Debates

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Legislative Assembly for the ACT

SIXTH ASSEMBLY

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Tuesday, 7 March 2006

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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.

Leave of absence

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

> That leave of absence from 6 March to 19 March 2006 inclusive be given to Mr Seselja.

Legal Affairs—Standing Committee
Report 3

MR STEFANIAK (Ginninderra) (10.31): Pursuant to order, I present the following report:

> Legal Affairs—Standing Committee—Report 3—*Report on Terrorism (Extraordinary Temporary Powers) Bill 2005—exposure draft*, dated 24 February 2006, including additional and dissenting comments *(Mr Stefaniak, Ms MacDonald, Dr Foskey)*, together with a copy of the extracts of the relevant minutes of proceedings.

I move:

> That the report be noted.

Firstly, I would like to acknowledge all the people who put in submissions. There were about 20 submissions in all and a number of people appeared before the committee. The inquiry was conducted largely over the Christmas/new year break and hearings were also held in January. Many people put in a lot of work at fairly short notice. Because of the importance of the legislation and the importance of the issue facing not only this jurisdiction but also the rest of Australia, I do not think anyone begrudged the fact that the inquiry had to be held at short notice. Secondly, I would like to acknowledge the hard work of my committee colleagues, Karin MacDonald and Deb Foskey, and especially that of our committee secretary, Dr Hanna Jaireth, who did a magnificent job. I am sure I speak for all committee members in that regard.

As a result of the COAG briefing in September last year, the Chief Minister accepted the need for antiterrorist legislation complementary to the legislation being enacted by the commonwealth and the states. This type of legislation is rare in Australia. We have not seen the like of it before, although people have been detained in times of war. I accept, as does the Chief Minister, that there is a need for this legislation. Although I and the other committee members were not privy to what happened at COAG, when you have a diverse group of people ranging from the Prime Minister to our own Chief Minister accepting the need for it, it must be given precedence.

The committee made a number of recommendations and I will deal with some of the major ones. My colleagues will obviously talk on issues which are of interest to them. I will then deal with some of the dissenting and additional comments I have made. The committee's main recommendations basically include in-principle support for the draft bill, although Dr Foskey dissented on that. Other recommendations were that the main threshold tests in the legislation be the same as those in other jurisdictions; that the Standing Committee of Attorneys-General be asked to develop uniform best practice counterterror laws; that the legislation apply to 16 to 18-year-olds, with extra safeguards such as separation from adult detainees and special contact provisions. Ms MacDonald dissented on that one. Further recommendations were that the proposed public interest monitor panel be replaced by the ACT Human Rights Commissioner and the ACT Ombudsman; that the ACT develop specific strategies to engage with people who may potentially be marginalised by these laws; that some of the new special police powers be included in the Emergencies Act 2004; and that the preamble to the bill better explain the need for the legislation.

There are other recommendations which I encourage the government to take up; specifically recommendation 7—that parliamentary counsel redraft clauses 12 to 14 of the draft bill so the meaning is clearer. That recommendation was made by the Law Society and by a number of other groups. It seemed to be finding favour with the government officials and also with the attorney when he gave evidence. Recommendations 9 to 11 are very important too. Recommendation 9 says:

> The Committee recommends that the 'reasonable and necessary' element in clauses 17, 19, 21, 25 and 29 of the proposed bill be replaced with 'reasonably necessary', so that the test is not so onerous and consistent with other jurisdictions' legislation.

Further to that, recommendation 10 is that the words "is the least restrictive way of preventing the terrorist act" in paragraphs 17 (3) (b) (ii) and 19 (4) (c) of the proposed legislation be replaced with "substantially assists in preventing the terrorist act". Further, we supported recommendation 11. I am not sure whether or not Dr Foskey accepted those two recommendations but the majority of the committee did. There was unanimous support by the committee for uniform best practice national security legislation. The recommendation was that the ACT government requests that the Standing Committee of Attorneys-General develop model legislation. My colleagues recommended a five-year sunset clause for this bill but I went for 10 years for national consistency. I think we would all agree it is best that legislation like this is uniform across the commonwealth and there is ample time for that. As I said earlier, one point of contention was that this legislation did not seem to apply to anyone under 18. The majority of the committee recommended that it should apply to persons aged 16 years or older but that safeguards such as separation from adult detainees and special contact provisions for family members and oversight agencies be included in the legislation. I certainly commend that.

I draw a number of other things to the government's attention. One matter still up in the air as to how this legislation is proposed to work is in respect of the Supreme Court being the body that does the initial consideration of an application and issues an order. There are some questions as to whether that is in fact constitutional because separation of powers issues come into play in that regard. Issues around several High Court cases indicate that there might be a problem in that regard. I do not think we received a

definitive answer on that. That affects the legislation. The government really needs to look at that, along with other things.

Recommendation 13 proposes that the ACT government consult further with the Australian government Attorney-General's Department about the consistency of paragraph 18 (k) (vi) with Australian government legislation; otherwise, we may be breaching the law. That is on pages 60 to 61 of our report. The federal department's view is that that subsection should be omitted because disclosure of information without authorisation about warrants issued and questioning done pursuant to the Australian Security Intelligence Organisation Act is an offence carrying a penalty of five years imprisonment while a warrant is in force. There may be some big problems if our legislation breaches a relevant commonwealth law. Those things need to be cleared up.

I think our suggestions specifically in recommendations 9 and 10 are very important to ensure consistency with the legislation in other states and consistency of the tests the police will have to apply when going before the court for an order. I believe it would be pointless to have legislation that would make it difficult for the police. We might get to a situation where it is almost impossible for them to satisfy the test for an order to be made, which totally defeats the purpose of this legislation. After all, this legislation is aimed at protecting our community from the possibility of quite horrendous attacks, which we have not necessarily seen before, which potentially could involve hundreds, if not thousands, of casualties, so it is very important that we get it right.

I turn now to my additional comments. If we are to have such legislation, it is important that it be as standard as possible across Australia, because terrorism, like other major crime, knows no boundaries. It is important for the ACT to have legislation that is, if not identical, at least very similar to that of the states and the commonwealth. There is a real need here for the standard of proof required to be consistent right across the jurisdictions. A number of people gave evidence before the committee. I accept the rationale in the evidence given by Mick Keelty, the AFP commissioner. He is a world-renowned expert on policing and matters pertaining to terrorism. In this regard he was the most experienced person to appear before the inquiry, and I give due weight to his evidence. In his evidence on 31 January this year Mr Keelty said:

> The ACT is of particular importance to the AFP because it not only houses the seat of government, some 90 diplomatic missions and some 1,000 staff attached to those missions across the Australian Capital Territory but is policed by the AFP in a community policing role, complementing the role that the AFP performs nationally and internationally. In responding to terrorism, we are focusing on minimising the risk to the community … we are trying to narrow the space between when we can intervene to prevent an attack occurring and the opportunity for terrorists to launch such an attack. These are powers that we will use judiciously and cautiously to protect the community.

He went on to say that the AFP had had the commonwealth legislation powers for over a month, that ASIO had had detention powers for over 12 months and that there had been little or no outcry from anyone in the community about abuse of power. He also said that he and his colleagues had fears about whether the ACT's proposed bill was sufficient. He stated in his submission that the police had concerns about provisions in the bill that may impede the interoperability between the ACT policing element of the AFP and the rest of

the AFP and other jurisdictions in conducting counterterrorism operations. In referring to powers sought, the commissioner said:

> The proposed extended powers are necessary to increase the AFP's capacity to prevent terrorist attacks and to respond effectively to attacks in a way that is consistent with police in all jurisdictions in Australia. The AFP believes that this bill does not enable us to do that.

He and his colleagues went on to indicate that they had particular concerns in relation to different standards of proof being required for the AFP to establish a case for preventative detention orders before the ACT Supreme Court. The standards of proof required are much higher than those anywhere else in Australia. The commissioner indicated that in a number of areas the New South Wales legislation was a much more suitable model than the ACT legislation. Also on 31 January 2006, I asked the commissioner the following question:

> From what you say, from an AFP point of view would it be simpler if, say, the ACT simply adopted the New South Wales legislation and introduced that?

The commissioner replied:

> It would be. That would be a way forward. I understand why there might be a difference of opinion on certain issues, but I think in this bill we do need to have consistency. If ever I have seen people with the intent, motivation and capability to do something catastrophic, it is the terrorists. Let us not forget, chair—I mean this in a respectful way—that the ACT has been the target of a planned terrorist attack. There is a person … in Western Australia who pleaded guilty to the planned bombing of the Israeli embassy here in Canberra just prior to the Sydney 2000 Olympics. The fact that that person pleaded guilty is something that the committee ought to take note of. Canberra is a target.

Mr Gentleman asked a question of the commissioner—I pay tribute to Mr Gentleman, who attended all the hearings as a non-committee member—whose reply was as follows:

> The reasons for terrorist attacks are many and varied and there is nothing that will make us immune from them. This is a really important point about why we need consistency in the legislation across Australian jurisdictions, particularly for the ACT; that we don't by default cause ourselves to be the subject of a terrorist attack because the police don't have the right powers.

The commissioner was concerned that terrorists, like international criminals, do not take note of jurisdictional impediments to their activities. If our bill were to be weaker than those of other jurisdictions, this could well be a factor. I note that this view was not accepted by other people. I refer again to the commissioner's qualifications as an expert in this field which, with the greatest respect, no other person who appeared before the committee could demonstrate. That being said, I recommend that the ACT government adopt the New South Wales legislation. I make that recommendation for the reasons I have just stated, along with the commissioner's comments. When the ACT Human Rights Office gave evidence, they also indicated that the New South Wales act was the next best act in respect of human rights and other considerations. So it seems that, if that is the case, it would indeed be a good template or model.

Failing the government's acceptance of that, I recommend that the standard of proof required for the AFP to prove matters before the Supreme Court or any other tribunal should be the same as for New South Wales and other jurisdictions. I note that the committee's recommendations 9 and 10 go some way to addressing this issue. I note also that the attorney and his officials were making some noises which indicated that the words "reasonably necessary" may well be quite reasonable. I stress that, if you cannot adopt something like the New South Wales act, you should at least make sure that the standards of proof are the same across jurisdictions. In no way should our standards of proof be more severe and restrictive on police than those of other jurisdictions. It is critically important to have as much uniformity as possible across jurisdictions for legislation as serious as this. We are dealing with the potential of hundreds, if not thousands, of lives being put at risk if the legislation is not consistent across all Australian jurisdictions. Some inconvenience through laws that restrict human rights is necessary to protect the fundamental right of all Australians—that is, the right to live. I think, on balance, that the laws enacted elsewhere are reasonable. I commend the abovementioned recommendations to the ACT government.

I made a number of other recommendations. For example, again for conformity with other laws, I thought we should have sunset clauses of 10 years with a review period after five years, but my two colleagues felt that the draft legislation should stand. I also questioned whether there is a constitutional issue as to whether the Supreme Court can be the issuing authority. You can get around that, again, if you adopt the New South Wales legislation, but, if the government were not to do that, I suggest it should err on the side of caution.

I recommend that the proposed legislation retain a role for the Supreme Court in relation to preventative detention orders but that senior police officers in the ACT be given the power to issue a 24-hour police order in urgent circumstances, with interim orders of 24 to 48 hours being required to be heard in the presence of the party in the Supreme Court. I understand that that would get us over any potential constitutional problems. If the government did not want to simply adopt the New South Wales legislation, I recommend that it adopt that position. It would also mirror commonwealth legislation. I recommend that clauses 14 (2), 15 (2), 16 (2), 19 (2) be amended so that information that is likely to prejudice national security is excluded from information to be given to a prescribed person. I make a number of other recommendations in my dissenting report—noting the time—which I commend to the government.

MS MacDONALD (Brindabella) (10.47): Subject to the COAG agreement of 27 September 2005, the ACT government agreed to enact legislation to strengthen counterterrorism laws. It was agreed that such laws should be necessary, effective against terrorism and contain appropriate safeguards against abuse. These elements, as they relate to the ACT Terrorism (Extraordinary Temporary Powers) Bill 2005 will be discussed in turn. First, the ACT Terrorism (Extraordinary Temporary Powers) Bill 2005 before the Assembly is necessary. Several submissions to the legal affairs committee opposed the introduction of the bill, arguing that the need for the proposed legislation had not been demonstrated and that current laws were adequate to deal with terrorism. Several submissions noted that a warrant and prosecution-led response to terrorism urging existing criminal law was preferable to preventative detention.

While existing laws may be useful in countering suspected offenders, the committee accepted—well, at least the majority of the committee accepted it; I am sure Dr Foskey will elaborate on her opinion on the need for it—that extraordinary measures are warranted in extreme circumstances where the available evidence is insufficient to detain a suspected terrorist. The ACT Chief Minister, Jon Stanhope, agreed to introduce these new counterterrorism laws on the basis of assurances and clear, though confidential, evidence that they were needed. I do not doubt the Chief Minister's assertion that these measures are needed and that the desired effect of this legislation cannot be achieved in less intrusive ways. However, I agree with recommendation 2: the need for preventative detention needs to be explained more clearly in the preamble to the bill.

Second, the ACT bill will be effective in the unfortunate event that it is needed. Clause 8 allows a person who is not a child to be taken into custody and detained for a maximum of 14 days. This is a proposed measure of last resort to prevent a terrorist act within that period of time or to preserve evidence of, or relating to, a terrorist act that happened within the previous 28 days. Additionally, clause 21 of the exposure draft bill enables an interim preventative detention order to be applied by the ACT Supreme Court to a person for up to 24 hours, with the possibility of a further 24-hour extension. I should note that, if this interim preventative detention order is applied, that will be included as part of the maximum of 14 days; it cannot be added to the first 14 days. So it cannot be 14 days plus one, plus one.

Part 3 of the bill also provides police with authorised special powers to require personal details, search people, search vehicles, move vehicles, enter and search premises, cordon target areas, seize things and use force. Broadly, the substantive effect of the ACT bill is the same as in other Australian jurisdictions. All provide measures for preventative detention orders and most equip police with authorised special powers. All have tailored legislation to ensure that, in the event of a terrorist activity, there are clear and effective measures to limit or eliminate danger. The ACT bill diverges in the extent to which it complies with basic democratic and human rights.

That brings me to my final and most significant point. Unlike any other jurisdiction in Australia, this bill actively takes into account the human rights standards in the International Covenant on Civil and Political Rights, or the ICCPR, as incorporated in the ACT Human Rights Act 2004. This bill places human rights compliance at the forefront of its draft. It is an approach that recognises that choices must be made between rights to security and basic democratic principles such as the rule of law and right to freedom, but it is an approach which ensures that limitations and restrictions on human rights are only permissible if held to be reasonable and necessary. This is an important distinction and one that I want to stress. Submissions made by the AFP and the Australian government Attorney-General's Department noted that the commonwealth preventative detention regime more properly balances individual rights and national security. The so-called balanced approach was adopted by the Australian Senate committee on constitutional and legal affairs in the inquiry into the Security Legislation Amendment Bill 2002. This approach advocates a balance between national security laws and human rights.

Inevitably, the problem with the balancing approach is that the scales necessarily tip in favour of national security at the expense of human rights. This approach fails to realise

that an increase in the measures to protect national security or the security of the ACT need not necessarily be dependent on an inverse erosion of human rights. In fact, it is difficult to see how any balance can be achieved in terror laws without the approach the ACT government has taken in drafting this bill. If a balancing metaphor is to be used, it should be used where national security measures are met with a greater assurance of human rights. With this exposure draft bill the ACT government has attempted to provide an adequate preventative detention structure which is also compatible with the ACT Human Rights Act.

The compatibility between the ACT Human Rights Act and the bill is stark, especially when compared to equivalent provisions in New South Wales and the commonwealth, and is achieved in a number of ways. First, section 28 of the ACT Human Rights Act requires that all ACT laws that place restrictions on protected rights be demonstrated and proportionate to the pursuance of legitimate aims. Ultimately, this requires that restrictions must not impair the essence of a protected right. The bill also complies with the standards set by the UN Human Rights Committee in general comment No 8 of the ICCPR, which states that preventative detention must not be arbitrary, must be based on grounds and procedures under the law, that reasons for the detention must be given, that a court must control the detention and that adequate compensation be provided for a breach of the provisions.

Second, the role of the Supreme Court in issuing and monitoring preventative detention orders is crucial. Several submissions made to the committee welcomed the requirement that the ACT Supreme Court consider applications for preventative detention orders. For these stakeholders the possibility for judicial review and oversight throughout the entire process was seen as an important human rights safeguard. Third, detainees affected by a preventative detention order are assured notice, access to legal representation, access to relevant information, a statement of reasons, a restriction on rolling preventative detention orders, privacy of contact with a lawyer, a public interest monitor and compensation for wrongful detention. Once in detention, detainees are separated from people who are on remand; may only be questioned for a very limited range of purposes; are supported if in special need; are accommodated for any cultural, religious or gender considerations; and are able to inform family of fact and place of detention.

As mentioned earlier, distinct from the New South Wales and commonwealth provisions, the ACT bill is not about balancing or trading off human rights for more general rights to national security; the ACT approach is about creating a preventative detention scheme that restricts some of the most basic of human rights. The bill allows for the detaining of suspected persons without trial for up to 14 days by capping the erosion of civil rights by ensuring strict compliance with all other rights and standards throughout the process. This approach has been criticised for failing to conform to legislative results achieved in other Australian jurisdictions. However, many submissions to the committee agreed that human rights compliance justifies jurisdictional difference and that it is better to have human rights compliant legislation than uniform legislation. Further to this, there is no compelling evidence to suggest that a bill such as that of the ACT's, with high standards of accountability, impedes effective law enforcement. In addition to effectively countering terrorism and upholding human rights, it guards against sloppy reasoning and policy development. The very fact that we are debating and have reviewed this legislation is testament to a more rounded policy process and, ultimately, a more

effective piece of legislation. We consulted with people in the community and those who consider themselves to be stakeholders in this process uphold that view as well.

Fourth, the committee notes at recommendation 9—the standard of proof and threshold test in clauses 17, 19, 21, 25 and 29—that the words "reasonable and necessary" should be replaced with "reasonably necessary" so that the test is not so onerous. The AFP advised the committee that consistency in fundamental threshold questions is important between jurisdictions, especially between the ACT and New South Wales. As it is currently worded, the legislation may lead to a situation in which a member of a terrorist organisation is eligible for detention in New South Wales but co-conspirators in the ACT cannot be detained due to the higher threshold test being applied to the same facts or intelligence by the court. Mr Speaker, there was a little bit of misrepresentation of my stance with regard to that last week in the *Canberra Times* when you circulated this report. With regard to that, the Attorney-General appeared before the committee on 1 February. In response to this issue, the ACT Attorney-General, Mr Stanhope, said he would take advice on the issues arising from the language 'reasonable and necessary'.

That is referred to in the report at clause 2.28. He acknowledged that he and his department would look into the issues raised by this. Finally, in my dissenting remarks, I rejected the committee's endorsement of recommendation 12, which reads as follows:

> The Committee recommends that the proposed legislation be applied to persons 16 years of age or older, but that safeguards such as separation from adult detainees … and special contact provisions for family members and oversight agencies be included in the legislation.

Under the ACT Legislation Act 2001 a child is defined as a person under the age of 18 years. This is the default position under the bill, and many submissions agreed with this standard. However, a number noted that children under the age of 18 are just as capable of criminal responsibility and should also fall under the scope of this bill. I believe Mr Stefaniak has put this as his reasoning for supporting this clause. Dr Foskey's reasons are different and I am sure she will explain those.

My dissenting comments noted that offences committed by persons under the age of 18 under this bill should be dealt with by other legislation. Such an approach is consistent with the United Nations Convention on the Rights of the Child. Children between the ages of 16 and 18 are often at their most vulnerable and impressionable. If involved in a terrorist attack, they are likely to be psychologically unsound and should not fall under the scope of the proposed legislation. Detaining a child for a maximum period of 14 days would be a traumatic experience—even if they were over the age of 18. Courtrooms alone have been shown to be distressing for children. Alternative arrangements should be made to deal with offences committed by children.

In conclusion, I believe that the government has attempted to achieve—and in the main has achieved—another tool for the Australian Federal Police in their fight against terrorism which will attempt to protect the greater public where it is needed, where they cannot utilise existing legislation because there is not enough evidence and where they seriously believe there is a chance of a terrorist attack happening. But it still maintains and protects human rights. I believe that the exposure draft bill has done that in the main, although I think it needs minor tweaking. The recommendations in the report are for

consideration; they are not saying, "This is absolute." The committee has taken this issue seriously and this is a serious report to the government. Finally, I would like to thank my committee colleagues, Mr Stefaniak and Dr Foskey, and also Hanna Jaireth, the inquiry secretary. It was not easy for the three of us to come together because we all have very different views on this issue. I think we have worked together fairly cooperatively. I commend the report to the Assembly and to the government.

DR FOSKEY (Molonglo) (11.02): I wish to endorse the comments of my colleagues about the collegiate atmosphere of our committee meetings on the draft Terrorism (Extraordinary Temporary Powers) Bill 2005. I also want to commend the government on its process in relation to this legislation. It is good practice to present controversial legislation—or legislation which, whilst not controversial, may initiate great change—as an exposure draft and set up a public consultation process whereby both ordinary people and experts can report to committees, speak at hearings and provide submissions, with the ultimate aim of improving the legislation. I believe that, if the committee's recommendations are followed, the ACT government will have as good a set of legislation as it can have in response to the agreement made at the COAG meeting last year. However, as everyone is also aware, I have said at the front of the report that I do not believe these terror laws are necessary. To go further into that, I think we need to look at the world view that lies behind these and other laws on terror that we have watched coming in and eroding our freedom, or the freedom of other people in the community, over the last few years.

As an international relations scholar I studied the ideologies which shape Australia's foreign policy and the subsequent impacts on our domestic policy. The tendency of the realists and the neorealists—especially the United States approach to the world—is to see the world in blocs. That is a very convenient and easy way to deal with the issues. The Cold War was of course a pre-eminent example. I hope we will not forget that we spent decades worrying about the scourge of communism. It was in that name that we saw many repressive laws. I am too young to remember the 1950s but other people will remember that time and the McCarthy era in the United States. A recent film was shown which reminded us of what governments can do in the so-called protection of our freedoms.

The demolition of the Berlin Wall and the break-up of the Soviet Union left a vacuum in the early 1990s into which the so-called realists and neorealists tried to step. However, that was a little more difficult in the Clinton era and in the era of the Labor Party with Gareth Evans's reign as foreign minister in Australia, which stalled the reimposition of a bloc approach to international relations. But then, very conveniently, along came Samuel Huntington in the mid-1950s with his book, *The Clash of Civilisations.* Clearly, this book was read by the advisers to Mr Bush because so much of its language was incorporated into his speeches.

The Clash of Civilisations asserted that the next war—of course, we know that the next war is inevitable because that is the whole foundation of the realist IR theory—will be between cultures. Although the theories in this book have been heavily critiqued for their sweeping generalisations, its appeal to these leaders was immediate. But instead of trying to break down any tendencies towards the forming of cultural-religious blocs—and Islamism and fundamentalist Christianity are the major ones for our purposes—leaders like George Bush and John Howard saw political advantage in solidifying and creating

divisions between these blocs. The presence of our troops in Iraq is seen as one of the ways in which this occurs. We have heard several reasons for their being there but, whatever they are, their continuing presence is serving as part of that large project.

The project of dividing the world into cultural-religious blocs has been accompanied by a fear campaign around terrorism. Governments that are seen to be protecting citizens against an enemy—even a diffuse one like terrorists—are rarely questioned. In today's *Canberra Times*, Robert Fisk—a person who has been watching and commenting on the Middle East for decades—is quoted as saying that US President George W Bush, British Prime Minister Tony Blair and Australian Prime Minister John Howard are doing a better job of spreading the message of terror than bin Laden himself. The article continues:

> Fear is the message from the world's leaders, Fisk says, and they are injecting it into voters as effectively as bin Laden could have wished after the September 11 attacks on the US ...
>
> Bin Laden wanted 9/11 to change the world, and this is what they—

Mr Howard, Mr Bush and Mr Blair—

> are saying.

In 2002 Tim Anderson, who was wrongly accused of the Hilton bombings, wrote about the suite of antiterror laws put to parliament in 2002 when, thankfully, there was a coalition minority in the Senate, which meant that changes were able to be made to the particularly draconian laws of the ASIO Act. He said:

> Any real "terrorist act" is already illegal. The real targets of these laws in Australia are not bomb throwers or assassins. The new powers in Australia will be used selectively against activist targets, marginalised groups and individuals, and racial minorities.

