon them extremely heavily if they determine that they should find out information about that policeman to try perhaps to influence an outcome. That is why it is so important, but the government simply has not addressed it, that the issue of stalking police and obtaining information about police is addressed in law. I do commend Mr Stefaniak's bill, which goes at least some way towards addressing those sorts of measures.

I will now talk about the impact of weak sentencing on police. Police officers will lose confidence if, having arrested or detained people and then prepared cases for court, they see that weak sentencing means that those people are simply not deterred from reoffending. The feedback that I have had continually from police over the last four years, both police in the ranks simply approaching me and the AFPA, is that the police do not have confidence that our courts are backing up the work that they do.

It is the responsibility of government to ensure that our sentences are strong enough that the courts are indeed able to apply appropriate measures to ensure that people are deterred from reoffending. The police get sick and tired of rearresting the same sorts of people because those people simply have not been sentenced adequately in the first place. It is not a confidence booster for our police. They will go out there and risk a limb if they know that at the end of the day there will be a reasonable outcome; they will take that extra risk. They are paid to take risks, but they are not going to be very happy about taking those risks if the courts are not backing them up.

The community also feels deeply concerned with regard to violent crime in the ACT that justice is simply not being seen to be done. Again, I call upon the government to strengthen its sentencing provisions so that a very strong message is being sent that the sorts of violence we are seeing now simply will not be tolerated. Of course, with the new mix of drugs out there, we are seeing cases all the time of behaviour that is somewhat extreme.

The rates of violence might be reasonably steady—the ABS statistics are telling us that violent crime is not necessarily on the increase—but we do hear from the community and from police that extreme behaviour by people committing crimes is a new feature of the community safety landscape; that people, either because of what they are smoking or taking, or because they have no respect for police or authority, simply go the extra yard now in the way that they violently attack police or each other. Those issues need to be looked at.

I wish to pick up on a comment made by the Greens in their contribution to this debate. I notice that Dr Foskey talked about the values of the respective parties in this house, as demonstrated in this debate. She was appalled by Mr Stefaniak's expression of the values

of members of this side of the house in their approach to these types of matters. Let us talk about the Greens' values when it comes to community safety and support for the police. The Greens' values are that criminal behaviour can always be excused to the nth degree, that people who make the decision to commit a crime or take the risk of committing a crime should not have to take responsibility for their actions. These are the values of the Greens.

The third landmark value expressed here this morning by the Greens is, of course, that the civil liberties of criminals and the individual rights of people who may be intending to commit a crime, who make that risky decision, come before the rights of the community to be protected. No wonder police are frustrated by the Greens, from Bob Brown down to Dr Foskey. How much confidence can you get out of the Greens' philosophy as to what constitutes good order and conduct in any community in this country?

I commend Mr Stefaniak's bill. Whilst the government's bill is heading in the right direction and is to be generally supported, Mr Stefaniak's bill adds significant steel to the government's bill. It address a couple of major issues, particularly the issue of how well our police are supported. ACT police have a very important job to perform on behalf of our community. I call upon the government to take note of that. The government's first duty of care is to defend the safety of our community. That means making sure that the police have the instruments of power and authority to be able to protect the community. The government's bill today does not provide that. Mr Stefaniak's bill today does provide provisions to strengthen the government's rather watered down bill.

Our police are very important. They are our most valued asset when it comes to how a government exercises community safety. The police are our front line. We as a community and the government as our representative impose significant responsibilities on the shoulders of our police. If we are going to do that, we need to make sure that our police are backed up. This government has not done that here today. In respect of how we see the government's general lack of support for policing, as illustrated particularly by the government's bill today, and the government's behaviour over the last four years, one has to say that this government is soft on criminals but hard on our police.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (11.37), in reply: I am always amused when I hear Mr Pratt speak about civil liberties. We continue to hear the bleating of his wrongful, as he tells it, detention whilst he was off acting in what was Yugoslavia and I find it remarkable that a person in this place who pleads constantly about his wrongful detention would actually dare to raise civil liberties.

Mr Pratt: I take a point of order, Mr Speaker. I think there is an implication in what the Chief Minister is saying. I understand that this issue is before the courts anyway. I would suggest that the Chief Minister should withdraw his comments. Does he wish to pursue that as some way of deviating from his lousy debating?

MR SPEAKER: Order! There is no point of order.

MR STANHOPE: Mr Speaker, the government's Crimes (Sentencing) Bill 2005 and Crimes (Sentence Administration) Bill 2005 will be a substantial improvement to the territory's criminal justice system. The government's legislation will provide our courts with one coherent act that governs sentencing decisions, and our corrections staff with one coherent act to administer sentences.

Consistency is a word often invoked abstractly when concerns are raised about particular sentences. Sentencing is not a mathematical task, but an act of judicial thinking that applies the law to the facts. As legislators, we cannot possibly account for the array of facts that may be before the court, but we can do our best to create a coherent framework of sentencing options and procedures.

The first thing practitioners will notice about these bills is the harmonisation of language, concepts and procedures. The sentencing bill is a compact expression of all of the sentencing dispositions and sentencing procedures for the ACT. Chapter 3 of the bill forms the core of sentencing options in the ACT; it is concise and direct.

In the case of Ryan and the Queen, decided in 2001, Justice Kirby of the High Court said:

> … punishment imposed judicially must be proportionate to the individual features of the offences proved and to the considerations personal to the particular offender. These facts require that the sentencing judge must normally adjust the sentence to the circumstances of the case. In this respect, judges fulfil an important and complex function.

Justice Kirby's comments reflect modern thinking on sentencing, namely, that the elements of a sentence need to be tailored to the offence and to the offender. The history of criminal law and punishment has not delivered any magic systems to stop crime or automatically rehabilitate offenders, but history does show that a blanket approach does not work. In the 1970s and 1980s, scholars on the subject deeply questioned the effectiveness of imprisonment and parole. In recent decades, as many questions have been raised about non-custodial sentences.

In May this year, Lord Woolf, the Lord Chief Justice of England and Wales, made the point that the issue is not whether society needs imprisonment, as it is an essential element of protecting the community from further crime and demonstrating society's disapproval of serious crime. Lord Woolf observed that it is the positive steps in tackling offender behaviour, in prison and out of prison, that make a better contribution to stopping further crime.

Mr Speaker, the government's sentencing bill aims to provide meaningful options to the courts to tackle offending behaviour. I will outline the key options for courts. The first is combination sentences. Courts will be able to customise the sentence to the offence, the offender and the circumstances of the offence. The option of combination sentences aims to improve the court's ability to prevent and manage offending behaviour and to rehabilitate offenders. The court will have the flexibility of imposing any number of orders as part of a whole sentence. For example, the court may impose a sentence combining full-time imprisonment with a period of periodic detention, followed by a good behaviour order with a community service condition.

The next is periodic detention. Apart from full-time imprisonment, the bill also provides courts with the power to authorise the performance of a sentence of imprisonment part-time through periodic detention. Periodic detention allows for both the imposition of a custodial sentence and the maintenance of an offender's positive contribution to the community, such as family life, work or study.

Another option is good behaviour orders. The bill creates good behaviour orders, which will be a vehicle for a range of conditions that can be set by the court. For example, a condition may be that the offender engage in community service work or participate in a rehabilitation program. The court will have the discretion to impose any particular conditions it wishes in a good behaviour order.

I turn to non-association and place restriction orders. The bill includes two new, important orders that are specifically designed to prevent violent behaviour, especially domestic violence: non-association orders and place restriction orders. A non-association order is an order prohibiting an offender from associating with a specified person for a specified time. A place restriction order is an order prohibiting an offender from frequenting or visiting a specified place or district for a specified time. These orders can be made if a court is dealing with an offence that involves harm against a person and the court believes an order will prevent further offences or harassment. These orders will be available to the court if the offender is subject to periodic detention or a good behaviour order.

The bill also creates deferred sentence orders, which are known at common law as Griffiths remand. Frequently, the courts provide opportunities for offenders who have pleaded guilty to demonstrate their motivation to address their offending behaviour by extending bail orders for some period, generally with supervision conditions. Positive progress during this period often results in a lesser penalty than that originally envisaged by the court being ultimately imposed. Following the period of remand, a report is provided to the court and then sentence determined.

The availability of this option will extend beyond those circumstances that the common law acknowledges this type of remand is available for. Deferred sentence orders will enable the court to adjourn proceedings to provide an offender with an opportunity to address their criminal behaviour before sentencing. In this way the court can assess whether the offender demonstrates prospects for rehabilitation or an ability to address their criminal behaviour.

The bill increases the scope of presentence reports so that the court can be better informed about the offender, the circumstances of the offence, and what elements of sentencing will provide the best means to stop offending behaviour. Presentence reports will include any risk assessments of offending behaviour and any programs available that may assist in managing or stopping offending behaviour.

The sentencing bill expands the availability of victim impact statements. The government has lowered the threshold to enable victim impact statements to be tendered for any offence punishable by imprisonment for longer than one year and for the summary offence of common assault. Under the sentencing bill, victim impact statements can be given orally, read out by the victim, or provided someone on the

victim's behalf. Further, the bill provides a right for parents and guardians of child victims and carers to make victim impact statements.

Mr Speaker, before making some points about Mr Stefaniak's Sentencing and Corrections Reform Amendment Bill, I foreshadow two government amendments to the Crimes (Sentencing) Bill for the detail stage of the bill's debate. I will be moving amendments to the matters a court must consider when sentencing an offender to include consideration of the harm to a pregnant woman if the woman's pregnancy or subsequent child suffers harm or is lost as a consequence of the offence.

I will move amendments that will defer the execution of ancillary orders made by sentencing courts until any standard appeal procedures are complete. Ancillary orders include compensation for loss, repairs, et cetera. Deferring the execution of ancillary orders will save victims of crime from the further trauma of repaying moneys if a conviction is overturned or set aside.

I would like to make some brief points about Mr Stefaniak's bill and the amendments the opposition has foreshadowed to the government's sentencing bill. In relation to the plethora of penalty changes proposed by Mr Stefaniak I simply say that the government is already developing legislation to implement chapter 5 of the uniform model criminal code. The model criminal code is a national endeavour and will provide the ACT with a comprehensive and cogent set of criminal offences and penalties. Chapter 5 of the code is pending and will cover crimes against the person and includes proposed offences on assault and stalking.

Aggravated offences that apply higher maximum penalties where, for example, the person assaulted is a police officer will be covered by chapter 5 of the code. Given the uniform methodology of the code, I advocate that it is in the best interests of the territory that the Assembly discuss the level of penalties within the context of the code, rather than in a disparate manner as proposed by Mr Stefaniak.

Mr Stefaniak has foreshadowed two major amendments for the government's sentencing bill. Mr Stefaniak wishes to introduce guideline judgments and standard non-parole periods. Guideline judgments aim to improve the consistency of sentencing in large jurisdictions where the decisions of inferior courts are too variable to be consistent. In New South Wales, for example, a scheme for guideline judgments makes sense. New South Wales has three tiers of courts: local, district and supreme. The 190 local courts in New South Wales are geographically spread across the state. In 2003-04, all New South Wales courts imposed a total of 15,971 custodial orders.

Conversely, the ACT has two tiers of courts: magistrates and supreme. The ACT only has two courthouses, both located in Civic. In 2003-04, both tiers of ACT courts imposed a total of 822 custodial orders. The size of the ACT does not warrant guideline judgments, nor is the ACT experiencing a drastic problem with the Magistrates Court following precedents set by the Supreme Court.

I would also like the Assembly to note that the High Court has ruled against guideline judgments that substitute for the role of the parliament to set penalties. The High Court has found that guideline judgments that set quantitative measures as a chief factor in fixing the sentence are inconsistent with Australian sentencing principles. In other words,

superior courts have authority to sentence particular offenders before the court and make judicial statements, but no authority to publish a table of future punishments over other offenders not before the court.

Rather than assisting in coherence between superior and inferior courts, I fear that Mr Stefaniak's proposal would have the effect of shifting the Assembly's responsibility for setting penalties to the courts. If Mr Stefaniak had his way, criminal justice would be upside down: the Assembly would be sentencing offenders, while the court would be setting penalties.

Mr Stefaniak's proposal to introduce standard non-parole periods contradicts the Liberal Party's 2003 submission to the government's sentencing review. That submission advocated rehabilitation as the key element of sentencing policy. Given that the rationale for parole is rehabilitation, Mr Stefaniak's proposal elevates jail time above the goal of rehabilitation advocated by the ACT Liberal Party in their submission to the sentencing review.

Mr Stefaniak's proposal for standard non-parole periods does not acknowledge that the treatment of parole periods in New South Wales and the ACT is fundamentally different. In New South Wales, the time an offender spends on parole is counted towards completing the whole sentence. In the ACT, an offender's parole time is not counted towards completing the sentence until the whole sentence is finished. If an ACT offender breaches parole, the offender must serve the whole parole period in prison unless parole is again granted. A New South Wales offender who breaches parole is only obliged to serve the remaining time of their sentence. Given the experience of non-parole periods in New South Wales, I think that having standard non-parole periods would only create more complexity and technical grounds for appeal.

I would like now to sum up the in-principle debate on the government's Crimes (Sentence Administration) Bill 2005 and foreshadow government amendments for the detail stage of the debate. Democracy is built upon the consistent and equal application of the rule of law. The government's sentence administration bill contributes to the rule of law by ensuring that there are clear obligations upon everyone who must serve a sentence and that these obligations will be enforced. Conversely, the bill also articulates the law that must apply to any agency managing sentences. The government and its departments are obliged to ensure that people found guilty of breaking the law are themselves treated lawfully.

This is human rights in practice. The bill will protect offenders against arbitrary acts because it openly expresses the law that would apply to those serving sentences. The bill upholds the authority of corrections officers to manage and enforce sentences by clearly expressing their powers and responsibilities. The rights of offenders and the powers of public authorities are best protected if these rights and powers are laid down in law that is publicly known, equally applied and effectively enforced.

To this end, the government's bill creates a standard model for administering and enforcing each sentencing option. The bill sets out the obligations upon offenders for each type of sentence: full-time detention; periodic detention; and good behaviour orders. The bill openly sets out the consequences for any offender failing to meet their obligations. Breach proceedings have been strengthened and streamlined to ensure

prompt attention is given to ensuring maximisation of opportunities for rehabilitation, core conditions have been introduced, and offender management reorganised to provide a better response.

I foreshadow a number of government amendments for the detail stage of the bill's debate. Most of the amendments I foreshadow are upon advice from the Sentence Administration Board. To ensure that the provision for special parole application is not abused, I will move an amendment that enables regulations to further qualify eligibility to apply for special parole. In relation to the supervision of periodic detention, parole and release on licence, I will move amendments to clarify that permission for changes in an offender's contact details should be given prior to any change rather than after the change.

An amendment to the bill also will be proposed to make it mandatory for corrections officers to report all breaches of sentencing orders. An amendment will be moved to require the Sentence Administration Board to cancel periodic detention if an officer on periodic detention fails to perform periodic detention twice or more. A provision to this effect was in the exposure draft but was unintentionally drafted out of the final bill.

On advice from the Supreme Court, an amendment will be made to enable the Supreme Court to issue a summons if that court is the sentencing court supervising a good behaviour order. I will also move amendments to ensure that the Sentence Administration Board can interview offenders in the context of supervising sentences where no breach is alleged; to clarify Sentence Administration Board members' requirements to attend meetings; to change the Sentence Administration Board's authority to remand in its own right from four days to 14 days maximum; and to clarify who is responsible for making audio records of the Sentence Administration Board's hearings.

Mr Speaker, the two government bills the Assembly is debating today have been three years in the making. I would like to express my thanks to everybody in the criminal justice system and the community for their comments and criticism of the bills. The bills incorporate the many suggestions made by stakeholders and reflect the policy advocated by the government on the project. In particular, I thank the Chief Justice and the Chief Magistrate for enabling officers of my department to benefit from their thoughts and analysis and those of the justices and magistrates. I commend this bill to the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 9, by leave, taken together and agreed to.

Clause 10.

MR STEFANIAK (Ginninderra) (11.52): I move amendment No 1 circulated in my name *[see schedule 1 at page 4176]*.

Clause 10 (2) of the bill states:

> The court may, by order, sentence the offender to imprisonment for all or part of the term of the sentence, if the court is satisfied, having considered possible alternatives, that no other penalty is appropriate.

My motion would omit the clause. Whilst I agree that that clause is somewhat better than the old section 345 of the Crimes Act, which mentioned "all other possible alternatives" or something and was a little bit stronger than clause 10 (2), it still causes great problems. Basically it indicates that the court has to consider possible alternatives and consider that no other penalty is appropriate. In other words, it is imprisonment as a last resort.

This has caused our local courts here in the ACT considerable concern. I can recall a number of judicial officers commenting on the old section 345, and this clause is not dissimilar to that. I can recall Justice Gallop commenting. I think the former Chief Justice, Jeffrey Miles, may have commented at one stage. I well recall the most recent case, in which Magistrate Madden commented that, because of that provision—and this clause has its genesis from that provision—he was forced effectively to send someone who had some mental health problem out into the community. He actually commented that if he had not been constrained by the section he would have sentenced this man to 16 months imprisonment.

Other magistrates have, from time to time, lamented the fact that their hands are tied by sections such as this. Courts will always consider possible alternatives, and there are other parts of this act that would enable that to happen. A court must consider, and will consider, a plethora of things, including sentencing principles. But when it is restricted to a situation where no other penalty is appropriate, that is really restricting the discretion of the court. The courts and judicial officers have commented on that fact. Accordingly, I propose that that clause be omitted.

If that clause were omitted, the court would still have an incredibly wide sentencing discretion, in fact, probably a wider discretion because it would not be constrained by what the judicial officers themselves have seen as an unnecessary restriction that ties their hands—and they have said this on occasions—when they would like to take a certain course of action, having due regard to all the circumstances in the case, the offence, the prisoner's circumstances, et cetera. All of those circumstances are covered in this bill. They were covered, too, under the old Crimes Act. I commend the amendment to the Assembly.

DR FOSKEY (Molonglo) (11.56): I oppose the amendment. It seeks to omit a provision that provides judges with discretion when deciding the length of time an offender must spend in incarceration. I cannot see any advantage in taking away the court's discretion. Rather, I see many disadvantages, such as a loss of flexibility when deciding upon a combination sentence that best fits the offender, his or her family situation and the needs of the community.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (11.56): The

government opposes the amendment, essentially for the same reasons as expressed by Dr Foskey. Clause 10 empowers the court to sentence an offender convicted of an offence punishable by imprisonment. It is the provision that empowers the court to impose a sentence of imprisonment. It is the provision with which Mr Stefaniak and the Liberal Party have some difficulty. It states:

> The court may, by order, sentence the offender to imprisonment, for all or part of the term of the sentence, if the court is satisfied, having considered possible alternatives, that no other penalty is appropriate.

The provision requires the court to at least bend its mind to whether or not it has exhausted other possibilities. I think it is appropriate, in the context of a philosophy in relation to prison that sees imprisonment as a sentence of last resort, that the court be required to consider possible alternatives to imprisonment. That is all the provision requires. It is a provision that is quite consistent with this government's attitude to sentencing. The government will not support the proposed amendment.

MR STEFANIAK (Ginninderra) (11.58): I thank both the Chief Minister and Dr Foskey for their comments. I think the Chief Minister effectively has conceded that the court's mind is going to be directed to something. That is my point. It actually does effect the discretion of the court. There are other parts of the legislation that direct the court's mind to a lot of things. But a provision like this, in the view of the courts themselves and in the view of judicial officers, actually is a restriction on their imposing what they see as a proper sentence.

The attitude of both the Greens and the government is totally inconsistent with some of the criticisms they are levelling at some of my other amendments. I just make that point. I think Dr Foskey's argument is inconsistent. My amendment is about discretion. It is not about taking away their discretion. It is to give them a discretion that they themselves have asked for on a number of occasions in the past.

Amendment negatived.

Clause 10 agreed to.

Clauses 11 to 13, by leave, taken together and agreed to.

Clause 14.

MR STEFANIAK (Ginninderra) (12.00): I move amendment No 2 circulated in my name *[see schedule 1 at page 4176]*.

The note on line 14 currently states:

> Section 33 (1) (m) requires the court, in deciding how to sentence an offender, to consider the offender's financial circumstances if relevant and known to the court.

My amendment is a consequential amendment to amendments I will be moving to section 33 of the act. I might as well refer to them now, Mr Speaker.

MR SPEAKER: I have some difficulty with that because we are not actually dealing with those amendments.

MR STEFANIAK: It is a consequential amendment to section 33 (1). I suppose I need only point out to members that I am seeking to amend that section because it does not make sense otherwise. My amendment No 4 seeks to change the wording of section 33 (1) slightly to read, "in deciding the sentence to be imposed on an offender for an offence, a court must have regard" rather than "in deciding how an offender should be sentenced (if at all)".

A court has a wide range of sentencing options, ranging from admonished and discharged to imprisonment. My concern is with the words "if at all". I think they are totally unnecessary. A sentence is a sentence even if it is an "admonished and discharged" or a bond that does not record a conviction. The words "if at all" are inappropriate. That is the substance of my amendment No 4. This is simply a consequential amendment in relation to a note. In other words, if you were going to vote against my amendment No 4, you would vote against the amendment to this note.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (12.02): The government will oppose this amendment and the consequential amendments. As Mr Stefaniak has indicated, this particular amendment is tied to a suite of amendments to clauses 14, 33, 34, 36 and 53. The changes that Mr Stefaniak proposes have been described to me by the parliamentary counsel's office as essentially issues of language and style, rather than of substance. The Office of Parliamentary Counsel stands by the phraseology of the bill. Mr Stefaniak does not persuade me that his amendments to clauses 14, 33, 34, 36 and 53 should be supported. The government will not support the amendments.

DR FOSKEY (Molonglo) (12.03): Mr Stefaniak's explanation goes some way towards making up for the lack of a comprehensive explanatory statement that would have made the objective of this amendment much clearer. We read the amendment to suggest that a sentence "will be" imposed on an offender. The original clause only suggests how a sentence should be imposed. I am not sure whether Mr Stefaniak's objective was to use stronger language. I will be opposing this amendment.

Amendment negatived.

Clause 14 agreed to.

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

Clause 18.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (12.05): I move amendment No 1 circulated in my name and table a supplementary explanatory statement to the amendments *[see schedule 2 at page 4178]*.