I note that Mr Stefaniak referred to the Hilton bombings a number of times during the hearing. I wish to make clear for the record that he apparently had not been reading up on the aftermath of the bombings in the various legal proceedings which showed that the prime accused, Tim Anderson, was acquitted of all charges. There are still very real questions about who was behind those bombings. We have no proof at all that it was a terrorist attack of the kind Mr Stefaniak mentioned.

Since the underground bombings in the United Kingdom a very different approach has been taken. Apparently that is the main reason why we have these new terror laws. The British Prime Minister announced a 12-point plan of measures designed to tackle terrorism. There are 12 points, not just one suite of laws against terrorists. The 10th point is to establish with the Muslim community a commission to advise on how there should be better integration of those parts of the community presently inadequately integrated and to strengthen police and community partnership. We have problems in the Prime Minister's Islamic advisory group; he would do well to have a look at what is really representative.

One of my concerns is that we will see a loss of community policing in the ACT as more and more resources are put into this so-called fight against terror. The ACT laws raise the threshold. This was seen by Keelty as negative but there is another way of looking at it. The ACT legislation can be the kind of law a community that respects human rights would set in place. I oppose the exclusion of young people from the ACT's legislation because it provides a human rights shield for that group, along with other vulnerable groups. Even so, this legislation, despite the best efforts of the legal affairs committee with the draft, can never be human rights compliant. It can never be human rights compliant to lock people away in case they commit an offence. In Britain the impacts of people who were accused of crimes in Ireland and wrongly jailed are still being felt as they fight the effects on their lives. We have to be very careful not to allow a world view which has a tone and gender to determine the way our society is set up. Fearmongering will lead us into a world where we will need to watch our backs every minute, and it will not reduce the threat of terror.

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

MR PRATT (Brindabella) (11.12): I rise to quickly correct something raised by Dr Foskey. I think Huntington's *The Clash of Civilisations* was published in the mid to late-1980s, rather than in the mid-1950s. Otherwise, I will not get into the rest of the rambling, interesting dissertation about international politics and how they affect Australian government policy.

Dr Foskey: I am afraid I have to rise to correct you, Mr Pratt.

MR SPEAKER: You will need leave to do that.

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

Legal Affairs—Standing Committee
Scrutiny report 22

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

> Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 22, dated 6 March 2006, together with the relevant minutes of proceedings.

I seek leave to make a brief statement.

Leave granted.

MR STEFANIAK: Scrutiny report 22 contains the committee's comments on eight bills, 52 pieces of subordinate legislation and three government responses. The report was circulated to members when the Assembly was not sitting. As I said, we had three government responses. I was pleased to see the constructive nature of those responses. On behalf of the committee, I thank the government ministers responsible for those constructive responses, which the committee certainly appreciated. I commend the report to the Assembly.

Planning and Environment—Standing Committee
Statement by chair

MR GENTLEMAN (Brindabella): Mr Speaker, pursuant to standing order 246A, I wish to make a statement on behalf of the Standing Committee on Planning and Environment relating to the petition referred by the Assembly to the Standing Committee on Planning and Environment on 16 February 2006 concerning the expansion of the Woolworths supermarket in Mawson.

On 16 February 2006, the Assembly resolved that the petition presented that day concerning expansion of the Woolworths supermarket in Mawson be referred to the Standing Committee on Planning and Environment. The committee first considered the petition at its meeting on 28 February 2006. On 1 March 2006, the committee resolved not to inquire further into the petition and to present this statement to the Assembly.

The committee invited the Minister for Planning, Mr Simon Corbell MLA, to respond to the issues raised in the petition. Mr Corbell provided a detailed response on 28 February 2006. Mr Corbell advised that Argos Pty Ltd is a lessee of block 13 section 46 Mawson. A Woolworths supermarket operates from that site. The current supermarket is considered by Argos to be suboptimal and therefore Argos has applied to acquire block 24 section 46 Mawson. In support of the application, Argos also provided a range of planning studies which included consultation with the local shop owners. These studies supported the expansion of the supermarket.

Following extensive consideration, the government agreed to the direct sale, conditional upon a variation to the territory plan being undertaken in order to allow the expansion, as well as Argos meeting all costs associated with the proposed development, including the replacement car parking and infrastructure costs. Argos will also be required to pay full market value for the site, determined by an independent professional valuation.

Argos recently lodged a development application for the proposed expansion and it is currently being assessed by the ACT Planning and Land Authority. Once the DA is approved, the Land Development Agency will be in a position to grant a lease at full market value to Argos. A crown lease will not be provided to Argos over the replacement car park as it will remain in territory ownership.

The committee appreciates Mr Corbell's prompt response to its inquiries and is satisfied that due process has been followed in relation to the proposed expansion of the supermarket. The committee notes that several aspects of the petition were factually incorrect.

In July 2005, the committee had unanimously supported the proposed expansion of the supermarket in its report to the Assembly on draft variation to the territory plan No 255. The committee considered the consultation comments on the proposed variation that had been provided to the ACT Planning and Land Authority. The committee visited the Southlands Mawson Group Centre in June 2005 and discussed the proposed territory plan variation with stakeholders.

The committee noted in its report on DV255 that the direct grant application made by Argos Pty Ltd had been considered by numerous ACT government agencies, including the Land Development Agency board, other agencies consulted during the cabinet consultation process, and cabinet ministers. The committee also considered the ACT government's guidelines for direct grants of land.

The committee's report is accessible on the Assembly's web site. The committee is satisfied that the proposed expansion of the supermarket in Mawson is in the public interest. The committee thanks the petitioners for their engagement with the Assembly process, and Dr Foskey for referring the petition.

Crimes (Offences Against Pregnant Women) Amendment Bill 2005

Debate resumed from 16 February 2006, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (Ginninderra) (11.18): As I was saying in relation to the government's proposed amendment just before debate ceased last time round, there are some significant problems there. I was starting to use as an analogy culpable driving, that is, that if someone came around a corner too fast, going at 100 kilometres an hour, and hit a car and there was a child in the car, they would not necessarily see the child, but if that child was killed or seriously injured they would be charged with culpable driving.

An analogous situation is the eggshell skull type of case, that is, that if someone assaulted a person who had an eggshell skull, punched them in the head and they went down, cracked their skull and were killed, it certainly would not be a case of murder as there was no intent to murder a person there, but there was intent certainly to harm that person. If that harm leads to death, it is too bad for the person charged that the other person did have an eggshell skull. It is not just assault. It is manslaughter, because it is death by that reckless misadventure on the part of the assailant. I suppose that it is a risk that people take when they choose to harm another person. I think what the government had set out initially is probably far more preferable to the way that it is seeking to amend it. I can understand why the government is seeking to amend it. That is referred to in a scrutiny report. But that, I think, should be taken as a guide only.

What we are doing here is dealing with anomalies with similar situations in other areas of the law. I think the law in relation to culpable driving is really quite stark there, as is the eggshell skull case. The government's amendment certainly waters down this bill and actually goes against other situations where the law does take into account the fact that offences are committed even though the offender may not have known in the culpable driving case that there was a child strapped into the back seat and would not necessarily have known that the person they were assaulting had, say, an eggshell skull. I think that this amendment actually goes against long-established laws there. Accordingly, it is not something that I or, indeed, the other members of the opposition, I understand, will be supporting.

I close by reiterating that I think that the amendment Mr Pratt has on the table is far more preferable. I note that even the Council for Civil Liberties preferred his bill, which was defeated. I note that the government has made some attempt—obviously it was forced to as a result of Mr Pratt's attempts over several years—to put in place legislation to overcome this real glitch, this real problem, this real omission from ACT legislation for many years and that it has sought to protect the rights of women, sought to protect the rights of foetuses, unborn children in the womb; sought to protect effectively the rights of innocent members of our community.

Indeed, I think I might have indicated earlier that one of the most abhorrent crimes is to assault a woman, especially to assault a pregnant woman, but, sadly, it does occur in our society. It is to be abhorred. It deserves the most severe penalties and the opprobrium of right-thinking people. Strong laws are needed to deter it from occurring but, if it does, we should ensure that the laws are adequate to deal with this particularly nasty type of offence against pregnant women. Mr Pratt has, through his efforts, at least forced the government to address, perhaps inadequately, this most important issue. At least we have taken a step forward today in that this legislation will be passed as a result of that.

I close by indicating again that I am pleased to see the government increase penalties in at least some areas. I do refer the government to the fact that a lot of the substantive penalties in the New South Wales act for these particular crimes are far higher than they are in the ACT. In looking at the new Criminal Code and crimes against a person, I would certainly commend to the government the need to get in line with other states there. I hope that that is happening not only here but also across the rest of Australia.

MRS BURKE (Molonglo) (11.23): Mr Speaker, I wish to show further support for Mr Pratt's intentions and his very clear position in this matter. It must be reiterated that the offences against pregnant women bill was tabled by the Chief Minister in November of last year in what could only be perceived to be a response to the previously tabled protection of the unborn child bill that Mr Pratt had put before the Assembly and saw twice rejected by the Stanhope government.

Despite the fact that several adjustments were made in a redraft, Mr Pratt will be today tabling a further amendment, which I will fully support, to obtain, one may hope, a position from the government on the medical or precise status of what it believes to be the definition of unborn child. Mr Speaker, I really believe that the amendment proposed by the opposition is sensible and strengthens the status of the unborn child. The question here, of course, is: who, even the government, has the right to place a precise time frame on when a status can be established in relation to an unborn child?

I have to concur with Mr Stefaniak's comments regarding culpable driving. I do not believe that it is an adequate defence on the part of the government to say that someone driving recklessly may not have known a woman was pregnant. Mr Stefaniak cited the case of a child in the back seat of a car who died as a result of such reckless actions and who may not have been seen by the driver at the time, yet the driver was still charged with culpable driving.

The government has previously failed, in my opinion, to initiate any constructive debate on this matter. It has previously made no attempt to highlight the seriousness of bringing

in adequate protective measures for pregnant mothers and their unborn children. Put plainly and simply, this leaves the ACT in the position of not affording what I believe to be adequate protection to pregnant women and, indeed, unborn children in the eyes of the law. In fact, the Stanhope legislation blatantly weakens the law in relation to the unborn child and all because, I believe, the government simply cannot recognise when a foetus becomes a baby.

Ask any woman who knows she is pregnant what she is carrying in her womb and she will tell you unequivocally that she is carrying a baby, a human being, no more and no less, from that moment that she knows that inception occurred and a baby is being formed. I do get slightly worried when I feel that the Stanhope government may be trying to rewrite the medical textbooks to say that somehow a foetus which becomes a baby becomes something else after a certain period in a woman's womb.

Mr Speaker, if the Stanhope government recognises that a baby is a baby once outside the womb, which it does, what does this make the living organism inside the womb prior to that event occurring? The Stanhope government's position on this issue simply does not make sense. Accordingly, my concern is that perhaps the point Mr Pratt makes is at the heart of the matter. Even if the Stanhope bill mirrors the opposition's rejected bill in some ways, the key component lacking is that the Stanhope bill does not recognise the unborn child as being recognised by law as an individual. I would therefore appreciate clarification from the Chief Minister and from the government in general as to why recognition is not afforded to an unborn child as a separate being to a mother prior to birth.

I see it as being a pointless exercise to protect a pregnant woman in isolation from the baby she is carrying, leaving the unborn child she is carrying with no separate identity. There has been little to no explanation by the government as to why this must be the case. An interesting differentiation is seemingly emerging in this sense whereby Mr Pratt has extended to the government a situation and a possible response to that situation. Perhaps the most poignant point we, as members of the Assembly, must reflect upon is the one made by Mr Pratt when he said:

> If injuries sustained prior to birth can be recognised as having affected the individual after it is born, that is in effect recognising retrospectively that the unborn child was an individual prior to birth when it originally sustained the injuries that led to its death.

I believe that it is crucial to give consideration to Mr Pratt's amendment, which seeks to inject some sensible measures, which seeks simply to identify the importance of considering that, if a manslaughter charge applies to an offender when a child dies after birth as a result of injuries sustained while in utero, then so too should a manslaughter charge apply to a child killed prior to birth. If the government is seeking to water down the legislation, perhaps from external pressures—I am not sure—from groups such as groups civil libertarians, it may well do nothing but imply that the government does not want to determine nor recognise when life actually begins. I think that is a very serious position for the government to be placing itself in.

Other jurisdictions are recognising the need to have a debate around this sensitive matter, with a measured approach to tackling the multitude of issues that lay embedded in such a

debate. There is no evidence of this occurring in the ACT, which is rather unfortunate. On a matter of conscience, I share Mr Pratt's dismay with the government's inability to seek clarification about when we, as an Assembly, should be recognising an unborn child as a life form, not some inanimate object.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (11.29), in reply: Mr Speaker, the primary objective of this bill is to afford special protection to pregnant women against wilful, reckless or negligent acts that would cause loss or harm to their pregnancies. This bill achieves its objective in a way that we can all embrace. Because the aggravated offences in the bill are referenced against the mother, they do not create a separate legal personality from the mother. They avoid the potential for a conflict of rights between the mother and her foetus and do not risk compromising her rights to privacy, freedom of thought, conscience and religion. The bill will also leave the current law with respect to abortions unaffected and thereby avoid the unnecessary angst and division in the community that reopening the debate on abortion would inevitably bring.

Mr Speaker, I welcome the feedback that I have received on this bill since it was introduced last year. I am grateful to the scrutiny of bills committee for its thorough and detailed analysis of the issues involved in determining whether the bill complies with the Human Rights Act. I also appreciate the efforts of the ACT branch of Civil Liberties Australia in putting forward its views on the bill. I believe that I am right in saying that this process of consultation has assisted us all in honing our focus on the salient issues confronting us in relation to the bill, particularly with respect to the absence of a fault element for the aggravating factors.

I am aware that there is some concern felt by some sections of the community in relation to the absence of the requirement to prove a fault element for the aggravated factors that go to proving the aggravated offences in the bill. I have been advised that this aspect of the bill was central to discussions with Dr Foskey, Mr Pratt and advisers in Mr Stefaniak's office. Mr Speaker, it is good to be a member of an Assembly such as this and to see the struggles we all go through to get the balance right and not unduly interfere with the rights of the community we serve.

The government certainly takes the matter of human rights very seriously and was therefore greatly assisted by the observations that have been made on the bill, particularly by the scrutiny of bills committee, chaired by the shadow Attorney-General, and most particularly in relation to concerns expressed about the absence of a fault element for establishing the aggravating factors of the bill offences.

I would like to clarify that, contrary to some views that have been expressed, the bill offences as they currently stand do not dispense entirely with the requirement to prove a fault element. For example, in the case of aggravated culpable driving, the prosecution must still prove the fault element that applies for the simple offence of culpable driving before the aggravated offence can apply in any event; that is, it must prove the fault element of negligence or a fault element that is roughly equivalent to it, namely, driving in such a state of intoxication as to be incapable of having proper control of the vehicle. The level of negligence required in this context is gross negligence, which is often referred to as criminal negligence and which judges explain to juries as a high and reprehensible degree of negligence.

However, the government is inclusive, is prepared to listen, and takes its consultations very seriously, because it is convinced that that will ultimately produce the best laws. Accordingly, having regard to the legitimate concerns that have been expressed—as I say, most particularly by the scrutiny of bills committee, chaired by the shadow attorney—I foreshadow that I will be making an amendment to the bill which will include a lack of knowledge defence to allow the accused to avoid liability if he or she proves, on the balance of probabilities, that he or she did not know and could not reasonably be expected to know that the woman was pregnant. That is consistent with views expressed by the scrutiny of bills committee, chaired by the shadow attorney.

I will move this amendment because I accept the concerns that the absence of the requirement to prove fault for the aggravating factors is a limitation of the right to a presumption of innocence and I share some of the concerns that have been expressed that the limitation may not fully satisfy the reasonable limits test in section 28 of the Human Rights Act.

To some extent, the additional sentencing criteria in the bill will ameliorate the lack of a requirement to prove fault with respect to the aggravating factors. However, following the consultation which I have referred to, I am of the view that this cannot entirely remedy the problem because the person will be fixed with criminal liability in the first place, even though he or she did not know and could not possibly have known that the woman was pregnant.

Finding a person criminally responsible for an aggravated offence where that person is not aware of, or could not have been aware of, the pregnancy, may overstep the line as far as issues around human rights, criminal law policy and fundamental legal principles are concerned. I believe that including the lack of knowledge defence will ensure greater consistency with all of those principles.

Mr Speaker, the lack of knowledge defence does not weaken at all the objectives of this bill. In fact, the defence is compatible with its objective, which is to afford special protection to pregnant women against intentional, reckless or negligent acts that would cause loss or harm to a woman's pregnancy. The government recognises that in the high majority of cases the protection that pregnant women will need will be in domestic violence situations. I am confident that in these cases the bill will prove to be extremely effective and it will do so without compromising rights.

The new defence will also avoid the suggestion that somehow the law places less value on women who are not pregnant. Also, if the defendant did not know about the pregnancy, he or she could still be found guilty of a simple offence and the new sentencing provisions in the bill will still have effect to ensure that the sentencing courts take into account, for example, any harm caused to the pregnancy. This is because the sentencing provisions are not limited to sentencing for an aggravated offence. They are relevant to the sentencing for any offence where the victim is a pregnant woman.

Mr Speaker, I would like to respond to some of the matters that have been raised in the debate. In particular, it is necessary to correct Mr Pratt's suggestion that the right to life provision in the Human Rights Act constrains recognition of the separate identify of the unborn child. Since well before the Human Rights Act—Mr Stefaniak, I am sure, is well

aware of this and other members should be—the criminal law of the ACT and of every other jurisdiction in Australia has required one to be born in order for an offence against the person to apply to them.

In the ACT, this requirement is embodied in section 10 of the Crimes Act. The right to life provision in the Human Rights Act simply reflects the criminal law position and a longstanding position within the criminal law, not just in the ACT but in every jurisdiction in Australia, inherited indeed from the United Kingdom. Mr Stefaniak knows that and knows well the good reason and the rationale for having that particular provision in relation to the operation of the criminal law.

To the extent that Mr Pratt and other members of the opposition object to the bill because it does not create offences of murder, manslaughter, assaulting an unborn child, et cetera, their issue is not with the Human Rights Act, but with a longstanding requirement of the criminal law that one must be born, must be a person in being, before the law of murder, et cetera, can apply to them.

I should stress that this requirement has been the law in every Australian jurisdiction for donkey's years because it gives certainty to the application of the offences against the person. That has always been the law. These provisions do not change the law. The Human Rights Act does not change the law. It is the law now. It has been the law for ever and a day in the ACT that the criminal law applies only to persons in being, and there is a very strict definition of a person in being. It is essentially, in the broad, a person who has been born. That is to whom the criminal law applies.

We do see in the responses which the Liberal Party make to this debate and we do see in the legislation which they tout as the legislation on which this particular provision was modelled, namely, Mr Pratt's earlier bills, that essentially for the Liberal Party in this place this is a debate about redefining the meaning of life and when life commences. The law as it currently stands recognises that the law applies to persons in being; in other words, people who have come into existence, babies who have been born. The criminal law has always in every Australian jurisdiction and in the United kingdom operated on that basis.

The Liberal Party's position in this particular debate and the Liberal Party's position in relation to the legislation which they introduced earlier has been all about changing that longstanding legal principle around the operation and application of the criminal law to a person in being. So be honest about it. Have the integrity to say, "What we want to do is to change the way in which the criminal law defines life." Be honest about it. Do not confuse and confect this interest in protecting pregnant women when your motivation is wholly and solely about creating a new definition under the law of—

Mr Stefaniak: A long bow there, Jon.

MR STANHOPE: No, it is not. It is not a long bow. You have been dishonest in your dissembling around this particular issue and your motivation.

Mrs Burke: I take a point of order, Mr Speaker, concerning the imputation by the Chief Minister.

MR STANHOPE: I withdraw that. You have been intellectually dishonest in your dissembling and your lack of admission of your motivation.

Mr Stefaniak: I take a point of order on that, Mr Speaker. I would like a ruling.

MR SPEAKER: Withdraw that, too

MR STANHOPE: What, "intellectually dishonest"?

MR SPEAKER: I think so.

MR STANHOPE: That surprises me. I withdraw it. I am surprised.

MR SPEAKER: It indicates an intention to be dishonest and I think it should be withdrawn.

MR STANHOPE: I concede. Returning to the point, the difficulty you have in this debate is that you are not so much interested in protecting pregnant women. Your whole motivation has been to change the way in which the criminal law operates and the way in which the law operates in relation to a foetus. You want to rewrite those definitions that apply in the ACT. You want, effectively, to repeal section 10 of the Criminal Code. But you never say that. You never stand up and say, "Let's rewrite section 10 of the Criminal Code." You have not done that. You did not do it for seven years in government. You have not done it during this debate.

You have never stood up and said, "What we want to do is to rewrite section 10 of the Criminal Code. We want the law to stop operating as it currently does in relation to human beings from the moment of birth. We want the criminal law to operate from the moment of conception." That is what you are saying. That is your argument. That is your position. It is quite simple. The law currently operates from the moment of birth insofar as it applies to a person. You wish to repeal section 10 of the Criminal Code to read, "This act"—in other words, the Crimes Act—"operates from the moment of conception." That is what you want to do, be honest about it, and everything that flows from that. You wish to separate a foetus from the mother. The law currently does not and you wish it to do so. Just be honest about it and be honest about all of the flow-on, knock-on implications of it. Just be honest.

Mrs Burke: I raise a point of order, Mr Speaker. You have asked the Chief Minister not to imply or impute that we are dishonest. I take offence at that and he should withdraw it.

MR STANHOPE: I did not.

Mrs Burke: You did. You were saying that we are dishonestly operating.

MR SPEAKER: Order! It is not a point of order.

MR STANHOPE: I was talking about the Liberal Party.

Mrs Burke: Do not speak for the Liberal Party on this, Mr Stanhope.

MR SPEAKER: It is not a point of order to ask people to be honest.

MR STANHOPE: Mr Pratt suggests in his presentation that the Human Rights Act and the born alive requirement in section 10 of the Crimes Act present no impediment to the enactment of unborn child offences, even though the model Criminal Code officers declined for good reason. I must say that I know Mr Stefaniak knows and understands, because I know he has studied it, that they declined for good reason. These are reasons that I know that Mr Stefaniak, if he were being objective about it, would accept. They did not make recommendations in relation to the born alive requirement in section 10 because they are aware of and accept the appropriateness of retaining those provisions, particularly as they apply to other areas of the operation of the law.

The government has stated repeatedly its reasons for not supporting the enactment of unborn child offences. We have done it repeatedly over the last few years and essentially, as any thinking person accepts, it is because of the complex moral and legal issues, on which there is absolutely no community consensus, that it raises and it has nothing to do with any imagined impediment presented by the Human Rights Act or section 10 of the Crimes Act.

With regard to injuries caused in utero, Mr Pratt said—and Mrs Burke just repeated it—that it is illogical that a person cannot be charged for homicide of the unborn child if the mother has a stillbirth, but can be charged for homicide if the baby is born live, even for a brief time. The answer to that, of course, is that this is how the law currently operates. It has operated for a significant period in that way in all of Australia and in other places, such as the United Kingdom.

This bill makes no change to the current law in this respect and nor should it. So for Mr Pratt and Mrs Burke, as they have, to insist that this is completely illogical and cannot be sustained flies in the face of the reality of the way in which the law has operated for all my life, and operates today, in the ACT and throughout the rest of Australia, and it operates in the UK in precisely this way. Essentially, the way in which the law operates is now regarded as illogical. But fundamentally the law is about delivering practical solutions to problems and this law achieves that.

MR SPEAKER: The minister's time has expired.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 17, by leave, taken together and agreed to.

Proposed new clause 17A.

MR PRATT (Brindabella) (11.44): I move amendment No 1 circulated in my name, which seeks to insert a new clause 17A *[see schedule 1 at page 420]*.

Mr Speaker, the purpose of this clause is to put some teeth back into this quite weak bill. I have made the point that, if injuries sustained prior to birth can be recognised as having affected the individual after it is born, that is in effect recognising retrospectively that the unborn child was an individual prior to birth when it originally sustained the injuries that led to its death. That is why the opposition is proposing this amendment.

This amendment basically recognises that if a manslaughter charge can apply to a child after birth as a result of injuries sustained while in utero, so too should a manslaughter charge apply to a child killed prior to birth. That is not, as the government would have everyone believe, reopening the abortion debate, but I think that that was the implication of the Chief Minister's emotional response. This amendment is all about wanting to increase the strength of this bill to make it much more meaningful.

The government have introduced legislation which is at least better than nothing, but in their fright to deal with the issue of the status of the unborn child they have, in effect, produced a very weak piece of legislation. Will this bill deter? Will it deter offenders? What is the object of any legislation? The object of legislation surely is to deter law-breakers and to protect the innocent. Our amendment, if the government accepts it, will strengthen this bill and provide real deterrence.

As the Chief Minister's legislation now stands, a careless or reckless person or a person intent on directly assaulting a woman would not be thinking twice. We are talking about increases in penalties which simply go to the heart of trying to bring somebody to account for what really was an aggravation to a pregnant woman and the reason for the termination of her pregnancy. We are saying that this bill will not provide deterrence. I would have thought that a bill which incorporates 25 to 30 per cent loadings for routine offences is simply not going to provide that deterrence at all. Our amendment will put power back into this bill, it will give status back to the unborn and it will mean that deterrence is reinserted.

Mr Speaker, if I can pick up on the Chief Minister's comments about the longstanding practice in Australian law, the question of the time when life starts, he says that that is a longstanding provision under Australian law that has been almost sacrosanct. That is not quite right because the Queensland legislation has changed that provision. The Queensland government, in its protection of the unborn child law, has changed that piece of law. It has put in place instruments which change that status.

Why can the Chief Minister not do that? Why can this government not find the courage to change the laws here to reflect the same standards? Why? It is because the Chief Minister, with his tunnel vision and his lack of courage, is driven more by ideology than by commonsense and the determination to protect the community at large. He would have it that the opposition has been "dishonest", "intellectually dishonest", or engaged in some other form of dishonesty in bringing forth its amendments and, in previous times, the legislation that it has sought to bring forward here. That is just—

MR SPEAKER: Order! That was withdrawn, Mr Pratt.

MR PRATT: Let me just point out, Mr Speaker, that the objective of the opposition today is to see that logical instruments are put in place to provide better protections for a

pregnant woman and her unborn. That is our objective. That is why we are standing here today debating this bill, not for any other ludicrous motive that the Chief Minister might want to put upon us. I say to the Chief Minister that he should accept this amendment, which would put some strength back into his legislation and provide real deterrence, which would provide better protection to the pregnant women of our community and, of course, to the unborn.

Chief Minister, put this amendment back in, make your bill stronger and send a strong message, as the first law officer, to the community that offences against a pregnant woman will not be tolerated and that there are serious consequences for people who do that. If you are serious in your role, you will accept this amendment.

DR FOSKEY (Molonglo) (11.50): Just briefly, Mr Speaker, I want to say that the Greens are not going to support Mr Pratt's amendment—I am sure that he will be quite unsurprised—because it goes against the whole basic principle of this bill, which recognises that until the foetus is born it is a part of a woman and, certainly by law, not considered to be a separate person until after it is born.

Like many women here, I have had children in my womb; three. While I imagined each child until it was born—I do think that pregnancy is a lot about imagining—there is no doubt that the foetus was part of my body. I just think that his argument is a fallacious argument to put up, one with a highly emotive intention, and it distracts from the aim of this bill, which is perfectly straightforward, to recognise there can be harm done to a pregnancy in an attack, inadvertent or purposeful, upon a woman. I think we should try to stick to the issue.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (11.52): Mr Speaker, for the reasons that I gave previously, the government will not support the amendment. Of course, I have given these reasons three times in, I think, the last two years in relation to the repeated introduction by the opposition of this proposal.

I need to correct the assertion that Mr Pratt has made in relation to the alleged move away by Queensland from the criminal law principle of life being interpreted to have commenced at the point of birth. Queensland has not changed the provision within its Crimes Act, Mr Pratt. It remains the case in Queensland, as it does in the rest of Australia, that the Crimes Act provisions in relation to offences against the person apply from the moment of birth. When a person is born, the person is considered to be a separate legal entity and those offences against the person apply only from that moment, from the moment of separation from the mother, in relation to those individual human beings. Queensland legislation—

Mrs Burke: I don't think you are right there.

Mr Stefaniak: I do not think that is right, Jon.

Mrs Burke: Our advice tells us not.

MR STANHOPE: Well, your advisers are wrong. If your shadow attorney gets the Queensland Criminal Code out he will be able to advise you that you are indeed wrong.

The Queensland government introduced a separate provision of an offence against an unborn child but it did not overturn those provisions within its Crimes Act, which are repeated in section 10 of the ACT Criminal Code in relation to the operation of the criminal law in offences against a person. Those are the facts. Queensland did not undo its version of section 10 of the ACT Crimes Act. It introduced a separate specific offence in a specific circumstance in relation to an unborn child. Certainly, they moved away from the position that has been traditionally adopted throughout Australia and other common law countries but they did not abandon the criminal law presumption of the operation of the criminal law as it applies against persons to the moment of parturition or separation from the mother.

So you are wrong about that, Mr Pratt. It is important that the record be corrected in relation to that because you have it out and about that, "Oh well, Queensland has done this. Queensland has walked away from this longstanding principle, so why don't we?" Well, they have not. They introduced a separate offence but they have not walked away from the provision which applies throughout the whole of Australia in relation to the essential definition of a person as being a person or a life in being separate from the mother. And that is why, as we have said now repeatedly over the last three years, this government and no other government in Australia will legislate in the way that you propose.

We are being consistent with Queensland, the rest of Australia, the United Kingdom and other common law countries around the world who accept for very good reason that in relation to the operation of criminal law offences against the person, the person is a person at the moment of parturition, from the moment of birth, when they became a separate being, a being, a person in birth. We have done this to avoid the very debate and conflict which we are having here this morning. We will not agree and we will never agree, as we have not agreed for donkeys years, to change on this fundamental issue. That is why Queensland did not amend the law, as you claim they did, and it is why no other government in Australia has amended the law in the way which you wish that they would. They have not done so for very good reasons around these morally and legally complex issues relating to the meaning of life and the operation of the criminal law book, and the operation of the criminal law in respect of when life begins and how the criminal law should operate.

While I am on my feet I might just debunk the suggestion, which is continually put, that the government in introducing the legislation which we are debating today is responding to Mr Pratt's flawed attempts to bring about change. As everybody knows, the ACT government over the last four years has been progressively introducing to the law of the ACT the entire Criminal Code, chapter by chapter. This was started by Mr Stefaniak and it is a job which we are continuing and which we will complete. This is being done chapter by chapter. It is a mammoth task. Mr Stefaniak, as one-time attorney, would know how massive a task the introduction of the Criminal Code is. It is the single largest piece of law reform being undertaken in the ACT. It is massive, it is a mammoth task.

The next chapter is offences against the person. And guess what? We are talking about an offence against the person—we are completely rewriting the Criminal Code of the ACT chapter by chapter by chapter, year after year; we have still got three or four years to go—and the chapter that we are up to is a chapter on offences against the person. Indeed, in the context of the last debate in relation to Mr Pratt's flawed approach, I did

say that this is a work in progress. In the context of the opposition's interest in this issue, I said we would extract this aspect from the chapter on offences against the person and deal with it ahead of the rest of the chapter. That is the genesis of this. This is work that is being done methodically and reasonably by the ACT government. It is work that is being done methodically and reasonably and as part of a very good process, and we have extracted this small part from that very significant chapter.

So that is the history and the fact of the matter. To suggest that this is some Steve Pratt inspired, knee-jerk response is just a touch too egotistical. I have to suggest to you, Mr Pratt, that it is just a touch too egotistical. But the fact remains that this point has been made ad nauseam. This is the third occasion in the last two years that we have debated this provision. Of course, that is the tactic and it goes to the heart of this. I would suggest—Mr Stefaniak has a good memory for these things—that this would be the only piece of criminal law reform or issue that has been debated three times now in two years. That is interesting in itself, isn't it?

At the heart of the passion for this particular form of law reform is abortion. This is about when life commences. We all know that. That is what this amendment is about. This is about the fight-back from those that oppose abortion to find a way through the law on this incredibly complex and morally difficult issue around abortion, life, the meaning of life and the legal rights of women to privacy, their own rights and their own responsibility for their bodies. It is precisely that. Let us not mince words about it. Let us not pretend that this is just some late-found commitment by the opposition or the Liberal Party in this place to do all they can to protect pregnant women from domestic violence. This is about opening a new front by those that oppose abortion, that are against abortion. That is what it is. I do not object to or dismiss your right to do that. It is your business. It is an expression of your philosophy and your view of the world and I respect that right. But I wish you would be honest about it. I wish you would be honest about the fact that what you introduced into the Assembly today—

Mrs Burke: I take a point of order, Mr Speaker. In accordance with standing order 57, the Chief Minister needs to withdraw that comment.

MR SPEAKER: I have already ruled on that. A call for honesty is hardly disorderly.

Mrs Burke: He is accusing us of being dishonest.

MR SPEAKER: No. The words were, "I wish you—

MR STANHOPE: "I wish you would be honest." That is not disorderly, Mrs Burke.

Mrs Burke: Oh, isn't it?

MR SPEAKER: Order! Continue, Mr Stanhope.

MR STANHOPE: And I do wish that. Such a significant debate—a debate which seeks to reopen a front by those who oppose abortion—should be conducted publicly and honestly so that the community knows what it is that you intend and what it is that you seek to achieve.

You are not being honest with the people of Canberra. You have introduced into the Assembly today an amendment to this piece of legislation which is designed to reopen an opportunity for those that oppose abortion to take that opposition one step further through the creation in a foetus of a separate personality which would then be subject to the ordinary operation of the criminal law. That is your intention. That is what you seek to achieve. I do not dismiss your right to seek to achieve that. You all oppose abortion. You all oppose a woman's right to choose whether or not that is a procedure or an option which she wishes or might wish to take for herself. That is your position. You do not accept the right of women to choose an abortion and you will do everything in your power to prevent abortions.

But you owe it, in my submission, to the people of Canberra to be honest with them and tell them that that is what you are doing. I believe it is dishonest of anybody to seek to introduce law reform or changes to the law of this order without letting the people of Canberra know that that is what you are trying to do. I do not believe it is honest at all. It shows absolutely no respect to the people that you purport to represent. It is not honest.

We will not support the amendment because of the very complicated complex moral and legal issues which it would create. They are complex because of the dichotomy of cause which would be raised or created between a pregnant woman and an unborn child. There is absolutely no community consensus on that. We see that in this place time and again. There is no community consensus on the moral issues that unborn child offences, such as you seek to introduce, would create or raise.

As I have said—and I will conclude with this summary of the position—creating a separate legal personality in the unborn child will give rise to complex legal issues that have the potential to create conflict. That is what they would do—they would create a conflict between the rights of the mother and the rights which you seek to invest in the foetus. They will have profound implications for the mother's right to privacy, to freedom of thought, to freedom conscience and to freedom of religion. Most particularly—which, of course, is what you seek to achieve—they will have a most profound implication on a woman's right to choose an abortion.

The offences in the government's bill will effectively achieve the same result as unborn child offences, except they will do so in a way that the whole community can embrace outside the context of the debate around the right to choose to abort or not. This is because—and this is, of course, why we chose this particular model—the aggravated offences in the government's bill are referenced against the mother. It is an offence against the mother. They do not create a separate legal personality in the foetus from the mother and they therefore avoid the conflict of rights between the mother and the foetus, which your amendment would create. It would create two sets of rights. There is a set of rights in the mother and you seek to create a set of rights in the foetus—rights which the law currently does not recognise, and does not recognise for very good reasons.

Our bill will leave the current law with respect to abortions unaffected and thereby avoids the angst and the division in the community that reopening the debate would inevitably bring.

Mr Pratt: The same as our amendment.

MR STANHOPE: I have simply explained this. If you cannot understand that then there is no hope for you. Your amendment creates in a foetus a separate set of rights, a set of rights separate from the mother. We disagree on this but that, of course, is the whole point of the governments position. These are issues on which we can never agree. But we can agree to protect pregnant women from deliberate assault and the government's legislation does that. Our bill protects pregnant women from assault, deliberate assault and malicious assault or injury. You claim your amendment does too, and that may very well be the case. But along the way it raises a whole range of complex issues that create a separate set of rights in an unborn child. It opens an argument about the right of the woman to an abortion and it is legislation on which we will never agree. We will never agree to your proposals.

The assertion has been made that this legislation is weak and wishy-washy and does nothing. I have to say that those sorts of arguments are very interesting, particularly in the context of the shadow attorney's approach to law reform, which is simply around, "Well, if you want some criminal law reform, just put the penalties up." It was interesting today to hear the shadow minister for police simply scoff and suggest that increasing the penalty for manslaughter from 20 years through the addition of a six-year additional sentence for an aggravation is worth nothing, is worth nought or does not send a message. I think it is drawing a long bow to suggest that adding the potential of an additional six years in jail for an aggravated offence of manslaughter involving a pregnant woman does not send a message that the community particularly abhors attacks on pregnant women.

It is not credible to suggest that increasing the penalty for inflicting grievous bodily harm from 15 years to 20 years if the infliction of grievous bodily harm involves a pregnant woman—that the penalty is potentially 20 years in prison instead of 15—does not send a message that this government, or this community, regards such an offence as particularly odious. It is suggested that there should be an additional three years in prison for recklessly inflicting grievous bodily harm. It is interesting to note that when the glove fits it will not necessarily be worn. If the argument suits on one occasion, Mr Stefaniak is out there constantly beating the drum and saying, "Put this penalty up by three years, put that penalty up by four years, put that penalty up by five years, to send a strong message that we really are concerned about the seriousness of this offence."

The government is putting up penalties by six years and by five years for a whole range of offences involving assaults. Where the victim of the assault is a pregnant woman, all of a sudden it does not matter. But I think the suggestion that increasing the penalty by six years where the offence is against a pregnant woman, as opposed to an offence of the same order against a woman who is not pregnant or against a man, does not send a message that as a community we regard attacks on pregnant women as particularly odious and deserving of an extra penalty of six years has absolutely no credibility and it flies in the face of everything that particularly Mr Stefaniak and Mr Pratt have ever said about the criminal law and the application of penalties.

We are talking about sticking up the penalty by six years for some offences where the offence is against a pregnant woman and you say it does not count, it does not matter.

Mr Pratt: On a narrow band of offences. The overall bill does not provide it at all.

MR STANHOPE: It does. In relation to every possible offence that you could conceive against a pregnant woman, the penalty is increased. Whether it is manslaughter, intentionally inflicting grievous bodily harm, recklessly inflicting grievous bodily harm, wounding, inflicting actual bodily harm, occasioning actual bodily harm, culpable driving of a motor vehicle causing death, culpable driving of a motor vehicle causing grievous bodily harm, the penalties are increased if the victim of those offences is a pregnant woman. It covers the field. If anybody offends against a pregnant woman, this community is sending a loud, hard message that you will be punished and doubly punished. The purpose of these provisions in this bill is to ensure that we as a community express our abhorrence of anybody or any act that intentionally targets a pregnant woman and her unborn baby.

MR STEFANIAK (Ginninderra) (12.12): Mr Speaker, I listened with interest to what the attorney had to say. I think a very salient point can be made about the Queensland legislation. Although the attorney may not have said that the opposition was dishonest, he could have used the word "disingenuous". I think this could apply to the government. I do not have the Queensland legislation in front of me—I did see it the last time we had this debate—but the attorney conceded that they have moved away from the longstanding principle that he spoke of. He also indicated that they have introduced a separate provision. Well, it seems to me that that is exactly what Mr Pratt has done in his proposed new section 42A. He has introduced a separate provision.

In an attempt not to reopen the debate in relation to abortion, the attorney seems to have ensured that this particular offence and the section do not apply to certain situations. But they relate to the issue of abortion. So quite clearly, Mr Speaker, I would think he seems to have very much introduced a separate provision. I am sure Mr Pratt would be very happy if the attorney just introduced the Queensland provisions. I think he spoke quite fondly about them, as did I, in the previous debate. They are very good, strong provisions which certainly carry the relevant deterrent factor which, despite what is being said in this place, we all seem to want to achieve here.

It is not the case that the opposition is not supporting the government's bill. It is actually supporting the government's bill. What we are saying is there are better ways of doing it. You are right, attorney: this is the third time round and the government has voted against Mr Pratt's bill on two previous occasions. We are now back dealing with the government's bill.

I think it is quite interesting to see the attorney indicate that, "Oh no, this is not the government reacting at all." As he said, the government is going through a process of introducing a criminal code. Yes, it is a very lengthy and complex situation. It is a very important piece of legislation. I would hope that Australia-wide there will be a national criminal code some day. And yes, it does take time. It is a major reform of the law. I am pleased to see that the next chapter of the code will be crimes against the person because that, probably more than any other crime, is what concerns people most in the community. People mostly fear what could happen to them and their loved ones. This is the area of criminal law that people are most interested in. They want to see that justice is done and that hopefully people are deterred from committing particularly nasty crimes against the person.

The government has, regardless of what it says, introduced this legislation ahead of the rest of the chapter. I do not think it would have done that if it had not been pressed by the opposition and pressed by Mr Pratt in particular. I hardly think it is a touch too egotistical to say that. I have known Mr Pratt for many years and he is certainly not an egotistical person. He is doing his job and he has brought his bill forward on two occasions.

The government has introduced its bill well forward of its proposed time frame for the rest of the code. Obviously it feels that there is a community concern and need; that there is an abhorrence of violence against pregnant women, against actions that might, if not kill the pregnant woman, kill the unborn child in that woman's womb or cause serious harm both to the woman and, indeed, to the child within the womb. It is a particularly nasty type of offence and the opposition does not shy away from the fact that we are pleased that the government has responded. But we think it could have done it a better way. We think it perhaps could well have just supported the legislation put forward by Mr Pratt after a lot of lengthy discussion and a lot of advice from parliamentary counsel and other persons to try to get this difficult issue right.

The Chief Minister referred to section 10 of the Crimes Act. He noted also that Queensland has stepped away and introduced a separate provision, as Mr Pratt has done. There is a real logic for section 10. I think it is important to put section 10 on the record because it probably gives people some idea of why it has been in the act for many years. It states:

> **When child born alive**
> For this part, a child shall be taken to have been born alive if he or she has breathed and has been wholly born, whether or not he or she has had an independent circulation.

To assist members, I have just found a couple of references in the Crimes Act to offences against children who have either just been born or around the time of birth. Section 42 states:

> **Child destruction**
> A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive—
>
> (a) prevents the child from being born alive; or
> (b) contributes to the child's death;
>
> is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

Section 43 states:

> **Childbirth—grievous bodily harm**
> A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive, inflicts grievous bodily harm on the child, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

Section 47 (1) states:

> **Concealment of birth**
> A person who disposes of the dead body of a child (whether or not the child was born alive) with intent to conceal the child's birth is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

So there are a number of offences around the time of childbirth and I think members might be able to see the logic in having a provision like this.

The law evolves and you cannot get away from the fact that Queensland has had strong laws in this area now for some time. And, yes, that may well be a separate provision and it probably is a move away from a longstanding principle. But we do move on. The law adjusts and it needs to adjust to the changing demands of society. What would happen if we never moved? I am sure the Chief Minister, with his civil liberties background and his strong views on capital punishment, would appreciate that 100 years ago we had the death penalty for a number of offences—not only murder but rape, treason and probably several others. If you go back 200 years, it applied to several hundred offences, including absolutely piddling property crimes. The law has moved on. Society has changed. There are changing needs and the criminal law moves on and adjusts. Even in the short span of time that this Assembly has been in operation, we have introduced new criminal laws.

What we now have before us is new criminal law. Thirty years ago I did not see anything remotely like this legislation—and I have never practised in Queensland—in the New South Wales/ACT context. In the last few years there has been a recognition in New South Wales and other jurisdictions that society, the community, feels that there is a need for laws to cover these types of situations. And they are horrible situations that need covering. We are perhaps taking a small step today to cover them. But do not kid yourself: I doubt very much if this small step today would have occurred if it were not for the fact that Mr Pratt brought forward a couple of pieces of legislation on two separate occasions in this place.

We are pleased to see these laws. They are better than nothing. What Mr Pratt and the opposition are trying to do is improve them. Even groups as diverse as civil liberties liked the original bill that he had before the Assembly. They certainly can be very critical of laws that seek to deter crime by going down the path of increasing penalties. In accordance with their brief, they can take a very strong view on such laws. But, in fact, a member of this group indicated to me that he felt that Mr Pratt's original laws were better than what was being proposed by the government in this place.

As I have just said, what is being proposed is better than nothing. However, members can clearly see by simply reading Mr Pratt's amendment that he seeks to differentiate, as he has always done, between these laws and the issue of abortion. What he is trying to do—and, indeed, to an extent what he has succeeded in doing today because the government has finally acknowledged it—is point out that there is a glaring gap in our law in relation to horrendous offences against pregnant women and the child in the womb and that there is a need for laws to protect the community from that. Queensland has obviously seen this need for a long time. Other jurisdictions in Australia, too, are going down this path. I for one certainly thank Mr Pratt for his interest in this area of the law. I think even today, with what is perhaps a watered-down version, we are seeing an advance in the criminal law.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (12.21): I want to respond briefly to the position put that it is important we acknowledge that the law changes. Certainly, the law does change and Mr Stefaniak pursued this point. There is within the Criminal Code of the ACT and every crimes act around Australia—and similar criminal provisions within the United Kingdom and other common law countries—a provision which Mr Stefaniak referred to, namely, section 10 of the ACT code, which provides that the criminal law, as it imposes offences against the person, applies from the moment of birth.

Mr Stefaniak went to a couple of instances of offences specifically against very young children—that is, at the time of birth or after birth but, nevertheless, those that fall within the description of a life in being, as defined within section 10. Mr Stefaniak says, "Well this might be the law now around Australia and the United Kingdom and in other places around the world, but the law moves, the law changes." And, indeed, the law does change.

There was a significant change in the law three years ago—and this is relevant to the amendment moved today by the Liberal Party—when this parliament decriminalised abortion in the ACT. We removed the offence of abortion from the criminal law. And the law moved; the law changed. The law in relation to abortion in the ACT reflects this community's view and attitude to a woman's right to choose whether or not to terminate a pregnancy. So the legislation did develop, it did move. The point is, Mr Stefaniak—and I also make this point to members of the opposition in the Liberal Party in this place in relation to the amendment that we have been debating today—that that change in the law does not accord with your views. You opposed that change in the law. You opposed that development in the law. You opposed the fact that this parliament removed abortion from the criminal law.

So do not stand up and say, "Well, the law can change, the law develops." It certainly does and in this place it changed quite dramatically. It changed in accordance with this community's views around the right of a woman to choose to terminate a pregnancy by removing from the Criminal Code the criminal offence of abortion. That significant change was made in recent history in this parliament, in this place, and your amendment today seeks to undo that change. My plea to you is to be open, transparent and honest with this community that your amendment seeks to redefine the moment that life commences so far as the criminal law is concerned. We can argue forever about when life commences. It has been determined that the criminal law in respect of offences against people applies from the moment a child is born, becomes a separate being, a separate personality, and it does not commence at some stage during the nine months, the time in utero, or from the moment of conception.

You might say that the amendment seeks to exclude a woman's right to abortion. But the two cannot sit together, and you know that very well. If you are being honest with yourselves, you would know in your hearts that this amendment and your two previous attempts to introduce this change are designed to change the way in which the criminal law applies to people. You are seeking through your amendment to deem at least as a matter of law that life commences and that a person to whom the criminal law might apply comes into existence from the moment of conception. You cannot create a law

which does not allow any separation of the mother and the foetus and concurrently support a law which allows the abortion of a foetus in whom you have invested the same legal rights as a person in being. It cannot be done, it is a fiction and it is what you seek to do. This parliament has removed the offence of abortion from the Criminal Code. This is your third attempt in two years to reverse, undo or open and divide in relation to the law in this place which decriminalised abortion. You should own up to that. You should be honest to the people of Canberra around your intention.

The bill which has been introduced by the government and which we are debating today is a law designed to protect pregnant women against assault—an odious offence—and it is appropriate that this community send the strongest possible signal that it will not tolerate assaults or attacks on pregnant women. The government has introduced a law which allows each of us to support that proposition and that concept without opening the difficult, the incredibly complex, the intractable issue around which, in this place alone, we will not have a meeting of the minds, and that is the issue of when life as a matter of law commences. We will never agree—and you know that we will never agree—because it goes to the heart of the law on abortion and a woman's right to choose to terminate a pregnancy. It goes to the heart of that debate and you know that those of us that support a woman's right to choose to terminate a pregnancy can never, and will never, accept your formulation.

You can, however, as you have indicated you will, accept the law which the government has put on the table for dealing with this same issue of attacks on pregnant women. You have introduced a law which you know the government cannot accept or accede to because you know it goes to the heart of the debate and the moral complexities around the beginning of life. You know we cannot agree to it, you know we cannot accept it, because you know of our views in relation to pregnancy and a woman's right to choose to terminate a pregnancy. You know of our views because we legislated to remove abortion from the Criminal Code. You can, however, accept and support our legislation.

The debate that we are having now around abortion and the implications of your legislation is a debate which we should not be having, because it achieves nothing. It is divisive and it is essentially and inherently destructive. It is a backdoor attempt at reopening a complex and fraught debate which we have had and in relation to which this Assembly has legislated to the effect that we have removed abortion as an offence against the law in the ACT.