The Crimes (Sentencing) Bill 2005 retains a sentencing court's authority to make ancillary orders such as compensation for damage. For example, the bill currently would lapse these orders if a conviction or finding of guilt is reversed or set aside. Rather than place victims in a situation where ancillary orders are made, enforced and then changed, the government's amendment will defer the execution of the orders until the normal appeal period expires. Section 133A, which I will discuss later, provides for the deferral. The amendment to clause 18 (4) ensures that clause 18 is subject to section 133A.

DR FOSKEY (Molonglo) (12.06): I will be agreeing to the Attorney's amendments Nos 1, 2 and 3. They appear to be logical and focused on administration. They indicate the most appropriate manner for the courts to deal with and implement ancillary orders. This intervention also applies to amendments Nos 2 and 3.

MR STEFANIAK (Ginninderra) (12.06): We will support the amendment. If someone who has been a victim goes through a difficult court case and there is a finding and some ancillary orders that are then changed as a result of an appeal, that does cause further trauma. It does seem to be a sensible amendment.

Amendment agreed to.

Clause 18, as amended, agreed to.

Clause 19.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (12.07): I move amendment No 2 circulated in my name *[see schedule 2 at page 4178]* .

Clause 19 of the bill allows a reparation order to be made if a person is found guilty of an offence and a victim of the crime suffers a loss or incurs an expense as a direct consequence of the offence. Rather than place victims in a situation where reparation orders are made, enforced and then changed, the government amendments will defer the execution of the order until the normal appeal period expires. This is related again to section 133A, which provides for this deferral.

Amendment agreed to.

Clause 19, as amended, agreed to.

Clause 20.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (12.08): I move amendment No 3 circulated in my name *[see schedule 2 at page 4178]*.

If an offender is convicted or found guilty of an offence that involves stealing property, clause 20 of the bill enables a reparation order to be made. Once again, rather than place victims in the situation where reparation orders are made, enforced and then changed, the

government's amendment will again defer the execution of the order until the normal appeal period expires. This amendment is similar to the previous two amendments.

Amendment agreed to.

Clause 20, as amended, agreed to.

Clauses 21 to 24, by leave, taken together and agreed to.

Proposed new clauses 24A, 24B and 24C.

MR STEFANIAK (Ginninderra) (12.09): I move amendment No 3 circulated in my name which inserts proposed new clauses 24A, 24B and 24C *[see schedule 1 at page 4176]*.

As I said earlier, we were pleased to see non-association and place restriction orders and some other suggestions that were made by the opposition last year actually incorporated into this bill. There were, however, several pretty important parts of that package that were not. That is what these three clauses actually deal with.

Proposed new clause 24A deals with non-association and place restriction orders being suspended while an offender is in custody. Obviously, if they are in custody, there is no need for those orders to run because they are in the one place and they are probably not associating with the people who would be referred to in the order. Proposed new clause 24A provides, firstly, that a non-association order or place restriction order for an offender is suspended whilst that person is in lawful custody; secondly, that the suspension of the non-association order or the place restriction order does not operate to postpone the date when the order ends; and, finally, that the offender is not taken to be in lawful custody only because that person is serving a sentence by way of periodic detention. If someone is on periodic detention, it is invariably weekend detention. For five days of the week they will be out in the community. It is important that any place or restriction orders continue while that is the case. We think it is very important that that is actually provided for.

Proposed new clause 24B refers to the contravention of non-association and place restriction orders. There is nothing in the attorney's package in relation to this, and this is an omission that needs to be rectified. The proposed new clause provides that an offender must not engage in conduct that actually contravenes a non-association order or a place restriction order to which the offender is subject. The penalty recommended there is a maximum of 500 penalty units, imprisonment for five years, or both.

Proposed new subclause (2) provides that subclause (1) does not apply if the offender associated unintentionally with a person in contravention of a non-association order and the offender immediately ended the association. That is basically a defence. If the offender otherwise has a reasonable excuse for the contravention, subclause (1) would not apply. That, I suggest, would give ample protection to any offenders. Subclause (3) defines "engage in conduct" and refers readers to section 13 of the Criminal Code for clarification.

Finally, proposed new clause 24C deals with changing or revoking non-association and place restriction orders after subsequent conviction. That applies to an offender who is

sentenced by a court in relation to an offence, which would be a new offence, while they are subject to a non-association order or place restriction order in relation to another offence, an old offence, an offence for which they are currently serving.

Subclause (2) provides that, when sentencing that person for the new offence, the court may change or may revoke the non-association order or place restriction order for the old offence. The court may well feel that there needs to be another non-association order or another restriction order. It may feel that it is completely inappropriate because the new offence is so significant that the person is going to be sentenced to a lengthy time of imprisonment. There might be some other circumstances where the court may feel there is a need to revoke the non-association order or place restriction order. I commend the amendment to the Assembly. It would complete the new part 3.4.

DR FOSKEY (Molonglo) (12.13): The Greens will be supporting this amendment. Proposed new clause 24A allows for the suspension of non-association order or place restriction order while an offender is in custody. I suppose this is implicit in the government's legislation. But because it makes it explicit and clear that, while the offender is in custody they do not have the ability to associate with the person from whom they are banned, unless of course that person visits the offender or visits the place from which they are restricted, I will give this clause my support.

I also support proposed new clause 24B. The breach of a non-association order should attract a proportionate punishment. Otherwise there is no deterrence to such a breach. I also think that ignorance in this case should be a reasonable defence. The defences of reasonable excuse or an inadvertent breach that is immediately rectified are sound protections against unfair punishments.

To conclude, I support proposed new clause 24C as well. It provides a court with greater discretion in shaping its punishment regime in light of a breach of a non-association order.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (12.15): The government opposes the amendment. The government carefully considered non-association and place restriction orders and the provisions within the legislation were drafted after broad consultation.

The government believes that there is no demonstrated need for proposed new clauses 24A or 24C. There already exists, in fact, under clause 111 of the Crimes (Sentence Administration) Bill 2005, which we are debating cognately, the facility for a court to amend or discharge a non-association or place restriction order upon application or on its own initiative. This will allow the court to consider the circumstances of each and every individual case to determine if there is a demonstrated need for some variation. The capacity for a court to consider the appropriateness of continuing the orders upon sentencing for a subsequent offence is also covered by clause 111.

An automatic suspension, as proposed under new clause 24A, is not prudent and, the government submits, shows a lack of understanding of why such orders may be placed. For example, a court may have imposed the non-association order relating to a victim of crime. The offender bound by the order is subsequently charged with fresh offences and

remanded in custody. Under Mr Stefaniak's proposal, that offender could, for example, whilst at the Belconnen Remand Centre, telephone, write to or even send someone around to visit or otherwise contact that victim because the order would have been automatically suspended. This, the government believes, would be highly undesirable.

Mr Stefaniak's proposal to create an offence for the contravention of non-association and place restriction orders in proposed new clause 24B is contrary to government policy. The structure of the sentencing reform package is to avoid piecemeal approaches. Under the government's approach a breach of a non-association or place restriction order will amount to a breach of the total sentence imposed on the offender. This is consistent with an approach that allows the customisation of sentence to the offence, the offender and the circumstances of the offence. It allows some flexibility in the imposition of any number of orders as part of a whole sentence and removes the confusion and conflict that can arise where an offender is on a number of different orders. For these reasons the government does not support these amendments.

Proposed new clauses 24A, 24B and 24C negatived.

Clauses 25 to 32, by leave, taken together and agreed to.

Clause 33.

MR STEFANIAK (Ginninderra) (12.18): I move amendment No 4 circulated in my name *[see schedule 1 at page 4176]*.

I foreshadowed this amendment while explaining my amendment No 2. Currently clause 33 (1) reads:

> In deciding how an offender should be sentenced (if at all) for an offence, the court must consider whichever of the following matters are relevant and known to the court:

I think I explained earlier why I believe my amendment is better than clause 33 (1). I do not think I need to elaborate. I will just rely on what I said earlier.

DR FOSKEY (Molonglo) (12.19): This amendment seems to reflect dissatisfaction with the expression "in deciding how an offender should be sentenced (if at all)". It seeks to substitute "in deciding the sentence to be imposed". Given the overall intent of these amendments to present a tough on crime attitude, the Greens are not comfortable supporting the amendment. We are actually pleased that the legislation reminds us that a sentence may not be imposed if the courts deem it to be inappropriate.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (12.20): The government will not support this amendment. The amendment proposes a change to remove the adverb "how" from "in deciding how to sentence an offender". The government's position, on advice from the Office of Parliamentary Counsel, is that this is an issue really just of language and style. The structure of the clause is as recommended and drafted by the parliamentary counsel's office, and the government is inclined to accept the advice of the parliamentary counsel on this matter.

Amendment negatived.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (12.21): I move amendment No 4 circulated in my name *[see schedule 2 at page 4178]*.

The task of a judge or magistrate in sentencing an offender is to impose a sentence in a manner that applies sentencing principles and considerations to all cases equally. The sentencing court must balance the needs of the victim, the community and the offender, determine the factual basis upon which the sentence should be imposed and consider the circumstances of the offence. Those issues are set out in clause 33 of the bill.

Proposed new clause 33 (1) (fa) inserts additional matters that a court must have regard to when determining a sentence for an offence when it is known to a court that a victim of the offence was a pregnant woman. In that regard, the proposed new clause provides that the court shall have regard to the loss or harm to the pregnancy or to the child born alive as a result of the pregnancy; whether the person knew or ought reasonably to have known that the woman was pregnant; and whether the person intended to cause or was reckless about causing loss of or harm to the pregnancy or to the child born alive as a result of the pregnancy.

The inclusion of a consideration in sentencing will be an important balance to the government's foreshadowed bill on offences against pregnant women, which will create an aggravated feature of an offence if the offence causes loss of the pregnancy, serious harm to the pregnancy or death or serious harm to a child of the pregnancy that is born alive.

If a person were found guilty of an offence against a pregnant woman, it would not be necessary to prove a fault element in relation to a factor of aggravation. Effectively, this enables a person to be found guilty of an aggravated offence although the person was not aware of the factor of aggravation. The person's knowledge and state of mind when committing a simple offence will be taken into account by a court on sentencing through new clause 33 (1) (fa).

The clause is not limited to sentencing offenders convicted of the aggravated feature of pregnancy offences. It would also apply to the sentencing of offenders for any offence. When it is known to a court that a victim was a pregnant woman, a court may consider any harm caused to the pregnancy or child born alive as a result of the pregnancy and the knowledge of the offender in relation to the pregnancy and the offender's state of mind when determining a sentence for any offence, whether or not the offence has an aggravated offence, and, when the offence has an aggravated offence, whether or not the aggravated factor was proven.

For example, in a matter where a person is convicted of assaulting a woman who is pregnant and it is established that the person knew the victim was pregnant and intended to cause serious harm to the pregnancy but the aggravated factor was not proven because the commission of the offence did not actually cause any serious harm to the pregnancy, the court will have regard to the fact that the offender knew the woman was pregnant and intended to harm her pregnancy in determining a sentence for a simple offence.

MR STEFANIAK (Ginninderra) (12.24): The opposition will be supporting this amendment. I would like to point out, and no doubt Mr Pratt will probably have something to say on this, too, that on two occasions Mr Pratt submitted perfectly good bills replicating New South Wales legislation. One was voted down in the last Assembly and one, I think, earlier in this Assembly. Mr Pratt put a lot of effort into preparing bills designed to protect pregnant women who suffer a serious injury and whose child suffers serious injury as a result of attacks on them. The bills basically followed New South Wales legislation and practice in other states as well.

The government says it is going to have its own bill. It has a foreshadowed bill dealing with offences against pregnant women. The government is very slow to get pieces of legislation before the Assembly. This particular piece of legislation, it is stated, took three years and it is a significant piece of legislation. But when good ideas are put forward, it is ridiculous for a government to find some excuse, any excuse, to vote them down and then finally come up with something which is pretty similar, if not identical, which does the same thing and say, "Aren't we good? Look at what we've done."

I am quite happy to support sensible amendments that the government is making here. I am quite happy to support a sensible piece of legislation, despite the fact that it does not go far enough. These bills generally are sensible. It is ridiculous that the government, having not supported the bills that Mr Pratt presented, now brings something like this in here that will go only part of the way because we have to wait to see what the substantive offences are.

This legislation itself has to be recognised for what it is. It is merely one of the considerations that courts have to take account of when sentencing offenders, people who have been convicted of committing crimes. It is just one factor. It may have some benefit initially, but we certainly need substantive legislation. I want to point out we had good, substantive legislation put up by Mr Pratt which has now been voted out on two occasions by this government. I wonder when we are going to see this next segment of the Criminal Code actually introduced.

If Mr Pratt's legislation had been accepted, pregnant women in the territory could have been protected for probably two years. How much longer are we going to have to wait? Having said that, this is at least a start, but we could have got to the desired result a lot earlier.

DR FOSKEY (Molonglo) (12.27): Mr Stefaniak raised the issue of Mr Pratt's legislation. I want to say that the Greens disagreed with it for quite good reasons. The intent of the legislation may have been similar to what is expressed in this amendment, which we do agree with. It is a matter of concern that the opposition does not see a difference between an amendment like this and hopefully the forthcoming legislation, which will be in line with that approach, and some underlying concerns and implications of the earlier bill. We will be supporting the amendment.

MR PRATT (Brindabella) (12.28): At long last we have something being introduced to try to plug a very large anomaly in law. I welcome the Chief Minister's amendment No 4. It is certainly better than nothing. It goes some way to addressing what is not only a major anomaly in law here in the ACT, but indeed across the entire nation.

We know that a couple of jurisdictions have taken substantive steps to address the concern about protecting the unborn and protecting pregnant women. While this amendment is nowhere near as strong as the proposed New South Wales legislation and existing Queensland laws, I strongly encourage the Chief Minister to very quickly adopt the legislation that we have previously tabled here because this amendment simply will not go far enough.

I notice, for example, that this is simply an amendment that allows a court to take matters into consideration. They might be able to take into consideration offences against the pregnant woman. That is a woeful, pale imitation of the provisions of law that we have seen in other states and the model that the opposition has proposed and tabled in recent times. It is still not strong enough, but at least the Chief Minister has identified that there is a need to be addressed.

Perhaps he will move at some stage to strengthen the law. Again, I strongly encourage the Chief Minister to bring back the legislation previously tabled by the opposition. I do not care whether you rebadge it and amend it accordingly. Let us not lose any more time on this issue, Chief Minister. This amendment that you are proposing does not go anywhere near far enough in plugging that gap.

Mr Stanhope: It does not go anywhere near your legislation, for very good reason. Your proposal was an absolute disgrace.

MR PRATT: I point out the Chief Minister's hypocrisy, Mr Speaker.

Mr Stanhope: You don't think it had anything to do with abortion, do you?

MR PRATT: I point out the Chief Minister's hypocrisy, Mr Speaker.

Mr Stanhope: Your hypocrisy. Just be honest. You don't believe women should be able to have the choice.

THE SPEAKER: Order, Chief Minister!

Mr Stanhope: That's what it's about. It's about abortion.

MR SPEAKER: Order, Chief Minister!

Mr Stanhope: Just be honest.

MR SPEAKER: Order, Chief Minister!

MR PRATT: Good luck, Mr Speaker, in trying to find order.

THE SPEAKER: I do not need luck.

MR PRATT: I know. You have authority. If I may continue, I remark upon and identify the Chief Minister's hypocrisy in the attacks that he has launched on the opposition regarding the legislation that we have previously tabled. The Chief Minister indeed

attacked that legislation as being "a backdoor attack on abortion", "a backdoor attack on the existing abortion laws in the ACT". That was never the case.

One would have to say that, even looking at this pale imitation amendment, if you take the Chief Minister's definition of attacks on existing ACT abortion law, it is perhaps sailing a little close to the breeze. Whilst we note your hypocrisy, Chief Minister, we welcome the fact that you are going some way to try to plug this gap in law, to bring more and better protections to pregnant women and the unborn and to put some sort of a message out there to people that attacks on pregnant women will not be tolerated. However, Chief Minister, you need to have a more substantive law. You have got a long way to go. The question must be asked: why has it taken two and a half years for you to bring anything at all to this place to address this issue?

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

Sitting suspended from 12.32 to 2.30 pm.

Questions without notice

Budget—election promises

MR SMYTH: My question is to the Chief Minister, Mr Stanhope. The government has received advice that there are currently 55 election commitments outstanding from the 2004 ACT election, comprising a total of $69 million in recurrent spending and $188 million in capital spending, that your government has not implemented. Given the poor budget position facing the ACT, how many of those promises will you abandon?

MR STANHOPE: None.

MR SMYTH: How can you possibly afford to fund these commitments unless you increase taxes, increase borrowings or cut services?

MR STANHOPE: These matters were considered in the context of the budget.

Government—expenditure review

MR MULCAHY: My question is directed to the Treasurer. I refer to the review of government structures and spending that the Chief Minister announced last week. Since each of the five items in the terms of reference are already part of the regular and ongoing work of the Treasury, what can the review team do that Treasury is not able to do?

MR QUINLAN: Someone said—2,000 years ago I think—that a prophet is not honoured in his own land. I am already in the process of putting together all of the propositions I have brought forward from time to time and probably not sold very well. Unlike some people, I am not very good at covering my tail by writing stuff down and trotting out a note a year or two later. Nevertheless, to the best of my recollection, I will be putting that stuff forward.

It is undeniable: a process such as the one we go through in budgeting, priority setting and setting up structures that deliver government services could benefit from external, independent and dispassionate review. That is why businesses have a thing called internal audit. That is why we have audits. Every business knows that it needs a second view.

This government has been in place for four years and it intends to be in place for many years to come. It is timely that we look at our processes of priority setting, the structures we have in place to deliver services, and the prospect of rejigging what we do to be able to meet the highest priorities.

Mr Smyth's previous question was about the number of promises that the government has on its schedule to deliver. As the Chief Minister said, we intend to deliver on those. But it is difficult. You know that it is difficult. You know that every government works with limited resources. You know that there are always demands that exceed capacity.

There will be a fresh set of eyes, because a couple of quite knowledgeable gentlemen are involved in this review. I can do nothing but assist government in setting and reviewing its priorities and the structures whereby it delivers its services. It is a positive thing in which to be involved. As I said, I will certainly be having my four pence worth.

MR MULCAHY: Thank you, Treasurer, for a most comprehensive answer. My Speaker, I have a supplementary question. Could the Treasurer indicate the cost of this review?

MR QUINLAN: No, I cannot. I will take that on notice.

Anti-terrorism legislation

MR STEFANIAK: My question is to the Attorney-General. Attorney, you complained recently that you were left out of a phone hook-up between the states and the commonwealth concerning the commonwealth's proposed anti-terrorism legislation and, as a result, you did not know what had transpired between the Labor premiers and the federal government. Are you so out on a limb in the Labor Party that even the Labor premiers will not share information with you?

MR STANHOPE: No.

MR STEFANIAK: I have a supplementary question. Attorney, has that been a lesson to you concerning the necessity for staying in negotiations and retaining the trust of the other parties?

MR STANHOPE: No, it has not. The question does allow us to speculate in the context of the anti-terrorism legislation to which Mr Stefaniak refers about what Mr Stefaniak would have done as Attorney-General or what Mr Smyth would have done as Chief Minister were our roles reversed. One is left to ask: what aspects of that initial package would Mr Stefaniak and Mr Smyth have signed up to? Would they have agreed to the detention of Australians without any judicial oversight at all? One assumes that

Mr Stefaniak would have agreed to the detention of Australian citizens without any judicial involvement or oversight.

What would Mr Stefaniak and Mr Smyth have agreed to? Would they have agreed to an Australian citizen being locked up, being detained, without access to a lawyer? What would Mr Stefaniak and Mr Smyth have agreed to? Would they have agreed that a young man could be taken off the street, locked up and allowed one phone call, say to a mother or father, with a capacity to say, "I am safe but I cannot tell you where I am"; and if that person did in his anxiety let it slip that the police think that he is a terrorist and he has been locked up and the mother in her anxiety says to that young man's father, for instance, that he has been locked up and the police think he is a terrorist, for that person then to be subject to five years imprisonment?

Would Mr Stefaniak and Mr Smyth have signed up to the prospect that, for telling your mother or your father that the authorities believe you to be a terrorist, you should be locked up for five years? That is what Mr Stefaniak and Mr Smyth believe is appropriate in this day and age in Australia. That is what they think is appropriate. How remarkable! We know, by their response to these issues, that they think it is okay for people to be locked up without access to a judge or a court; that they believe it is appropriate for people to be sent to jail for five years; that they believe that the new laws in relation to sedition are okay; that they accept that you should be able to be sent to jail for seven years for expressing a view that is perhaps outrageous view but which does not actually involve suggestions of violence, that the government be brought undone or that there be a revolution; that we be denied that essential right to express a view or, essentially, suffer seven years imprisonment.

I think that there is now a level of embarrassment round Australia in a whole range and across a breadth of parliaments and parties, certainly within both the Liberal Party and the Labor Party, about the extreme nature of the law which John Howard and his cohorts sought to foist on Australia. I can only say and I can only be thankful that, as a result of the decision by me to release that bill, to take the people of Canberra into my confidence, some sanity has prevailed. One has to ask Mr Stefaniak and Mr Smyth in relation to the winding back of those outrageously draconian, fascist provisions that the Prime Minister has now abandoned to say which of them they would reinstate, which would still be there but for the fact that I released the bill and generated the level of debate that I did. Which of those provisions? All of them.

Bill Stefaniak and Brendan Smyth liked it as it was. They saw no need for debate. They saw no need for expert input. They liked it as it was and they now regret that the Prime Minister has been forced to wind it back. They now regret that there is judicial oversight. Mr Smyth and Mr Stefaniak regret now that you can actually appeal on the merits against your detention. That is something that Mr Pratt should understand as a person in this place who has suffered preventative detention. He now embraces the need for preventative detention, but not when it applied to him, of course: something regarding which, I understand, he is now embroiled in some legal action.

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

Industrial relations

MR GENTLEMAN: My question is to the Minister for Industrial Relations. Minister, I understand that on 2 November the federal government introduced its radical industrial relations WorkChoices legislation into the House of Representatives. Can you inform the Assembly of recent activities in response to the legislation?

MS GALLAGHER: I thank Mr Gentleman for the question. It is both timely and pertinent given the considerable discussion and opposition to this legislation evident in the community and I take the opportunity to inform the Assembly about certainly a couple of recent events.