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 12.30 to 2.30 pm.

Questions without notice

Hospitals—safety

MR SMYTH: My question is directed to the health minister, Mr Corbell. Minister, this month the *Medical Journal of Australia* carries an article from Professor Drew Richardson, which concludes:

> … presentation during high ED occupancy was associated with increased in-hospital mortality at 10 days … The magnitude of the effect is about 13 deaths per year.

This means that, when the hospital's ED is overcrowded, there are more deaths than when it is not overcrowded. Professor Peter Cameron, in the *Medical Journal of Australia*, states that "an overcrowded hospital should now be regarded as an unsafe hospital". As the ACT hospitals are now unsafe, what actions are you taking to ensure that the ACT community has appropriate health care in our public hospitals?

MR CORBELL: ACT public hospitals are not unsafe. That is essentially the sort of scaremongering that we have come to expect from those on the other side of this place. Whenever it comes to bad news about public health systems, I can bet you who the first on the bandwagon is—it will be Mr Smyth. But when there is good news about our public hospital systems, do we hear anything from Mr Smyth? Do we have someone who comes and welcomes the fact that service delivery is being improved? The answer to that is: not a peep. For example, when elective surgery waiting lists went down by more than 600 since the beginning of last year, did we hear anything from Mr Smyth? Not a word.

To respond to Mr Smyth's question, we are doing a range of very important things to improve the situation at our emergency department to avoid access block and overcrowding, wherever possible. For example, the government has funded an additional 20 acute-medical beds; it has provided an additional $15 million for elective surgery; it has established discharge lounges at both of our public hospitals to free up beds; it has funded better community-based care to enable high-needs children to be cared for at home; it has funded an additional three intensive-care-unit beds; it has allocated another $10 million for 60 new non-acute aged-care beds; and we have funded new emergency medical units in our emergency departments.

That is what this government is doing, and it is achieving results. For example, in the last 12 months, access block at the Canberra Hospital has dropped from 45 per cent to 27 per cent. This situation is being addressed, and it is being addressed comprehensively by this government. Access block and overcrowding are issues faced by every major hospital in the country and many around the world. This is not an issue that we are ignoring; this is an issue we are tackling head-on.

There is more that we are doing. For example, we now have up and running new after-hours GP services included at our public hospitals. We have put in place new and better hospital discharge practices. People are discharged in a timely way, freeing up beds for people who need them. We have expanded the home and community care services to keep people healthy and well in their own homes. We are putting a strong focus on prevention, to prevent admission in the first place. The most successful of these to date is our falls prevention program which is designed to prevent older people from suffering a fall and the debilitating medical consequences of that.

These are some of the measures that we are putting in place. They are comprehensive and they are working. They are working in reducing access block. I do not know where Mr Smyth learned his arithmetic, but 45 down to 27 is an improvement when it comes to access block in our emergency departments. But Mr Smyth is not interested in the facts. Mr Smyth is not interested in what the government is doing. Mr Smyth is not interested

in anything that is about substantively improving public health services. All he wants is a bad figure so that he can go out and repeat his tired old mantra. This government has a comprehensive program in place, and it is a program delivering results.

MR SMYTH: Mr Speaker, I have a supplementary question. As access block and bypass rarely occurred under the previous government, why have your reforms to the ACT health system failed so comprehensively, despite the additional funds you have provided to the ACT's health budget?

MR CORBELL: I do not agree with Mr Smyth's assertion that bypass and access block never occurred when Michael Moore was minister. Is that what he is seriously saying—that access block and bypass never occurred? What a joke!

Policing—response times

MR PRATT: My question is to the minister for police. In a violent incident in Canberra on the weekend of 25 and 26 February, a teenage gang known for its predatory behaviour and violent nature gatecrashed an ordinary teenage party. Despite repeated and urgent calls from parents, culminating in a triple-O call made at 1.30 am, it took police 30 minutes to respond, even though revenge attacks involving serious assaults were in full swing. A young man who attended that party was hospitalised with serious injuries while another guest had a broken nose. Yet again, why has the government failed to resource ACT Policing, resulting in a failure to quickly respond to reports of serious gang violence?

MR HARGREAVES: Firstly, I reject Mr Pratt's assertion that the government has not resourced adequately our police. In fact, since the Stanhope government came to office, we have seen increased police numbers; we have seen increased resources, going to many, many millions of dollars; we have seen a greater visibility of police in our town centres, in Civic, in Manuka and in the suburbs; and we have seen an incredible success rate on the part of police in attacking major crime incidents.

Mr Pratt can come up with the odd incident here and there. He does this with monotonous regularity because he is insistent on casting aspersions on the quality of the police force in this town. He will continue to find ways in which to denigrate the police, to try to diminish the confidence the public has in their police force. He does not, in fact, encourage—

Mr Smyth: Be honest.

MR SPEAKER: Withdraw that, Mr Smyth.

Mr Smyth: Mr Speaker, you ruled—

MR SPEAKER: Just withdraw it.

Mr Smyth: This morning you ruled that saying "be honest" was acceptable. You refused to make the Chief Minister withdraw it this morning.

MR SPEAKER: Wait a moment. That is not what occurred. Do not verbal me. That is a bad start. You interjected across the chamber, "Be honest." Withdraw it.

Mr Smyth: I withdraw. I will check the *Hansard*.

MR HARGREAVES: Mr Pratt does not acknowledge the fact that we have had significant double-digit reductions in major crime in this town. He does not acknowledge that he has a role and a responsibility as a member of this place to inspire confidence, in fact, in the community and its police force. He does everything in his power to diminish the confidence the public have in the police force by coming up with absolutely, in my view, single incidents. He does not approach my office and say, "Is there something untoward about this that I, as shadow minister, might need to know?" No. He promptly goes to the media or comes into this place, in his usual form, in an ill-informed manner. I have to say that I make extreme apologies to the community out there that I am unable to put a policeman at the bottom of his driveway.

MR PRATT: Apart from not answering the facts of that last question, how can Canberra families have confidence in your government's law-and-order policies when the police clearly do not have the resources to respond to gang violence?

MR HARGREAVES: Very simply, my answer to Mr Pratt's supplementary, which was: "How can the public have confidence in the services of the police in this town?", is—

Mr Pratt: The king of the mislead.

MR SPEAKER: Withdraw that, Mr Pratt.

Mr Pratt: I withdraw.

MR SPEAKER: Now, silence, please.

MR HARGREAVES: Thank you very much, Mr Speaker. My answer to Mr Pratt's question, which is: "How can the public have confidence in the police when this government does not give the resources—

Mr Stefaniak: On a point of order, Mr Speaker: Mr Pratt quite clearly asked, "How can Canberra families have confidence in your government's law-and-order policies when the police clearly do not have resources to respond to gang violence?" I can hardly see how Mr Hargreaves—

MR SPEAKER: Come to the point of order.

Mr Stefaniak: He is deliberately misleading the Assembly.

MR SPEAKER: Resume your seat. I will rule on your point of order. Come to the point of the question, Mr Hargreaves.

MR HARGREAVES: I am trying to. I am desperately trying to. I must say that sometimes I have to repeat the question from Mr Pratt because, like most people in Canberra, I do not understand him and I do not understand what on earth he is babbling on about. I have to verbally process his stuff. I apologise to your good self, Mr Speaker.

In answer to his question: "How can the community have confidence in their policing when this government does not give enough resources?", there are two answers. The first answer is: the community will have confidence in their police officers because we have the best policing processes in the country. The second is: the best way the community can have confidence in their police force is not to listen to a thing Mr Pratt ever says anywhere in the world about it.

Mrs Burke: On a point of order—

Mr Pratt: Did you know it was intellectually superior?

MR SPEAKER: I cannot hear this point of order that your colleague is trying to raise, Mr Pratt.

Mrs Burke: Thank you, Mr Speaker. I ask you to direct the minister to be relevant in his answer to the question: "How can Canberra families have confidence in your government's law-and-order policies?", not the police. He needs to rectify that. I ask you to rule on that.

MR SPEAKER: Have you finished, Mr Hargreaves?

MR HARGREAVES: No. I have got two minutes to go. The community can have enormous confidence in its police force, despite the rantings and ravings of this man opposite. He goes out of his way and goes trolling through all manner of documents to try to find something wrong. What is wrong? I know exactly what is wrong. He went to gather the mail the other day and there was no policeman at the bottom of his driveway. There was nobody there. And not a rebel in sight!

The fact of the matter is this: we have the best police force in this country. Contrary to Mr Pratt's assertions, that is so. We have the best policing processes in this country, proven by double-digit reductions because of major crime initiatives. The so-called shadow minister, for the moment, the aspirant over there for the deputy position on the other side, would have us believe that there are rampant gangs running riot across the countryside. They are slashing and burning and razing to the ground—all of these horrible things. I quake in my bed of a night-time. The fact is that this man builds up straw men and tries to tear them down. The only straw thing in this place is this man's ability to articulate a damn thing in this place.

Housing—ministerial summit

MS PORTER: My question is to the Minister for Disability, Housing and Community Services. Can the minister please inform the Assembly of the discussions held at his ministerial housing summit last week?

Mrs Burke: Ah, a dorothy dixer!

MR HARGREAVES: I acknowledge the mooing across the chamber of Mrs Burke, which you may have missed, Mr Speaker, and I thank Ms Porter for the question. I would like to take this opportunity to inform the Assembly of the range of issues addressed at the ministerial consumer forum and housing summit held late last month.

Mr Speaker, as you know, private rental prices in the ACT are too high. The price of houses is prohibitive for most ordinary people and many people are forced to rely on the government for housing assistance. This has resulted in our public housing waiting list being too long and many Canberrans being homeless or trapped in inappropriate housing. That has been so since time immemorial in this place. To pay a little bit of credit here, I know that the Leader of the Opposition struggled with this issue in the same way that we do and I do not wish to have anybody believe that he did not attempt to have a go at it either because—fair go.

The housing issues confronting us are complex and not all of the solutions are within the purview of the ACT government. With that in mind, I held a series of advisory forums throughout 2005 and early 2006 to work directly with the community and private sectors to identify pressing issues and find solutions. These forums provided initial feedback on issues of importance that were further debated during the consumer forum and housing summit.

I was absolutely inspired by the attendance at the two days, with over 500 participants engaging in some stimulating debate. The consumer forum, held on 27 February, enabled Canberrans who live in or who are seeking rental accommodation to discuss housing issues and thereby assist in the development of government housing policy. The forum was open to all tenants and over 250 private, public and community tenants as well as individuals experiencing homelessness or who access crisis accommodation services attended.

The consumer forum stressed that we need to continue to place strong emphasis on improving our services for our tenants—in particular, to focus on individual client responses, improvements to the location and quality of our housing stock and improvements to Housing ACT's customer service and communication mechanisms. Tenants also identified the need to develop strong working relationships with housing managers. Housing ACT will expand its staff development programs to better equip staff to respond to the broad needs of its clients. The Stanhope government has a strong commitment to tenant participation and I am looking at expanding tenant participation mechanisms, including the establishment of regular regional tenant forums.

I turn to the feedback from clients at the housing summit on the second day. The summit brought together a diverse group of people to share ideas and collectively consider new opportunities to improve the housing system in the ACT. A clear outcome of the forum and the summit was an acknowledgment that there is an insufficient supply of affordable housing in the ACT. There was also broad agreement that the government would never be able to provide enough public housing stock to respond to all of the demand for affordable housing in the territory.

Public housing will remain the most affordable housing option for low-income families in the ACT. We are maintaining a greater proportion of public housing than any other state or territory and lead the way in allocating housing to those most in need. However, that is not proving to be enough to relieve the current pressures on public housing, which largely reflect a market failure at the lower end of the private housing market.

A strong message from the summit was that the attack on affordability must come from the supply side. Land supply is a key issue, both in new suburban developments and medium-density sites closer to the city. High building costs attributable to the skills shortage are another major factor.

In response to these issues, I am eager to explore further joint ventures to rejuvenate ageing Housing ACT multiunit developments and undertake new affordable developments in areas such as City West and Forde. I will hold further discussions with the private sector to progress the variety of new ideas brought to the table at the summit, including some innovative investment proposals for maintaining and renting low-cost housing.

The forum and summit were a great success in gathering people into one room to discuss these issues. Many of them had not come together before or been given the opportunity to voice their ideas to government. The ACT government has implemented a range of measures to support affordability and to enhance services to the community, and I will continue to work on new ways to enhance housing affordability.

MS PORTER: I have a supplementary question. Can the minister please outline for the Assembly what measures the government has already undertaken to improve housing affordability in the ACT?

MR HARGREAVES: The Stanhope government has implemented a number of housing affordability measures, backed up by considerable funding, since coming to office in 2001. These have included $4 million over four years, starting in 2002-03, for a range of innovative social housing projects, including funding to improve the amenity of accommodation at Ainslie Village, funding to increase the capacity of the indigenous housing sector and funding to expand community housing.

In 2003-04, $3 million was provided to increase community-managed affordable housing. In the third appropriation of 2003-04, $33.2 million was provided to boost social housing. That was the largest single injection of funding into public and community housing since self-government. In the following budget, 2004-05, that was augmented by a further $20 million over four years, at $5 million a year, to further increase the supply of social housing. That will assist in the acquisition of a further 60 properties.

The government announced a number of additional affordability initiatives in the 2003-04 and 2004-05 budgets. These included: $13.4 million over four years to address homelessness; funding to assist the replacement of the 81 public housing properties destroyed in the January 2003 bushfires; $1.6 million over four years for emergency accommodation; $5.2 million committed by reducing the land tax burden on rental

properties; and revising the eligibility for stamp duty concessions, at $5.2 million, to encourage home ownership.

The Stanhope government is committed to improving the affordability of housing in the ACT and to supporting those in our community to find safe, secure and appropriate housing. These initiatives have certainly helped. However, it is becoming increasingly clear that we cannot keep doing that alone. We cannot forget or underestimate the role that the Australian government plays in it all.

The issue of housing affordability is not unique to the ACT and there are, we believe, considerable national challenges for the Australian government, particularly in the areas of taxation and income support reform. We have long argued that the Australian government has an important role to play in the development of a national housing policy, in an ongoing commonwealth-state housing agreement and in further assisting people in the private rental market through commonwealth rental assistance—the CRA.

The CRA is the major national policy lever to influence affordability in the private rental market. As members know, it is a non-taxable supplementary payment made by the Australian government to help recipients of income support payments with the cost of private rental housing. Nationally, 35 per cent of CRA recipients continue to pay more than 30 per cent of their incomes on rent, figures that suggest that the CRA could be better designed by the Australian government to reduce housing stress.

In regard to public housing, the ACT, like other jurisdictions, is faced with declining commonwealth funding in real terms under the commonwealth-state housing agreement. The Housing Ministers Conference will be held on 16 June 2006. I am advised that this conference is likely to consider national action on affordable housing, a CSHA evaluation, a national housing summit and indigenous housing issues.

The Stanhope government will continue to work both locally and nationally to progress housing affordability issues and we will continue to do so in an open and consultative manner. As can be seen from the figures of which I have just advised the house, the Stanhope government, since coming to office in 2001, has injected huge amounts of money into this really serious issue. Contrast that with the fact that when we came to government in 2001 the public housing stock was some 1,000 properties short.

Mrs Burke: You know why that was.

MR HARGREAVES: Yes, I know why that was so, Mr Speaker. Mrs Burke asks whether I know why that was. Yes, I do. While the Leader of the Opposition had stewardship of that portfolio, the fact of the matter is that the stock went down by 1,000 properties.

Mrs Burke: What about the $30 million election promise?

MR HARGREAVES: The mooing from across the chamber will not make the slightest bit of difference to me, Mr Speaker. The simple fact is that under Mr Wood's leadership as part of the Stanhope government in 2001 there were gigantic steps forward in addressing affordable housing and homelessness. I think that the Stanhope government of 2001 to 2004 should be congratulated sincerely on the amount of funding that it has

injected into the process. I am only too pleased as minister to have a great and consultative role to play in moving the thing even further forward.

Housing—Narrabundah long-stay caravan park

DR FOSKEY: My question is to the Minister for Planning. It concerns the Narrabundah long-stay caravan park, in essence a small village of affordable housing and home to 200 people. The Assembly is aware that the ACT Commissioner for Housing gave the park to Koomarri for nothing, and, now that the requirement to maintain its purpose for five years has expired, Koomarri is selling it off, presumably to the highest bidder.

Given that the block is zoned broadacre and that ACTPLA can agree to vary the lease purpose clause specifying a caravan park for a fee, and given that the planning reforms to come in this year propose to get rid of those clauses altogether, the residents do not feel secure on that site. Consequently, since there is a shortage of similar sites available in Canberra, is the ACT government pursuing a variation to the territory plan to ensure the site remains dedicated to long-term affordable housing?

MR CORBELL: No, we are not. The government does not believe that a variation is required in relation to this site. For Dr Foskey's and the Assembly's information, the crown lease over this site was granted to the Commissioner for Housing on 9 November 1999. The crown lease permits the land to be used for a caravan park and camping ground, except that no more than 102 caravan sites are to be located on the land.

As Dr Foskey and members are probably aware, the crown lease also provides that the lessee shall not, before the date of 31 December 2004 or a date five years from the sale of the lease, seek to vary the lease, but the above restriction does not prevent the lessee from making application under section 226 of the land act for the approval of additional uses or additional caravan sites, but such an application is not able to seek approval to the premises being used for a purpose which does not include a caravan park and camping ground. So there are some guarantees in the existing lease but, as Dr Foskey points out, the existing lease has conditions that essentially put a five-year sunset clause on those arrangements.

I think it would be fair to say that the government is very keen to see that the site is retained for accommodation purposes similar to or the same as is currently occurring because it does provide an important housing opportunity in Canberra that otherwise would not exist or would be reduced.

There has been no application to vary the lease. The lease is sold. Leaseholders have rights in relation to their land consistent with what is permitted under the territory plan. There has been no application to vary the lease. I will certainly encourage the sellers of the land, in this case Koomarri, to ensure that they do sell it to a third party who has a bona fide interest in continuing to operate the facility as long-stay accommodation.

DR FOSKEY: I ask a supplementary question. In the event that Koomarri does not take the minister's advice, what measures will the government take to ensure that those people currently resident in the long-stay caravan park can stay where they are living in an affordable and socially sustainable manner?

MR CORBELL: It is a hypothetical question, Mr Speaker.

Hospitals—overcrowding

MRS DUNNE: Mr Speaker, my question is to the Minister for Health. Minister, last Friday you launched the ACT health access improvement program which, by my count, is your third attempt since August 2004 to address access block at the hospitals. In this third attempt at addressing a problem that, according to the *Medical Journal of Australia*, costs 13 lives a year, you offered ingenious advice through media release. It says:

> Now comes the really hard part—taking up those opportunities—

I am not quite sure what they are—

> —and putting in place solutions.

Minister, after two years, three attempts and upwards of 26 deaths, you have finally got to the stage of putting solutions in place. How many more patients will need to die before you actually fix access block in the hospitals?

MR CORBELL: That is an outrageous allegation. I would ask Mrs Dunne to withdraw the allegation that I am somehow responsible for 27 additional deaths in the public hospital system. It is an outrageous allegation and she should withdraw it.

MR SPEAKER: I will have a look at the *Hansard*. I think you should deal with the question, Mr Corbell.

MR CORBELL: Thank you, Mr Speaker. Contrary to Mrs Dunne's assertion, this is not the third attempt; it is part of a package of measures the government has put in place to address access block problems at our public hospitals. Really interesting about the assertions made by those opposite as their solution to access block is the simplistic and constant mantra we hear from the Leader of the Opposition which is, "A hundred more beds; a hundred more beds!"

I do not know whether Mr Smyth read the *Australian Journal of Medicine*, but if he did, he would have seen that the experts say there that extra beds are not the solution. What happens when you have extra beds on their own is that the beds just fill up and then you are back to square one. That is what those who have investigated this issue are saying. All Mr Smyth talks about on this issue is an extra 100 beds. Mr Smyth, go and read the *Australian Journal of Medicine* and see what the experts say. They say that the solution is not necessarily extra beds. In fact, they say that just supplying extra beds is not going to fix the problem. You know what happens: the beds fill up and then you are back to square one.

In contrast to the simplistic and opportunistic approach from those opposite, this government takes a comprehensive approach. It is about increasing capacity—and we are increasing capacity significantly. I will have more to say on that during the MPI later today. But we are also focusing on improved management and improved patient flows. That is what the access improvement program is about. Mrs Dunne and Mr Smyth should

talk to the people in the emergency department or the people on the wards about their engagement in the access improvement program. Over 600 ACT Health staff across both public hospital campuses have been engaged in the access improvement program. They have identified how they can do their work more effectively and more efficiently to help reduce blockages in the system and to help reduce access block, to help free up beds when they are needed by simply working smarter.

I am amazed that a party which is always on about better efficiency and better administrative effectiveness is saying, "When it comes to the hospital, it doesn't matter. Don't worry about that; don't worry about working smarter; don't worry about being more efficient; don't worry about focusing on work practices to make things work better; just put in 100 beds—which we know won't work." Access improvement is all about better work practices to address the problems. I say quite clearly to those opposite that this is having a result. Access block is down in the Canberra Hospital from 45 per cent to 27 per cent. That is a significant reduction. There has been close to a halving in access block in the past 12 months because of the measures this government has put in place. This government is tackling these issues. I will not accept from anyone on that side of the chamber this bald-faced lie that people are dying because the government is doing nothing. It is a lie; it is a horrendous, bald-faced lie; it is an outrageous claim and it is one I will not accept.

Mrs Dunne: Mr Speaker, I wish to raise a point of order. At least five or six times in the past half-minute Mr Corbell said that members of the opposition—and presumably me in particular—had told a lie. I want him to withdraw it.

MR SPEAKER: I do not think he said that at all.

Mrs Dunne: On a number of occasions he said that it was a bald-faced lie. He was referring to what I had said. That is a clear indication that I have told a lie, and I would like it withdrawn.

MR SPEAKER: I do not think he directed that at you, Mrs Dunne.

Mrs Dunne: He did not directly identify me. He did not say, "Mrs Dunne told a bald-faced lie," but he referred to what I said and stated that it was a bald-faced lie. All you need to do is join the dots.

MR SPEAKER: I will have a look at the *Hansard*. My reflection on the comments are not the same as yours.

MRS DUNNE: Mr Speaker, I have a supplementary question. Minister, what difference will this third phase—not this third attempt—at providing the answer to access block make to the community? What confidence can the community have that you will solve this serious problem?

MR CORBELL: I thank Mrs Dunne for the question. They can have confidence because results are being seen now. Access block at the Canberra Hospital has gone down from 45 per cent to 25 per cent in the past 12 months. The trend is downwards; the trend is reduced access block. So all the measures the government has put in place—whether they be discharge lounges, additional emergency medicine units in our

emergency departments, improved day surgery admission rates so people come in on the day of their surgery and do not take up beds overnight when waiting for surgery, or issues around the access improvement program and identifying improved work practices—are making a significant difference and it is showing up in the figures. They are showing up in reduced access block at our public hospitals and at the Canberra Hospital in particular, which is down from 45 per cent to 27 per cent. I think the community can have far more confidence in a government that takes a comprehensive and informed approach than in an opposition which always resorts to the crisis call, which always resorts to the panic stations that we hear of and always resorts to the simplistic notion which the *Australian Journal of Medicine* itself says simply will not work.

Policing—response times

MR STEFANIAK: Mr Speaker, my question is to the Minister for Police and Emergency Services. Over the weekend of 25 and 26 February there were a number of serious bashings at the Canberra show and also at a private party in Campbell by the same gangs of north-side teenagers involved in earlier acts of intimidation over the summer. According to witnesses, in all cases there has been a reluctance by police to follow up. Minister, can you explain why the police have been forced to give such a low priority to reports of serious assaults?

MR HARGREAVES: Mr Speaker, I pass my on condolences to Mr Stefaniak, who clearly has the same affliction as Mr Pratt: digging into little bits and pieces here and little bits of pieces there, trolling through the garbage bins of history trying to find some little morsel of criticism of our police force. From what I have seen in this place, I thought Mr Stefaniak had hitherto been a supporter of the police. Alas, I am sorry to say that I was wrong. I can see now that this is merely an opportunity for Mr Stefaniak to keep at bay the pretender to the position of Deputy Leader of the Opposition. He is trying to keep Mr Pratt out of leadership contention. Well, good on him. I sit in this place and sometimes marvel at the heights of incompetence and ignorance that those opposite aspire to. They climb the ladder of incompetence and in the end their Valhalla is complete and utter incompetence. And good on them.

Members interjecting—

MR SPEAKER: Order! There has been a range of interjections. Minister, come to the point of the question.

MR HARGREAVES: Okay, Mr Speaker. The truth of the matter—and those opposite have heard this said in this place before—is that the police have a particular approach to major events management. Mr Stefaniak knows only too well that in fact they put on additional policing to make sure that certain major events are covered. We may remember their presence at Summernats when—guess what, Mr Gentleman—quite a number of Rebels turned up. In fact, it was the presence of the police at that major event which I am sure contributed to the peace and the wonderful event that Summernats was. There will always be an opportunity at the Canberra show for some malcontents to exercise their indulgences. Unlike those opposite, I have every confidence that the police take events such as the Canberra show particularly seriously.

Mr Pratt: They do to the limit of their capacity, minister.

MR HARGREAVES: Oh, Mr Pratt. I cannot wait for the election, Mr Pratt—I really cannot—when you will get a screaming flogging. I just cannot wait for that to happen. You are going to get an absolute flogging. I am going to be there, and the smiling face behind the gun, mate, will be mine.

Mr Pratt: In your dreams, baby.

MR HARGREAVES: The smiling face behind the smoke and the gun, Mr Pratt, will be mine. I look forward to the contest.

MR SPEAKER: Order! Mr Hargreaves, what has that to do with the question?

MR HARGREAVES: We were talking about violence, Mr Speaker, and the violence that will be meted out to this man in the election will be nothing—

Mr Pratt: In your dreams.

Mr Stefaniak: You should talk to the Minister for Health. He might be able to help.

MR HARGREAVES: Mr Speaker, the police—

MR SPEAKER: Mr Hargreaves, come to the point of the question or sit down.

MR HARGREAVES: I will come to that; I am getting there, Mr Speaker. The police in this place do a fantastic job. These guys can troll through the garbage bins trying to find little instances to make them look bad but I am not going to listen to a bit of it.

MR STEFANIAK: Mr Speaker, I ask a supplementary question. I thank the minister for that answer. My supplementary is: why isn't the government giving this issue a high priority, especially considering the fact that Canberra hospitals are treating an increasing number of teenage victims of assault?

MR HARGREAVES: We are, Mr Speaker.

Teachers—wage negotiations

MS MacDONALD: Mr Speaker, my question, through you, is to Ms Gallagher in her capacity as minister for education. It has been reported recently in the media that ACT public school teachers are considering striking over wage negotiations. Can you update the Assembly on the progress of negotiations?

MS GALLAGHER: I thank Ms MacDonald for her question. I welcome the opportunity here in the Assembly to discuss the government's pay offer to teachers. The Stanhope Labor government has proved time and time again that we are committed to a strong, vibrant and effective public education system in the territory. There is no doubt that we value the contribution of our teachers very highly. There is also no doubt that their skills and hard work provide us with one of the best education systems in the country.

When we came to power in 2001, the teachers were suffering under the very small pay increases and, essentially, wage freezes by the previous Liberal government. We had to do something to address the wage inequity that existed and ensure that teachers were paid within a realistic framework.

During the last negotiations, the ACT government offered responsible and realistic pay increases which ensured our teachers were the best paid in the country. For example, ACT graduate classroom teachers are now amongst the highest paid professionals in the country. Their current commencing salaries of $46,565 rank them on a par with the medical profession and ahead of graduates in law, engineering, accounting and architecture. When they leave university and get their first job, they are earning $46,000.

The pay increases over the past three years have seen teachers salaries increase by between 15 and 25 per cent. However, in budgeting for the new pay deal, we were anxious to do two things. One was to maintain teachers' position as one of the best paid in the country but to offer a pay increase that we could afford. That offer is now on the table. It is, essentially, an increase of three per cent per annum, which will keep them at that No 1 position.

This offer encompasses the same pay and conditions that teachers currently enjoy but offers them a pay rise above CPI and forecast CPI. Over the past three years, national CPI has been steady at 2.5 per cent. On top of the three per cent per annum, classroom teachers automatically move up the increment scale each year.

On top of the annual pay rise above CPI, teachers will receive a salary increase by virtue of progressing to a higher pay level automatically. For example, in 2003 a teacher who started at the graduate entry level entered the teaching work force on a salary of $41,000. Since that time, successive wage increases, coupled with automatic progression, mean that that teacher would now earn $51,222. By 2008, under the current three per cent on the table from the ACT government, this teacher will enjoy an annual salary of around $64,000, well above their counterpart in New South Wales on salary alone and well above when the total remuneration package, with increased super and less face-to-face teaching hours, are considered.

I was disappointed at the negative response from the education union in rejecting the government's offer. I am also disappointed that the union has decided to take industrial action so quickly. The union and the government have worked well together during our time in office. Certainly in a spirit of compromise, we have achieved much in our partnership.

I do not think the union is being honest when they criticise the government's offer. There is no doubt that teachers, if they accept this pay increase, would maintain their No 1 position in the country. There is no doubt about that. It is unfortunate that they have decided to take industrial action. We will be trying to avoid that industrial action on 14 March, if we can reach a resolution with the teachers before then.

I have to say that the government does not have any more money to give. If there is any movement, it will certainly have to be movement from the teachers' side on the content

of the agreement. Certainly, on the wages side and the money we have put aside to pay those wages, there won't be any movement on that.

MS MacDONALD: Minister, what steps is the government taking to resolve this dispute and thereby prevent any industrial action which you have just mentioned?

MS GALLAGHER: Thank you, Ms MacDonald, for the supplementary question. As I have said, we have put forward this offer to the AEU. The government believes this offer is fair, reasonable, affordable and generous. We are not in a position to increase this offer without seeking to change the current conditions that teachers enjoy.

If we look at the facts, the facts are that ACT government teachers are paid more by way of remuneration than teachers in any other state or territory. The government's offer will maintain this position. On salary alone, the majority of ACT government classroom teachers will be better off than their New South Wales counterparts under the government's offer. That is on salary alone.

Any government teacher leaving the ACT to teach in another state or territory would immediately be worse off in terms of employers' superannuation paid to them. If they went to New South Wales, this would be a minimum of 6.4 per cent. Any graduate choosing to commence work in another state or territory would immediately be accepting a payment of lower superannuation contribution.

Based on financial considerations only, no current ACT government teacher can afford to leave our system for another state or territory. ACT teachers on the top classroom teachers' salary will be paid a minimum of $3,500 more than their New South Wales counterparts over the three years of the agreement.

Contrary to claims by the AEU, New South Wales and Victoria's superannuation contributions stand at nine per cent. ACT employer contributions stand at a minimum of 15.4 per cent. In New South Wales, there is no capacity to salary sacrifice superannuation contributions. It is debatable whether this will occur in the life of this agreement. That is one of the arguments that the AEU have been putting forward. The situation is that they cannot salary sacrifice and cannot benefit from the argument that has been put forward.

In the interests of seeking resolution to the teachers dispute, the government is prepared to consider New South Wales parity as an alternative resolution. That is the argument that the AEU would like—four per cent per annum. We will consider that as an alternative resolution to avoid this strike action, but it will be New South Wales parity on pay and conditions. The only way that we can deliver their wage increases is if they accept New South Wales parity across the board. We will be happy to settle on either offer.

Importantly, if teachers accepted the New South Wales parity argument in its entirety, it would come at no extra cost to the taxpayer. There is no problem there if the teachers want to consider that. That is where things stand at the moment. They can accept the three per cent per annum across the board, with no changes to conditions, or they can consider the New South Wales parity package. This is something that they have argued for for some time. It essentially meets their demands.

Hopefully, if this position is acceptable to the teachers union, this could bring an end to the dispute prior to any industrial action next week which, of course, in the end will only inconvenience students and their families who have to make alternative arrangements on those days. Hopefully, there is some work we can do in the meantime and avoid this industrial action but, at the end of the day, they are the two positions on the table for the AEU to consider. At the end of the day, they keep teachers at that No 1 level across the country, enjoying the best conditions, the best pay.

We are having no trouble attracting graduates leaving university or obtaining teachers. We have 10 teachers on a waiting list for every teaching position we advertise. There are people waiting to teach in our schools. There are not people rushing across the border, as the AEU would have you think. There is absolutely no problem with our ability to attract and retain. Teachers see the ACT as a desirable place to teach. The conditions are great; they are supported by a government that supports public education; they can enjoy teaching children in small classes; and there is a well-educated population.

There is absolutely no problem with our attracting teachers, and attracting teachers on a starting salary that is above lawyers, architects and health professionals, which is as it should be. I have no problem with that. With commencing salaries around $46,000 to $48,000, we will have no problems attracting and retaining teachers. I hope the AEU reconsider their position and we are able to avoid the strike action next week.

Hospitals—overcrowding

MR MULCAHY: My question is to the Minister for Health. Minister, as we now know, Professor Richardson's research shows that access block and overcrowding at Canberra's hospitals are associated with around 13 deaths a year. In his editorial on Richardson's research in the *Medical Journal of Australia*, Professor Peter Cameron remarks: "It is obvious that making elderly or disabled patients wait on uncomfortable emergency trolleys in corridors with sleep deprivation and minimal privacy is inhumane."

Minister, making patients wait on uncomfortable emergency trolleys in corridors is now a regular occurrence at our hospitals. Why have your reforms in the last few years failed to end this inhumane practice of patients waiting on uncomfortable emergency trolleys at Canberra's hospitals?

MR CORBELL: We are tackling this issue. I do not know where Mr Mulcahy has been for the rest of question time today, but I can only say it again: access block at the Canberra Hospital emergency department is on the decrease, not the increase. It is down from 45 per cent to 27 per cent in the past 12 months. That is evidence that the government is addressing and tackling this problem. That means fewer people waiting longer than eight hours from the time of arrival until the time they are admitted into a ward. That means fewer people having long waits to get into a ward. That means fewer people clogging up the emergency department. That means more people getting access when they need it.

The government's reforms are working, and they are working comprehensively, whether it is discharge procedures, emergency medicine units, new arrangements to assist older Canberrans to get the care they need in their own homes, issues around falls prevention

to prevent admission in the first place or whether it is through improvements to the access improvement program as a result of improved work practices. All of these measures are working and access block is on the decline because of them.

MR MULCAHY: I ask a supplementary question. If the reforms are working, why are so many elderly people still enduring these inhumane experiences?

MR CORBELL: There is more work to be done to reduce access block in our public hospitals. But the message is very clear. The comprehensive program the government has put in place is working, and the figures back that up. I do not how many times I am going to have to explain this to Mr Mulcahy. Mr Mulcahy, have a look at the outcomes we are getting. This government is getting the outcomes. The outcomes include reduced access block. Access block at the Canberra Hospital emergency department is down from 45 per cent to 27 per cent in the past 12 months. I am going to keep saying it, Mr Speaker—

Mr Mulcahy: Well, go and tell the people affected, minister.

MR CORBELL: because that is a halving. Mr Mulcahy, I can assure you that any Canberran who shows up at the emergency department who is category 1 and needs treatment straightaway because they are in a life-threatening situation gets that care. They get that care on time. They get that access when they need it.

Mr Mulcahy: This is a serious issue.

MR CORBELL: When it comes to category 3, category 4 and category 5—

Mr Mulcahy: What about category 2?

MR CORBELL: there are still people waiting too long. I know that and I accept that.

Mr Mulcahy: I have given you cases.

MR SPEAKER: Order!

MR CORBELL: But Mr Mulcahy and those opposite need to accept that this government—

Ms MacDonald: Mr Speaker, I raise a point of order. The continuous interjections of Mr Mulcahy, in spite of your directions and in spite of standing order 39 have been the summation, basically the cumulative effect of the Liberal opposition—

Opposition members interjecting—

MR SPEAKER: Order!

Ms MacDonald: The opposition have been continually flouting standing order 39, Mr Speaker. I ask that you direct them to desist.

MR SPEAKER: Cease your interjections, Mr Mulcahy. I think Mr Corbell has more to say.

MR CORBELL: Mr Mulcahy and those opposite need to accept a very basic fact. That fact is that access block at the Canberra Hospital is down. Maybe they should have thought about that before they decided to resort to their usual claim of crisis and disaster. Maybe they should have thought about that when they were writing their questions for question time today. Access block in the emergency department of the Canberra Hospital is down, and it is down significantly from 45 per cent to 27 per cent in the last 12 months.

That means, Mr Mulcahy, fewer people waiting, fewer people waiting long, uncomfortable hours to get into the wards and more people able to be seen. On top of that, this government has increased the capacity of our public health system to address these issues. We have increased it with new subacute beds, new medical beds, new intensive care beds, more in-home care, GP after hours clinics, better discharge lounge arrangements and our access improvement program.

The challenge for the opposition and the challenge for the Liberal Party in this place is to go beyond the simplistic assertion that providing more beds fixes every single problem in the public health system. The Canberra community deserve better than a Liberal party that has a parrot as the Leader of the Opposition who repeats the mantra day in and day out without any attempt to analyse and understand the complexities of managing a public health system. Until they have that and until our community has that, we are not being served well by this poor and pathetic opposition.

MR SPEAKER: Mr Corbell, withdraw your reference to a member as some sort of bird. I am not going to put up with that sort of thing.

Mr Smyth: I raise a point of order, Mr Speaker. I did actually refer to Mr Gentleman as a parrot and we had quite a nice interchange about different sorts of parrots.

MR SPEAKER: You might think that is tolerable in this place, Mr Smyth. I do not.

Public housing—war widows

MRS BURKE: My question is directed to the Minister for Disability, Housing and Community Services. I understand that changes have been made to regulations that do not allow for the exemption of all forms of veterans' entitlements when assessing income to calculate rent for public housing. Under the changes, the exemption for the purposes of calculating rent is made only to take account of disability allowances, disability payments and disability pensions.

How many war widows, for example, who are public housing tenants are now facing having to pay higher rent because you are clearly including all the forms of veterans' entitlements, other than disability payments, when determining rents?

MR HARGREAVES: I thank Mrs Burke for the trick question. It is either a trick question or an extreme example of lack of research. I will give a little bit of history with

regard to the purported changes to eligibility. There was a determination made in April 1996—if my memory serves me correctly it was a Liberal government at that time. The Commissioner for Housing excluded disability pensions, payments and allowances paid under the Veterans' Entitlements Act 1986. This exemption replaced an earlier, somewhat narrower exemption of the extreme disablement adjustment pension. This exemption does not and did not include the war widows pension, which is not specifically a disability payment. There has been no new determination or amendment to the Housing Assistance Act 1987 relating to veterans' entitlements.

Mrs Burke: That's not true. I've got the proof.

MR HARGREAVES: Check it out.

Mrs Burke: I have done.

MR HARGREAVES: Stop making a fool of yourself. Any amendment or change to a gazetted program must be tabled in the Legislative Assembly and is subject to disallowance. The determination was amended in 2006 for internal clarification purposes; that is, that only disability payments and allowances—not all payments and/or allowances, which Mrs Burke would have us believe is the case; it referred only to disability payments—were exempt. This was a clarification rather than a change of policy or practice. The internal clarification did not and does not alter veterans' entitlements.

I do not know how many times I have to say this before it gets into the minds of those opposite. I wish I could draw pictures for *Hansard*. The really silly people across the chamber need it in pictures. There has been no change to veterans' entitlements. When Mrs Burke went out to frighten the horses in the media, the first thing I did was get hold of a copy of the two determinations, and I read them both. There was no reference to veterans' entitlements at all.

Mr Pratt: Will war widows be affected in any way?

MR HARGREAVES: Give it a rest, you parrot. I looked at both determinations. One of them clarified the definition of disability by placing the word "disability" more prominently than in the previous determination. That is all the change that was there. There has been no change to the veterans' entitlements. Yet again, Mrs Burke has got it wrong or is being mischievous. You have a choice of people being either incompetent or mischievous. I give her credit: she is incompetent. You could have looked it up and had a little bit more of a look. Also she could have asked us, and we would have quite happily told her.

Mrs Burke has taken the case of a particular person. I spoke to that particular person this summer. I said, "Do get in touch with us and we'll clear it up". That is exactly what we will do. I also asked my department to check whether our treatment was any different to other jurisdictions. Guess what? No. We are no different to anybody else. The reason is that we have not changed anything.

I challenge Mrs Burke either to come into this place, table the change that specifically refers to veterans' entitlements and which contains the words "veterans' entitlements" or

"war widows pensions", and show this house how we have reduced this, or to stand up in this place and make a public apology for it. I can tell you this for free: she has got it wrong, she will get it wrong again, and before the election she will get it wrong again.

MRS BURKE: Mr Speaker, I have a supplementary question. What effect—despite your saying that there are no changes, there are—will these changes—implemented under determination 2006/2, as opposed to 2005/1, Housing Assistance Act 1987—have on the way in which rents are determined for all who are on some form of veterans' entitlement?

MR HARGREAVES: Again—I wish I had a textacolour and a big piece of butcher's paper—there has been no change to veterans' entitlements. There is none, and that is the end of the story.

Alexander Maconochie Centre

MR GENTLEMAN: Is the Chief Minister aware of comments made by the chief executive of the ACT chamber of commerce, Mr Peters, on ABC local radio this morning that, in view of the economic situation, the government should abandon the construction of the Alexander Maconochie Centre? What is the status of work on the project? Is Mr Peters correct in saying that the prison is a waste of money?

MR STANHOPE: Regrettably, I am aware of Mr Peters's quite uninformed comments on radio this morning. I have to say, and I think it is a fair comment, that I think Mr Peters is alone amongst the business community on this issue. His comments are not shared by any other business representative organisation, business organisation or business person that I am aware of. I think that if one were to have regard to the attitude of the master builders association or the Canberra Business Council one would be aware of the stark contrast between the views expressed by Mr Peters and those of other more mainstream business representative organisations.

Indeed, as far as I am aware, the only Canberra organisation that reflects the same view or shares the view of Mr Peters on the ACT prison and the desirability of this project is the Liberal Party of the ACT. I think it is fair to say that Mr Peters, along with many others, indeed everybody else, had the opportunity to express his views on the project, whether it be during the preliminary assessment phase or the public notification phase of the development application but, of course, he chose not to. That is, to some extent, a hallmark of Mr Peters and the chamber of commerce.

I think we all recall the development by the Treasurer, Mr Quinlan, of the economic white paper, a most significant piece of research and strategic planning in relation to the future of the ACT economy, perhaps the most significant undertaken ever in the ACT, certainly since self-government. Through its chief executive, Mr Peters, the chamber of commerce, an organisation which purports to represent businesses of the ACT, chose not to engage in the consultation on the economic white paper. That is quite remarkable. It is a coincidence surely, but perhaps not, that the only ACT organisation that shared the approach and attitude of Mr Peters to the economic white paper was, once again, the Liberal Party of the ACT. Something of a trend is being exhibited here.

Yes, I am aware, and it is a pity that the chamber of commerce, an organisation that purports to represent business in the ACT, purports to be there to advance commerce, would not engage in the preparation of the single most important strategic document, the economic white paper, ever produced in the ACT and does not believe that there is any benefit in the construction of a $128 million piece of significant infrastructure, with ongoing utility now and into the future. It is quite remarkable that a business representative would talk down a $128 million government public works project and all that that entails. It is quite amazing not only in the context of budgeting and what is or is not a waste of money.

It might be interesting in the months ahead, as events unravel in relation to the finances of the chamber of commerce, for us to reflect on Mr Peters's capacity as a budget manager when we get to have revealed to us in some more detail exactly how the old chamber is travelling in terms of its budget. To hear Mr Peters pontificating on what is a waste of money and what represents good budgeting might make some interesting copy in weeks and months to come. Yes, I think that it might make some interesting copy in weeks and months to come.

Of course, the prison is not just about dollars and cents, it is not just about the economy and it is not just about commerce. But, in the context of the chief executive of a commerce-driven organisation, one would have thought that the other issues, the other great benefits, of having our own corrections facility, our own prison, the Alexander Maconochie Centre—the social benefits, the social aspects and indeed the other benefits which are hard sometimes to quantify—might have been upmost, at least in the context of an organisation that one might have hoped would show some compassion, some foresight and some capacity to think laterally about costs and benefits in relation to a reduction in recidivism, an increase in rehabilitation and a reduction in crime.

Of great importance to the opposition today were issues around a reduction in crime. We will not see reductions in crime if we do not deal with some of those other aspects of institutionalisation and corrections around rehabilitation. Even if the chamber was not interested in those aspects, one would have thought it would have paid a bit more attention to the benefit to the community economically of the prison.

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

MR GENTLEMAN: Chief Minister, what work has the government done to assess the benefits of commissioning the territory's own corrections facility? Can you tell the Assembly what this analysis has revealed?

MR STANHOPE: The government, quite obviously, has done significant work on an assessment of the benefits of the prison. I was touching on some of the social benefits, some of the benefits of a reduction in recidivism and some of the benefits of a return to society of functioning, participating members whose lives had perhaps been shaped by their institutionalisation, and the enormous benefit which a rehabilitated and functioning individual might be in terms of future benefit in a whole range of ways to the community. It is not just that a rehabilitated prisoner is a prisoner who won't re-offend, but a rehabilitated prisoner, of course, is somebody who can take their useful place in

society as a useful, contributing member. This has an enormous knock-on effect or capacity.

To get down to tintacks: the things that the chamber of commerce appears not to think important are a $128 million capital works project; 200 to 250 full-time construction jobs for the next two years, already commenced; Canberra businesses now already the beneficiaries of $10 million or thereabouts of pre-construction work on road works, major earthworks and some of the other site works that have been undertaken by ACT-based companies and ACT-based workers and employees—250 full-time construction jobs for just under two years.

The chamber of commerce is not interested in and thinks that 250 full-time construction jobs over 18 months is a waste of time. The ACT chamber of commerce thinks that a $128 million capital works project is a waste of money and time. A $128 million capital works project and all that entails, so far as the chamber of commerce is concerned, is not worth doing.

Mr Corbell: Look at them; they are all walking away.

MR STANHOPE: I am not surprised that they would walk away from one of their fellow travellers. Can you imagine the chamber of commerce saying that it does not want a $128 million capital works project to go ahead? It is not interested in 250 full-time jobs; it is not interested in $128 million worth of work going to ACT businesses; it is not interested in $128 million worth of local product going into the construction of this facility; it is not interested in the 200-plus full-time jobs, forever, which will be located in the Alexander Maconochie Centre. Can you imagine that the chamber of commerce, spouting the Liberal Party position, does not want, in the first instance, 250 full-time construction jobs, leading to 200 full-time corrections jobs into the future, forever, in the ACT? The chamber of commerce is not interested in a facility that will employ more than 200 people full time.

The chamber of commerce is not interested in a facility that would drag back from New South Wales the $10 million or so which we pay every year, year in, year out, to the New South Wales government. No matter where our prisoners are housed, there is a cost of their maintenance. At the moment, we simply write out a cheque and pay it to Morris Iemma in New South Wales and say, "Here is $10 million a year." The chamber of commerce does not want that $10 million to be spent in the ACT.

The chamber of commerce is happy for all of the people that are employed to care for ACT prisoners in New South Wales to live in New South Wales, to spend their wages in New South Wales, to go to the local Supabarn, to go to the local shops and spend their money in the local shopping mall. The chamber of commerce does not want the 200 full-time workers at the Alexander Maconochie Centre to shop in ACT shops. It does not want their children to go to ACT schools or to participate in this society.

Chris Peters is out there rabbiting on about population growth and skill shortages—the two big issues, he tells me every time I meet him. The two big issues facing the territory are jobs growth, employment, and population. Here is a $128 million project generating 250 jobs during construction and 200 full-time jobs on completion in the ACT, and Chris Peters does not want them. Chris Peters does not want another 250 jobs in the short

term and more than 200 jobs in the long term and $128 million spent in generating economic activity in the ACT.

Yet he says he wants us to address issues of population, he wants us to address issues of skill shortages and he wants us to address issues of population growth. What humbug! Mr Peters really needs to get off his Liberal Party bandwagon and start representing his members, instead of being out there articulating, parroting on, rabbiting on in support of the Liberal Party blindly and stupidly.

MR SPEAKER: The minister's time has expired.

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

Paper

Mr Speaker presented the following paper:

> Study trip—Report by Dr Foskey, MLA—ACT Legislative Assembly, Canberra, 17 February 2006.

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

> Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments—
>
> Contract variations:
>
> Beverley Forner, dated 14 February 2006
> Diane Spooner, dated 18 January 2006
> Maureen Sheehan, dated 16 February 2006
> Michael William Kegel, dated 14 February 2006
> Peter Garrisson, dated 24 January 2006
>
> Long-term contracts:
>
> Janet Davy, dated 17 February 2006
> John Hare, dated 16 February 2006
> Judi Childs, dated 24 January 2006
> Robyn Hardy, dated 31 January 2006
> Stephen Miners, dated 2 February 2006
>
> Short-term contracts:
>
> Beverley Helen Forner, dated 16 February 2006
> Brett Phillips, dated 27 January 2006
> Danielle Krajina, dated 9 January 2006
> Elizabeth Kelly (unsigned), dated 3 February 2006
> Elizabeth Kelly, dated 7 February 2006

June Bronwyn Leslie, dated 18 January 2006
Karl Phillips, dated 1 and 9 February 2006
Lana Junakovic, dated 21 December 2005
Maureen Sheehan, dated 16 February 2006
Stephen Ryan, dated 22 February 2006.