Today is the national day of protest against this legislation. This morning many of us here, including Assembly colleagues—noticeably, of course, no-one from the other side—joined with the Chief Minister to take part in a virtual country-wide meeting to protest against the proposed changes. The meeting here was held at the ACT racecourse in Mitchell.

It was a truly historic meeting, without doubt Australia's biggest ever meeting of working people. Was there one member of the opposition there? No. It was the ACT's biggest community meeting, but there was not one member of the opposition strong enough or brave enough to go and listen to what the community is saying about these proposed laws.

Workers were motivated to come out in such numbers because the changes proposed by the federal government represent the single biggest reduction in working people's conditions of employment in this country's history. That is the legislation that is being pushed through the federal parliament. It is the single biggest attack on the conditions of working people ever in this country's history. The opposition say, "Look at the growth in the minimum wage." The federal government has opposed every single application for growth in the minimum wage since 1996.

Mr Smyth interjecting—

MS GALLAGHER: They lost the commission hearing, Mr Smyth. That is why it grew. The submissions accepted by the commission were the submissions of the state and territory governments, who have consistently had claims closest to the decisions delivered by the commission. What is the response of the conservatives in Australia? It is to abolish the commission, discontinue these wage cases and ensure that minimum wages do not grow. That is the legislation that is before the federal parliament.

Close to 4,000 members of the ACT community gathered this morning to voice their opposition to the changes via satellite hook-up using Sky Channel. The unified message of all the communities attending across Australia was a strong message to the federal government advising them that we are opposed to the changes and urging them to rethink their ideological attack.

The meeting today built on community events that have been happening for some time now dating back to May, when the Prime Minister made the first indication of his desire

for change in industrial relations. It was some six months after the federal election. There was no mention of this in the federal election campaign, and one wonders why. But six months after that all the plans are outlined. There is no legislation, of course—just a vision, or lack of vision, that is being presented by the federal government.

I congratulate the ACTU for their efforts today and also the affiliated unions who have worked tirelessly running campaigns and public gatherings against these changes. They will continue to do so. As Greg Combet said today, this meeting is the first day of the campaign for change. It is by no means the last meeting before the federal government pushes through its legislation, but the first meeting of a community campaigning for progressive change to this conservative agenda.

Yesterday I had the opportunity, along with my state and territory colleagues for industrial relations, to appear before the Senate committee to speak to the joint submission that state and territory governments provided in respect of the proposed changes. In relation to the ACT, we highlighted in our submission and in evidence the issues, as we saw them, particularly issues concerning the impact of the legislation on women. The legislation will have a disproportionate effect on women in relation to flexibility of employment and in relation to any sort of family-friendly conditions. We already know the impact of AWAs on women. It was an important message to give to the Senate.

MR SPEAKER: The member's time has expired.

MR GENTLEMAN: I ask a supplementary question. Minister, you mentioned the Senate committee inquiry. Will there be enough time to consider the detail of the 687 pages of the bill?

MS GALLAGHER: This is an important matter. We got our copy of the legislation when we downloaded it from the web and started working through the detail of it. Maybe Mr Mulcahy got his copy early. We know he has links up there. He may have had his little secret copy marked "Mulcahy in confidence". He is the only person in Australia that would get it beforehand. Perhaps Mr Mulcahy has had a little longer than all of us to take in the detail of the legislation.

The state and territory governments had seven days to provide a submission to the Senate committee. We were able to provide a comprehensive submission that outlined our major areas of concern. That Senate inquiry will sit for five days. That is five days to consider 580 pages of legislation with another several hundred pages of explanatory memoranda. This is, of course, after it was pushed through the House of Representatives in 24 hours. Debate on the floor was gagged. Members of parliament were not able to talk about legislation that impacts so significantly and presents the biggest change in the way that ordinary Australians work. Members of parliament representing the Australian community were shut down and not allowed to speak to legislation that is going to set those parameters. The member for Canberra was not able to deliver her speech and had to apply to have it incorporated into *Hansard*.

This Senate inquiry will sit for five days before providing a report to the Senate by 22 November. It is expected that the legislation will be rammed through the Senate by the first week in December. Certainly here in the ACT we are expecting that it will come

into effect in March 2006. I know that Mr Mulcahy and those opposite can hardly contain their joy at the prospect of these laws coming in. We expect that they will come in in 2006.

There do not seem to be any arguments advanced by the federal government as to why this legislation needs to be passed so quickly, why stakeholders—and every single Australian has a stake in this—have been given such a short time to consider the detail of the legislation. Some of the detail of the legislation is still not clear. For example, under "prohibited content" in workplace agreements, there is a $33,000 fine—

Mr Gentleman: Training and trade work.

MS GALLAGHER: That is so for a number of areas, and trade union training leave is one of them, as dreadful and evil as a notion like workplace training might be! We had better get rid of that. That is frightening. I wonder what they teach at those training courses? It is almost as frightening as the training course offered by the hotels association, I would imagine.

There is a $33,000 fine for anything that the government feels like prohibiting. It is to be done by regulation. They do not say what they are going to fine you for. If you put it in your agreement and it becomes prohibited content, you will be fined $33,000. For restricting contractors or use of labour hire, there is a $33,000 fine. For asking that your agreement be collective, there is a $33,000 fine. For saying you do not want to offer AWAs, there is a $33,000 fine. For asking for a clause in your agreement allowing a union to be involved in dispute resolution, there is a $33,000 fine. In the fine print, there is a fine for anything else the government feels like introducing.

This is the detail in the legislation that nobody has had the time to work through. We were in the ridiculous situation yesterday where representatives of the department of workplace relations appeared before a committee to give details of what the state and territory governments are saying. It could all have been avoided if there had been discussion on the legislation prior to its introduction.

We find ourselves in the ridiculous situation where the Senate has five days to consider a piece of legislation of this magnitude before it is passed and imposed on 100 per cent of workplaces in the ACT come March next year. It is an atrocious situation. The federal government is treating the people of the ACT with such contempt that they do not even give us the opportunity to talk about this legislation and genuinely listen to our concerns and amend the legislation accordingly.

Education—policy

MRS DUNNE: My question is to the Minister for Education and Training. Minister, during a meeting at Ginninderra district high school on 16 September, when asked by a member of the audience what was wrong with the school building, you made the comment that you had been on a tour of the school and you felt that it was "sort of run down". Minister, how many major policy decisions have you made based on feminine intuition?

MS GALLAGHER: Was this the question that you scribbled down, Mrs Dunne, and passed to the person with the microphone in the audience—the "anonymous" question from Mrs Dunne? "I'll scribble one down now, hand it to the person with the roving mike, get them to ask the minister this question and then later in question time I'll use this—

Mr Stanhope: Based on feminine intuition, of course: "I'm not writing this as a member of the Liberal Party; I'm writing this through my feminine intuition."

Mrs Dunne: Tell us about the building.

MR SPEAKER: Order!

MS GALLAGHER: We have discussed the government's position on this a number of times and I welcome the opportunity to talk about it again. Here we have a situation where, for the first time in the ACT government's history, a government has recognised issues at a school and, instead of closing the school, walking away and saying, "Good luck to you out there in west Belconnen; you're all obviously going to schools other than this school," we have said: "We will build you the best school. We will put $43 million into building the best government school." We have said to the students at west Belconnen, "You deserve the same kind of school that the kids at Radford have. You deserve the best school. We will give $43 million to build you the best school, and that school building will far exceed the standard of the school buildings that are out there at the moment."

The discussion that Mrs Dunne alludes to about the fact that I walked around the school is true in the context of explaining the work that the government has done since then. In November, I was invited out to the school and taken on a tour of the school by the principal—and I did think the school was run down. I do not know whether you, Mrs Dunne, have had the opportunity to go out to the school; but I would be surprised if you could walk around that school and say that it was not run down, just based on your intuition—looking at the building—

Mr Stanhope: Based on your intuition and your eyesight!

MS GALLAGHER: It was not possible for a large school built for 1,000 but now with 180 students—a student population of under 20 per cent of what the school was built for—to maintain that school and adhere to the standards required in relation to safety and all the other measures that schools need to do. There is no doubt that that school was not able to keep the facilities up to the standard required; there is no doubt in my mind about that. Anyone walking through that school who says anything different obviously does not—

Mr Corbell: They're using their intuition.

MS GALLAGHER: That's right. We are currently going through a six-month consultation period on the proposal the government has put on the table. In the last couple of months, as we have been able to talk with the community and explain the proposal and answer the questions that the community has, the view out there in the

community is that this proposal should go ahead. I have recently attended meetings with parent groups at both Holt and Higgins primary schools, and I would say the view shared—certainly from one of the meetings—was: "Knock down the high school now; build it tomorrow. We want our kids to go there. We want this best school in west Belconnen." That is the view of the community. I am not saying that there are not elements in the community that do not share that view. It would be wrong to say that. There are, and we will work through the issues that those groups have. But for the large part the reception to the government's proposal has been overwhelmingly positive.

There is no doubt in my mind that the school buildings were run down, but it was one element of some other issues existing at that school that required the government to make a response, and our response was: "We will build you the best school. We won't walk away from you. We want the best school for your kids and we want it built as soon as we can build it."

MRS DUNNE: I have a supplementary question, Mr Speaker. minister, why did you fail to take the community into your confidence about the quality of the building, about the standard of the building and about your aspirations for the best school in Canberra? Why did you not take the community into your confidence in the first place and consult with them about what they wanted to do with the building, rather than making the decision and imposing it upon them?

MS GALLAGHER: The government went to the community with this proposal two days after making a decision. Two days after the cabinet made a decision to go to the community with a proposal for a significant investment in school infrastructure in west Belconnen, that proposal was out there in the community for six months of discussion. That is taking the community into our confidence. Two days after considering a response to the issues we saw at Ginninderra district high school, we went to the community and, every single day since, we have been out there in the community, talking with the community about this proposal. I have met with the P&C, the save our schools group, the Holt and Higgins parents, the preschool society and the playgroup society throughout the consultation period. The government has not made a final decision on the proposal and will not be making a final decision until 20 January next year.

There have been shopping centre stalls set up at Kippax. I know members of the government hold regular community meetings with their constituents as an opportunity for information sharing. Every single request from the community for information that has come to my office or to the department has been answered—and will be answered throughout this consultation period. The government has taken the community into its confidence. We are talking at every opportunity with the community and we will continue to do that. I have had input in the last few days, with people wanting me to have a look at another aspect of the proposal—and we will continue to do that until the decision is made.

Emergency Services Authority—volunteers

MR PRATT: Mr Speaker, my question is to the Minister for Police and Emergency Services, Mr Hargreaves. Minister, the ESA's September quarterly report shows that volunteer recruitment is 26 per cent below target, with the explanation that this shortfall in recruitment is due to a lack of resources. Why does the ESA not have the resources to

adequately recruit volunteers? Why did you say that you are not in the least bit concerned about this issue, when the community is always concerned about the threat of bushfires?

MR HARGREAVES: I have to say that Mr Pratt asked me this same question through the media and I thought I had answered it. Obviously he does not listen to what is said about his own diatribes in the media.

Mr Pratt: Perhaps it was an unsatisfactory answer, John.

MR HARGREAVES: Oh dear; you are tiresome sometimes.

MR SPEAKER: Order, please! Mr Hargreaves, get on with it.

MR HARGREAVES: Mr Speaker, what Mr Pratt conveniently forgets is, firstly, that we have enormous numbers of volunteers out there. We have something like 700 people in the CFU program. We have—I might stand corrected—up around the 400 or 500 mark in the RFS and 200 in the SES. We have to consider those volunteers in the context of the total fighting force that the ESA actually has to respond to such things as bushfires. Also, we have to consider the extent to which the volunteer infrastructure needs to be kept up. There are a number of aspects to that. One is equipping them all. That is fine and I take the point that that is a resourcing issue. There is the training aspect of it, which is not as straightforward as Mr Pratt would have us all believe. We have dedicated training regimes. What happens—and Mr Pratt ought to know this because, heaven knows, he has been told it often enough—is that most of the brigades, most of the units within our volunteer force, are trained by their own leaders. We need to train these leaders not only in respect of their technical expertise but also their ability to train other people.

Mr Speaker, I stand by my statements. I am quite satisfied. I am not in the least worried about the number of volunteers we have. After the fires of 2003 went through there was an enormous influx of volunteers. Now they have been trained and they are online. What happened when we introduced the community fire units? Bang, the numbers went up. If anything, we have a problem in that when disasters occur we have to deal with spontaneous volunteering. That is an area that gives me some concern.

Mr Speaker, I am not worried about the letters. If, in fact, I felt that the time was nigh to have a massive recruitment drive for volunteers, I would do it. At the moment I do not see it at all. I think the Emergency Services Authority is doing a great job in progressing its volunteer training and collecting people who wish to be volunteers. In fact, I think Mr Pratt ought to stop his whingeing and congratulate the ESA on being so prepared, as they are, for this coming bushfire season. They are exponentially more prepared than they were when the guys opposite got tossed out of office in 2001.

Mr Smyth: Not true.

MR HARGREAVES: Unceremoniously.

MR PRATT: Mr Speaker, I ask a supplementary question. Minister, is it not true, though, that despite current numbers, you still have turnover targets? How can the ACT

community be assured that the ESA is well prepared for the coming bushfire season when you have not ensured that the full target of volunteers has been recruited and trained?

MR HARGREAVES: On a number of fronts. The first thing is that our preparedness does not rest wholly and solely on volunteers. It never has. We have other things. For example, we have, believe it or not, a fire service. We have an SES unit. We also have an ambulance service. We have police officers. We have a range of areas within the fighting arms of the ESA that are very fully prepared. We also have advanced technology. We have compressed air foam appliances up and down the urban fringe and we have more of those coming online.

Our technological preparation has been particularly well created. Our emergency coordination centre is up and running. We have a much better communications system. On top of that we have a communications strategy to tell the people of the ACT what to do in the event of a warning signal. We also have MOUs with the media so that people can be given plenty of notice and also advice on what to do. We have put a very fine document in the letterboxes of every household in the ACT. The people of the ACT can have every confidence that we are exponentially better prepared than we have ever been.

Mr Pratt's scaremongering that we have not met a particular target of recruiting volunteers equates to the fact that we should be not only alert but also afraid. I reject that completely. In fact, I think the people of the ACT can have every confidence that we are a heck of a lot better prepared. In a perverse kind of sense, we are actually waiting for something to happen because we know that our levels of training are up, the number of our personnel is up, the number of our appliances is up, the technology is high, our radio system is a heck of a lot better than it ever was before, and the service is being ably led by people who know what they are doing, and I have every confidence in them.

I only wish that Mr Pratt would stop sniping away on the sidelines and come out and express confidence in those troops and those volunteers. Whenever volunteers or paid people go out in a disaster they need the full support of the community behind them. They need their moral to be up, not down. All Mr Pratt has done in the whole discussion about preparedness for disaster, whether it be flood disaster, power failures, bushfires, earthquakes, CBR, terrorist attacks or anything else, is put forward negative little snippets. This is having its effect on those people who are in the front line and I urge him to desist.

Model litigant guidelines

DR FOSKEY: My question to the Attorney-General is in regard to the government's behaviour as a model litigant. The Greens have received a disturbing number of credible reports in which it is alleged that ACT government agencies or their representatives have not been acting in compliance with the ACT's model litigant guidelines. One particularly disturbing development appears to be a pattern of failure to comply with or enforce orders of the Administrative Appeals Tribunal.

Given that the AAT has traditionally relied on the good faith of government agencies to implement its orders, the Greens are concerned that there is no independent review or oversight of the government's adherence to the model litigant guidelines.

Attorney-General, would you commit to investigating such breaches and ensuring government agencies are aware of and comply with their obligations under the guidelines?

MR STANHOPE: Yes, I will happily commit to that. In saying that, I have to say, as Chief Minister and Attorney-General, I cannot recall a single representation in which I have received a complaint about non-compliance with the model litigant undertakings of the ACT or ACT authorities. Most particularly, of course, in relation to being a model litigant, we refer to the Director of Public Prosecutions and the ACT Government Solicitor.

If there are people who have approached you, Dr Foskey, with concerns about the behaviour or actions of ACT government officials or agencies in relation to non-compliance with AAT orders, I would be more than pleased if you would provide me with those details, if you are able to, and I will pursue each of the issues that have been raised with you and seek a response from the relevant ACT official or agency. That is all I can undertake to do now.

I take the model litigant obligations of the ACT government extremely seriously. It is something that I have, over time, insisted that the Department of Justice and Community Safety and all agencies associated with the Department of Justice and Community Safety take seriously.

I am not aware—I cannot bring to mind; it may be that I forget—of an instance in which the model litigant rules have been raised with me. I honestly cannot remember receiving a representation on the subject. I am prepared to stand corrected on that. I certainly cannot bring to memory a single issue.

I receive regular representations from members of the Canberra community dissatisfied with an outcome in a legal process, whether it be the AAT, one of our other tribunals or the courts. I receive representations on a regular basis from people who are dissatisfied with a finding that is brought down in a tribunal or a court. I do not recall a feature of those complaints being the non-observance by an ACT government authority of the obligation that I expect them to accept and be a model litigant.

I will arrange for a member of my staff to approach your office, Dr Foskey. If there are details that you are able to give me without breaching a confidence or privacy, I will happily pursue all of those issues.

DR FOSKEY: Given that, what recourse is open to people who feel that they have suffered detriment as a result of breaches of the guidelines? What procedural safeguards are in place to ensure that their concerns are properly addressed?

MR STANHOPE: I do not wish to appear to be unhelpful, but the question is too broad and perhaps too hypothetical for me to even attempt a response. It would depend very much on the circumstance of the particular situation. The model litigant rules, of themselves, stand outside the law. The model litigant rules are, essentially, rules by which I expect ACT government agencies to abide.

The ACT Government Solicitor and the Director of Public Prosecutions are the two agencies most involved. In the one instance, the ACT Government Solicitor is an ACT public servant. I have instructed the ACT Government Solicitor's Office always to observe the rules of a model litigant, the behaviour and ethics of a model litigant.

It is not an instruction that I can issue to the Director of Public Prosecutions as such because the Director of Public Prosecutions is an independent statutory office, and I do not instruct the Director of Public Prosecutions on anything. I expect the Director of Public Prosecutions to behave as a model litigant. In all my conversations with, and in the annual reports of, the Director of Public Prosecutions, I am aware that he has often referred to the fact that he behaves as a model litigant.

I would expect the Legal Aid Commission—once again I do not instruct the Legal Aid Commission—to behave as a model litigant. One ACT government agency, I guess, at the forefront of the pursuit of litigation or legal issues on behalf of the ACT government is the ACT Government Solicitor. I have instructed the Office of the ACT Government Solicitor that they are to act as a model litigant.

The recourse, essentially, in relation the ACT Government Solicitor is that I have instructed them to behave as a model litigant, and I would be most distressed if they were not. It has not been brought to my specific attention that they are not. In relation to the other agencies in the front line of legal activity of the territory, namely, the DPP and the Legal Aid Commission, it is not for me to instruct them.

I take it from the broader nature of your question that you are more concerned about the way in which other ACT government agencies—those not involved in the pursuit of the law as such—are perhaps not responding as you would expect, for instance, to orders of the ATT. Those are administrative matters; they are not matters that would go to the model litigant rules. I would have thought those were not specifically matters caught up in that; more generally, they are matters of administration.

Then again—this is the trouble; I am hypothesising—if you are suggesting that the Administrative Appeals Tribunal has made an order and that an ACT agency or public servant is deliberately refusing to implement an order of the AAT, then there is recourse to the non-response to the order. I will take advice on that.

Housing—national survey

MS PORTER: My question is directed to the Minister for Disability, Housing and Community Services. Could you advise the Assembly how the ACT fared in the Australian Institute of Health and Welfare's public housing national social housing survey 2005?

MR HARGREAVES: The ACT government is one of the biggest landlords in the country. We house around 25,000 Canberrans in a portfolio of more than 11½ thousand properties—many tenants and many homes. In fact, it is around nine per cent of all housing in Canberra. It is a major responsibility and one we take very seriously.

This is why engagement and communication with our tenants is so important. It is essential that we involve them in decisions that affect their lives and their homes. We have a range of engagement initiatives, which involve support groups, peak and umbrella groups, and tenants themselves speaking with the Department of Disability, Housing and Community Services and directly with me.

Since the last AIHW survey in 2003—the same year as the creation of the Department of Disability, Housing and Community Services—the staff and management of Housing ACT have been working towards increasing tenant satisfaction. Following the survey, staff members conducted tenant focus groups to ask what it is that tenants want and need from the department. These have proved extremely useful to staff and management and they are continuing as a regular activity.

Tenant service visits have been increased, with staff now visiting more than 10½ thousand tenants per year. I am very pleased to report that these efforts have paid off. The AIHW's national housing survey 2005 has recorded a marked increase in tenant satisfaction in public housing in Canberra. The survey shows a significant improvement in tenant satisfaction, from 59 per cent in 2003 to 65 per cent in 2005, with the level of dissatisfaction falling three per cent to 14 per cent.

Encouragingly, the survey records steady improvement in satisfaction with the general service provided to clients by the staff of Housing ACT. This can be attributed to management efforts to improve customer service. For example, from 2003 to 2005 there was a significant six per cent increase in satisfaction with the availability of clear information to tenants and a five per cent increase in satisfaction with the knowledge of staff.

The government and Housing ACT would like nothing more than to see this satisfaction level continue to rise in coming surveys. We recently initiated a tenant participation project. Administered by ACT Shelter and the Tenants' Union, this project explored new ways to involve tenants in matters that affect them. The "Raising our Voice" report was submitted to the government earlier this year. Tenant and community groups will now be able to apply for a slice of the $90,000 that the government has allocated to support tenant participation. I look forward to that.

I congratulate the staff and management of Housing ACT on this great outcome and encourage them in their endeavours to continue to improve our public housing system. I also encourage those members who have been critical of Housing ACT management—particularly Mrs Burke, who earlier this year alleged that the public housing system was corrupt—to read this report and acknowledge the improvements made. I look forward to the public apology from Mrs Burke for the accusation of corruption made by her in the Liberal Party website article of 11 June 2005, which I table. I look forward to the apology from Mrs Burke for saying that the system is corrupt, the inference being that the people who manage the system are also that way. I would like that apology.