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

Leave granted.

MR STANHOPE: These documents are tabled in accordance with sections 31A and 79 of the Public Sector Management Act, which require the tabling of all executive contracts and contract variations. Contracts were previously tabled on 14 February 2006. I present five long-term contracts, 10 short-term contracts and five contract variations. The details of the contracts will be circulated to members.

National Environment Protection Council
Paper and statement by minister

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs): For the information of members, I present the following paper:

National Environment Protection Council Act, pursuant to subsection 23 (3)—National Environment Protection Council—Annual Report 2004-2005.

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

Leave granted.

MR STANHOPE: We in the ACT are fortunate to enjoy some of the cleanest air, most pristine water and most effective waste management regimes in the country. Our free green-waste facilities at local tips see 180,000 tonnes of green waste recycled a year, more than three times the amount of garbage collected kerbside. Overall, 70 per cent of the waste we generate is diverted from landfill. The level of air pollutants is generally well below permissible standards, and of course the fact that we have no coal-fired power stations means we do not even have to routinely measure the sulphur dioxide concentrations in the air we breathe.

But we know that appearances can deceive. The legacy of our physical layout as a city, our love affair with the car and our relative affluence have meant that our impact on the environment is far from negligible. And it is not something we can tidy away forever. That is why the work of the National Environment Protection Council is as vital to the ACT as it is to anywhere else. The report I tabled today sets out the activities and achievements of the council and our national progress on implementing the national environment protection measures.

During the year the council focused on a number of crucial environmental issues, including water recycling, air quality, waste management, site contamination, chemicals and the national pollutant inventory. The council collaborated with the National Resource Management Ministerial Council on the drafting of national water recycling

guidelines that would help all of us make this precious resource go further, without risking human health or imposing upon the environment.

In 2004, the council set in train a major review of the national environment protection measure relating to ambient air quality. This is Australia's most important tool in the management of air quality. Of particular attention were our existing ozone standards, current particulate monitoring programs and research into the links between children's health problems and air pollution. I am pleased to say that the ACT complied with the set standards for all kinds of air pollutants; though, as another Canberra winter looms, I suspect it will not be long before pollution from wood heaters, a perennial problem in some parts of the city, will be with us again.

Another major contributor to urban air pollution, this time in spring, summer and autumn, as well as in winter, is the family car. This year the council endorsed the introduction of Euro 4 and Euro 5 emission standards for new motor vehicles, a step towards better managing air quality, especially in our major urban centres.

Over the course of the year the council worked productively with the Environment Protection and Heritage Ministerial Council on a number of waste management issues. The national environment protection measure dealing with the movement of controlled waste was changed to streamline the interstate transport of hazardous wastes. Work began on the drafting of a new national packaging covenant and an associated used-packaging materials protection measure.

The council is working towards an extension of this kind of regulation to cover tyres, computers, mobile telephones and televisions. The council has been pleased to witness the recent substantial reduction in plastic bag distribution, a sign of a real and perceptible change in attitude among many millions of Australians, and has strongly encouraged retailers and shoppers to reduce the use of lightweight plastic shopping bags even further.

Over the course of the year the council began to review the national environment protection measure dealing with the assessment of site contamination, the chief tool used by those involved in the restoration of contaminated sites. Variations to this measure are expected. These will reflect recent advances in scientific know-how and will better allow us to restore contaminated ground to health.

The council also reviewed the national pollutant inventory measure, to gauge whether it is meetings its objectives, to debate whether greenhouse gases ought to be considered, and to come up with ideas for improving user access. The report flowing from the review is currently with council, and I anticipate some variations to the NEPM will result.

In other important work over the course of the year, the council launched the web-based national chemicals reference guide, which helps Australian governments manage chemicals in the environment. It was a productive year for the council. I am pleased that the ACT met all of its reporting requirements for this important and interesting annual report. I commend the National Environment Protection Council annual report 2004-05 to the Assembly.

Papers

Mr Quinlan presented the following papers:

Financial Management Act—

Pursuant to section 16—Instrument directing a transfer of appropriations from the Chief Minister's Department to InTACT, including a statement of reasons, dated 22 February 2006

Pursuant to section 19B—Instrument varying appropriations related to the Investing In Our Schools Programme—Department of Education and Training, including a statement of reasons, dated 22 February 2006

Independent Competition and Regulatory Commission—Report 5—Issues Paper—Review of ACTION buses pricing for 2006-07, dated 20 February 2006.

Ms Gallagher presented the following paper:

Workers Compensation Amendment Bill 2006—Revised explanatory statement.

Mr Corbell presented the following papers:

Subordinate legislation (including explanatory statements unless otherwise stated)

Legislation Act, pursuant to section 64—

Canberra Institute of Technology Act—

Canberra Institute of Technology (Advisory Council) Appointment 2006 (No 1)—Disallowable Instrument DI2006-15 (LR, 8 February 2006)

Canberra Institute of Technology (Advisory Council) Appointment 2006 (No 2)—Disallowable Instrument DI2006-16 (LR, 8 February 2006)

Canberra Institute of Technology (Advisory Council) Appointment 2006 (No 3)—Disallowable Instrument DI2006-17 (LR, 8 February 2006)

Canberra Institute of Technology (Advisory Council) Appointment 2006 (No 4)—Disallowable Instrument DI2006-18 (LR, 8 February 2006)

Canberra Institute of Technology (Advisory Council) Appointment 2006 (No 5)—Disallowable Instrument DI2006-19 (LR, 8 February 2006)

Domestic Animals Act—Domestic Animals (Fees) Determination 2006 (No 1)—Disallowable Instrument DI2006-9 (LR, 8 February 2006)

Electoral Act—Electoral (Commission Chairperson and Member) Appointment 2006 (No 1)—Disallowable Instrument DI2006-23 (LR, 8 February 2006)

Health Professionals Act—

Health Professionals (Fees) Determination 2006 (No 1)—Disallowable Instrument DI2006-32 (LR, 21 February 2006)

Health Professionals Amendment Regulation 2006 (No 1)—Subordinate Law SL2006-1 (LR, 16 January 2006)

Health Professionals Amendment Regulation 2006 (No 2)—Subordinate Law SL2006-2 (LR, 16 January 2006)

Health Professionals Amendment Regulation 2006 (No 3)—Subordinate Law SL2006-3 (LR, 16 January 2006)

Health Professionals Regulation—

Health Professionals (ACT Nursing and Midwifery Board) Appointment 2006 (No 1)—Disallowable Instrument DI2006-11 (LR, 6 February 2006)

Health Professionals (Medical Board) Appointment 2006 (No 1)—Disallowable Instrument DI2006-12 (LR, 6 February 2006)

Land (Planning and Environment) Act—Land (Planning and Environment) Territory Plan Amendment 2006 (No 1)—Disallowable Instrument DI2006-14 (without explanatory statement) (LR, 6 February 2006)

Mental Health (Treatment and Care) Act—Mental Health (Treatment and Care) (Official Visitors) Appointment 2006 (No 1)—Disallowable Instrument DI2006-24 (LR, 9 February 2006)

Public Place Names Act—Public Place Names (Several Divisions) Determination 2006 (No 1)—Disallowable Instrument DI2006-25 (LR, 17 February 2006)

Public Sector Management Act—Public Sector Management Amendment Standard 2006 (No 4)—Disallowable Instrument DI2006-31 (LR, 16 February 2006)

Race and Sports Bookmaking Act—

Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2006 (No 1)—Disallowable Instrument DI2006-33 (LR, 27 February 2006)

Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2006 (No 2)—Disallowable Instrument DI2006-34 (LR, 21 February 2006)

Rehabilitation of Offenders (Interim) Act—

Rehabilitation of Offenders (Interim) (Sentence Administration Board) Appointment 2006 (No 1)—Disallowable Instrument DI2006-28 (LR, 17 February 2006)

Rehabilitation of Offenders (Interim) (Sentence Administration Board) Appointment 2006 (No 2)—Disallowable Instrument DI2006-29 (LR, 17 February 2006)

Rehabilitation of Offenders (Interim) (Sentence Administration Board) Appointment 2006 (No 3)—Disallowable Instrument DI2006-30 (LR, 17 February 2006)

Road Transport (General) Act—

Road Transport (General) (Application of Road Transport Legislation) Declaration 2006 (No 2)—Disallowable Instrument DI2006-22 (LR, 8 February 2006)

Road Transport (General) (Application of Road Transport Legislation) Declaration 2006 (No 3)—Disallowable Instrument DI2006-26 (LR, 16 February 2006)

Road Transport (General) (Driver Licensing) Exemption 2006 (No 1)—Disallowable Instrument DI2006-20 (LR, 9 February 2006)

Road Transport (Public Passenger Services) Regulation—

Road Transport (Public Passenger Services) (Minimum Service Standards—Taxi Network) Approval 2006 (No 1)—Disallowable Instrument DI2006-21 (LR, 9 February 2006)

Road Transport (Public Passenger Services) (Minimum Service Standards—Taxi Network) Approval 2006 (No 2)—Disallowable Instrument DI2006-27 (LR, 20 February 2006)

Road Transport (Safety and Traffic Management) Act—Road Transport (Safety and Traffic Management) Amendment Regulation 2006 (No 1)—Subordinate Law SL2006-4 (LR, 16 January 2006).

Public health system
Discussion of matter of public importance

MR SPEAKER: I have received letters from Mrs Burke, Mr Gentleman, 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 Mrs Burke be submitted to the Assembly, namely:

The state of the public health system in the ACT.

MRS BURKE (Molonglo) (3.54): It is timely that I rise today to speak on this important matter. It is fair to say that, in the public mind at least, there is no more important area of public policy than health. In the ACT, owing to our small size, public concern about health tends to focus on our public hospitals—the Canberra Hospital and Calvary Public Hospital. That is not to say that there are many other important areas of public health in the ACT. At another juncture I will spend more of my speech on these other areas. However, as members would know, recent events have cast the ACT's public hospitals into the limelight.

It is particularly appropriate that we have this discussion today, especially in light of the articles published in the *Medical Journal of Australia* yesterday. The research article

"Increase in patient mortality at 10 days associated with emergency department overcrowding" by Associate Professor Drew Richardson makes for some startling reading. The accompanying editorial "Hospital overcrowding, a threat to patient safety?" by Professor Peter Cameron puts Richardson's research into its proper context. Professor Richardson opens his article by writing:

> Overcrowding causes dysfunction in the emergency department (ED): it is associated with longer waiting times, increased delays in admission to hospital, and even with transmission of infectious disease (during the outbreak of severe acute respiratory diseases [SARS] in Canada). Delays in transfer to an inpatient bed from the ED are associated with increased inpatient length of stay, but there have been few studies of the relationship between ED overcrowding and patient outcomes. An understanding of the human cost of overcrowding is important to guide appropriate distribution of health care resources.

I emphasise that last point:

> An understanding of the human cost of overcrowding is important to guide appropriate distribution of health care resources.

As we know, the last thing this government or this minister cares about is the human cost of its policies. While I will not bore members by reading the whole article here, you can access it online at www.mja.com.au. I will quote the important findings:

- The cohort of patients presenting when the ED was overcrowded has significantly higher 10-day in-hospital mortality than a similar cohort treated when the ED was not overcrowded, stratified for shift, day, season and year;

- More patients presented during Over Crowded shifts, they were triaged as having slightly higher acuity, and they received care at a much lower performance level by standard measures;

- Physical and staff capacity is reached or exceeded at times of ED overcrowding, and it is plausible that patients presenting at these times receive a lower quality of care because the available resources are stretched too thinly;

- ED overcrowding is caused by insufficient available inpatient beds access block, or high hospital occupancy;

- Patients presenting during times of increased ED occupancy were reasonably similar to those presenting at other times, but had significantly higher short-term in-hospital mortality; and

- The magnitude of the association is around 13 excess in-hospital deaths annually, similar to the number of people killed on the roads in the ACT.

What Richardson's research shows is that there are 13 extra deaths each year in the ACT that are statistically associated with hospital overcrowding. While Richardson does not state outright that hospital overcrowding causes an extra 13 hospital deaths in each

hospital, he acknowledges that there is plausible causal relationship. Professor Cameron is more forthright, however. In his article he states quite bluntly:

> An overcrowded hospital should now be regarded as an unsafe hospital.

Then he follows up by stating:

> Given that it is logical that there is a causal relationship and that there is no known increased risks to patients under conditions of normal hospital bed occupancy, it is unacceptable to continue to allow hospital overcrowding to occur.

Unfortunately, with this government's head-in-the-sand attitude when it comes to health, we can expect that they will happily continue to let overcrowding occur. Since 30 January, as my colleague Mr Smyth has noted, the Canberra Hospital was on bypass some eight times, including twice in the same day. In the same period, Calvary was on bypass on one occasion as well. Altogether our public hospitals were on bypass on nine occasions, for a total of almost 14 hours. Not only that but on at least four occasions at the Canberra Hospital emergency department patients had to wait on trolleys in corridors.

Where was the minister during all this? What comments did he have to make? None. I did not hear anything. Why? Because to him this situation is normal; nothing to be concerned about, it would seem. Here is what Professor Cameron had to say about patients waiting on trolleys in corridors:

> It is obvious that making elderly or disabled patients wait on uncomfortable emergency trolleys in corridors, with sleep deprivation and minimal privacy, is inhumane.

What that means is that on four occasions at least in the last month or so Canberrans have had to endure inhumane treatment. It is simply flying in the face of this government's very own Human Rights Act on how human beings should be treated. Where are Mr Stanhope and his bill of rights when you need him? Certainly not in the Canberra Hospital's emergency department on busy days.

As a quick aside, I would alert people to the *Canberra Times* article today "10 things to know" about hospitals by Frank Millburn of Pearce. At point No 8 he says, having been a patient and recently stayed in one:

> When you're relaxed and happy, your body knows it and responds. Ask any nurse about the difference in recovery times between grumpy and pleasant patients.

For a long time, the opposition has been extremely concerned about access block and overcrowding. Indeed it was in July 2004 that we got the rather startling wake-up call from the Australasian College for Emergency Medicine. To remind members, in summary, this is what the college had to say about our public hospital emergency departments:

> The problem of overcrowding is indisputable in the ACT. That there are negative consequences for performance, adverse event rates, compromise of privacy and staff retentions has been documented repeatedly in other settings.

> The ACT public hospitals are both significantly affected. The declining ratio of inpatient beds per 100,000 population has been associated with a 54% increase in ED workload and a 500% increase in patients experiencing excessive waiting time.
>
> Dissatisfaction at this current situation by the public and the staff is profound.
>
> It is key to addressing this problem to recognise that the fundamental issue is inadequate numbers of inpatient beds. Enhancing of after hours GP services, while a laudable plan, will not have a measurable effect on Emergency Department performance.
>
> We, the ACT faculty of the Australasian College for Emergency Medicine regretfully draw to the attention of interested parties a progressively worsening problem with Emergency Department overcrowding in the ACT. It is our collective opinion that patients' lives are being endangered to an unacceptable degree at an unacceptable frequency. Our conclusion is that while some mitigation of the problem has been obtained by further improvements in efficiency, the solution must also be addressed at its root, which we believe to be a situation where inpatient beds per 100,000 population ratios are simply too low to meet the needs of the community.

Nearly two years on we now have the empirical evidence to back what the ACEM was saying. It is clear that there is a desperate need for more hospital beds in the ACT. The answer to the problems faced by our hospitals will not be totally provided by more beds, but it is an essential part of any solution. There are other components to the solution, the most critical being prevention.

The government needs to face up to its responsibilities in the other areas of public health delivery, particularly in relation to mental health, diabetes, obesity and heart disease. Nationally, these diseases are set to cost in excess of $15.8 billion per year at the end of the year; yet all of them, to a certain extent, are preventable.

The solution to the ACT's overcrowding problems needs three things: (1) improved process; (2) preventative work; and (3) more beds.

The minister can go on at length about his beloved discharge lounge, but the reality is that it is no good without more beds.

While the research is disturbing, it presents us with an opportunity. The opportunity is that the government can no longer stare down the fact that our hospitals are overcrowded and that this overcrowding produces bad outcomes. Perhaps now, at last, in conclusion, the government will act and restore the health system to something in keeping with community expectation.

MR CORBELL (Molonglo—Minister for Health and Minister for Planning) (4.04): I welcome this opportunity for a genuine discussion on the state of the public health system in the ACT. Let me start by stating that the people of the ACT and the surrounding region continue to have access to a high-quality and responsive public health service. When it comes to this, no government has made a greater investment in the health of our people than this one. That said, we acknowledge that there are issues

that still need attention in the health system, and we are continually looking at better ways to do things.

There is, in any debate about public heath services, a place for genuine criticism. There are things that can be done better. But the continued harping about crisis in the health system by those opposite has two major, troubling outcomes: firstly, it unnecessarily reduces the confidence of the community in their health system; and, secondly, it impacts on the morale of the public health work force.

So where is the support from the opposition for the tremendous achievements our work force has already notched up over the last three years in improving care and access for the people of the ACT? Where is the acknowledgement from those opposite of the effort of clinicians and administrators in redesigning our health services to meet the current and future needs of our population? Many people who encounter our health system every day are already fearful and vulnerable. That is the nature of a healthcare problem. But it is scurrilous to further add to people's fears without foundation, simply for political advantage.

The ACT community has access to one of the best public hospital systems in the world. I give members a snapshot on what that means. In the last full year, ACT public hospitals provided for 69,627 cost-weighted inpatient separations, an increase of 12 per cent over three years. The hospitals cared for 93,710 people who attended our emergency departments, including an increase of 47 per cent in those patients with the most urgent needs over the last three years. They provided access to elective surgery for over 8,600 people, the highest level of elective surgery on record and almost 1,000 more than two years ago. And they managed an increase of 14 per cent in the number of outpatient services.

The latest quarterly activity report on health services, for the December period, which I released, provides more evidence of the improved access to services across a full range of hospital and acute and non-acute care. For example, we are on target to exceed last year's elective surgery record by more than 300 additional operations. The number of people waiting for elective surgery has dropped by more than 10 per cent over the 2005 calendar year. Day-of-surgery admission rates have exceeded the target of 80 per cent for the first time since we started counting them over five years ago. Waiting times for in-hospital, aged-care assessments averaged 1.3 working days in this quarter, well below the target of 10 working days.

Access block, which Mrs Burke alluded to, across both our public hospitals was at 31 per cent in the December quarter 2005, a considerable drop from the 42 per cent recorded in the same quarter in 2004. When you look, for example, at our tertiary care hospital, Canberra Hospital, it has dropped from 45 to 27 per cent.

Waiting times for breast screening dropped in the December quarter as well, and the number of screens was more than 50 per cent up on the same quarter in 2004. The rate of post-hospital follow-up for mental health clients exceeded the target in the quarter. And the total hospital in-patient activity is up 11 per cent on the total reported for the same quarter in 2004-05.

All of this is evidence of the impact of the government's three-pronged approach to improving access to hospital services, an approach I outlined over a year ago in my statement on access to care. Firstly, we are working on reducing the demand for emergency and acute hospital care. We are doing this through our support for after-hours GP services and clinics, better hospital discharge practices, expanded HACC services to keep people healthy and well in their own homes, and focusing on prevention such as our successful falls-prevention-in-the-elderly initiatives.

Secondly, we are increasing the capacity of our hospital and healthcare systems. We have funded an additional 20 acute medical beds, and these have been online since July last year. We have provided an additional $15 million over the last three years to improve access to elective surgery. This will have provided more than 2,500 more operations over the last three years than would otherwise have been the case.

We have introduced discharge lounges to free up acute care beds. We have funded services that provide for high-needs children to be cared for at home, also freeing up acute care beds. We have funded an additional three intensive care unit beds, reducing blockages and providing more access for elective surgery. We have filled the first 10 beds of the new 60-bed sub and non-acute aged care beds facility, with the next 50 coming on stream in December 2006. When complete, this will add an additional 51 new beds to the system.

We have commissioned the ninth operating theatre at the Canberra Hospital, which increases patient flows and reduces elective surgery postponements. And we have established short-stay inpatient units next to our emergency departments to further improve access to care, and adding a further 17 beds to our hospital system.

Let us add all those figures up. That is 50 extra beds on line now, with another 41 being built by December 2006. That is 91 beds, Mr Smyth. But when you count the 15 additional transitional care beds for the elderly which have been commissioned by the Baptist Community Services at Carey Gardens for June—and it has been jointly funded by the ACT and the commonwealth governments—that takes the total number of additional beds in our system to 114. So for all the carping and parroting by the Leader of the Opposition, if we only implemented his boastful but ill-informed claim for extra beds, we would actually be going backwards by 14 beds.

Thirdly, we are changing the way we do things in our hospitals. On top of reducing demand and increasing capacity, we are changing our work practices and modernising the way our hospitals organise their care systems. This approach is being adopted in the $1.2 million access improvement program. AIP seeks to redesign care delivery systems based on the concept of patient journeys and is built up by frontline clinical staff who know the day-to-day realities of managing emergency and acute care.

We have also managed the way we provide services as we refocus our services on patient needs. This has included the establishment of the capital region cancer service and the aged care and rehabilitation service. Both these services bring together the inpatient, outpatient and community services that provide care to people in the target populations so that they get more seamless service that improves care and improves their health outcomes. These streams provide a more patient-centred focus, and this approach will

gradually be rolled out across other areas of our hospital and health system in which a close cooperation between different services is absolutely essential.

The establishment of these streams has been a major improvement to the way health services are delivered in the ACT. But do we hear any support for this initiative from the other side of this place? No, we do not. Perhaps it is because it is good news. The access improvement program is one of the most exciting initiatives the government has undertaken in the delivery of healthcare. The program will achieve further improvements to patient access and care by implementing solutions that are developed by doctors, nurses and healthcare consumers. It is about developing local solutions to local issues.

We have come a long way but we are not there yet. There are still too many people who wait too long for care in our emergency departments. And the level of access block, that is, the time taken to get out of ED into a bed in a ward, is still too high. But let us be clear about it. The trend is encouraging. Access block is down. Waiting times in our emergency departments are on the decrease. All people classified at triage category 1, the most urgent category, receive attention immediately. The increase in the number of people arriving at our emergency departments classified in the first three triage categories has almost doubled over the last three years.

To meet this demand means additional resources, which we have supplied, and changes to the way our emergency department operates, which we are working with doctors and nurses on. I am told that clinicians, consumers and administrators working on the program have already come up with a range of ideas to improve the management of the emergency department into the future.

Yes, it is true that when our emergency departments get busy a load-sharing arrangement, or bypass, comes into play. But I want to address some of the misconceptions about this. No-one in a life-threatening situation is ever diverted due to load sharing. Load sharing is a normal operating situation for emergency departments. Sometimes, though, emergency departments get more attendances than they can cope with. It makes sense that in these times people are diverted to services where they can be more adequately cared for.

What would the Liberal Party want? Would they prefer that our ambulances drive around in circles, waiting for the call to come in to go and deliver their patient? Or would they want that ambulance to go to the nearest hospital that could take that patient? Load sharing does not mean that people with life-threatening conditions are turned away or receive less timely or effective care. It seems that those opposite just do not get the idea. Load sharing only affects less urgent ambulance patients. All unstable patients who require resuscitation, who are deteriorating or who have immediate, unmanageable life-threatening conditions are still taken to the nearest appropriate hospital, regardless of whether it is in bypass or not.

Bypass is not a failure of the system; it is the most appropriate clinical response to meet unexpected levels of demand for emergency department services. And in the ACT it is rare. Despite the figures you hear from those opposite, it is rare. It occurs, at most, around 2 to 3 per cent of the time.

The government is working to address the problems in our public hospital system. The most recent article about access block and overcrowded emergency departments has, as expected, led to wild claims from those opposite about the health system. But these are scare tactics which are baseless and which only serve to reduce public confidence.

Even the person who wrote the report about the Canberra Hospital suggested caution in interpreting the results. In an interview on ABC radio yesterday, journalist Ross Solly asked the author of the ACT report, Associate Professor Drew Richardson, whether he had heard my remarks on his research in which I noted that the studies outcomes do not say that overcrowding is the cause of additional deaths. Dr Richardson's response was this:

> I'd say the minister's absolutely right. This was not a causative study.

I do not suggest that this report should be buried but I, like the author, believe that further research is necessary before further conclusions can be reached. No-one is saying that overcrowding is a good thing; it is not. However, overcrowding does occur when there are a number of seriously ill people in the emergency department in the first place. So let us stop playing on people's fears. Let us address the issues. And let us not do it in a simplistic way. Let us do it in a comprehensive and informed way.

The ACT government knows where the pressures are, and we put in place the measures to address it. Improving capacity, working with our doctors and nurses, providing for additional resources, improving bed numbers, providing more facilities, putting in place better work practices—all of these things improve the management of the ACT public health system.

As I said at question time today, this Assembly and this community deserve better than what they are getting from the opposition. They deserve better than parrot-like claims that simply providing 100 new beds fixes every problem. The reality is more complex than that. We do not live in some fairytale world; we do not live in some world where you snap your fingers, provide more beds and everything will be great. It does not work that way. And our community deserves better from an opposition when it comes to contributing to the public health debate.

Public health is about improving services, about better management, about increased capacity. We are doing that and we are getting the results. Access block is down, waiting times are down, elective surgery lists are down. We will continue to address these issues in a comprehensive, not simplistic way.

MR SMYTH (Brindabella—Leader of the Opposition) (4.19): Mr Deputy Speaker, that was vintage Minister for Health! In attacking the opposition the minister said that this community and this Assembly deserve better, and he is right. But the community and the Assembly deserve better from the minister and from the government. The minister is playing games with words and affecting people's lives.

During question time Mr Corbell said that 600 staff have provided the answers that are going to be put into place. As I have always said whenever I do an interview, this is not a reflection on the staff, the nurses, the doctors or the allied health workers. The state of

the hospital system is a reflection on the government and the minister. The staff can only work with the tools that this government provides and they are not being given the tools to do the job properly.

Mr Corbell should listen to experts such as Dr Peter Collingnon, who has said that we need 100 extra acute beds. Despite the numbers that the minister throws around, those beds have not been provided. The problem is that access block permeates from the emergency department to the rest of the hospital. I want to refer to one of the 600 staff that Minister Corbell consulted with and suggested that I talk to. This staff member has put his opinion of the plan on the internet. It is to be found at impactednurse.com. It is headed "The plan. Excuse me while I pinch myself" and it reads:

> I spend so much time venting my spleen over problems occurring in public hospitals emergency departments that my keyboard is covered in crusty green goop. I thought that was about to change.
>
> For the first time in quite a long long time, we had something positive to work towards.
>
> We had a plan.
>
> It was not a perfect plan, mind you, and I foresaw rocky road ahead whilst we ironed out its wrinkles. And it would not likely ingratiate the ED with the ward nurses. But if it worked, it just might succeed in addressing the dangerous workload generated by access block and redistributing it equitably throughout the hospital.
>
> It aimed to achieve an emergency department occupancy rate of 85 per cent, taking the lid off of overcrowding in the ED by re-empowering it to effectively manage its core business.
>
> It was quite a radical plan and I certainly don't think it has been attempted anywhere else in Australia. And even more heartening was the fact that the hospital executive appeared to be actively driving its implementation.
>
> When I initially wrote this piece I was pretty excited by its potential, expectantly typing …. "I won't go into the nuts and bolts of it all right now … lest I put the kibosh on it. But we will be implementing it real soon. Watch this space."
>
> Kiboshed.
>
> I should have known.
>
> In the final draft of this plan, each subsequent draft was watered down until it reached a veritable homeopathic dilution. Pretty much ineffectual.
>
> The original plan was a bold 4 phase escalation in response to overcrowding of the ED. In order to maintain occupancy rate of 85 per cent, in intensive effort would be activated hospital wide rather that trying to contain the problem in the ED as is current practice.
>
> A 4 bed transition ward would be open to manage ED patients waiting for admission to the hospital.

> At phase 3 patients waiting for admission to the hospital would be moved to an appropriate ward space to be cared for by ward staff until a bed was available.
>
> Phase 4 would see the activation of the hospital's internal disaster plan to mobilise additional resources.
>
> What we are now left with is pretty much our current management plan. Two parts trying to run an ED with effectively no beds and one part crossing our fingers that nobody dies from the resulting mess.

So much for the involvement of the hospital staff, Mr Corbell! They seem to be ignored again. That is the problem. They are fine words, but when they get to the management or to the ministerial office, they are knocked on the head. Mr Corbell is not listening to the staff. We had the charade of Mr Corbell saying, "We have consulted with 600 staff." But there in black and white at impactednurse.com is the true story of what happened. Yes, they were asked and yes, they were ignored.

In an article in the *Medical Journal of Australia* Dr Drew Richardson says:

> The magnitude of the association is around 13 excess in-hospital deaths annually, similar to the number of people killed on the roads in the ACT.

Yes, Dr Richardson did agree with the minister that it was not a causal study, but he also said—and the minister did not mention this—that it is not drawing a long bow to say that overcrowding of the ED caused these deaths. Dr Richardson went on to say:

> If replicated in other studies, this association represents a significant public health issue.

I note that the results have been replicated already in Western Australia. So we have, by definition, a significant public health issue.

The problems with access block are well known. However, the government chose to ignore them until the Australasian College of Emergency Medicine, in their letter of 2004, said they could not guarantee patient safety. This report reveals that they were right. Just last week Mr Corbell launched the second phase of what he calls the ACT access health improvement program, but it is actually the third step, While Mr Corbell was away in August 2004, Mr Wood ordered the department to make changes and fix the problem. Since then we have had Mr Corbell's version of progress.

Just last week Mr Corbell launched the third attempt by the government to address access block. Interestingly, in his media release celebrating the launch of the ACT health access improvement program, he seems to indicate that the triage system has not been safe or timely. It is also interesting that this latest attempt has got another long and important sounding name—the ACT health access improvement program.

I think from that we can formulate a new law. It is Corbell's law of crisis management: the larger the crisis, the longer the time of the strategy to conceal its needs. The media release celebrating the ACT health access improvement program has the minister sternly advising the community, "Now comes the really hard part—taking up these opportunities

and putting in place the solutions." What are the solutions, Mr Corbell? Are you serious? How can it be that after all this time and roughly 20 avoidable deaths, you are only now going to start implementing solutions?

Mr Corbell selectively quoted from reports during question time. I would like to go to the editorial by Professor Peter Cameron from Monash University. He says:

> It is incumbent on governments and administrators to prevent overcrowding by improving management of the health care system and, where necessary, providing increased resources.

In this case increased resources means increased beds. If they wish, people can download Professor Cameron's editorial from the web and read the rest of it. He goes on to say:

> The exacerbation of access block seen in the past few years is symptomatic of much larger changes occurring within the health system. Changes to workforce, working hours, aged care, and funding, as well as fewer hospital beds, and increasing demand for seemingly limitless new treatments and procedures, have all contributed to access block.

There it is: we have fewer beds. Professor Cameron goes on to deal with increased bed numbers, and this is where Mr Corbell quotes half a sentence or half a paragraph to try and prove his point. I will read the full paragraph. It states:

> Increased bed numbers: It is important to note that access block does not correlate well with the absolute number of hospital beds. Increasing the number of hospital beds temporarily alleviates access block, but does not solve the problem—the beds fill quickly and the problem recurs.

It finishes with the line the minister did not read:

> Nevertheless, governments must fund an adequate number of beds to provide the health care that the community demands.

Professor Cameron then goes on to say:

> An overcrowded hospital should now be regarded as an unsafe hospital.

In the report itself Professor Richardson comes to the same conclusions. He says:

> Conclusions: In this hospital—

that is, Canberra Hospital—

> presentation during high ED occupancy was associated with increased in-hospital mortality at 10 days, after controlling for seasonal, shift, and day of the week effects. The magnitude of the effect is about 13 deaths per year. Further studies are warranted.

The studies looked for the causal link but, as Professor Richardson said on the radio yesterday, it was quite clear that statistically the link is there and it needs to be addressed. Professor Richardson has talked about three studies, but I hope the minister

will not decide to wait until an additional three studies have been undertaken. I simply close with Professor Richardson's own words:

> The magnitude of the association is around 13 excess in-hospital deaths annually, similar to the number of people killed on the roads in the ACT. If replicated in other studies, this association represents a significant public health issue.

That research has been confirmed by the study in Western Australia.

MS MacDONALD (Brindabella) (4.29): I would like to endorse Mr Corbell's comments about the ACT public health system. No ACT government has demonstrated the energy and drive of the current administration in increasing investment in health services and responding to changes in the demand and delivery of care. To top it off, this government has put its credibility on the line by providing the people of the ACT with the most comprehensive report on health service activity ever seen in the ACT or elsewhere.

I accept, like all of us here, that there are instances when our health services demonstrate that improvements can be made to access and care. But thanks to the hard work of those in the system this is a rare occurrence. For most of us, when we go to hospital, especially to an emergency department, we are not at our best. Sometimes we do not understand the reasons why we might have to wait when we believe that our needs are great and that they are not being met.

We all need to know that every person who attends our emergency department as a category 1 patient receives care on arrival. When a number of high priority patients attend at the same time, this can lead to longer waiting times for others. Over the last few years, as the minister noted, demand from the most urgent emergency department patients has increased by almost 50 per cent. This level of increase is not something that one could predict over such a short time frame, and it has resulted in some people waiting too long for care.

But the government has not just twiddled its thumbs. The unprecedented increase in urgent emergency department cases has resulted in more people being admitted to hospital, and this has resulted in increased pressures throughout the hospital system. This has not been a crisis, but it has placed increased pressures on the hospital and health system. It would have resulted in crisis if the government had done nothing.

The government has increased capacity in the system by increasing bed numbers and changing the shape and nature of services to better meet patient needs. It has increased the level of clinical staff working in our hospitals across medical, nursing and allied health areas and it has provided additional capital investment to ensure that the people of the ACT continue to access high quality services.

On top of that, the government has instituted a process that brings clinicians and consumers together to assess patient journeys across the health system. The program shows that our clinicians understand that the patient is the reason why the health system exists and that together doctors, nurses and patients can develop new ways to provide care that improve both access to care and outcomes from that care. Most importantly, these groups will develop solutions that will work in the ACT context and that are owned

by those who run and use the health system. Like the minister, I, too, am looking forward to the further improvements to health care that this program will provide.

It is a shame that those opposite cannot acknowledge the valuable work being undertaken by people throughout our health system to improve access and care. Despite the ingenuous claims by those opposite, the people of the ACT can be confident that they will continue to receive high quality health care from our hospitals and health services.

No category 1 patients have to wait in our emergency departments for care. The ACT is among the best in the nation in making sure that all category 1 elective surgery patients get the surgery they need on time. Our hospitals are managing an increase in demand for inpatient services of about 10 per cent. Emergency department demand has increased by nine per cent this year compared to last. Outpatient demand continues to increase at double-digit percentages each year, and we are managing this demand. This is not a system in crisis. Our hospitals continue to perform at, or better than, benchmarks for patient safety and quality.

To further improve the quality of our care the government has consolidated patient safety services across the portfolio under a single banner. The government has also increased funding for patient safety initiatives by adding $0.5 million this year rising to $0.9 million per year from 2006 to 2007. This initiative will further improve the monitoring of patient safety in our services and provide the strategic direction needed to ensure a continued focus on improving the quality of our services.

We are also better at telling the community about how their health services are performing. Never before have the community had access to such clear, concise and comprehensive information about their health services in a single place. The new health services performance report is published quarterly on the ACT Health website. Under the leadership of Minister Simon Corbell the report provides the people of the ACT with a comprehensive understanding of the performance of the ACT health system against a range of targets and benchmarks. The minister did not have to produce this new report. He could have continued with the variety of reports that covered only part of the picture and which did not show trends or performance against targets and benchmarks.

But the minister, like the rest of this government, does not just pay lip-service to the notion of accountability to the people whom he serves. The minister regularly reports to the people of the ACT on how their health system is performing in the key areas of our health services. The report does show that there are areas where we do need to do more. Without the new report we would not know about emergency department waiting times or access block results. The report is valuable because it shows the government is serious about accountability. It is very clear to everyone who reads the report how our services are performing. It is also a very handy instrument for measuring how the government's initiatives are improving access to care.

Let us not forget about our achievements to date. On achieving office ACT Labor had to immediately inject almost $9 million into the hospital system just to keep it going. In our first budget we provided almost $12 million to increase the salaries of our health professionals, who were poorly neglected under the previous government. We restructured the health portfolio so that it could plan and implement services in a strategic manner that met the needs of the entire community.

Over the last three years we have funded our hospitals to meet the growth in demand for services such as interventional cardiology, cancer services, renal services and emergency department care. We have funded increases in the costs of technology. We have funded additional registrars to reduce the pressures on our young doctors and to improve the level of, and access to, care at our hospitals. The establishment of the ANU Medical School further enhances our reputation as a place to practise medicine. It will also provide a vibrant learning community that will ensure that the people of the ACT have access to the latest and best that the medical field has to offer.

Sometimes significant improvements can be made by changing the way things are done, rather than by spending more money. The type and nature of hospital services is changing dramatically. The integration of services across the continuum of care has blurred the barrier between hospital and community-based services. In more and more areas people are benefiting from improved health outcomes by the tailoring of health care to meet their needs at each stage of their illness. The minister has already spoken about a range of initiatives the government is implementing to meet the changing face of our health system.

There are issues that need to be addressed. The Labor government are proving that we are the best team to tackle these issues. The people in our health system are working very hard to further improve our health services, and I personally would like to thank them for their hard work and achievements in a demanding environment. I am encouraged by the increased participation of clinicians in planning and developing our services. I look forward to the outcomes of the initiatives that are currently under way.

I will just finish by noting that this was obviously the topic of the day for the opposition in question time, and there is nothing wrong with that. Ministers are here to be held accountable. Question time is actually about accountability. But at one point when the minister was answering a question, Mr Mulcahy interjected, saying that this is a serious issue that needs to be taken seriously. Mr Mulcahy was posturing from his seat. I have to say that this government take this issue very seriously. We take it very seriously every day, not just in question time. That is why we have dedicated so much time, energy and money to actually improving the system.

MRS DUNNE (Ginninderra) (4.39): This is a most important matter of public importance. I think the matter that probably most occupies the minds of average electors in the ACT is: when I go to hospital, will I get timely, efficient and appropriate service for myself or for members of my family? The minister spent a lot of time saying, "Well, it's not real good, but we're improving it," but I would like to mention a few personal experiences of problems that my family has encountered in the health system. They are just the tip of the iceberg of what is wrong in the public hospital system at the moment.

Over the past two years, these things have happened in my family. A member of my family had a car accident and waited 3½ days for emergency surgery for a broken leg. On another occasion a member of my family lay on a coffee table in an emergency department waiting area for 2½ hours in need of pain relief and a drip. She could not obtain the pain relief and drip because there were no beds in the emergency department. After 2½ hours they eventually found her a bed. No-one was slacking off on this. They were looking very hard to get somebody out so they could put her in a bed and on a drip.

She then spent 4½ days in an observation ward where you are supposed to spend a maximum of 12 hours.

Most recently, and most alarmingly, my youngest son was prepped and ready for theatre and we had a three-quarter-hour altercation between the theatre department and the paediatrics unit over who should supply a paediatric central line while a distressed child waited for theatre to get under way. Simply no-one had a paediatric central line because there was no procedure about who should actually provide one to the theatre department.

There are many things that are wrong in the system. Yes, a lot of people come in and out of the hospital system and get a not-bad service, but for most of us who experience the hospital system the service could always be better and could provide better medical outcomes. I have sat in paediatric wards and watched people completely and utterly disempowered by the system. They do not know what questions to ask and they are not assisted because the staff do not have the time to assist people with a sick child to negotiate their way through the mire of the paediatric system. It is not for want of goodwill; it is just through want of resources. People do not have time to sit down and explain to parents what is happening when they are first-time attendees in a paediatric ward.

I am an experienced health consumer, unfortunately, and I still have trouble. I also come from a fairly articulate and forceful family, but we still have trouble finding out information when we need it when in the hospital system. Those problems are multiplied over and over again for people who do not have the capacity, the will, the intelligence or the basic information to allow them to ask the questions to get the right answers so that they can negotiate their way effectively through the medical system. That results in people being hospitalised for too long, not getting the right treatment and going home with the wrong treatments. These problems are increasing in our system.

Mr Corbell has been very up-front today in talking about access block. He has a new set of statistics that show that we are getting much better at dealing with access block. He said in his speech that back in December 2004 there was close to 40 per cent access block and that now we are down to much less than that, down around the low 20s. The thing that the minister did not tell us is that he is comparing apples with oranges. Until December 2004 the measure for determining access block seems to have been: how long have you been in the ED from when you first arrived? If you were there for more than eight hours, that was a case of access block. Now the method is that when it is decided that you need a hospital bed, if you have to wait more than eight hours, that is access block.

What Mr Corbell was talking about was a close to 50 per cent incidence on one measure in December 2004 going down to 30 per cent in November 2005 and, on his preferred new measure, going from 30 per cent to about 15 per cent over the same period. Mr Corbell did not compare apples with apples. He compared the high figure of the apples with the low figure of the oranges and said, "Look how wonderfully we are doing." Mr Corbell has enjoined people to be honest in this place. He should participate in the debate honestly as well.

There is much that can be said about public health and the public health system and our failures and problems. I would like to touch briefly on one of those issues which is dear

to my heart, and that is the way that people are treated in the mental health system and the impacts and cost impacts that that has had.

I think that one of our greatest policy failures over the last 25 years has been the way that we treat people with mental disorders. For a whole lot of good motives and idealistic vision, we decided a few years ago that the mentally ill should not be locked away in psychiatric hospitals—nor should they be—but should integrated into the community, that bedlam should be a thing of the past. But in most jurisdictions the result of this policy is far from the happy outcome that was predicted by the policy makers at the time.

People who were once kept in psychiatric institutions are now free to roam the streets, and that is what they literally do in many cases because they are homeless. If they are not homeless, they are holed up in boarding houses where they have to leave after breakfast and come back late in the evening, and they roam the streets. Alternatively, they are in prison. The 2003 report of the New South Wales corrections and health service concludes that 78 per cent of male and 90 per cent of female reception prisoners were found to have had a psychiatric disorder in the 12 months before they presented to the prison system. This is not a mistake. Nine out of 10 female reception prisoners in New South Wales had a psychiatric disorder in the 12 months prior to their presentation.

The ACT is no better. Last year's report by the Mental Health Council of Australia, the Brain and Mind Research Institute and the Human Rights and Equal Opportunity Commission entitled *Not for service* identified eight major deficiencies in our mental health system, including a totally inadequate approach to management of forensic mental health issues—that is all the people in prison—a lack of basic hospital and rehabilitation services, little attention to the issues of early intervention and a large role played by police and emergency service in acute mental health care.

A sign of our failing public health system is the way we treat people with mental health issues. As we know, the costs of not addressing mental health are huge, not only in economic terms but also in moral terms. We know, for instance, that depression alone costs six million working days a year and that keeping somebody in prison who is mentally ill costs something like $65,000 a year per prisoner with a mental disorder.

What actually happens in the system is that, for the most part, people with mental disorders cannot get admission and those who do get admission to institutions and hospitals are given the psychiatric equivalent of a bandaid treatment. This is not just my opinion. The ACT Community Health Services Complaints Commissioner's report states:

> Some agencies and services perceived the triage and crisis assessment and treatment team service operating as barriers to treatment.

It goes on to say that the people observing the CAT team formed the view that some patients in all categories who were in need of services did indeed have difficulty with access. Another facet that they noted was what was termed a "tolerance of psychosis" by mental health staff that reflects a preparedness to see treatment as unnecessary when others believe the patient is so sick that treatment is essential.

We have a failure of the mental health system. We have a failure of the hospital admission system. We have a failure of communications in hospitals that means that simple processes take longer than they should. There is often a breakdown of communications. When people are being discharged from hospital, it often takes them hours to get simple things like medications because of the process. There is much that is wrong and much that this minister needs to do to fix it.

MS PORTER (Ginninderra) (4.50): Today we have heard from those opposite their impressions of our health system in the ACT. As we heard from the minister, Mr Corbell, and Ms MacDonald, it is a health system that the ACT public can be proud of and have confidence in. I must say I am not surprised that Mrs Burke and Mr Smyth would see the article in the *Canberra Times* as a way to leap from Dr Richardson's research to an accusation that the minister does not care and is happy to allow overcrowding to occur.

Mrs Burke vexatiously continues to say in this place that the research shows a causal relationship between one thing, that is, the number of people in A&E, and another, the death of individual patients. I have heard Mrs Dunne make this claim in question time, and Mrs Burke did so a few minutes ago. I am not surprised because each time the opposition discusses essential public services in this place it manages to undermine them by questioning the quality of these services.

I have observed Mrs Dunne, in her previous role as shadow minister for education, continually undermine our public education system. It is almost a joke the way the shadow minister for police, Mr Pratt, runs down emergency services. He was doing it again in question time today. I say "almost a joke", as it is an absolutely serious matter when those opposite express a lack of faith in those whose job it is to protect us. Then, of course, we hear in this place the opposition seeking to undermine our public transport system, a public transport system that is proving on a daily basis to be more and more responsive to the public and more and more popular—

Mrs Dunne: I raise a point of order, Mr Temporary Deputy Speaker. The matter of public importance is the public health system. So far Ms Porter has talked about the police, the public transport system—

MR TEMPORARY DEPUTY SPEAKER: Mrs Dunne, if Ms Porter has talked about—

Mrs Dunne: She has been going for two minutes.

MR TEMPORARY DEPUTY SPEAKER: Mrs Dunne, there is no point of order.

MS PORTER: Public transport is becoming more and more popular and, therefore, further utilised. But I digress. Today this matter of public importance is about our fine public health system. The opposition have their beady eyes on it, as they have on many of our services. I am somewhat surprised, though, that Mrs Burke, a member of the Standing Committee on Health and Disability, should undermine the public health system. What does she hope to achieve by expressing such a lack of confidence in our public health system? She surely does not think that this will assist the public.

Mr Corbell has already said this will cause the public to feel afraid. Certainly it does not help our wonderful doctors, nurses and allied health workers who are working so hard and doing such a brilliant job. As Mr Corbell said, this only serves to lower their morale and cause them to question their own abilities. How shameful is that?

Only the week before last I received several emails from a constituent who asked me to pass them on to Mr Corbell. She wanted to thank the health system for the wonderful service that she and three members of her extended family had enjoyed. Unfortunately, this family had experienced a string of health challenges of a serious nature and therefore had first-hand knowledge of the way in which the health system responded to their serious emergencies and challenges and provided ongoing after-care support to members of the family who were ill and those of the family that were affected. The member of the family that contacted me about their experience was fulsome in her praise of the health system and the care that had been provided to her and to the members of her family.

We have heard from Mr Corbell and Ms MacDonald regarding the health of our health system. Mr Corbell outlined the many ways that this government has improved all levels of health care since he has been in power. No other ACT government has made a greater investment in—

MR TEMPORARY DEPUTY SPEAKER: Order, Ms Porter! The time for the discussion has now expired.

Crimes (Offences Against Pregnant Women) Amendment Bill 2005

Detail stage

Proposed new clause 17A.

Debate resumed.

MR PRATT (Brindabella) (4.54): I rise to speak again on this amendment. I deal firstly with the Chief Minister's attack on our amendment and our position on this. I have really got to say that his attack was merely a smokescreen. He talked about concerns that we were interfering with or seeking to attack women's privacy issues and that this was a covert objective of my amendment.

He also said that really the Liberals are only out here pushing, what he terms or what he sees to be, some sort of abortion rights agenda. He says repeatedly that our motive is simply to push the debate on abortion. It was not the opposition here today who stood up to raise the divisive issue surrounding the abortion debate. It was the Chief Minister. I remind the Chief Minister of what the amendment says in terms of the divisive issue of abortion. The Steve Pratt amendment basically seeks to insert:

> **Offences relating to unborn children**
>
> (1) This section does not apply to—

(a) a lawful abortion; or

(b) anything done by a pregnant woman in relation to her own unborn child; or

(c) anything done to save the life of, or preserve the health of, a woman who is pregnant, or her unborn child; or

(d) anything done otherwise within the usual and customary standards of medical practice.

That is pretty clear, I would have thought. In the framing of this amendment, an amendment which seeks to add teeth to an otherwise weak bill, we have enshrined the provisions in existing law about abortion rights and the rights of women to choose abortion and the rights of women to privacy.

We have gone out of our way—we have executed cartwheels in anticipation of the Chief Minister's smokescreen counterattack—to ensure that our amendment enshrines provisions under existing law. Why? Because we do not want the damn debate; we do not want the waters muddied, diverted down that track. We want to see put in place good law that goes to protecting the pregnant woman and her unborn, which is why we support the government's bill. It is at least a bill that provides something that we currently do not have. I have put that on the record again and again.