Housing—multiunit complexes

MRS BURKE: My question is to the Minister for Disability, Housing and Community Services, Mr Hargreaves. Minister, given that recommendations to retain and upgrade

many of the large government multiunit complexes are due for re-evaluation and that some of the properties could now be deemed to be close to the end of their economic life, have detailed Building Code of Australia, or BCA, compliance assessments been conducted of each of the 25 multiunit complexes in the ACT?

MR HARGREAVES: The last time I heard Mrs Burke whingeing about our multiunit complexes she was saying to use them for this, use them for that or use them for something else. The department is embarking on a program of examining all of our multiunit complexes to determine whole-of-life expectation and whole-of-life costs. In fact, that is why we have had success with the joint ventures at Fraser Court and Burnie Court. They are fantastic. It is also why we are not about to be having a fire sale and flogging off the Currong flats. We are engaging more closely with the industry to make sure that we get a good return there and we retain as much of that stock for public housing as we can possibly manage.

I think I know where Mrs Burke is heading. She is going to find an apartment in one of the blocks that she will allege does not meet building codes. We have a new maintenance regime. We have a $30 million contract out with one supplier and we are steadily working our way through all of our stock to make sure that it is as good and liveable as we like.

MRS BURKE: I have a supplementary question. Minister, if your department has endorsed and carried out detailed BCA compliance assessments of the sites, how many of the multiunit complexes have been found to have deficiencies in relation to structural maintenance or condition matters? What strategies exist for managing the long-term future of housing's multiunit complexes?

MR HARGREAVES: It might surprise Mrs Burke to know, having had her shadow responsibilities for just over a year, that we have 11,500 properties and we have over 25,000 tenancies.

Mrs Burke: We are talking about 25 complexes.

MR HARGREAVES: If Mrs Burke knew the sheer scale of the responsibilities we have in public and community housing and if only she would put an orange, a mandarin or perhaps a grapefruit into her mouth and open her ears a bit she might be able to listen. I am getting tired of having to talk over the top of her, Mr Speaker.

Mr Pratt: Oh, the load upon your shoulders! Goodness!

MR HARGREAVES: When you are finished, Mr Pratt!

MR SPEAKER: Order, Mr Pratt! That is a fair point.

MR HARGREAVES: Mrs Burke has asked a question of some incredible detail, not unlike the 30 or so questions on notice that we receive every time the Assembly sits. They go to such a level of detail that they keep an army of officers beavering away for hour upon hour. In fact, I think that there have been some poor people who, in the context of responding to the questions on notice from Mrs Burke and from her compadre in crime, Mr Pratt, have been born, lived their lives and died without seeing the outside

of an office. They have had to answer these ridiculous, spurious and most intricate questions on notice—

Mr Smyth: I take a point of order, Mr Speaker. Standing order 118 (b) says that the minister cannot debate the issue. Also, another standing order says that he must be relevant in answering a question. He is not.

MR SPEAKER: The point of the question was BCA assessment of government premises. Mr Hargreaves has been talking about the however many thousands of government properties. Whilst ever he sticks to the subject matter, he can continue.

MR HARGREAVES: I am on my way, Mr Speaker, as is said in that Scottish song.

MR SPEAKER: You are going to get there about now!

MR HARGREAVES: Yes, I will. I will probably be there in about two minutes and 30 seconds. Mrs Burke has asked me to say how many of our properties satisfy the code and how many of them require major work, minor work and a whole stack of stuff. I am very tempted to invite Mrs Burke to come with me and visit all 11,500 of them and then she could find out for herself. Mr Speaker, it is a ridiculous question.

ACT Racing Club—insurance

MS MacDONALD: My question is to the Minister for Racing and Gaming. Can the minister please bring the Assembly up to date regarding the insurance issue at the ACT Racing Club?

MR QUINLAN: I thank Ms MacDonald for the question. This is, I have to say, still a work in progress, but I think we should advise the Assembly where we are up to. By way of background, the ACT Racing Club creates some level of employment for, I think, about 500 people in and out of the ACT on a regular basis. The government has been directly involved with it on redevelopment of Thoroughbred Park—not by way of financing but by way of devising a way in which it can parlay its future racing development fund fees against loans—and we have underwritten the work that has been done at the racing club. To put it in a monetary perspective, our TAB, makes I think, the best part of half a million dollars in Canberra on Canberra races, so the club is a very significant contributor within the territory and needs to be given whatever assistance we can reasonably give it.

I think members are aware that the racing club faced some difficulty with its insurance and we have been working fairly solidly with it to resolve that. At this stage it looks as though we will be able to join with New South Wales and for the ACT Racing Club to be considered for many purposes part of the New South Wales racing industry, given that to many—virtually most—of the people involved in racing the border is just invisible, whether they are running here, in Goulburn or wherever they think they might win the local cup.

So there is now a good chance that, if we work with the racing club, and if we do with our racing club what we did with Summernats, where we took the people running the event through a whole, quite arduous, process of risk management to the point where

insurers were prepared to recognise what they were now doing and bring premiums down to a reasonable level, we will get this acceptance from New South Wales and we will be able to come under the workers compensation cover that exists in New South Wales, for what is probably a manageable fee.

All that is still down the track, as they say in the trade. Nevertheless, there is a brighter prospect now than there has been before. It will require some legislative change in the ACT in the first instance to deem New South Wales racing as a licensed workers compensation self-insurer in the ACT so that they can cover the ACT, and some amendment to our own Workers Compensation Act to define particular employees so that they can then be covered by New South Wales racing as a self-insurer in the ACT.

I want to congratulate Tom McDonald and his people in the insurance authority who have worked to come to this result. A number of times we have faced what have seemed to be intractable insurance problems, with Summernats, the racing club and a few other not-for-profit organisations that had difficulty during the public liability crisis, and in virtually every case—except, I think, one, if there was one at all—we have been able to find a solution for a particular activity; whether it be enterprise or not was, I think, part of the question that hung over it. Nevertheless, they have done a substantial and significant job for the territory—and done it again for racing. I will report back to the Assembly as soon as we get past the lawyers in cardigans in departments that—

Mr Stefaniak: Have you talked to the harness club, too? That might have some effect if you are amending legislation?

MR SPEAKER: Order!

MR QUINLAN: I missed all of that, Bill, but ask me later. Congratulations to the ACT Insurance Authority.

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

Auditor General's report No 6 of 2005

Mr Speaker presented the following papers:

> Auditor-General Act—Auditor-General's Report No 6 2005—Government Procurement, dated 15 November 2005.

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

> That the Assembly authorises the publication of the Auditor-General's Report No 6 2005.

Papers

Mr Speaker presented the following papers:

> Study trips—Reports by:

Mr Seselja MLA—National Conference on values based education for young people, Melbourne—7-9 September 2005.

Mr Pratt MLA—Meeting with colleagues and Lord Mayor, Brisbane City Council, Brisbane—3 November 2005.

Executive contracts
Papers and statement by minister

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (3.32): For the information of members, I present, pursuant to sections 31A and 79 of the Public Sector Management Act 1994, copies of the following papers:

Contract variations:
Beverley Helen Forner, dated 10 October 2005.
Glen Gaskill, dated 25 August 2005.
Jenelle Clare Reading, dated 7 September 2005.
Michael William Kegel, dated 10 October 2005.

Short-term contracts:
Brian Weir, dated 1 October 2005.
Chris Tully, dated 25 October 2005.
Dita Hunt (2), dated 1 October 2005.
Floyd Kennedy, dated 29 September 2005.
Geoff Keogh, dated 23 September 2005.
Ian Antero Sakkara, dated 5 September 2005.
Ian James Thompson, dated 17 October 2005.
Ian Waters, dated 4 and 25 October 2005.
Pam Davoren, dated 17 October 2005.
Peter Ottesen (2), dated 18 August and 29 September 2005.
Rodney Peter Lambert, dated 30 September 2005.
Susan Barr, dated 4 October 2005.

I seek leave to make a statement in relation to the papers.

Leave granted.

MR STANHOPE: I present another set of executive contracts. These documents are tabled in accordance with sections 31A and 79 of the Public Sector Management Act, which requires the tabling of all executive contracts and contract variations. Contracts were previously tabled on 18 October 2005. Today I present 14 short-term contracts and four contract variations. Details of the contracts were circulated to members.

Papers

Mr Quinlan presented the following papers:

Financial Management Act—

Pursuant to section 14—

Instrument directing a transfer of funds from the Chief Minister's Department to the Department of Disability, Housing and Community Services, including a statement of reasons, dated 9 November 2005.

Instrument directing a transfer of funds within the Department of Justice and Community Safety, including a statement of reasons, dated 4 and 25 October 2005.

Pursuant to section 26—Consolidated Financial Management Report for the financial quarter and year-to-date ending 30 September 2005.

Independent Competition and Regulatory Commission—Report 12 of 2005—Issues Paper—*Retail prices for non-contestable electricity customers*, dated November 2005.

Annual Reports (Government Agencies) Act, pursuant to section 13—Annual Report—2004-05—ACTTAB—Corrigendum, dated 11 November 2005.

Land (Planning and Environment) Act
Paper and statement by minister

MR CORBELL (Molonglo—Minister for Health and Minister for Planning) (3.32): For the information of members, I present the following paper:

Land (Planning and Environment) Act, pursuant to subsection 229B(7)—Statement regarding exercise of call-in powers—Development application No 200400175—Blocks 8 and 10 Section 36 Ainslie, dated 4 November 2005

I seek leave to make a statement in relation to the paper.

Leave granted.

MR CORBELL: On 29 September this year I directed, under section 229A of the Land (Planning and Environment) Act 1991, that the ACT Planning and Land Authority refer to me development application No 200400175. On 1 November this year I advised the authority by notifiable instrument that I had decided to consider the development application, and on 3 November this year I approved the application, using my powers under section 229B of the land act. The application sought approval for the construction of a three-storey residential aged care facility consisting of 108 beds and 170 aged persons units and associated landscaping, car parking, paving and other site works.

In deciding the application, I gave careful consideration to the issues raised in the consultation period and in the many letters and emails that I received. The key concerns included the maximum height of buildings, overshadowing, the loss of trees, the potential impacts on the amenity of adjacent residents during construction, the location of a waste enclosure, the increase in traffic, and reinforcement of a sense of community and landscape quality.

In my decision to approve the development application, I imposed conditions to require the two six-storey buildings to be reduced to a maximum height of four storeys. I have also sought further details, including how the development will be managed during construction to minimise the potential impact on the adjacent residential areas; the relocation of a waste enclosure off the southern boundary; ensuring that significant

landscaping is provided between the residential aged care facility and blocks G and H; and requiring additional detailed architectural drawings for the latter stages of the development.

A further condition of the approval is that the applicant must obtain the approval of the Conservator of Flora and Fauna for all tree-damaging activity. This is a separate statutory process that must be followed. This process will assess, among other things, the measures that will need to be taken to protect existing trees, particularly where groundwork is undertaken within three metres of the protection zone for the trees.

In view of the significance of the development, residents of Ainslie and the surrounding area were consulted on this proposal over an extensive period of time. Concerns voiced by the community were taken into account and the proposal was modified in response to those concerns. Given the views expressed in some quarters about the consultation on this development, I would like to outline briefly the process over that time.

There was initial consultation with the community at the end of 2004, before Goodwin lodged its development application, and this was done by Goodwin. Goodwin conducted an informal consultation process as requested by ACTPLA, where all immediate neighbours were notified of an open invitation to attend a meeting on 9 December last year. This meeting was publicised in the Ainslie Neighbourhood Watch newsletter.

On 7 February this year, Goodwin conducted a consultation session with the main stakeholders who were identified as being interested in a retirement facility in the area. These were the North Canberra Community Council and the Ainslie Retirees Network. A second round of consultation was conducted with these groups on 26 April 2005, with Goodwin taking any views and issues into account as the proposal was reviewed.

Goodwin then lodged its development application on 21 July this year and, in accordance with statutory requirements, the development was publicly notified on 1 August this year. This involved an advertisement in the *Canberra Times*, notices on site and sent to adjoining properties and notification on the ACTPLA web site. The North Canberra Community Council was also advised.

The ACT Planning and Land Council also considered the submission and provided its advice at a meeting on 3 August this year. A public meeting attended by more than 200 people, including Ainslie residents, the proponent and ACTPLA representatives was held on 4 October this year. In addition, I personally met with representatives of the Ainslie community, who also presented me with a petition. I also inspected the site several times, and I met with an ACT Housing tenant who had particular concerns about the proposal.

As well as the numerous letters and emails received, there were 101 submissions sent to ACTPLA as part of the statutory notification process. Of these, approximately one-third supported the development proposal and the remainder raised concerns about the proposal.

The proposal to redevelop the Goodwin site in Ainslie has involved significant community consultation and this has resulted in a compromise where the original plan for two six-storey buildings was changed to buildings of a lower height. In my view, this demonstrates that the consultation process does work and community views are taken

into account when important decisions such as this one are made. I reject absolutely any suggestion that there was not any consultation. I think the chronology I have just outlined demonstrates the fact that there was.

I have used my call-in powers in this instance because I consider the proposal a response to a major policy issue. This facility will provide a substantial public benefit by providing housing for the ageing community in a location where people can remain in a familiar environment close to existing social networks. The proposal also has a substantial effect on the achievement of objectives of the territory plan in respect of the provision of a wide range of housing types and choice and the provision of affordable housing to accommodate the entire life cycle in established areas.

The redevelopment of the Goodwin aged care facility in Ainslie will provide much needed additional aged care facilities in the vicinity of north Canberra, as well as improved and compliant facilities compared with those enjoyed by the present Goodwin residents.

The land act provides for specific criteria in relation to the exercise of the call-in power. In this case, I considered the application raised a major policy issue, it had a substantial effect on the achievement or development of objectives of the territory plan, and the approval of the application provides a substantial public benefit.

Section 229B of the land act specifies that, if I decide an application, I must table a statement in the Assembly within three sitting days of the decision. So, as required by the act and for the benefit of members, I have tabled a statement providing a description of the development, details of the land on which it is proposed the development take place, the name of the applicant, details of my decision and grounds for the decision. With the statement I have also tabled the comments of the ACT Planning and Land Council on this proposal. I move:

> That the Assembly takes note of the paper.

Debate (on motion by **Dr Foskey**) adjourned to the next sitting.

Papers

Ms Gallagher presented the following papers:

> Occupational Health and Safety Act, pursuant to section 228—Operation of the *Occupational Health and Safety Act 1989* and its associated law—First quarterly report for the period 1 July to 30 September 2005.

Mr Corbell presented the following papers:

> **Performance reports**
> Financial Management Act, pursuant to section 30A—Quarterly departmental performance reports for the September quarter 2004-2005 for the following departments or agencies:
>
> ACT Emergency Services Authority, dated October 2005.
>
> ACT Health, dated November 2005.

ACT Workcover, dated October 2005.

Attorney-General's Portfolio within Department of Justice and Community Safety.

Chief Minister's, dated October 2005.

Disability, Housing and Community Services, dated October 2005.

Disability Housing and Community Services—Output 2.2 Child and Family Centre Program, dated October 2005.

Economic Development, dated October 2005.

Education and Training, dated October 2005.

Office for Children, Youth and Family Support, dated October 2005.

Planning Portfolio within ACT Planning and Land Authority.

Planning Portfolio within Urban Services.

Treasury, dated October 2005.

Urban Services Portfolio.

Subordinate legislation (including explanatory statements unless otherwise stated)

Legislation Act, pursuant to section 64—

Animal Diseases Act—

Animal Diseases (Endemic Diseases) Declaration 2005 (No 1)—Disallowable Instrument DI2005-236 (LR, 27 October 2005).

Animal Diseases (Exotic Diseases) Declaration 2005 (No 1)—Disallowable Instrument DI2005-235 (LR, 27 October 2005).

Animal Diseases (Tagable Stock) Declaration 2005 (No 1)—Disallowable Instrument DI2005-237 (LR, 27 October 2005).

Architects Act—Architects (Fees) Determination 2005 (No 2)—Disallowable Instrument DI2005-222 (without explanatory statement) (LR, 13 October 2005).

Dangerous Substances Act—Dangerous Substances (Explosives) Amendment Regulation 2005 (No 1)—Subordinate Law SL2005-28 (LR, 20 October 2005).

Health Act—Health (Fees) Determination 2005 (No 4)—Disallowable Instrument DI2005-231 (LR, 27 October 2005).

Occupational Health and Safety Act—Occupational Health and Safety (Volunteers) Declaration 2005—Disallowable Instrument DI2005-232 (LR, 20 October 2005).

Public Health Act—Public Health (Cooling Towers, Evaporative Condensers and Warm Water Storage Systems Specialised Systems) Code of Practice 2005—Disallowable Instrument DI2005-234 (LR, 24 October 2005).

Public Place Names Act—Public Places Names (Kingston) Determination 2005 (No 2)—Disallowable Instrument DI2005-238 (LR, 25 October 2005).

Road Transport (General) Act—Roads Transport (General) (Application of Road Transport Legislation) Declaration 2005 (No 10)—Disallowable Instrument DI2005-233 (LR, 24 October 2005).

Roads and Public Places Act—Roads and Public Places (Fees) Determination 2005 (No 4)—Disallowable Instrument DI2005-240 (LR, 31 October 2005).

Utilities Act and Utilities (Water Restrictions) Regulation—Utilities (Water Restrictions Scheme) Approval 2005 (No 1)—Disallowable Instrument DI2005-239 (LR, 31 October 2005).

Mental health
Discussion of matter of public importance

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

> The state of the mental health system in the ACT.

MR SMYTH (Brindabella—Leader of the Opposition) (3.45 pm): We have just had the latest focus on mental health issues through the activities undertaken during Mental Health Week last month from 9 to 15 October 2005, and congratulations to all those who involved themselves in the activities. Mental health issues have always been with us and this will continue to be the case. Further, if recent trends are any guide, the incidence of mental illness is likely to increase.

It is salutary to consider the comments of the Australian Human Rights Commissioner and Disability Discrimination Commissioner in an address to the National Press Club in 2004. Dr Sev Ozdowski put things this way:

> The statistics on sanity are that one out of every five Australians this year will experience some form of mental illness. Think of your four best friends. If they're okay, then it's you.

Mental health issues are real. They touch virtually all of us and they demand an effective response from all governments. In this context, I suggest that the optimum approach is to seek agreement across all political views that there is a sound response to mental health issues. Unfortunately, at the level of the states and territories there appears to be a dichotomy of approaches to responding to mental health issues, and it is at this point that the recent announcement made by the ACT government, through the Minister for Health, demonstrates the apparent inability of this government to focus on the whole breadth of issues relating to mental health.

In September 2005, Mr Corbell announced that the ACT government was considering the development of a new mental health precinct at the Canberra Hospital. This mental health precinct is being considered as part of the master planning for this site and could include high-security, adult and young persons services and possibly other inpatient and outpatient services. This proposal has been painted as path-finding by seeking to bring together disparate facilities and services and also to provide a more appropriate physical site for the provision of mental health services.

Unfortunately for this government, the proposal fails on a critical ground. It deals with only one component of responding to mental health issues. It only deals with physical security matters. What it ignores are the equally important issues related to providing appropriate community-based services for people who have mental health issues. There is nothing in this grandiose announcement that covers these issues. The significance of this omission is that the Mental Health Council of Australia, as a major organisation with

expertise in mental health policy matters, has observed that the ACT is more concerned with bricks and mortar and it says nothing about community-based care.

While Mr Corbell attempted to represent his announcement as a soundly-based approach, he has only dealt with part of the whole issue. He and this government have failed to deliver for people who have mental health issues. It is simply not sufficient to propose a bricks and mortar approach as the answer to mental health issues when this flies in the face of all the policy developments that have taken place in Australia over the past 10 years or so.

Mr Corbell has said that his proposal would be part of "a new approach to providing mental health services in the ACT". It is actually hard to find what is new in this approach. In fact, in the absence of dealing with the development of appropriate community-based care programs and services, the ACT government's approach can be characterised as a retreat to the philosophy that applied in this country prior to 1992.

Over the past 15 years or so, under the guidance provided through the national mental health strategy, there has been an orderly reduction in the deinstitutionalisation of psychiatric facilities. As one measure of the national strategy, there has been a reduction of 60 per cent in the number of stand-alone psychiatric beds since 1993—and this is a very pleasing outcome.

At the same time, according to the Mental Health Council of Australia, while there has been an increase in awareness in the community, some service improvement and an increased understanding of mental illness through research and epidemiology, there has been a failure to implement orderly and integrated care and support systems that meet the needs of consumers and their carers.

Put simply, the ACT has proposed some action to deal with half—and only half—of the appropriate response to mental health issues. You have to ask: why is this so? Is it because the minister has asked for a response that deals with only half the issues? Is it because the ACT government has made some decisions about the allocation of resources to mental health and this proposal represents the limits of what those resources will provide? Is it because the advice given to the minister is not satisfactory? We do not know what the reason is. But, whatever the reason, it is evident that this government is only proposing to do half the job in responding to people with mental health issues.

There may be some who will think that this is the typical whinge of an opposition, that these comments are not really valid and that the opposition is simply trying to score political points. Unfortunately for this government, the Mental Health Council of Australia is thinking along exactly the same lines. The council put out a media statement, after the minister's recent announcement, that was headed "ACT Government's 'New Strategy' No Solution to Mental Health Problems for Canberra".

The CEO of the Mental Health Council, John Mendoza, acknowledged the proposed investment in mental health facilities and services but then went on to say:

> … Mr Corbell's announcement today of a 'new strategy' for mental health looks a lot like more of the same. …

> Putting more money into new buildings located at hospitals—

That is, acute care hospitals—

> doesn't help people with mental illness stay well in the community.

The Mental Health Council of Australia contended that Canberra is ideally placed to develop more innovative, integrated and community-based services for people with mental illness, and this means providing a range of support services outside the hospital environment. Mr Mendoza said that effective community services "help keep people well and avoid the need for expensive acute inpatient care" and that the ACT government's strategy "says nothing about providing long term accommodation options, it says nothing about providing step-up and step-down care, and provides no money for preventative mental health care".

The really fundamental criticism of Mr Corbell, however, is in the council's observation that:

> We thought the Minister understood the issue of mental health. However, the strategy so far announced focuses only on acute hospital care for people who are already ill. … these buildings will not make a real difference to mental health care in Canberra.

This council has the expertise in dealing with mental health issues to know that this is so. The council also concluded that the approach that this government proposes to adopt is deficient. These are not my words; these are the comments of an organisation that is extremely well qualified to speak on these matters.

As I said a few moments ago, this government has failed with its recent announcement on mental health matters. It has failed not only those people who have a mental illness but also those people trying to provide appropriate care and treatment for those they look after.

The major policy driver for the first national mental health strategy was to achieve reduced reliance on stand-alone psychiatric hospitals. The purpose of this policy was to be an expansion of community-based and primary health care, with the focus of these programs being the provision of support for people with a mental illness within their community. The intention of this approach is to emphasise primary and preventative health care, particularly primary and preventative mental health care.

According to the Mental Health Council, the strategy has been successful in achieving the first objective, to the point where dedicated stand-alone institutions are now considered to be facilities of last resort. Of course, even though a number of psychiatric institutions have closed, there are still issues with some people who have mental health issues. As has been commented on many times by magistrates and the judiciary in the ACT, the institutionalisation of people with a mental illness has, in effect, been transferred to prisons and detention systems generally—or it has been replaced with isolation from the community, for example, through homelessness.

A critical component of a comprehensive mental health strategy in a community is an effective primary response capability. The evidence suggests that, while early intervention for a person who is showing signs of mental illness is important, there is very little data available on the extent to which early intervention is playing the role it should. The Mental Health Council argues that programs that provide early intervention are critical both for interrupting the establishment of mental illness and in reducing the burden of the disease.

Of course, such programs need to work within the existing range of health settings and they need to use risk-assessment tools to assist with the identification of important behavioural indications of emerging problems, such as anxiety, withdrawal, social inappropriateness or poor socialisation. There are many community-based services that have the potential to assist in identifying at-risk families and children who may be showing signs of the development of some mental health issues. These services include infant, child, and family welfare centres, schooling systems, general practitioners and other primary care settings.

I am particularly aware of the incidence of mental health concerns among younger people, especially young adults. The Mental Health Council has obtained research from the Australian Infant, Child, Adolescent and Family Mental Health Association in which the association estimates that between 14 per cent and 18 per cent of children and young people aged between four and 16 experience mental health problems of clinical significance. I find it staggering that almost one in five of our children and young people are likely to experience mental health problems of clinical significance. The association put the figures at 217,000 young people aged between 12 and 17 years in 1998 who would experience these types of mental health problems. What is going on in our communities that is leading to such outcomes? This is a really serious issue, but it is a subject that should be discussed in depth on another day.

Early intervention takes on a critical imperative in the light of this research. Bricks and mortar are not the answer to dealing with young people who are suffering the effects of early exposure to mental illness. More appropriate responses, and responses that are likely to prove more timely, involve the referral of these young people to appropriate programs and services that have the potential to reduce the establishment of their mental illness.

There is so much more that I could say, but I will leave that to my colleagues and to another time. I want to conclude by emphasising that the recent announcement on mental health activities by the ACT government appeared to leave unanswered some critical issues relating to the delivery of mental health services. I am not denying that appropriate facilities are part of a policy of coherent and comprehensive approach to mental health policy. What I am highlighting is the way in which this announcement by the ACT health minister has been portrayed as the answer to the mental health needs of the ACT.

Expertise outside the ACT department of health indicates that the approach of the ACT is only part of the answer. Does this announcement by the ACT government reveal a lack of thinking and coordination both within the ACT health system and between the health system and other expert organisations based within the community on the optimum ways to tackle mental health matters? It would appear so.

As we have argued for a number of years, there is a pressing requirement for appropriate facilities to provide services and care to people suffering from mental illness, and I would still argue that a time-out facility, ignored by this government yet supported by magistrates, justices, a former chief police officer, clients and carers, is the answer to many of these problems. At the same time, though, there is just as much urgency to ensure that appropriate community-based programs and services are resourced to provide critical services to people suffering from mental health issues before they reach the point where their illness necessitates admission to specialised facilities.

That is the point that we make here: this fight needs to be fought much earlier and it needs to be fought with far more resources. It is something that we would look to from the minister in the lead-up to the next budget, and indeed in the budget announcement: that we do get much quicker than is being proposed to the world's best practice standard of somewhere between 12 and 14 per cent of health budgets being spent on mental health; that we do reduce the case loads that are currently between 30 and 40 clients per mental health worker in our system, down to the world's best practice of 12; and that we do start and do more early intervention, particularly arming our young people so that they can identify amongst their peers those who are suffering or are in trouble and indeed arm themselves against the early onset of mental illnesses.

These are important issues, they are issues that relate to all of us and they are issues that affect all of us, and that is why I have raised as a matter of public importance the state of the mental health system in the ACT today.

MR CORBELL (Molonglo—Minister for Health and Minister for Planning) (4.00): Mr Speaker, can I start the government response to this MPI by making it quite clear that the government has never proposed the mental health precinct at the Canberra Hospital as the solution to our mental health problems. I would be a foolish man to suggest otherwise—to suggest that it was a solution—and I am not foolish, in that regard at least.

The ACT government has demonstrated, and continues to demonstrate, that we have a strong focus on improving mental health services in the ACT. This ties in with our commitment, as outlined, to improve the wellbeing of all Canberrans, with the Canberra plan and the Canberra social plan in particular.

There is no doubt that the issue of mental health in Australia now is one of pressing concern. All jurisdictions—state, commonwealth and territory—have a responsibility to work as hard and as comprehensively as they can within the resources available to them to address this growing issue of concern in our community. I would say, though, that, while we recognise there is more to be done, the government has shown its commitment to improving mental health services through significant increases in spending, in new initiatives and in new services.

ACT government spending on mental health since we took office has doubled. The figure of $75 per head of population in 2000-2001 has risen to $131 in the current budget—a 75 per cent increase. In 2003, the ACT government launched the ACT mental health strategy and action plan, which outlined the major directions for planning for the territory. These include a strong move towards prevention and recovery in mental health

services and increases in service responsiveness, with strengthening of quality research and innovation also being key areas.

We heard a lot from Mr Smyth, in his speech, about the Mental Health Council of Australia's criticisms of the government's decisions to plan for a new mental health precinct in the ACT. I want to challenge this head on. Are Mr Smyth and the Mental Health Council of Australia saying that we should not have an up-to-date psychiatric services unit? Are Mr Smyth and the Mental Health Council of Australia saying we should not have facilities for forensic mental health clients and it is quite acceptable for them to be sent to Goulburn jail or to the Belconnen Remand Centre? Is that what they are saying? Their criticisms of the decision to plan for facilities at the Canberra Hospital are just that.

I do not accept for a moment that our clinical facilities, in terms of the physical infrastructure, are either up to scratch or comprehensive enough. They are neither. And these issues must be addressed. The government has made a commitment to address them. We made a commitment to build a new PSU during the last election campaign, a commitment we will honour. But we are also taking a broader look at the range of clinical facilities, acute care facilities, that are needed.

The other side of this argument of course from Mr Smyth and, unfortunately, from the Mental Health Council of Australia—which I must say is not echoed by the comments of consumers and carers here in the ACT—is that we are not spending enough on early intervention and community outreach and support. I would draw Mr Smyth's attention and the Mental Health Council of Australia's attention to the council's report, *Not for service*, released about a month or so ago.

In that report, the council acknowledged that 75 per cent of all mental health funding in the ACT is already allocated to community-based services. We are not a jurisdiction that spends the majority of our budget on acute care; we are a jurisdiction that spends the majority of our budget, the overwhelming majority of our budget, on community outreach and support, on community-based services. Particularly in the context that the Australian average expenditure on community-based services is 51 per cent and we are 75 per cent, how is it justified to criticise the government for deciding to improve acute care services particularly when we have no capacity for children, for adolescents or for forensic mental health clients? It is not a valid or reasonable criticism when you look at those facts.

The increased investment that the government is contemplating and doing the planning for at our hospital facilities includes planning for the replacement of the inpatient mental health unit with a new 30-bed facility, a 15-bed high-security unit and a 20-bed youth mental health inpatient unit. The development of these facilities is important. It is not acceptable to have young people in a psychiatric services unit with adults; it is not acceptable to have forensic-type mental health clients in the Belconnen Remand Centre, in Goulburn jail or even in our own jail when it is built. They need a particular, dedicated facility for episodes of acute illness, and that is what the planning is aiming to address.

We again heard the call from Mr Smyth for a time-out facility. The problem with this proposal is that it seems to be all things to all people—catering for people who may be at risk of suicide, catering for people who need further care following discharge from

hospital, even catering for people who need to dry out from alcohol and drug consumption. This is a vague, ill-thought-out proposal and one which ignores the complex issues surrounding care for a whole range of people who face problems with mental illness.

Mr Smyth: Which is why it has got so much support.

MR CORBELL: It has so much support because it means everything to everyone, but how do you make it work and how do you target the level of care? It is a poorly thought through proposal; it is a simplistic panacea designed to avoid the more complex issues surrounding mental health care in our community. Rather than proposing this rather vague concept as a solution for all the issues within the mental health system, which is what Mr Smyth is doing, the government is undertaking a comprehensive service development and planning approach that provides specific responses to each of these groups rather than a single, simple, panacea, catch-all proposal that everyone will like but ultimately, if it was ever built, would satisfy no-one.

The government has also responded to the need for improved services for people with a mental illness through the work we have done in forensic mental health care, which was commissioned through a whole-of-government process by the Chief Minister last year. Cabinet agreed to the proposal for care of forensic mental health clients in May this year. It includes a strong community focus for forensic mental health care, supported by access to a proposed new, high-security unit for those who require specialist inpatient care. This proposed service is based on the well-respected forensic care model and is underpinned by national forensic principles.

Today, I had the pleasure of launching the new suicide prevention strategy for the ACT, which will allow us to have a coordinated approach to managing and, hopefully, reducing the incidence of suicide in the ACT. The incidence of suicide in the ACT is below the national average. Nevertheless, every suicide is a tragedy; every suicide is an incident that we should seek to prevent.

Mr Smyth also mentioned issues to do with supportive accommodation and housing for people with a mental illness. Mental Health ACT has already entered into an agreement with Housing ACT which is designed to establish a partnership approach to improve access to housing options and support for people with a mental illness. The ACT homelessness strategy also identifies, as one of its priorities, the housing needs of people with a mental illness.

In all these areas, I know, as health minister, there is much more work to be done. As a society, as an Australian society, we face serious challenges in addressing the disadvantage, the isolation and the lack of comprehensive care that people with a mental illness all too often encounter. But what I am trying to outline today is the significant work that is being done to tackle and address these issues. I do not run away from these problems. I do not seek to suggest that they do not exist. What I seek to articulate today, and on every other occasion, is the focus on improving, on building our capacity and providing more resources and developing a comprehensive and humane framework for supporting and caring for people with a mental illness.

To that end, it is worth highlighting some other programs which the government has undertaken since it came to office. In particular, we are doing work around improved relationship-building between mental health clients and GPs. We all know that, when someone has a mental illness, all too often their general physical health also declines. One program that is now up and running is a liaison program to encourage GPs to work more closely with mental health clients to assist mental health clients to see their GPs regularly to maintain and address, on a regular basis, issues with their general physical health as well as their emotional wellbeing. Improving their access to primary health care is an important priority and one which is already funded and under way.

We are also fostering access to both mental health and alcohol and drug services. Dual diagnosis issues continue to be an emerging and very challenging situation for care providers, for clients themselves and obviously for service providers. New protocols are being put in place through the ACT Health co-morbidity program to recognise the high prevalence of co-morbidity illness around drug, alcohol and mental illnesses.

Finally, I would like to address some issues around the work of the Official Visitor. The Official Visitor has an important role: to monitor and improve inpatient mental health services. I am very grateful for the work of the outgoing Official Visitor, Ms Joan Lipscombe who recently retired at the end of her three-year term as principal Official Visitor. We are currently recruiting a replacement for Ms Lipscombe. I had an ongoing and very positive dialogue with her in her role as principal Official Visitor and met with her on a quarterly basis.

It is worth highlighting some issues in her final report. There were a number of positives. For example, she welcomed the more comprehensive information provided to support applications to the Mental Health Tribunal and the plans to introduce a wellness program focusing on patient physical wellbeing and lifestyle of the Psychiatric Services Unit. She also commented, in her final report, that steps to bolster the mental health nursing work force were gradually coming to fruition.

As always, she upheld her responsibility also to outline where the challenges were and where the problems were. She outlined—and it is also valuable to outline—how the government is working to address these. The issues she outlined included concerns about high levels of seclusion in the PSU. In response, a new seclusion area has now been established and seclusion rates are being very closely monitored. The duration of seclusion has also been reduced where possible.

She also raised concerns about the level of aggression and violence in the PSU. In response, the government, through ACT Health, has developed a policy on preventing and managing aggression and violence which will establish approaches to reduce these incidents. Her report also raised the importance of planning to minimise the risk of negative and harmful interactions in future development of inpatient facilities. Risk minimisation is a key aspect of future planning for all our new mental health facilities.

The government accepts that more work needs to be done. We are coming from an historically low base of mental health funding in the territory. The government has significantly increased the budget. We are planning on improving the acute care facilities which are in desperate need of that investment. We continue to focus strongly on

community outreach and community-based support. Seventy-five per cent of our budget is spent in these areas. But there is more work to be done. There is more work to be done on accommodation in support and prevention of mental illness, and we will continue to focus on these issues for as long as we are in office.

MRS DUNNE (Ginninderra) (4.15): This matter of public importance, the state of the mental health system in the ACT, is an exceedingly important matter for the people of Canberra. On occasions like this, when the minister stands in this place, he is, thankfully, rather chastened and does say; "Yes, we have a lot more to do." Never were truer words said.

Mental health in the ACT is in a parlous situation, but I am still a little pessimistic when I hear the minister because we still have the usual cant: "We have thrown a lot of money at it; so people should be thankful for the amount of money we have thrown at it." As people on this side are probably almost tired of saying, putting money into a system is not the solution. Inputs in terms of money do not necessarily give you good outcomes. What we are talking about here is providing good outcomes. Ms McDonald can screw up her face, but just because you spend money does not mean you are going to do it better.

We had the minister here saying, "We have doubled the money." Then he said, "We have increased it by 75 per cent." We are having a little mathematical problem here. He also said, "And we are gunna do a whole lot of things." This minister has been gunna do a whole lot of things for three years or more now, and I see very little difference.

I speak from personal experience. I speak from personal experience with the permission of the person I am speaking about because he basically says to me, "Talk about my case anytime you can because eventually we might get some solutions to the problems." Members of this place will know, some better than others, that my family has a family friend who is a fairly regular consumer of mental health services in the ACT. I have to say that, for this person, for his family, and for those who are close to him, this is a most scarifying experience.

It is not from want of goodwill and it is not from want of resources on many occasions. This young man has at his disposal at various times a private psychiatrist, a counsellor; has access from time to time, in an on-and-off way, to the mental health crisis team; is admitted in and out of hospital on a semi-regular basis. When you think about it, there is a lot of time and effort that goes into this young man.

But, in the space of three years, when I have been dealing with this—and other members of my family have been dealing much closer than I have with this for three years—we see no progress. His family sees no progress. He sees no progress. We are in the same situation we were in three years, going round and round in circles. He has asked me to advocate on his behalf. I am in the process of trying to set up what seems to me to be a pretty straightforward thing. It may or may not succeed, but it beggars belief that no-one has done this before. Because there are so many mental health professionals with a finger in this pie, it would seem logical that we could all sit down at the one table and come up with a regime of treatment.

This has been one of the most difficult tasks that this young man has come up with. He has basically thrown up his hands and said, "Can you help me to get this meeting under

way?" As someone close to me said the other day, "There is something wrong in this town when you ring the mental health crisis team on behalf of someone who is suicidal and you get put on hold for 20 minutes." The experience I have had is that there is something fundamentally wrong. There is something fundamentally wrong when you go with this person to the hospital and it takes you three or four hours to be seen satisfactorily when someone is in crisis.

This person is lucky because he has a family and a circle of friends who are there to do those things. I suspect there are many people outside my experience who do not have that support base and who are just crying in the wilderness because there is no-one to help them negotiate the minefield of mental health bureaucracy in this town.

This is often a great complaint with all health services. The health services are highly expensive and we want to make sure that the most deserving people get them; so we have a whole lot of obstacles to stop people needlessly accessing them. But they become so difficult that the people who need the assistance often miss out because they don't have the wit, the wherewithal or the sheer energy to negotiate the system. When we get to the acute phase, there are many people who have been failed by the system because a simple cry for help is not enough.

The minister has spent a lot of time talking about the projects that they are going to do, the things that they are going to do. They are going to build a new PSU; they are going to design a policy to minimise violence in acute settings; they are going to do a whole lot of things. We are going to have a program for marrying the health and mental health requirements of people who are clients of the mental health service. All of these things are good but we need to see them happen.

First and foremost, what we need to see is some simple coordination and case management of the people who are in the system. Case management, in the personal experiences I have had, is non-existent. There are occasions when people have been told, "Yes, you should be case-managed." As Mr Smyth said, with roughly 40 to 50 clients per person in the mental health system, there is no scope for case management; we cannot have case management of people who need it because there are too many people being spread too thinly.

It is not appropriate, in a premier city in the First World; we should not be here on a regular basis discussing these problems that, under the tutelage of this minister over 3½ years, have seen little to no improvement. This is a disgrace; this is a shame for this whole territory. It is a shame for this minister and this government that, when people stand here on a regular basis and speak of these issues, we are told, "We have doubled the money; we are gunna throw more money at it; we are gunna come up with policies; we are gunna build a new infrastructure." There seems to be very little in terms of the day-to-day holding of the hand, the case management of people, the putting together of the resources in the best possible way.

In the case of our young friend, there is an awful lot of money being spent around the periphery and if somebody spent some time thinking about the best way to do it, he would get a better outcome and so would the territory.

MS PORTER (Ginninderra) (4.23): This government has a clear commitment to improve ACT mental health services, as acknowledged by the Mental Health Council of Australia in the *Not for service* report. As indicated by Mr Corbell, the ACT government has demonstrated its ongoing commitment to mental health by increasing funding for mental health services in the last three budgets. This increased expenditure has been recognised by any number of internal and external reports.

The *National mental health report* of 2002 noted the ACT government's expenditure on mental health services was lagging behind the national average, with a per capita expenditure of $75 in 2000-2001 compared to the national average of $81 per capita. Under the present ACT government, this level of funding has increased significantly and in the ACT's 2004-2005 budget, handed down on 4 May 2004, the government committed a per capita expenditure of $131.

This government does not have a record of resting on its laurels but has as record of getting on with the job. And the area of mental health is no different. The government is continuing to work hard to improve mental health services in the ACT.

In relation to hospital services, the government is building a psycho-geriatric inpatient unit at the Calvary Hospital campus and is undertaking planning processes to deliver significant and secure mental health inpatient facilities in youth mental health treatment and care. These new inpatient services will reduce pressure on the two public adult inpatient units that currently provide the inpatient services to these populations, that is, older persons and youth, and will be more appropriate, as Mr Corbell said.

Further, the ACT government has recognised that treatment is nothing unless it is coordinated, coordinating all types of care—crisis care, short-term care, long-term care, community care. It is not just about hospital services, as essential as these are.

This government's investment in community mental health services is a necessary parallel and is complementary to the inpatient units. Also, it is necessary in maintaining people in the community as fully participating members of our society. The ACT is now well ahead of the national average in funding community-based services which assist people to retain their links to work, family and community supports. Around 75 per cent of total mental health funding in the ACT is allocated to community-based services, as Mr Corbell said earlier. The national average is around 51 per cent. The ACT's commitment is around 75 per cent of total mental health funding.

An excellent example of one such community-based service is the connections volunteer program, which links people living with mental illness with a volunteer who has weekly social contact with that person. This program provides a valuable opportunity for ordinary people in the community to understand the effect of mental illness on individuals and on families, to assist in a very real way to maintain the health of the individual and even, in some instances, to provide respite to the families and carers of people affected by mental illness living in the community. This service is a preventative service—a service in the community to keep people healthy; to keep people healthy in their community, living in their community, and participating on a day-to-day basis in their community life.

Another example, one of very many that I could choose from, is Mental Health Education, a not-for-profit organisation which gives those living with mental illness the opportunity to visit schools and other locations and share their stories so that the stigma of mental illness can be broken down—broken down right at the earliest point in our lives—so that people in our community can understand that mental illness is just that, an illness.

These two successful examples demonstrate how beneficial it can be to respond to the issues associated with mental illness in our community and through our community, not to concentrate exclusively on acute care. It is not just about the medical profession; it is not just about bricks and mortar; it is not just about expensive treatments. It is about the whole of the human being and about the comprehensive response to the whole person that engages the community. Mental health must be about community support and understanding as well as about government providing services. One cannot be successful without the other.

This government takes very seriously its responsibility to those who have mental illness, their families and society as a whole. Mr Corbell has been congratulated for his very real attempt, on behalf of the government, to claw back the years of neglect by the previous Liberal government. It is evident that a great deal of progress has been made in this regard. It does not stop now, however. The government has articulated a very real strategy to further improve the delivery of services related to mental health in the ACT.

The government is planning to restructure mental health service provision along developmental and life milestones rather than the traditional age-based structure. This will feature children's mental health, youth mental health, adult mental health and older person's mental health services, and be reflected in government and community services and reflected in inpatient treatment and care provision at all levels.

The government has started the preparatory work for the review of the Mental Health (Treatment and Care) Act 1994. This review will modernise our mental health legislation and be conducted in light of the Human Rights Act this government enacted last year. The government is committed to a full and open review of the act, with extensive consultation with the community and with key stakeholders.

The government also made significant investment in the non-government mental health sector, as I have said, to provide psychosocial support, vocational training and employment for people with mental illness. The government has budgeted for $5.2 million in 2005-06 for these community services, up from $3.2 million in 2000-01.

All of this adds up to a very real commitment, as Mr Corbell said, to the ACT mental health service. It is a very real commitment by the Stanhope government—a commitment that was needed because of the years of Carnell-Humphries neglect—but one that means the delivery of an efficient and effective mental health service for all Canberrans.

MRS BURKE (Molonglo) (4.30): I am very pleased that this matter is being debated today. This MPI is a matter of public importance for all of us. The guiding principle that is generally acceptable for the provision of programs and services to people who have mental illnesses is that there must be a combination of community-based services and

support facilities in which appropriate services and care can be provided. The major issue that is raised by this MPI is the imperative to achieve a transfer of the provision of mental health services from those based in purpose-built facilities to community-based service delivery.

Running alongside of this is the fact that currently our health committee—Ms MacDonald is our chair, and Ms Porter and I are members of that committee—is looking into the appropriateness of housing for people in the ACT with a mental illness. It is a very timely MPI, I have to say, and a very timely topic that we do talk about and keep out there in the public arena. In our travels and on our investigations, it has been said by some commentators for the mental health sector that we, as a society, need to de-institutionalise the people and re-institutionalise the service.

As the Mental Health Council of Australia has also commented, the broad underpinning strategies for the transfer of mental health services to mainstream health services and community-based care were to build increased capacity in the work force, to deliver care within these altered service models, to build increased capacity in the community and non-government sector to provide care, and the empowerment of consumers and carers to participate in the planning, delivery and evaluation of care. The important outcome of this approach is to build these principles into the way in which these changed values and the mental health service provision are inculcated into service delivery. The good news is that there are examples emerging where these changed values appear to be leading to valuable changes in the ways that mental health services are being delivered.

Consider, for example, project 300 in Queensland. This project has shown how it is possible to achieve cross-sectoral cooperation between agencies and, by this cooperation, generate positive outcomes. Project 300 commenced in 1995 and has assisted some 200 people to move from long-stay psychiatric hospitals to community-based accommodation. This project has involved collaboration—that is a very key word there, isn't it?—between Queensland Health, the Department of Families, Youth and Community Care, the Department of Public Works and the Department of Housing. The good news is that this project continues today, with annual recurrent funding of $9.2 million to support 190 people.

It is also instructive to consider the approach adopted by, for example, the New South Wales government, with a recently released policy on responding to people with a mental illness. The New South Wales government has implemented the housing and accommodation support initiative, known as HASI. This has demonstrated that well-planned, community-based programs meet the needs of people with severe mental illness. This project involves collaboration between the New South Wales departments of housing and health and three non-government organisations operating within New South Wales.

Early-stage evaluation of the outcomes from this program, undertaken by the social policy research centre at the University of New South Wales, shows that there have been significant improvements in the quality of life for the people involved in this project. Probably the most interesting result from this initial evaluation has been a dramatic decrease in the need for acute hospital services by the people involved in the project. The social policy research centre suggests that there has been a 90 per cent reduction in the number of days spent in hospital by HASI clients over a 12-month period. The research

calculates that this reduction of time that people spend in hospital translates into savings of $7.3 million in hospitalisation costs.

I put a side note here to this speech that, if you think about this, it is not always about money. And as we have said, it is not about more money into the system but better outcomes for people. Often it is just about using the resources that we have within the system in a better and more practical way. As well, there are other costs that would otherwise be incurred and that would be saved through people being hospitalised and then released only to be re-admitted.

The Mental Health Council comments most favourably on this project. In a recent commentary, the CEO of the council said:

> Sadly we have too few programs like this around Australia and we have virtually no independent evaluations. We have governments continuing to invest in the wrong thing, in acute hospital beds and buildings, as a response to the mental health crisis rather than on community based services.

It gets back to what Mrs Dunne was alluding to in terms of case management. Maybe we need to re-evaluate what case management means. There are some excellent people working in the field, and I do not want them to be despondent today when we talk about this. We all need to ensure that we keep this topic out in the public arena for public debate in order that we can improve our services always. None of us is beyond reproach in regard to this matter.

The Mental Health Council emphasises that, while these two projects show what can be achieved, much further work needs to be done. I note that the minister does say that, but I hope he is not thinking he can throw money at the problem and then walk away. We all have a responsibility in this place to be a part of the solution. In particular, other areas of government must be involved to ensure that the education, training and employment needs of people with mental illness are considered. It is possible to achieve good outcomes from developing appropriate community-based programs and services for people with mental illness. At the same time, these programs are one part of the overall approach to responding to mental health issues. Again, that is the key. I agree.

It is not a one-size-fits-all situation, but certainly the Liberal opposition are trying to put forward what we believe are constructive and helpful options which we hope the government is not too arrogant to take on board. After all, we are all here working to the same end, and that is to see a reduction in the number of people with mental illness just languishing in our communities somewhere, with people so committed to working in the sector that we are falling over each other and not dealing with the problem.

As has already been mentioned, there will continue to be a requirement for appropriate secure facilities in which relevant programs and services are provided to people with mental illness. Again, I have pleasure in supporting this MPI. It is not a means of always bashing the government up but it is a means of saying to this government, "Don't be a government of delay; don't wait for election sweeteners; get off your hands; listen with some sort of humility to what we are saying; and make sure we can implement good things and work together as an Assembly," which is what people in the community expect us to do on such an important issue.

DR FOSKEY (Molonglo) (4.38): I welcome this topic. Mental health is an issue that I am taking a particular interest in. I have had a number of representations from constituents and meetings with consumer and carer organisations. It is very clear that there are quite a number of problems with the mental health system in the ACT. But of course the ACT is not alone in that. In many jurisdictions, people with a mental illness seem to be at the bottom of the priority list. Today's discussion has heartened me because it seems to me that all sides of this house are committed to improving outcomes for people with a mental illness. I guess the issue is: how do we want to do this?

It is timely that we are talking about this on the day that the government has launched the suicide prevention strategy for 2005-2008. According to that strategy, page 13, it has been estimated that 15 per cent of people diagnosed with depression will die by suicide. We know that depression is not the only mental health-related cause of suicide. We know people who have caused their own death when in a delusional or psychotic state, sometimes within those very institutions whose job it is to care and assist them.

The current government and earlier Liberal governments' approach is, unfortunately, primarily stuck within a medical model. Too often, they focus on people as though they are just their illness. That is insulting to anybody but it also misses out on the very major part of the way to assist people.

The *Not for service* report has been very useful. It was interesting to hear it quoted both by people who are criticising the level of service in the ACT and by people who are supporting it. But there is no doubt that it is a timely report which raises issues of interest.

Today the Youth Coalition of the ACT put out a media release, based on its budget submission, expressing its absolute concern at the fact that 24 per cent of people experiencing a mental illness in the ACT will be under 19 years of age. They ask that funding be directed to youth-specific mental health and dual diagnosis services and initiatives in the next budget. I know of young people whose parents are tearing their hair out because they cannot get access to a public psychiatrist, and the waiting period for private psychiatrists is far too long when your child is suicidal.

The *Not for service* report does provide some interesting quotations. I want to use some of these. A consumer and consumer activist said, about the ACT mental health system:

> I would like to know why mental health funding is dominated by the medical model when funding could be better used to develop mechanisms to provide assistance for when people are well. We need to give people an opportunity of a life worth living. In the ACT less than 5% of the funding for health—

Mr Corbell may have a different opinion; I would be very happy to see it in writing—

> goes into social programs to help people do what they want to do with their lives … The medical model is about risk management. We neglect people when we leave them to rot—in front of a TV all day! I lost all my social skills—I see so many of my fellow consumers who can't do this because they have been dominated by the medical model. People go into self-medication with pills and drugs—we are now the

> dominant group in the criminal justice system. We need case workers who have no more than 8-10 clients and who can give due attention to people's long-term needs.

The case management approach allows people with a mental illness to be supported in their own homes. Of course there are issues around whether they have a place to live or not. I am quite sure a number of homeless people also have problems with mental illness. We need to question whether the idea of putting people together in institutions, expecting them, as we would not expect ourselves, to be able to get on with everyone that is put in there with them, is definitely the model that we should follow.

Case managers who are properly trained—and there are issues about numbers of people employed and their ability to do the incredibly stressful work requiring the great expertise that is called for—would assist people to remain well. What happens, though, when a case manager goes on leave? We need mechanisms that provide that support when, as case managers do, they take their family leave, their holiday leave, and so on. I hope that is still going to be possible in the reformed IR system.

Too often our mental health system relies on crisis care and too often—

MR TEMPORARY DEPUTY SPEAKER (Mr Gentleman): The time for the discussion has expired. The discussion is concluded.

Crimes (Sentencing) Bill 2005
Detail stage

Clause 33.

Debate resumed.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (4.45): Mr Temporary Deputy Speaker, I will conclude my comments on my important amendment No 4. I note some of the comments that have been made by others in the debate. In responding to those comments, I simply make the point that the government's proposal in relation to the development of what is essentially an offence acknowledges that an assault on a pregnant woman can be dealt with in the context of being regarded very much as an aggravated feature of an assault. And that is what this is. It is an aggravated offence for which the maximum penalties available for a simple offence, an offence of assault or violence that is perpetrated on another human being, are increased.

In the context of a woman who is pregnant, this sentencing arrangement will allow a court, obviously consequent or subject to the passage of amendments to include aggravated offence within chapter 5 of the criminal code, to apply sentencing principles to take into account any harm that is caused to the pregnancy or the child born alive as a result of the pregnancy. The government's position in relation to this, of course, is that this is a far preferable way of dealing with this particular issue of an assault on a pregnant woman than the approach which the opposition in this place has sought to pursue on a couple of occasions in recent years.

I take issue with the suggestion made in the debate earlier today by some members on the other side that the position pursued by the Liberal Party in relation to this of course has nothing to do with an ideological position they pursue in relation to abortion. And, of course, it does. It is simply dishonest to argue that the legislative scheme proposed by Mr Pratt on successive occasions and supported by the Liberal Party in this place is anything other than a device to open up the issue around the status of a foetus. It is dishonest, it is devious and, of course, it is extremely hypocritical. We noted that in the debate this morning in response to this amendment. It was interesting to note the extremes to which the shadow Attorney and the shadow minister for police went to avoid any suggestion that this had anything to do with the status of the foetus. Of course, that is all it was about. This was a devious, dishonest and hypocritical attempt being pursued by the Liberal Party—

Mr Stefaniak: I take a point of order, Mr Temporary Deputy Speaker. "Dishonest" and "hypocritical" are highly offensive words that have been ruled out of order. I would ask the Chief Minister to withdraw them.

MR STANHOPE: On the point of order, Mr Temporary Deputy Speaker: I did not attribute those characteristics to any individual, and it is not disorderly in that sense. I did not attribute dishonesty or deviousness or hypocrisy to any individual. I simply was making the point that an argument that suggests that to seek to introduce legislation that has at its heart a proposal that a foetus be regarded as a life and being without acknowledging that it has anything to do with debates around termination or the right to choose an abortion, is devious, hypocritical and dishonest. That was the point I was making. If there was any suggestion that I was attributing any of those characteristics to any individual, I would, of course, withdraw and I do withdraw. But I was not doing that. I was talking about the device. That is my position and I have made that point.

I will conclude by saying that I find it unfortunate that there are those who would argue for legislation which seeks to create a separate legal status for a foetus in the context of an aggravated offence of assault on a pregnant woman without having the integrity to acknowledge that they are essentially pursing, or seeking to reopen, an argument around termination of a pregnancy. This is not being honest or acting with integrity. That is my position and it is the point I want to make.

Quite obviously, I am happy, of course, without being patronising, for anybody in this place to pursue any issue or any agenda they wish. That is what we do to some extent. We are elected to stand up for our principles, to act pursuant to our consciences on a whole range of issues and, of course, we do that to a greater or lesser degree. You might want to go out and argue and put your position in relation to abortion or termination of pregnancy. I have no issue with that—none at all. I respect absolutely your right to do so. All I am suggesting to you is that when you go out and do it, be open and honest about it. Do not introduce legislation into this place that is designed to open up that issue, to pursue that particular agenda, and pretend you are doing anything other than that. That is the point I make and that is the point I stand by. In any event, I am insisting that the legislative policy position which the government is pursuing through this particular amendment is far superior to the token for legislation which you advance and which you stand up in this place and support.

MR PRATT (Brindabella) (4.51): Mr Temporary Deputy Speaker, I exercise my right to speak a second time on this amendment. We have just heard a diatribe from the Chief Minister in which he said that his amendment will provide protections to the unborn. Let me make a few more points. Mr Stanhope's amendment to the Crimes Act, which seeks to insert a new section that would allow a court to "consider" if a victim of the offence was a pregnant woman in deciding how to sentence an offender, is inadequate.

I said earlier that I am pleased to see the Attorney-General acknowledge the need to plug some major gaps that exist in law and to give at least some consideration to the unborn child. However, the amendment that he has moved today is a pale imitation. The amendment is weak. It allows a court to "consider" if a woman is pregnant. There are no safeguards at all in this amendment for the unborn child. The word "consider" is a cop-out.

The most recent amendment that I presented to the Assembly would have made it an offence to injure or kill an unborn child through assaulting or poisoning a woman who is known to be pregnant and who, as a direct result of the offence, loses her child. The decriminalisation of abortion in 2001 did not allow for an assailant to be held responsible for the loss of an unborn child. It created loopholes that allow the injury, manslaughter, unlawful killing or murder of an unborn child during an assault on its mother to go unpunished.

I assume that Mr Stanhope is concerned that, in taking such steps, he would somehow revisit or undermine the decision made by the Assembly in relation to abortions. But this is not the case. The opposition does not seek to deny abortion when it is needed. I will say that again, Chief Minister: we do not seek to deny provisions in law protecting the right for abortion. This is another Stanhope furphy. It is another mislead of the ACT community that I or the opposition do not support abortion when it is necessary.

A number of other jurisdictions in Australia have "precautionary legislation" that covers the protection of unborn children at least to a certain degree. Queensland and New South Wales have laws protecting the unborn child and today the ACT government has copped out of doing the same. Government has a duty of care to protect as many people, born or unborn, as it can in society. Jon Stanhope's amendment will not achieve that. I am extremely disappointed that Jon Stanhope does not rate the protection of the unborn child as more of an important issue. But why should we be surprised, Mr Temporary Deputy Speaker? We have had ample examples of exactly how Jon cannot recognise or acknowledge his first duty—his duty of care to the broader community. We continually see a lack of such a position of mind in Jon Stanhope. He has no understanding. He would not know the definition of "duty of care" if he tripped over it.

Witness elsewhere—not just the law that he has put on the table that we are debating today—Jon's failure to put substantial instruments in place. Witness his failure to put substantial instruments in place to provide fundamental protections for our police force. Jon simply cannot go the extra mile and provide full protections to the pregnant woman and her unborn child. Instead, ideology gets in the way. What we hear is all this rubbish pouring out of his mouth, ridiculing the opposition's position in the abortion debate.

Mr Temporary Deputy Speaker, I again stress that Mr Stanhope is simply misleading the ACT community on what the opposition's position is. He is doing that because he knows that he has put on the table here today inferior legislation in respect of the protection of the pregnant woman and the unborn child. Again, the opposition calls on the Chief Minister to be bigger than his ideology and grasp the legislation that we have put on the table twice in three years. At least he should take the best of it, rebadge it and put it in place. He has failed to show some mettle in respect of this law, as he has failed to provide the protections that we would like to see in place for our ACT police.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (4.57): Mr Temporary Deputy Speaker, I just want to apologise to members of the opposition. I did not know and I was not aware that the Liberal Party had agreed to abortion, that they had embraced abortion, as Mr Pratt has just indicated. I did not know that was the position of the Liberal Party and I apologise to the opposition that I have been misrepresenting them. Mr Pratt has just informed us that the opposition, the Liberal Party, now embrace and endorse abortion in certain circumstances. I have to say I did not know that, and I apologise to Mr Pratt and to all members of the opposition for having misrepresented their position on abortion.

Mr Pratt—and the transcript, of course, will show this, Mr Temporary Deputy Speaker—has just indicated the Liberal Party's position. His very words were, "You keep misrepresenting us. The Liberal Party supports abortion in appropriate circumstances." I did not know that and I apologise to all seven members of the Liberal Party. I thought they were all opposed to abortion. It is news to me, from Mr Pratt's statement just now, that in fact they all support abortion in appropriate circumstances. So I apologise. I beg your pardons.

MR PRATT (Brindabella) (4.58): Mr Temporary Deputy Speaker, I seek leave to make a further statement.

Leave granted.

MR PRATT: Thank you.

Mr Stanhope: Just accept the apology.

MR PRATT: Thank you very much, Chief Minister. It is the first time in four years that I have heard an apology from you in this place. What a remarkable demonstration! I stress again that the opposition is not against the entitlement of abortion when it is necessary. And that is what I said, Chief Minister.

MR STEFANIAK (Ginninderra) (4.59): Mr Temporary Deputy Speaker, the clause we are dealing with has absolutely nothing to do with the abortion issue. We are referring to a couple of bills that Mr Pratt introduced which, if I recall correctly—and I am sure I do—specifically contained clauses that had absolutely nothing to do with the issue of abortion. My attitude towards abortion is on the public record, and it has not changed, Chief Minister. So there.

Amendment agreed to.

MR STEFANIAK (Ginninderra) (5.00): Mr Temporary Deputy Speaker, I seek leave to move amendments Nos 5 to 11 circulated in my name together.

Leave granted.

MR STEFANIAK: I move amendments Nos 5 to 11 circulated in my name *[see schedule 1 at page 4176]*. I thank the Assembly as this will help speed things up. If for some reason, which I doubt, the government were to support one of them, we would perhaps need to separate them at a later stage. But I assume that the government is supporting none of them and I will proceed on that basis.

These amendments relate to clause 33. One of the concerns the opposition has in relation to basically the sentencing provisions in, I think, section 342, or thereabouts, of the old Crimes Act, which are largely replicated in the new series of sections in chapter 4 of the legislation that we are now considering, is that there are indeed some impediments to proper sentencing. The opposition has expressed its concerns. Specifically, some members of the general community I have spoken to have made clear their concerns, as have victims of crime and representatives of the AFP. Some lawyers have assisted me in drafting instructions for the opposition's amendments. I think I may have articulated some of those concerns before.

Amendments 5 and 9 need to be looked at together. Clause 33 of the government's bill is concerned with relevant considerations regarding sentencing. Clause 33 (1) states:

> In deciding how an offender should be sentenced (if at all)—

we now have that in the legislation—

> for an offence, a court must consider whichever of the following matters are relevant and known to the court:

Included in that list is paragraph (g), which states:

> any action the offender may have taken to make reparation for any injury, loss or damage resulting from the offence;

We need to have a look at paragraph (v), which states:

> whether the offender has demonstrated remorse;

The people that I have spoken do not have a problem in relation to reparation. That is quite relevant. An offender who has taken the trouble to make reparation for an injury, loss or damage shows real contrition and remorse. What I have done in the amendment is put together both those paragraphs. Ordinary people I have spoken to who have had some dealings with the system have concerns that quite often an offender will demonstrate remorse, or theoretically demonstrate remorse, by saying, "Of course I am awfully sorry" and just simply not mean it. That person might then be back before the court, having committed further offences down the track. It is very easy to say, "I am

awfully sorry." That might put a tick in the box for demonstrating remorse but how can one be certain that that is real or otherwise?

One of the most effective ways of demonstrating remorse is in fact to try to make some reparation, be it a tangible thing or be it perhaps in some other way. My amendment to paragraph (g) states:

> the offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other way;

In other words, the offender has shown that they have done something, whether in the traditional way of making reparation for an injury, loss or damage—something tangible—or perhaps in some other way that we do not stipulate but we leave up to a court, to prove that they have shown remorse. So effectively the amendment keeps everything we have in relation to reparation for injury, et cetera, but also it ensures that that is used to show remorse. I think the words "or in any other way" are a general coverall that effectively take care of what is in paragraph (v). However, it ensures that the offender has to have done something. The offender has to show that he or she is genuinely remorseful and it is not just some act. Accordingly, that is the rationale behind those two paragraphs and I think that is particularly important for victims.

Amendment No 6 refers to cultural background. Whilst superficially you can see a logic in what is contained in the bill—this is something that has been in the old Crimes Act for some decades—when you look at more recent acts you can see that there are problems. There are problems with the Discrimination Act in that under, I think, section 7, you cannot discriminate in relation to ethnicity, cultural background, et cetera. Similarly, I think there might well be some problem with the Human Rights Act. So I think the bill now before us is actually inconsistent with a couple of other government acts. Again, is it something that a court must take into account? The court does have to take into account a wide range of things but I think the government might find that what is contained in this legislation is somewhat inconsistent with some of its other acts.

Amendment No 7 relates to paragraph (n) of subclause (1). Victims have raised very strongly issues which relate to paragraph (n), which states:

> the probable effect that any sentence or order under consideration would have on any of the offender's family or dependants;

Amendment No 8 is concerned with paragraph (q), which states:

> whether the recording of a conviction or the imposition of a particular penalty would be likely to cause particular hardship to the offender;

The attitude of victims and other people associated with the system is that the defendant should have to take some responsibility for their own action. Maybe a court might want to consider that effect. The key word here is that the court "must", rather than perhaps "may", consider those matters if they are known to the court. I would have no problem if it were "may", and I think a lot of victims would not either. But at the end of the day the probable effect the sentence will have on the offender or indeed his family is the offender's fault. The offender has committed the crime and whether what is in the paragraph should be a consideration that has to be taken into account by the court is of

concern to victims. I think this is fundamentally a problem and, accordingly, I would like to suggest that it be removed. This was a very strong recommendation made for very good reason by a number of people who assisted me in the compilation of our package. People should be responsible for their own actions. Anyway, there is ample opportunity for a court to take a plethora of considerations into effect, as well as things that they must take into effect.

Amendment No 10 relates to paragraph (y) on page 34 of the bill, which states:

> current sentencing practice.

The Chief Minister that says we are a small sentencing jurisdiction. We do not have three courts, we have only two—the Magistrates Court and the Supreme Court. We have a limited number of judges and magistrates in the ACT. As a matter of common practice, what happens in Australian jurisdictions is looked at. Current sentencing practice in the ACT is probably not sufficient a guide because in some areas we do not have that many offences.

It is important to look at current sentencing practices in Australia. That means looking at the current sentencing practices in the states because our Crimes Act is akin to the crimes acts that operate in the six states and territories. In drafting our legislation, our parliamentary council said, "If you say 'states', you effectively include in practical terms the Northern Territory in determining whether there is anything relevant in their legislation." So I think it is crucially important that we look at current sentencing practice. We need to enshrine in legislation that the courts have to look at current sentencing practice in the states—in other words, throughout the Commonwealth of Australia. Naturally, the courts here will look at their own decisions but we have to make sure that we take into account what happens in the rest of Australia. Our legislation would be quite deficient if we did not enshrine in legislation—and I hope this still occurs in practice—that we look at sentencing practices throughout the rest of the states.

Finally, amendment No 11 seeks to omit clause 33 (2) and (3) and substitute other words. Subclause (2) states:

> Without limiting subsection (1),—

which deals with all the things a court must look at—

> in deciding whether a good behaviour order is an appropriate penalty for an offence, the court must consider the nature and severity of the conditions that may apply to the offender under the order.

Secondly, subclause (3) states:

> Subsections (1) and (2) do not limit the measures a court may consider in deciding how an offender should be sentenced (if at all) for an offence.

I have truncated those two subclauses to read:

> (2) The court may have regard to any other matter the court considers appropriate.

I commend those amendments to the Assembly.

DR FOSKEY (Molonglo) (5.09 pm): Mr Stefaniak has moved a group of amendments. His amendment No 5, which sets out factors for consideration when sentencing, is obviously connected to his amendment No 9. Those factors include reparation and remorse. The key problem is that amendment No 5 links remorse necessarily with reparation. This implies that remorse of itself without reparation, which may be beyond the scope of the offender, lacks value. Since the amendment subtracts rather than adds to the clarity of these provisions, the Greens will oppose amendment No 5.

In respect of amendment No 6, I cannot support omitting cultures in this context. A person's cultural background can have significant impact on the court's decision about what makes an appropriate sentencing package. Courts are well placed to exercise commonsense and I do not have serious concerns that people will be excused for criminal behaviour on the basis of their cultural beliefs. As this bill is about sentencing and giving the courts discretion to find the most suitable sentence for an offender, I cannot support this amendment.

This is not an argument for cultural relativism, which is a concept that I deplore as excusing behaviour that often transgresses human rights; it is about finding sentences that are appropriate and actually assist the offender in learning about their behaviour. For instance, somebody who is being tried for an honour killing of a relative who they believe has transgressed a moral code by wanting to marry someone other than the chosen person will not change that opinion by being given a longer prison sentence. We only need look at the success of circle sentencing amongst indigenous people to see that appropriate sentencing can be achieved in line with cultural beliefs. So it is not going to help our community to throw away cultural considerations.

I am not sure if it is the intention but Mr Stefaniak's amendment No 7 is an offensive amendment because it asserts that, in determining the most appropriate sentencing package for an offender, the court must not consider the impact on family or dependants. This is putting it very baldly that sentencing is about punishment, nothing else, and this is not a standpoint that the Greens can endorse. If that really is the Liberal Party's position, I would like to see them show courage and honesty and actually tell the public that. That would give the community an opportunity to explain why that approach does not work in the criminal justice system. I am sure that if they came out and did that they would receive many interesting phone calls.

Amendment No 8 has a similar thinking behind it as amendment No 7—that sentencing is about punishment only—and this is a narrow point of view which I cannot support. In respect of amendment No 9, I do not agree that remorse could or should be equated with actions taken in reparation. While reparation is obviously desirable and often does reflect true contrition and remorse, as I said before when in speaking to amendment No 5, not all offenders are in a position to make full reparation. This amendment implies that remorse without reparation is worthless and reparation without remorse is also worthless. We do not agree with either of these ideas. They are too simplistic and they do not help.

I think the Stefaniak amendment No 10 would limit the court's ability to take into consideration broader current sentencing practices by only looking at the states'

sentencing practices. Again, I think this is a narrow point of view. We must keep ourselves open to considering what is occurring at a territory and federal level, and consequently I oppose this amendment.

Finally, amendment No 11 appears to be again part of the posturing on a populous tough-on-crime stance. It does not seem to recognise that in some circumstances a sentence might not be appropriate or that, if a behaviour order is awarded, this may have a severe impact on the offender. This should be considered. It is important that we are able to have that flexibility, so I cannot agree to support that amendment.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (5.15): The government opposes this raft of amendments, for very much the same reasons as Dr Foskey has outlined.

Amendment 5 is opposed. It would inherently link remorse with the making of a reparation payment. Dr Foskey went to this point as well. It may be an indicator of remorse but it is certainly not determinative of remorse. An offender may make a payment to give the impression of remorse but in fact behave in a way that demonstrates quite completely a lack of remorse. Mr Stefaniak's amendment would link the two inextricably in a way that reality does not or would not accept.

Amendment 6 is also opposed. The amendment would delete cultural background as a factor that a court must consider when sentencing an offender. The foreshadowed amendment to clause 42 would remove the requirement of the court to be informed of the offender's cultural background when a pre-sentence report is being prepared. I find it a quite remarkable suggestion by the opposition that a court should be denied any knowledge of an offender's cultural background at both the pre-sentence stage and at the sentencing stage. I cannot believe that there is anybody in 2005 that believes that cultural background is not a relevant factor when sentencing.

Indeed the High Court in Leeth v the commonwealth summarised succinctly that the common law may have failed adequately to acknowledge or address the fact that in some circumstances, theoretically, equality under the law sustains rather than alleviates the practical reality of social and economic inequality. And that is no more the case than in relation to indigenous Australians. I find that a remarkable amendment for the opposition to propose.

Similarly, the opposition amendment would remove the effects on family or dependants as a factor that a court must consider when sentencing an offender. Mr Stefaniak believes that a court should not take into account, when sentencing a person to imprisonment, the implications for that person's family. It is the most hard-hearted attitude for anybody, any party, in this day and age to take in relation to sentencing—in relation to crime and punishment—to suggest that an offender should be treated in isolation from his family and that the family should effectively be also subliminally or directly punished as a result of the actions of an offender.

It is an incredibly high threshold that you would impose—well beyond any expected or humane consideration of the consequences of the separation of a father or a mother, say, from that father or mother's children—that there be no capacity to take into account the

impact on, for instance, a severely disabled child of a sole parent who is the offender. The Liberal Party is seriously suggesting—just imagine that as a scenario—a sole parent, who has a severely disabled child and who, perhaps out of absolute desperation or destitution, commits an offence, is before a magistrate and is facing imprisonment and the magistrate, when sentencing, is not to be informed of or is to have no account of the fact that that sole parent is the sole provider of a severely disabled child.

It is a remarkable proposition for the Liberal Party in the Australian Capital Territory to put that a magistrate, being asked by a prosecutor to send an offender to prison, is not to have regard to the effects of that imprisonment on a severely disabled, dependent child. That is a remarkable suggestion. It highlights this hard-heartedness, this flintiness, this total lack of compassion and humanity that are the inexorable result of a rush to be tough on crime—to be tougher than tough, to be out there saying, "We are really hard on criminals," without any regard for the implications for the rest of society.

Mr Pratt: It is better than being soft all the time.

MR STANHOPE: Mr Pratt says he fully supports the notion that the sole parent of a disabled child should be sent to prison without any regard being had to the implications for the disabled child. Mr Pratt comes in and gives support to his shadow attorney on that notion.

Amendment 8 will also be opposed by the government. This amendment would delete the imposition of a penalty causing a particular hardship upon an offender as a factor when the court sentences an offender. Once again, this is a particularly high threshold. Courts will not mitigate solely on the basis of illness or disease. However, it has been relevant in cases involving vulnerable offenders such as people with severe intellectual disabilities, psychiatric disabilities or, where appropriate, custodial settings were not available. This factor should be retained. A court, surely, should be able to have regard, in sentencing an offender, to the particular hardship that an offender might suffer as a result of being imprisoned.

One needs to get to the heart of this. We need to drill down into what it is that the Liberal Party in the ACT is suggesting here. We saw it in relation to the potential impact on a disabled child. Just imagine a person with a severe psychiatric condition, a psychiatric disability of some sort, who comes before a court as a result of offending behaviour. Mr Stefaniak does not believe—and the Liberal Party in the ACT does not believe—that a magistrate should have regard to the particular hardship that a person with a severe psychiatric disability would face in being imprisoned. That is remarkable.

Amendment 9 would delete whether the offender has demonstrated remorse as a factor when a court sentences an offender. The amendment would mean that the court had no scope to assess whether the offender was genuinely remorseful or not. Remorse is a factor that is and should be relevant to sentencing. Considerations of remorse as a factor should, of course, be retained. Just imagine what it is that the Liberal Party is here suggesting: a young 18-year-old, never been in strife with the police before, never been before a court before, knows he has done something absolutely stupid—and there but for the grace of God, of course, goes every single one of us—is absolutely and utterly remorseful of something that he has done that is completely out of character and exhibits and displays the depth of that remorse for his behaviour, and Mr Stefaniak and the

Liberal Party in the ACT do not believe that that is a relevant factor to be taken into account in the sentence that is to be imposed. How remarkable is that!

Amendment 10 would require the ACT courts to regard sentencing practices in other states and territories as a model. This amendment would invoke a plethora of contradictions for the court and unnecessary appeals. It would be almost impossible for ACT courts to reconcile all of the different nuances of sentencing practice in all the states and territories for each ACT sentencing decision.

Amendment 11 would omit the provision that requires the courts to behave proportionally when imposing a good behaviour order. The court could not impose a condition that would be so severe as to compare with imprisonment or a greater punishment. Of course that provision should be retained in its current form. I am disappointed but not a bit surprised by that raft of amendments. They should all be opposed, and the Liberal Party should be exposed for its attitude to human beings. Essentially, that is what I am saying.

Before I sit down, I need to clarify remarks I make before. I did distinctly hear Mr Pratt, speaking on behalf of the opposition, claim that the opposition now supported abortion in appropriate circumstances. They were his very words. That is what the transcript says. I did not know that. I apologised to all members of the opposition for the fact that I did not know that the opposition now supported abortion in appropriate circumstances. Mrs Dunne was here at the time and did not take issue with the fact that Mr Pratt had indicated that the opposition now supported abortion in appropriate circumstances; so I assumed that Mrs Dunne was comfortable with that opposition position.

Mr Stefaniak, however, has now stood—and almost by way of a personal explanation—insisted that, in fact, he does oppose abortion; so I am at somewhat of a loss. I did apologise. In relation to Mr Stefaniak, I do need to withdraw my apology. But the situation we have—and I do feel awkward about this; Mr Pratt, it is in *Hansard*—is that Mr Pratt's words were: "The opposition supports abortion in appropriate circumstances." I did not know that; I did not know a single one of you supported abortion and I have made remarks to that effect. To that extent, it was inappropriate. I apologised.

Having apologised, Mr Stefaniak jumps to his feet and says, "No, I oppose abortion." I am in an awkward position. I am told that the Liberal Party position on abortion is that the Liberal Party now supports abortion in appropriate circumstances. I assumed—and I erroneously assumed—Mr Pratt was speaking for all seven members. Of course he only needed to be speaking for four. So I apologised to those three members who now do continue to oppose abortion and acknowledge that there are four that support it.

Mrs Dunne was here when Mr Pratt made his remarks; so I assume Mrs Dunne is one of the four. I will leave it at that. I now acknowledge that the Liberal Party supports abortion in appropriate circumstances. Mr Pratt does; Mr Stefaniak does not; I do not know about the other five. Three of them obviously do support it; maybe two do not but maybe they do. I will leave it at that. I will not speak another word on this, other than to say that that was an absolute revelation and an enormous shift. I guess it is the Liberal Party trying to become relevant and trying to respond to the constituency that it pretends to represent. But it is an enormous shift that, within the space of three years, the Liberal Party has moved from a position of total opposition to one of support. I congratulate you.

MR PRATT (Brindabella) (5.27): Mr Speaker, I would like to respond to those very kind words by the Chief Minister.

MR SPEAKER: At the same time you should confine your comments, to the maximum extent possible, to the amendments that are before the house.

MR PRATT: Thank you, Mr Speaker. It needs to be said that we are delighted that the Chief Minister has found humility and indeed a human quality to be able to apologise to the opposition. We have waited for four years to see such human qualities come forth. Again, I do thank the Chief Minister for clarifying matters. I stress again that what I did say in my speech—and I will read it again—was: "We do not seek to deny abortion when it is needed." I repeated that. I also said, "Do not mislead the community by saying that I or the opposition do not support necessary abortion." Thank you very, very much, Chief Minister; it has taken you all this time to work this out.

Chief Minister, I do not want to make abortion an issue here today, but you certainly do. We are talking about sentencing legislation covering a broad range of issues, but you have sought to make abortion an issue by misleading the community on the opposition's perspective on how we would like to see better protections put into law to support the pregnant woman and her child. You do not want to see that in there; clearly you have no interest in terms of your duty of care to ensure that sufficient provisions are put into law to protect the pregnant woman and the child. You are ideologically blind sighted, and all you can ever do is raise the abortion debate.

MR SPEAKER: Come back to the amendments before the house.

MR PRATT: Thank you, Mr Speaker. I just wanted to clarify the Chief Minister's motives and his attitudes. For the record, let us get that down pat. Thank you.

MR STEFANIAK (Ginninderra) (5.29): I wish people would read amendments properly, particularly Dr Foskey and the Chief Minister. Dr Foskey, in her speech in relation to this, was far more rational than the Chief Minister. She did, however, misread, as did the Chief Minister of course—he has a habit of doing this—amendment No 5, which basically encapsulates remorse and the ability of a defendant to make reparation. Quite clearly, it is not dependent on some type of reparation.

There are the key words "in any other way". That does not mean necessarily anything to do with reparation. But it does mean some tangible action to demonstrate remorse to a court. I stress that to members. That has got nothing to do with any monetary reparation or anything like that; it is just demonstrating to a court that there is some genuineness, there is something tangible to indicate the genuineness of remorse, because remorse is very, very important in terms of sentencing and in terms of bringing to a close injuries done to a victim.

The other thing I would mention, apart from the vitriolic speech by the Chief Minister in relation to all these draconian things, supposedly, the opposition is doing, is that in amendment 11 the court may have regard to any other matter the court considers appropriate. What we are doing here with these amendments is simply saying that some of these are not necessarily matters that the court must take into account, but a court will

take into account and may have regard to any other matter. Something like this cannot be completely exhaustive; there are a lot of things a court needs to take into account.

There are circumstances, obviously, when the family circumstances, just like you say, Chief Minister, are probably so extreme and perhaps the offence is not so heinous that that would mean a person should receive leniency. Indeed, the same applies to the persons themselves. In amendment 11, the court may have regard to any other matter it considers appropriate. The court has ample and full discretion, and there are ample cases, interstate funnily enough and here in the territory, to indicate that courts quite appropriately take into consideration matters of personal hardship. Read the thing properly.

I have spoken in the past in terms of—and I am happy to use this as an example again—the worst offence of all, murder. I would have every sympathy with the court not even imposing a custodial sentence on a battered wife of 20 years who, after 20 years of absolute misery to herself and her children, finally snapped and killed the offender. Those things have occurred in the past in Australia, and no doubt will continue to. It is very important for members not to get carried away with their own rhetoric and to read the amendments.

That having been said, I can see these amendments will be going down. As a result, we can also speed up a couple of things later in terms of other amendments which are consequential and which I will not be moving.

Amendments negatived.

Clause 33, as amended, agreed to.

Proposed new clause 33A.

MR STEFANIAK (Ginninderra) (5.33): I move amendment No 12 circulated in my name, which inserts a new clause 33A *[see schedule 1 at page 4176]*. This would introduce sentencing guidelines. It states:

> (1) In deciding the sentence to be imposed on an offender for an offence, a court must have regard to any relevant guideline judgment.
>
> (2) If a court imposes on the offender a sentence that is inconsistent with the relevant guideline judgment, the court must give written reasons for the inconsistency.
>
> (3) This section is in addition to, but does not limit, section 33.
>
> (4) In this section:
>
> ***guideline judgment***, for an offence, means a judgment of the Court of Appeal—

which we now have—

> that is expressed to contain guidelines to be taken into account by courts sentencing offenders.

Then there is a note:

> For the power to make guideline judgments, see pt 4.1A.

This would introduce guideline judgments which, I indicated before, have been introduced in New South Wales and have operated quite effectively there. It gives courts guidelines in terms of certain types of offences. I gave an example in my speech earlier this morning in relation to how this could operate. Of course, it does not limit the ability of a court to do something completely different, but a court does have to give written reasons for the inconsistency. Again, it is something that has worked well in New South Wales.

I heard the Chief Minister say, as a reason for not doing this, "In New South Wales, you have got a big jurisdiction." And you do. You have got about eight or nine Supreme Court judges; you have got a large number of District Court judges; I cannot remember how many magistrates there are but obviously there are a lot there. Yes, you can see the logic in that.

Because we are a small jurisdiction does not mean that something like this would not be very helpful. Again, it was something recommended to me by a number of lawyers and is supported by the AFPA, victims groups and others because it gives, for serious offences, a superior court the ability to say, "Right, let's have a guideline judgment there." It ensures consistency. Even though we are a small jurisdiction, I do not think anyone could truthfully say that, in the ACT, we have consistency. We do not. Each judge, each magistrate, is an individual. There has to be, by necessity, as human beings, a certain amount of subjectivity. That does make it hard for consistency.

It is a perennial problem in courts, no matter whether you have a small system where, if anything, it is possibly starker, or a larger system. That is why, as much as anything, for consistency of judgments, New South Wales went down this track. It would help immensely in terms of ensuring a greater consistency of judgments in our Supreme Court and obviously there would be a follow-on, flow-on, effect to the Magistrates Court as well. I commend the amendment to the Assembly.

DR FOSKEY (Molonglo) (5.37): Sentencing courts already must have regard to precedent. Consequently, I do not see the need for this amendment. I fear that it is yet another attempt to allow the government of the day to interfere with judicial independence. I envisage that it would unduly and improperly politicise the judicial process, as the government will come under media and public pressure to make particular cases into guideline cases.

I can say quite confidently that we would witness both of the major parties trying to outdo each other with tough-on-crime credentials, as happens in other jurisdictions, including the one we have been incised from, which is also the one that Mr Stefaniak gave as an example. This will be to the detriment of sensible, proportionate and individually tailored sentencing decisions. Not only are judges individuals but also offenders undergoing sentencing are.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (5.38): This amendment, in conjunction with Mr Stefaniak's foreshadowed new part 4.1, would introduce guideline judgments to the territory. The government will oppose these amendments. During the development of the government's Crime Sentencing Bill, not a single stakeholder advocated guideline judgments. In his speech introducing the amendment, Mr Stefaniak gave no reasons why the ACT needs guideline judgments at this time, apart from bringing the ACT into line with New South Wales. Mr Stefaniak's proposal does indeed follow the New South Wales act.

Guideline judgments are judicial statements on the suitable range, starting point or factors to be considered when imposing sentences for a type of criminal offence. Guideline judgments aim to improve the consistency of sentencing where the decisions of inferior courts are too variable to be consistent. Usually the superior court issuing the guideline judgment will use a case that typifies the facts in forming the prosecution of an offence.

As I indicated earlier, New South Wales has three tiers of courts—local, district, and supreme. The 190 local courts in New South Wales are geographically spread across the state. In 2002-03, all New South Wales courts imposed a total of 15,971 custodial sentences. Conversely, the two ACT tiers of courts are the Magistrates Court and the Supreme Court. The two courthouses are both located in Civic. In fact, they are 100 metres apart. In 2003-04, both tiers of the ACT courts imposed a total of 822 custodial sentences. The size of the ACT simply does not warrant guideline judgments, nor is the ACT experiencing a problem with precedent.

Further, while not ruling out guideline judgment as a whole, the High Court ruled, in Wong v the Queen, against the guideline judgment that substitutes for the role of the parliament to set penalties. The High Court also found that the New South Wales court had acted beyond its power under the Criminal Appeal Act of 1912, because, while it had jurisdiction in respect of the particular offenders before it, the court had no jurisdiction to publish a table of future punishments over other offenders not before the court.

The High Court did not determine whether the guideline judgment issued in Wong offended the separation of traditional and executive powers. However, reference was made to the Canadian Supreme Court's deliberations on the matter. The majority in that Canadian case decided it was not for the court to create subsets of legislatively identified offences. In his judgment, Justice Kirby stated that the introduction of subclassifications for statutory offence by reference to quantity alone is incompatible with the scheme devised by the parliament.

Rather than decide this issue, it seems that this reasoning of the majority of the High Court supported their decision that the New South Wales court's guideline judgment is contrary to sentencing principles, which include many contradictory elements of decision-making and require proportionality from the sentencing court. Guideline judgments become a legal and political problem when the court substitutes for the role of parliament and begins to prescribe particularities of facts to sentences, rather than identifying an appropriate range, relevant factors or starting point for a type of offence.

The government does not believe that any case has been made to introduce New South Wales guideline judgments on the basis that New South Wales does it and we should slavishly follow. The government does not believe any case has been made to introduce guideline judgments in the ACT.

MR STEFANIAK (Ginninderra) (5.42): I thank members for their comments. The guideline judgments, from my information, work well in New South Wales.

In relation to a point the attorney made—and I did not address amendment 18 along with amendment 16, which I do now because effectively both of them deal with and would introduce guideline judgments—this gives the court of appeal, on its own initiative or at the request of the attorney, the ability to give a guideline judgment, which is to be taken into account by courts when sentencing offenders. Then it indicates when a guideline judgment can be given. It can be given either separately on proceedings that the court of appeal considers appropriate or it can be given in proceedings, even when it is not necessary for deciding the proceedings. It may be reviewed, varied or revoked in a later guideline judgment. It does not limit the power or jurisdiction that the court of appeal has, apart from this section.

If the attorney has got some real concerns in relation to some points raised by the High Court, I would suggest the easiest way would simply be to amend it and take out the ability of the Attorney-General to request a guideline judgment. It is not "demand"; it is "request". What is there is absolutely in line with the principle and the doctrine of separation of powers. But if there are particular concerns, he could simply remove the Attorney-General from the equation so that he cannot even request a guideline judgment.

To Ms Foskey, I say that it is not the executive interfering here; it really is the courts doing it themselves. Again, if you read the amendment, it is quite clear that this is giving the court the ability to consider a guideline judgment for consistency. That is very, very, important. It is important in terms of making out a case why guideline judgments would assist in terms of proper sentencing. It operates in New South Wales. Again, the size of the jurisdiction, I would submit to you, simply does not matter. In fact, in a smaller jurisdiction, it might even be that much more helpful and appropriate.

I can read numbers. I make those points and note that this too will be voted against.

Question put:

> That **Mr Stefaniak's** amendment be agreed to.

The Assembly voted—

Ayes 6		Noes 9	
Mrs Burke	Mr Stefaniak	Mr Berry	Ms MacDonald
Mrs Dunne		Mr Corbell	Ms Porter
Mr Mulcahy		Dr Foskey	Mr Quinlan
Mr Pratt		Mr Gentleman	Mr Stanhope
Mr Smyth		Mr Hargreaves	

Question so resolved in the negative.

Amendment negatived.

Clause 34.

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

Adjournment

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

> That the Assembly do now adjourn.

Dismissal of Whitlam government

MR MULCAHY (Molonglo) (5.48): Mr Speaker, in the frenzy of celebrating the 30th anniversary of the dissolution of parliament and the calling of a general election in November 1975, the Labor Party and, quite regrettably, many in the media have attempted to rewrite history. I have spoken before about these history revisionists and I thought it appropriate to ensure the facts were on the record on this occasion.

Unfortunately for his enthusiastic followers, Mr Whitlam will go down in history for what he is: not as the grand old man of Labor, but as the vain and failed leader of a dysfunctional and incompetent government. He will be remembered as a dissembler, unable to rise above his grudge against the then Governor-General, a Governor-General who did precisely what his oath of office and the Australian constitution required of him.

A fact that Labor cannot dispute is that the federal nature of our constitution provides that the Senate undoubtedly has constitutional power to refuse or defer supply to the government. Whether you like it or not, the Senate was correctly exercising its constitutional power in delaying the passage of the supply bills. Mr Whitlam himself knew that, for he had attempted on many occasions to use that power to block the passage of budget bills, notably in 1967 against the Holt government and again in 1970 against the Gorton government.

Mr Whitlam also accepted and advocated that a Prime Minister who cannot secure supply must resolve the matter either by resigning or by advising a general election. In attempting to block the Gorton government's budget and force an election, Mr Whitlam said:

> We all know that in British Parliaments the tradition is that if a money bill is defeated … the government goes to the people to seek their endorsement of its policies.

I was quoting from *Hansard* of 1 October 1970. If the Prime Minister refuses to do so, the Governor-General has the authority and indeed the duty under the constitution to withdraw the commission of the Prime Minister. Therefore, Mr Whitlam was and still is totally wrong to say that he was dismissed unconstitutionally.

I remind members opposite that, having withdrawn the Prime Minister's commission, the Governor-General did, as required, appoint a caretaker Prime Minister on the twin conditions that he immediately pass supply in the Senate and advise a double dissolution to allow a general election as soon as possible. Those are the facts. Amidst all the cries of ridicule, shame and revisionism, nothing will change those facts as they stand.

As an almost poetic sequel, when the people passed their judgment there was an overwhelming repudiation of the Whitlam-led ALP, the bit that seems to have been forgotten by many journalists in recent days. It was absolutely clear that Labor, under Whitlam, had lost the entire confidence of this nation.

The Whitlam record became one of disaster, deceit and international embarrassment. It is easy to see why, during the time of his government, Mr Whitlam did not want a general election. His polling must have shown that he would be slaughtered by the electorate, and indeed he was. Those of us who were around and lived through that process saw the enormous damage that was inflicted on this country in an incredibly short period. But so hungry was he to hang on to power that he tried to govern without supply.

Mr Whitlam was prepared to undermine the very basis of the constitutional system in Australia. He even tried to get his hands on several million petrodollars from a shady moneylender. Who can forget the Khemlani scandal? At home, unemployment had increased over 200 per cent during Mr Whitlam's term as Prime Minister. Days lost by strikes rose by 180 per cent.

We do not see that mentioned in the nostalgic articles about what happened in November. We do not see mention of the fact that inflation increased from five per cent to 16 per cent per annum or that commonwealth expenditure was out of control, increasing by 20 per cent in 1973-74 and a massive 46 per cent in 1974-75. With such an appalling record, it is no wonder that Mr Whitlam had lost the trust and confidence of the people.

No amount of argument about constitutional technicalities, conspiracy theories or hypothetical defections can ever alter the facts. The Governor-General did what he had to do under the constitution. To break the political deadlock, he let the people decide. As Sir John Kerr remarked a decade later, "There could have been no more democratic result."

Industrial relations

MR GENTLEMEN (Brindabella) (5.53): I will just bring members back to 2005. Over recent days, Mr Mulcahy has found it useful to ignore the concerns of working families in the ACT and attack the union movement as irrelevant. I suppose it stands to reason that someone who would support the destruction of 100 years of workers' rights and entitlements would choose to ignore the country's largest social movement, as it is now and has been since federation.

Mr Mulcahy would have been a little anxious this morning and maybe a little lonely because, whilst he was contemplating his next attack on workers in the ACT, those same workers were heading to the Canberra racecourse in solidarity against the proposed

industrial relations changes. Today will go down in the history books. Today, over 360,000 workers took a stand for their rights and the rights of their children. Over 200,000, as reported by the ACTU, gathered in Melbourne. The *Sydney Morning Herald* reports 120,000 in New South Wales, including Sydney, 20,000 in Perth, 15,000 in Tasmania, 10,000 in both Adelaide and Hobart, and in excess of 4,000 in Canberra.

In addressing the country this morning as it rallied together, via live telecast, Greg Combet, ACTU secretary, said:

> Today, by rallying in such huge numbers, we declare that working people will not be denied a central place in Australia's future.
>
> Working families built this country. They fought and died for it.
>
> They do not deserve to have their rights at work taken away.
>
> The government's laws are motivated by ideology—the articles of Liberal Party faith—the prejudices of the Prime Minister.
>
> We face these laws simply because the Government has won control of the Senate and has the power to do what it wants.
>
> And in the next couple of weeks the Government will abuse that power and ram these laws through.
>
> When it does so, it will not signal any setback for our campaign.
>
> Rather, it will signal the start of a determined, relentless effort to overturn these laws and put in their place decent rights for the working people of this country.
>
> That is our goal.

Despite every attempt by employer groups around the country to scare employees from attending today's rally, they turned out in droves. Mums and dads with their children, retired workers in support of their working families, and union members all stood up for their rights. "Your rights at work, worth fighting for" is the slogan of the ACTU campaign, and it is fitting. But I think it extends beyond your rights. As Sharan Burrow, ACTU president, stated this morning in Melbourne, we are in danger of being the first generation who will leave to our children worse working conditions.

Your rights at work is about all rights at work now and in the future. No worker should have to choose between losing annual leave with his or her family or the sack for not signing an AWA with such clauses. No worker should have to pay huge legal costs for fighting an unfair dismissal. No worker should lose penalty rates in the name of flexibility. These things we believe now and we believe for the future.

Four thousand workers and their families turned out to this rally this morning, despite Mr Mulcahy's belief of its irrelevance, despite the threats by employer groups and despite the fanciful figures on public service cost of attendance. Our Chief Minister received a 4,000-strong standing ovation, a fantastic response from the Canberra community.

Members of the CFMEU who were threatened with individual fines of $22,000 for attending were proudly flying their union flags. Childcare workers, truck drivers, retail workers, the men and women whom this city relies upon to function, came together to fight, and fight they will. If Mr Mulcahy was not nervous this morning, he should have been because, as Greg Combet said, today is just the beginning.

Industrial relations
Mental health

DR FOSKEY (Molonglo) (5.58): First of all, I want to endorse the things that Mr Gentleman said and to say that I was very proud to be amongst the 4,000 people today. I just hope that we are all going to go and join a union now, if we are not already part of one.

I am going to use the time available to me in the adjournment debate to finish saying what I was saying about mental health during the MPI debate when the clock so cruelly cut me off mid-sentence. Mental health is a really serious issue. I know that it adds a certain heaviness to the adjournment debate, but I feel that it is incumbent upon me to make the points that I need to make because they were not made by other people.

There are people in the ACT with a psychiatric disability whose interactions with mental health staff are no longer therapeutic. I know that they are seen as a problem to both the staff and to police and the courts. In fact, some of these people have been refused treatment by mental health services. How do we deal with that? They have human rights, like everyone else.

Work done by ADICUS, which is a group that advocates for people with disabilities, people with elderly people in care and others, has asserted that the fundamental need is for adequate levels of suitable staff in the ACT government and community-based agencies. It is a pity that increasing the numbers and the expertise of staff is not seen as a sexy thing that governments can put in front of voters before an election; yet that is where the need is. Perhaps we do not need more buildings to the same extent that we need good staff.

The other problem is that, partly because of the lack of good staff and resources, ACT mental health services operate under a risk management approach. Thus, people need to be in crisis to get attention. As a result, those people who are not in crisis receive very little support through case management. When they are well they are neglected and when they are ill they are considered too difficult.

The major place where people are well is when they are living their own lives as closely as possible, and that means in their own homes. That is why we need to be able to oversee their needs, to listen to them and to support them at that varying level. Sometimes they will not need much support at all, but often a person with a mental illness knows when they are going to go into a situation where they need support and that is when the resources need to be there.

Whilst we acknowledge that the deinstitutionalisation programs of the 1970s were based on a very progressive idea, they were not accompanied by an equivalent development of

community-based support. Essentially, people were dumped and we have not yet caught up with that situation. Whilst the ACT had no institutions comparable to those found in the states, there is a local example of that because, when the Watson hostel was closed down, a number of people found themselves without adequate support.

There are good models. The South Australian government has implemented an approach that focuses on establishing long-term case management for people with a medical illness and it has a mental health court to apply the principles of therapeutic jurisprudence with a view to addressing health issues that lead to criminal behaviour. I have not yet heard that mentioned as an approach and we do have magistrates complaining that they do not have options when they have before them people whose problem is mental illness rather than criminal behaviour as such. There is a number of other models. I do not have time to go into them now, but I will refer to them on later occasions. I think that a tripartisan approach would ensure good outcomes.

Dismissal of Whitlam government
Appeal for clemency for Mr Van Tuong Nguyen

MRS DUNNE (Ginninderra) (6.03): Mr Speaker, to follow up briefly on the remarks made by Mr Mulcahy, it is useful to reflect on the constitutionality of the actions of Sir John Kerr and also to reflect upon other instances when governors and governors-general have been forced to remove a Prime Minister or a premier from office. Sir Philip Game removed Jack Lang as the premier of New South Wales and Mr Lang was not returned at the next election. By contrast, Sir John Buchan, the author of *The Thirty-Nine Steps*, was forced as Governor-General in Canada to remove a Prime Minister who was returned at the subsequent election. So there is very much a constitutional precedent for what was done.

I turn to another matter of equal importance. As members of the Assembly will be aware, earlier this month I presented a petition to the Singaporean high commissioner calling on the republic's Prime Minister and cabinet to reconsider the decision not to commute the death sentence imposed on Australian citizen Mr Van Tuong Nguyen. This petition was signed by all members of the ACT Legislative Assembly and significant numbers of Assembly and political staff. I thank all members and staff of this Assembly for their cooperation and support in this very important matter.

The petition was offered and accepted as an appeal for clemency on purely humanitarian grounds and with due respect for the sovereignty of the Singaporean nation. As with similar petitions organised by our federal colleagues, this display of bipartisan concern, or tripartite concern, clearly demonstrated that, for all our differences, there are certain basic values which as Australians and representatives of the people of the ACT we all share. It is highly unlikely, sadly, that the Singaporean government will be swayed by any of our representations on Mr Nguyen's behalf, as the high commissioner made clear politely but firmly when we spoke. Singapore's hardline policy on drugs is not negotiable and is applied equally to everyone, regardless of circumstances or nationality.

That raises all sorts of issues with which, as members of the Assembly, we will be familiar. Some of them are essentially pragmatic. What sort of message, for example, does this case send about the wisdom of fully cooperating with the authorities, as Mr Nguyen did? Where there is no room for discretion, no differentiation between

cold-blooded, systematic drug trafficking and a desperate and stupid mistake, where there is no forgiveness, then a hardline policy is in serious danger of defeating its own purposes.

But more important than these pragmatic considerations are the questions of principle, the two most important being that of the respect that we should have for the sovereignty of another friendly nation and that of the moral arguments either for or against capital punishment. Indeed, if we broaden our perspective to take account of the numerous other moral and political issues involved in combating the general threat of terrorism, it is clear that such questions of principle are more acute and more pressing now than perhaps at any other time any of us who are old enough can remember.

Realistically, there is very little that we as individuals, or even as an Assembly, can do other than to state our case as plainly and as persuasively as possible to indicate where we stand and why. I am not a moral relativist and believe, among other things, that the death penalty is intrinsically wrong and that no civilised society should resort to torture. I am well aware that other people, including many Australians, do not share this belief and will not be moved by argument, evidence or simple humanity.

That does not mean that we cannot, or should not, articulate our values and take whatever practical steps we can to put them in place. To this end, I am proposing to resuscitate the ACT Legislative Assembly Amnesty International group, and have taken steps to commence it. In its earlier incarnation it was a tripartite initiative open to all Assembly members and Assembly staff and it was headed in my time by my former employer Gary Humphries, now Senator Humphries.

We will naturally work closely with our counterparts in the federal parliament on a range of issues, including some that I have raised in this place and elsewhere in the past, such as legal and residential rights for women who have been forced into sexual slavery. Of necessity, our efforts must be modest but will, I trust, go beyond the purely symbolic. I will shortly circulate details of the proposed group to all members and staff and look forward to working with as many of you as possible.

Industrial relations

MS PORTER (Ginninderra) (6.08): Tonight during the adjournment debate I wish to issue a warning to those opposite and to their federal colleagues up on the hill. This morning I was fortunate, along with many others, to attend the Canberra contribution to a national political protest, the largest of its kind this country has ever seen. I am sorry that some of those opposite missed the bus.

We saw the young and the old, people from the union movement, from the Australian Labor Party and from the Australian working community, unite in opposition to the Howard government's extreme IR agenda, an agenda which is an assault not only on working Australians but also on the way of life of our entire community. It is an assault on the fabric of our society which, as we have seen by now from the detail of the industrial relations changes, will abolish the five-day working week, demolish the concept of time off on weekends, abolish the right to public holidays, decimate the concept of four weeks annual leave and normal working hours, and abolish penalty rates.

I have heard a cry from those opposite that this can all be bargained for and negotiated by the worker when he or she sits in front of the boss for the AWA interview. Unless you have a skill that is particularly hard to source elsewhere or you are blessed with superb negotiating ability, you will be singing for your supper if you think that, given such an unequal relationship as boss and worker, you can hope that many people, particularly those who are currently unskilled or on minimum wages and conditions, will be able to preserve their right to a fair deal.

The way of life that we have long fought for is about to be lost and irreparable harm will be inflicted on our community, harm such as Mr Howard probably has never imagined. However, even as he hears the cries of thousands of Australians today, he blocks his ears and resolutely continues to maintain his determined path towards the shameful introduction of these horrendous IR changes, changes condemned by people from all walks of life. This is indeed a shameful page in our nation's history, but I predict that we will look back on today as the day that the people of Australia set their collective feet very firmly on a path that will lead to the ousting of the Howard government once and for all.

The warning I issue to the opposition today is to beware. The strength of the opposition to this legislation is unlike anything you have ever seen. The demonstration of unity we saw this morning across the country is something which has not been seen on either side of politics for over 100 years. In fact, the last time we saw such a unified approach from employee representatives was when our great party was established. The strength of this movement will result in the rise of political debate once again and will throw out the Howard government in 2007.

John Howard does not realise that, for all the intended so-called economic benefits of this legislation, the biggest and most important effect will be the growth and the development of the union movement, the thing that he wishes to destroy. Unions will be there when the new five allowable matters fail to stretch to the protection of the minimum wage or when the collapse of the award system results in workplace inefficiency because of uncontrolled internal competition in the workplace. Every step of the way, unions will be there, and so will we. It is not hard to motivate the working community to rally against these extreme changes. For that very reason, they are extreme.

Abortion

MR PRATT (Brindabella) (6.11): I rise to clarify remarks I made earlier today which have clearly caused some confusion. As is well known, the Liberal Party treats the issue of abortion as a conscience issue. As a result, the Liberal Party itself has no collective position on abortion. It is also on the record that the current seven members of the parliamentary Liberal Party oppose abortion to one degree or another.

In debate earlier today, I had certainly given the impression that the Liberal Party does not oppose abortion. That was not my intention, and I apologise for the confusion caused. My personal comments during this debate were around current legislation and the fact that my position, and indeed the opposition's position, on protecting the unborn

child does not seek to undermine current legislation regarding abortion. The abortion issue is a separate issue and it is a separate battle for debate another day.

If I may finish by talking about the issue of protection of the pregnant woman and the unborn, under current laws a woman has the right to abort if that is her choice. But so too does a woman have the right to take to full term. My difficulty is that the Chief Minister does not seek to enshrine that right, to ensure that the law reflects the right of a woman to take her unborn to full term. His amendment today really was a lame attempt to appease perhaps lobbyists who have been upset because he did not support previous attempts by the opposition to try to enshrine that right.

Indeed, the government's decriminalisation in 2001 of the law on abortion, which was of course the government's choice, which was the position pursued by the government, did open up a loophole which the Chief Minister has negligently presided over since because he is ideologically blind sighted on a narrow civil liberties platform in favour of only one lobby.

Today, unfortunately, the sentencing debate, which covered a broad range of issues, was turned on its head by the Chief Minister, who was clearly determined to turn the debate into a debate on abortion and misled the community by indicating that I stand for undermining existing law or undermining the government's existing position on the management of abortion. I remind the house of what I said when I tabled my legislation seeking to protect the pregnant woman and the unborn. I said:

> There are a number of key features in the Crimes Amendment Bill 2005—

which was my bill—

> that make it very clear that lawful abortions in the ACT are recognised and sanctioned in the provisions of this bill.

I went on to say:

> The bill does not go against the Crimes (Abolition of Offences of Abortion) Act 2002.

I say again that the bill did not go against the Crimes (Abolition of Offences of Abortion) Act 2002. I stated then:

> This bill—

the bill that I was debating—

> clearly excludes lawful abortions and enshrines the acknowledgment of lawful abortions in the crimes act. In addition, the bill also provides that it does not apply to anything done by a pregnant woman in relation to her unborn child.

I also stated:

> This bill is not an attempt to revisit or to undermine the decisions made by this Assembly in relation to abortion. Abortion laws in all other jurisdictions provide

> precautionary legislation that covers the protection of unborn children to a certain degree.

I just wanted to remind the house of that position, which was so badly misrepresented today by the Chief Minister, who was clearly determined to turn the sentencing bill debate on its head and into a debate about abortion by misrepresenting the opposition's position in saying that its proposed legislation was all about undermining the existing position that the government has on the management of abortion.

Question resolved in the affirmative.

The Assembly adjourned at 6.17 pm.

Schedules of Amendments

Schedule 1

Crimes (Sentencing) Bill 2005

Amendments moved by Mr Stefaniak

1
Clause 10 (2)
Page 7, line 5—

omit

2
Clause 14 (3), note
Page 13, line 14—

omit the note, substitute

Note Section 33 (1) (m) requires the court, in deciding the sentence to be imposed on an offender, to consider the offender's financial circumstances if relevant and known to the court.

3
Proposed new clauses 24A to 24C
Page 23, line 10—

insert

24A Non-association and place restriction orders—suspension while offender in custody

(1) A non-association order or place restriction order for an offender is suspended while the offender is in lawful custody.

(2) The suspension of the non-association order or place restriction order does not operate to postpone the date when the order ends.

(3) The offender is not taken to be in lawful custody only because the offender is serving a sentence by way of periodic detention.

24B Non-association and place restriction orders—contravention

(1) An offender must not engage in conduct that contravenes a non-association order or place restriction order to which the offender is subject.

Maximum penalty: 500 penalty units, imprisonment for 5 years, or both.

(2) Subsection (1) does not apply if—

(a) the offender associated unintentionally with a person in contravention of a non-association order and the offender immediately ended the association; or

(b) the offender otherwise has a reasonable excuse for the contravention.

(3) In this section:

engage in conduct—see the Criminal Code, section 13.

24C Non-association and place restriction orders—changing or revoking after subsequent conviction

(1) This section applies to an offender who is sentenced by a court in relation to an offence (the ***new offence***) while subject to a non-association order or place restriction order in relation to another offence (the ***old offence***).

(2) When sentencing the offender for the new offence, the court may change or revoke the non-association order or place restriction order for the old offence.

4
Clause 33 (1)
Page 32, line 19—

omit everything before clause (1) (a), substitute

(1) In deciding the sentence to be imposed on an offender for an offence, a court must have regard to any of the following matters that are relevant and known to the court:

5
Clause 33 (1) (g)
Page 33, line 15—

omit clause 33 (1) (g), substitute

(g) the offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other way;

6
Clause 33 (1) (l)
Page 33, line 24—

omit

cultural background,

7
Clause 33 (1) (n)
Page 33, line 27—

omit

8
Clause 33 (1) (q)
Page 34, line 6—

omit

9
Clause 33 (1) (v)
Page 34, line 16—

omit

10
Clause 33 (1) (y)
Page 34, line 26—

omit clause 33 (1) (y), substitute

(y) current sentencing practices in the States.

11
Clause 33 (2) and (3)
Page 34, line 27—

omit clause 33 (2) and (3), substitute

(2) The court may have regard to any other matter the court considers appropriate.

12
Proposed new clause 33A
Page 35, line 12—

insert

33A Sentencing—regard to guideline judgments

(1) In deciding the sentence to be imposed on an offender for an offence, a court must have regard to any relevant guideline judgment.

(2) If a court imposes on the offender a sentence that is inconsistent with the relevant guideline judgment, the court must give written reasons for the inconsistency.

(3) This section is in addition to and does not limit section 33.

(4) In this section:

guideline judgment, for an offence, means a judgment of the Court of Appeal that is expressed to contain guidelines to be taken into account by courts sentencing offenders.

Note For the power to make guideline judgments, see pt 4.1A.

Schedule 2

Crimes (Sentencing) Bill 2005

Amendments moved by the Attorney-General

1
Clause 18 (4)
Page 17, line 23—

omit clause 18 (4), substitute

(4) This section is subject to section 133A (Operation of ancillary and restitution orders).

2
Clause 19 (4)
Page 19, line 7—

after

chapter 7 (Reparation orders)

insert

and section 133A (Operation of ancillary and restitution orders)

3
Clause 20 (5)
Page 20, line 11—

after

chapter 7 (Reparation orders)

insert

and section 133A (Operation of ancillary and restitution orders)

4
Proposed new clause 33 (1) (fa)
Page 33, line 14—

insert

(fa) if a victim of the offence was a pregnant woman—

(i) whether the offender knew, or ought reasonably to have known, that the woman was pregnant; and

(ii) whether the offender intended to cause, or was reckless about causing, loss of or harm to the pregnancy; and

(iii) the loss of or harm to the pregnancy; and

(iv) whether the offender intended to cause, or was reckless about causing, the death of or harm to a child born alive as a result of the pregnancy; and

(v) the death of or harm to a child born alive as a result of the pregnancy.