We have the media today asking the question of me: "Is this just a backdoor approach to abortion?" Why did they say that? Because the Chief Minister probably put that stupid idea in their heads. I make that very, very clear. In fact, his rambling attack on the amendment was just a load of old bollocks. It was simply a smokescreen on his part to cover his failure to take action. I put that on the record.

Let us look at the Attorney-General's rejection of our point that his law is too soft and that the penalties are not comprehensive enough. We have said that his law is wishy-washy. We have said that his law provides a soft deterrent. There is some deterrent but it is still a soft deterrent Yes, we acknowledge that there are significant penalty increases—25 per cent for assault, 30-odd per cent for GBH and 25 per cent, if my memory serves me correctly, for manslaughter. Yes, they are significant penalty increases. But these are penalty increases on a very narrow base. What we are saying is that the overall frame of the government's legislation leaves so many other scenarios untouched. While there are significant penalties, they are on a narrow base.

Let me illustrate this way the point I am making: this law will be of no compensation to a pregnant woman who is assaulted, and there will be little justice for her for the benchmark, most-likely offence. I am talking about a direct violent assault, an intended violent assault, on a pregnant woman. Yes, there may be a significant increase of three years maximum for GBH if the woman happens to lose her pregnancy. But there will be no compensation or justice for the death of the unborn.

Under this law that the Chief Minister is proposing, there can be no manslaughter applied for the loss of a pregnancy because he is concerned that we might be seen to qualify the termination of the foetus before that foetus had become a living being. That is unfair

justice. That still leaves a very significant loophole in the system. That is why in this amendment that I have tabled today we are offering manslaughter in such a case. That will provide a real deterrent, not the soft deterrent that the Chief Minister's law is currently providing.

We do not support some of these watered-down attitudes that we are seeing put on display here today. Again we call upon the Chief Minister to put some teeth back into his legislation and accept our amendment.

Question put:

> That proposed new clause 17A 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.

Proposed new clause negatived.

Clause 18.

MR STANHOPE (Ginninderra—Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs) (5.06): I move amendment No 1 circulated in my name *[see schedule 2 at page 421]*. I table the supplementary explanatory statement for the amendment. The explanatory statement, for the information of members, incorporates changes that have been suggested by the scrutiny of bills committee on the issue of an aggravated offence and the provision of an offence that a person charged with an aggravated offence, on the balance of probabilities, did not know or could not reasonably have known that the woman was pregnant.

The amendment replaces proposed new clause 48A (2) to (5). The effect of the amendment, as I indicated earlier in debate today, is to include a lack-of-knowledge offence to allow an accused to avoid liability for an aggravated offence if he or she proves on the balance of probabilities that they did not know and could not reasonably be expected to know that the woman was pregnant.

I moved the amendment because I have accepted concerns that have been expressed that, in the absence of a requirement to prove fault, the aggravating factors are a limitation of the right to presumption of innocence. I have been persuaded that there are some concerns that the limitation may not completely satisfy the reasonable limits test in section 28 of the Human Rights Act. This amendment goes to that situation. A person who has been charged with a particular offence involving a woman who was pregnant now has a defence that they did not know and had absolutely no reason to know and

could not possibly have known that the woman who suffered the injury, which led to their being charged with a simple offence, to which there was an aggravating aspect as a result of the passage of the Crimes (Offences Against Pregnant Women) Bill, was pregnant and would not have known in those circumstances.

On the basis of the very thorough commentary provided on this particular aspect of the bill by the scrutiny of bills committee, I thank the shadow attorney and other members of that committee for that very thorough report and for the recommendations contained within it on this particular aspect. I thank the shadow attorney for his chairmanship and for producing the report to which the government was prepared to respond positively in the way that I respond now. Thank you very much, Mr Stefaniak, for the wisdom of that report. It is a very thorough discussion of the issues.

The government is very pleased to accept your advice and, along with that, of course, the advice of members of the community, members of the legal profession and members of the civil liberties council. It is interesting that Mr Stefaniak, in this particular instance, in the provision of that scrutiny of bills report to the Assembly, is echoing similar concerns expressed by the profession broadly and by the civil liberties council. I have to say that it is one of those interesting moments in life that Mr Stefaniak is singing the same song and from the same song sheet as the civil liberties council. There is a similarly reflecting view or position put by members of the profession.

So the government is persuaded by the advocacy of the scrutiny of bills committee, by the civil liberties council and by members of the legal profession that there should be some acknowledgment of the need that there be a fault element or a capacity for a person charged with a particular offence to be able to plead, essentially, the lack of mens rea—in other words, that they simply did not know; they did not have in their mind any intention to commit that crime with which they have been charged because they simply had no advice or knowledge that the woman was pregnant. One of the elements that are fundamental to the defence to the particular offence is an intention to harm a woman who is pregnant.

I commend this particular amendment to members of the Assembly. Again, I am grateful to the scrutiny of bills committee and to its chair, the shadow attorney, for the report that they delivered; to the civil liberties council; and to other members of the community who responded with some concern on this fairly important and fundamental issue.

I might, by way of concluding the debate—this is the last occasion on which I will get to my feet—refer to the opposition's motivation for the amendment which they have moved today and for their approach and attitude to this particular bill. It is notable that the Model Criminal Code Officers Committee, a significant committee of the Standing Committee of Attorneys-General—pre-eminently in terms of the criminal law, perhaps the most learned policy group that has been active within the last decade is, of course, the Standing Committee of Attorneys-General—in a report on the model criminal code included a chapter on non-fatal offences against a person.

They referred to the Queensland law, on which the Liberal Party's position is mirrored. The Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General referred to the intent in this way, at page 153:

> The current position in Queensland—

which is the position which the Liberal party wishes to impose in the ACT—

> has been complicated by recently proclaimed law on child destruction ... This section is directed at the situation in which a person harms a pregnant woman and, as a result, the foetus is killed. It is clear law in other jurisdictions (and has been so for centuries)—

that is, all other Australian jurisdictions and jurisdictions like the UK and other commonwealth countries—

> that a homicide charge—

in other words, a charge involving death, whether it be murder, manslaughter, et cetera—

> in relation to the foetus can be brought only if the child is born alive and subsequently dies from its injuries.

There is then reference to a whole raft of case law to that effect. The report continues:

> The Queensland amendment seeks to overturn that law. The section as enacted applies to all foetuses, at any stage of development.

In other words, from conception. The Queensland law, the law which the Liberal Party proposes to introduce into the ACT and has tried three times now and will continue to attempt to pass through this place, applies to all foetuses at any stage of development. The Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General then conclude:

> It is manifestly inconsistent with pre-existing Queensland Abortion Law.

That is the point I have been making all day. That is the point that I have made and that members of the government have made on the previous occasions that this matter has been debated. The view of that group of public servants that constitute the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General—and these are officers from every jurisdiction in Australia, including the commonwealth–is that this law is manifestly inconsistent with existing abortion laws. And it quite obviously is. They state that it is simply not possible to predict what legal effect these provisions will have. That is the view of the most expert criminal law policy group in Australia.

Mr Pratt can stand up and say that I am seeking to confuse the issue, but the opposition's motivation and the Liberal Party's position on this, that this has got nothing to do with abortion, is not accepted by the most learned criminal law policy group within Australia, which has on it representatives from the commonwealth and every state and territory in Australia. It reports to the Standing Committee of Attorneys-General. Their view is that what you have sought to do today is manifestly inconsistent; in other words, it cannot stand side by side with laws on abortion. They go on to say that there is no way of knowing what the legal implications of that law are. That is not my view. That is at

page 153 of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General report on non-fatal offences against the person.

There is specific reference to the specific provision that you seek to introduce, as introduced in Queensland, stating that it is directly inconsistent with laws on abortion. You cannot predict the impact it will have on the law as it relates to abortion, because what you have proposed in providing a separate legal personality for a foetus is that the offences against the person will apply to the foetus; in other words, the law as it stands in relation to murder will apply to a foetus from the date of conception.

You pretend that a law such as that can stand beside a law on abortion. It cannot. That is not my view; that is the view of the pre-eminent active criminal law policy committee in Australia; that is the view, as expressed, of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General. So you are simply wrong. Your proposal cannot, in the view of the Standing Committee of Attorneys-General Model Criminal Code Officers Committee stand with laws on abortion. That is not my view; it is the view of the experts.

So do not come at me saying that this is a smokescreen by me. This is the view of all of the officers. The report was written in 1998.

MR SPEAKER: Chief Minister, you should come back to the amendment that is before us.

MR STANHOPE: I conclude on this point: I cannot quite remember the critical distribution across the states in 1998, but I do know that in 1998 there was a Liberal government federally. I think the committee was chaired by the commonwealth, with a commonwealth official.

DR FOSKEY (Molonglo) (5.18): I welcome this amendment. My office was concerned by the proposed new clause 48A (4) in the earlier version of this bill which prevented the courts from considering, at the conviction stage, whether or not the defendant knew the woman was pregnant when the offence occurred. I recognise that, through this clause, the government was focusing on making the offender responsible for the consequences of their actions whether or not damage to the pregnancy was intentional.

There were strong arguments for and against this clause. First, we had to consider whether or not it was fair, if the assailant was found guilty of a criminal impact, that he or she may not have realised it could occur at the time of the offence, that is, if the assailant did not know the woman was pregnant and did not know that his or her actions could harm the pregnancy; or, in the case of a car accident, for instance, where the culpable driver causes harm to a foetus or destabilises the pregnancy of a person, he does not intend to harm in any way and does not know even who is the occupant of the car.

Second, we had to consider what was fair for the pregnant woman if her pregnancy was harmed as a result of someone else's criminal actions, whether they knew she was pregnant or not. The key point when analysing these factors is the intention the assailant had against the pregnancy, for that is where the most serious aspect of this crime lies. To have the intention to harm the pregnancy, the assailant would need to know whether or

not the woman was pregnant. The perpetrator is more likely to know that the woman is pregnant in an instance, for instance, of domestic violence.

In these cases, and a key reason why I did not support Mr Pratt's amendment, the harm is more likely to be intended to hurt the woman through harming her pregnancy and making it less likely that she will have a healthy, happy full-term child. We are talking in this legislation, despite what Mr Pratt has tried to introduce, about a crime against the woman which intentionally or inadvertently affects her pregnancy or her foetus in utero. That right is intended, if it is intentional, to harm the woman primarily. For this reason I am glad that the government reconsidered the clauses within the new section 48A. It will allow the defendant to try to prove to the courts that they did not have knowledge of the pregnancy so that that could be considered at the conviction stage.

This was a point that my staff and I raised at a briefing that has been mentioned by the Attorney-General. It is extremely heartening to know that in fact dialogue takes place in those cases and that the government took on the suggestions that I believe improve this legislation. Perhaps he can make it a model for other states and territories. However, in the Attorney-General's closing speech, I would be interested to hear his opinion on whether or not this amendment will impact on the new section 29 (2A) regarding culpable driving of a motor vehicle, for in this case it is almost impossible for the assailant to know, for a start, that a car that he may have a crash with contains a woman; and, secondly, that that woman is pregnant.

MR PRATT (Brindabella) (5.22): Of course we will not support this amendment. This amendment waters down the Attorney-General's legislation. Mr Stefaniak has quite forensically taken apart the Attorney-General's amendment in terms of discussing and illustrating those areas which really do need protection. If the Attorney-General did not seek to amend his law, those protections would still be in place.

I talk, for example, of the shadow Attorney-General's example of eggshell skull provisions in law. I talk also about the culpable driving which results in the death of somebody who suffers that type of condition. People are totally responsible for the consequences of those actions in those cases already; they are already responsible for the consequences of their actions for those that they may not see in the back of a car.

What is the difference between the consequences that will be suffered by a reckless driver who, having caused an accident as a consequence of his recklessness, injures people in that car, perhaps kills a one-month old baby on the back seat of the car, and the consequences that will be suffered by a reckless driver who causes an accident which results in the termination of a pregnancy of a seven-month pregnant woman in the car? What is the difference? What is the difference if, through his culpable driving, an old woman on the back seat, who would otherwise escape injury unscathed, suffers a heart attack because of a weakened condition? The culpable driver did not know that that woman had a condition but the culpable driver will be held accountable under existing law.

Therefore we are very, very disappointed that the Attorney-General would seek to take those protections and those provisions out of his bill. We are also disappointed that the civil liberties council of the ACT should have pressured the Attorney-General to weaken his bill. It is perplexing that the civil liberties council should seek or pressure to have the

protections for the unborn removed. Of course they would not do that for those other cases that I have just outlined. There is an inconsistency there. There is an illogicality there, and we question that illogicality. Perhaps the reasons are purely ideological.

I go to the point that the Chief Minister made before about the Standing Committee of Attorneys-General, the pinnacle of legal officers. Perhaps the legal officers have got their own agenda, because certainly over the last couple of years we have had broad legal opinion that the law on which this particular amendment that we put up earlier was based, and the need for you to have that protection in place, which you are now seeking to amend out, is absolutely reliable. It should have been kept in place. It is a pity, of course, that the Greens have also rolled over all the way with the civil liberties council of Australia and the Chief Minister, unfortunately purely along ideological lines.

Let me also say, incidentally, that I absolutely appreciate and respect the scenario painted by Dr Foskey earlier. She talked of the way that she felt during her pregnancy, the way that she would have assessed her own condition and what that means. We entirely respect that. She has clearly had her own experiences in life.

Can I also point out to Dr Foskey that there are a hell of a lot of women who are pregnant and who look upon their pregnancy in a different way. They would look at their unborn and say, "My little kid is kicking." If they happened to know, they would say, "My little boy" or "My little girl is kicking and giving me comfort tonight." That is how people view it. Everybody has a different approach. Everybody's different approach can be respected. Let me also point out to Dr Foskey that there are many women in this society of ours who look upon their pregnancy in a very lively way. We are very, very disappointed that the Attorney-General has weakened his already weak legislation even further. Of course we will not support his amendment.

Amendment agreed to.

Clause 18, as amended, agreed to.

Remainder of bill, by leave, taken as a whole and agreed to.

Bill, as amended, agreed to.

Children and Young People Amendment Bill 2005 (No 2)

Debate resumed from 15 December 2005, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MRS BURKE (Molonglo) (5.28): On behalf of the Liberal opposition, I rise today to support the government's amendments to the act, which are in line with recommendations arising from the Vardon and Murray reports. The opposition believes that it is important to allow the government and, particularly, service providers to have the opportunity to put into practice the key tenets of these amendments, with the hope that in procedural terms they will allow for a smoother delivery of the intent and the application of the act.

The Children and Young People Act 1999 provided for an operational review within three years of the act's commencement. According to the government, a comprehensive review has been undertaken, involving extensive community consultation, and it has resulted in a two-phase reform process. The first phase proposes changes to the principles of the act in this round of amendments as well as in the areas of care and protection and of information protection.

The opposition notes that the bill seeks to improve outcomes for children, young people and their families through improving their participation in decision making that affects their lives, preserving and enhancing the identity of Aboriginal and Torres Strait Islander children and young people, and improving the recognition and assessment of children and young people at risk of abuse and neglect. It is evident that the government is determined to implement these amendments at this point in time in the hope that an apparent and immediate positive impact will occur and further aid service providers to deliver improved forms of intervention, care and assistance to young people and/or families.

Mr Speaker, the review appears to have identified that the particular principles outlined in this amendment relating to the participation of children and young people in decision making require strengthening. The opposition supports that and acknowledges the government's clear determination through what appears to be a genuine, albeit long, process of consultation. I would say at this point that the length of time that it has taken would seem to indicate, as I think Minister Gallagher said, that it is a long and complex act.

We are at a point now where we have two tranches of this review going through and further amendments will be moved in August, I understand, which will reveal the full intent of the government's changes to the act. I am guessing and we are hoping that allowing these amendments to go through today is the government's way of being able to test whether they are workable and will prove to have good outcomes in relation to what the government is proposing to do in August.

The amendments seem to arrive finally at placing firmer acknowledgment in law on the key areas of care and protection by way of installing a new principle to assist with helping families understand care and protection procedures. I can see that it is important to guide the actions of decision makers regarding consultation with and participation of children and young people and people with parental responsibility in decision making.

It is acknowledged on this side of the Assembly that for any care and protection decision to be progressed the decision maker must make attempts to ensure that the child or young person, their legal representative and people with parental responsibility understand the nature of the decision and the decision-making process. It seems that an attempt has been made to ensure that they can participate in the decision-making process, put forward viewpoints and, once a final decision has been arrived at, feel that to be genuinely heard was the most important part of the communicative process.

I note that the best interests principle is to become the paramount consideration for decision makers across the ACT, except for young offenders, whereas the general principles will be applied except where the application would be contrary to the best

interests of the child or young person. The best interests of the young person will be one of a number of principles to be applied when making decisions about young offenders. I note and acknowledge at this point that Dr Foskey has tabled some amendments which perhaps we will talk about at a later date.

The review process has apparently identified that principles relating to the participation of children and young people in decision making required strengthening. In the area of care and protection, a new principle of helping families understand care and protection procedures is being introduced. This principle is intended to guide the actions of decision makers regarding consultation with, and participation of, children and young people and people with parental responsibility in decision making.

I particularly welcome the fact that the bill seeks to strengthen the representation of Aboriginal and Torres Strait Islander people on the Children's Services Council through a requirement that at least one council member represent their interests. A few years ago I did raise what was then a real issue and I am pleased to see some moves being taken here to address the issue of better record keeping in terms of Aboriginal and indigenous children in care and the fact that elders in the ACT were not being as fully engaged in the process as they might have been.

I really welcome and appreciate the government's work in this area. I trust that this placement will further elevate the need for decisions concerning Aboriginal and Torres Strait Islander children and young people. This seems to be at the heart of what will be the indigenous cultural plan that should preserve and enhance the child's or young person's identity as an Aboriginal or Torres Strait Islander person.

I note that a new concept is being introduced of a child or young person being at risk of abuse or neglect. This will replace the concept of likelihood of abuse or neglect and reflects contemporary child protection assessment of risk. I agree that by all accounts assessment by way of a test will aid in determining where there is significant risk of a child or young person being abused or neglected. I believe that it is important that examples of cases are made in the act to further highlight a need for the chief executive to make a clear determination that a child or young person is at risk of abuse and neglect.

The categorisation of persons required to report abuse of children and young people was a point of debate had between members of the opposition. It is imperative that a clear line of delineation does exist in the act to clarify and ensure that the public servants working with or persons providing services to children and young people and their families will be mandated to report.

As the current reporting regime appears to operate, all mandated reporters can report their suspicions of non-accidental physical injury and sexual abuse. It was conveyed to me that during the review it was identified that this can result in many mandated reporters in the same setting being required to report identical concerns for a child or young person. The Liberal opposition notes that in settings such as schools or hospitals a person who reasonably suspects or, more importantly now, believes that someone else has already made a report about the same child or young person in relation to the same incident of abuse or neglect is exempt from submitting a report. I acknowledge that this should provide a clearer picture as to the number of children and young people at risk by reducing the number of multiple reports.

I note that there will be further engagement between the chief executive of the department and the Office of the Community Advocate. That, I trust, will ensure a greater level of communication and cooperation between the two organisations so that streamlined reporting and responses can be further built upon when a decision is taken on action in relation to the abuse of children.

In relation to that, I welcome the proposed reporting process that will now see an annual reporting process to ensure that any required reporting is completed in a more regimented way and thus avoid any shortfalls. Of significance, the government has highlighted the importance of empowering facilitators of family group conferences who engage in conferencing work with children, young people and families, including mediation, resolving conflict or doing anything necessary to facilitate conferences.

Finally, of most importance is the new framework surrounding the protection and release of information under the act. The opposition supports, wherever it is necessary and deemed appropriate for the smooth delivery of care for children at risk, the release or sharing of protected or sensitive information between relevant agencies in the best interests of the child or young person at risk. I have to say that I think that that is a most sensible move and, as I say, it is fully supported by the opposition.

By supporting this phase of amendments, the Liberal Party is displaying a commitment to further protecting children and young people and providing further support to service providers who implement the act. It is, however, understood that if, in some form or another, these proposed amendments can be revisited, the opportunity may be extended during the government's next round of amendments which I have already alluded to and which are planned for introduction around the middle to latter half of 2006, I understand.

I thank the minister for the inclusive approach taken in seeking the opposition's support for this round of amendments to the Children and Young People Act 1999. It is genuinely hoped that the proposed amendments will both further empower the service providers and facilitate further inclusiveness of children and young people in decision-making processes that are covered by the act.

DR FOSKEY (Molonglo) (5.39): I support the Children and Young People Amendment Bill 2005 (No 2) in principle. I acknowledge that in reviewing and updating the Children and Young People Act the ACT government has undertaken a wide range of community consultation. I also note that the bill before us is only a small part of the reform and that much larger amendments are to come later this year.

The bill before us takes some positive steps in the way we recognise and treat the needs of children and young people. These positive steps include: the reinforcement of the best interests principle as being the paramount consideration; improved wording of Aboriginal and Torres Strait Islander-related clauses; legislative introduction of a cultural plan for Aboriginal and Torres Strait Islander children and youth; requirement for an Aboriginal and Torres Strait Islander representative on the Children's Services Council; requirement for decision makers to ensure children and young people and people with parental responsibility have a role in and fully understand the decision-making process; clearer definition of the role of public servants under the act;

minimised report duplication; oversight of the Public Advocate on incidents involving authorised carers; and a widened role for family group conference facilitators.

However, there are several points within the bill that are cause for concern. First, although the best interests principle is of paramount consideration for children and young people, apparently it is not of paramount consideration for children and young people who break the law. This anomaly fails to recognise that many young offenders arrive in the criminal system as a result of poor care and protection in earlier life and that the most important issue to be considered is how they can best be rehabilitated.

I acknowledge that the courts should only detain a young person as a last resort and that the rights of any victim and the interests of the community must be considered, but I think the best thing for the young offender in the community would be if paramount consideration were to be given to the young person's rehabilitation. It seems that our young offenders are being sent too often to Quamby and that it is not being used as a sentence of last resort, as the act requires. Even the Chief Minister is worried by it. For that reason, I will be proposing during the detail stage an amendment to the young offenders principles which will put forward that consideration of the young offenders' needs and rehabilitation is the most important criterion when making decisions about young offenders.

I understand that many of the youth detention centre standing orders, which came up in the Assembly late last year and are affected by clause 20 of this bill, are still being examined. My office has been informed that when the review is completed they will be split up into legislation, standing orders, and policies and procedures. While it seems to be taking the government longer than expected to review the orders, I acknowledge the enormity and the importance of this task and look forward to the resulting debate.

My final concern relates to the conflict between the admission of relevant evidence to court and the protection of sensitive information under the act. In favour of providing information are arguments that withholding relevant information from the courts can counter the right to a fair trial, that section 12 of the Evidence Act compels people to give evidence and if they do not they are in contempt of court, and that if someone were prosecuted under this act sensitive information could be supplied.

Arguments against the provision of information include: clause 56 (1) of the Evidence Act implies that evidence is admissible rather than compellable; sensitive information about children and young people under this act is highly private and confidential; and if someone was prosecuted under another act, sensitive information would not be supplied. This is not an easy situation to understand, but it seems that the ultimate test of what is in the best interests of the child is for magistrates to be provided with sufficient information to allow them to discern the best that can be made of a difficult situation.

I support the Children and Young People Amendment Bill 2005 (No 2) in principle, but I will be seeking to make one amendment to the young offender principles.

MRS DUNNE (Ginninderra) (5.44): As Mrs Burke has said, the opposition will be supporting this bill, which is the first wave of amendments in the much-needed review of the Children and Young People Act. The issues that have been touched upon by

Mrs Burke have been well touched upon and some of the issues raised by Dr Foskey are important ones.

The best interests principle is one that needs to be substantially and constantly reinforced when we are dealing with children at risk. From a cursory reading of the act as it currently stands and having had a weather eye on the comments of people more qualified than I am on this matter, particularly the former Community Advocate, there have been substantial failures in the past in dealing with children and acting in their best interests at all times.

That is not to be overly critical. It is an extraordinarily difficult thing that people do when they are seeking to find solutions for children at risk of abuse and children who have been subjected to abusive situations. While the opposition welcome the amendments brought forward by the minister in this amendment bill, I think that we need to put on the record that we do not consider that because these amendments are passed today they cannot be revisited in the context of the wider review.

The wider review is somewhat overdue and I understand that these matters are being brought forward simply to address things which are of a more urgent nature. I think that that is laudable. But, because we have done so today, we have not necessarily fixed it up. As to those amendments which we do pass today and which the opposition supports, we are doing so with an open mind to perhaps tweaking those matters when the next tranche of amendments comes before this place, because this is something on which members of this place and members of the community in general need to be absolutely vigilant.

The Children and Young People Act has been in operation for some considerable time. It is well overdue for review and amendment. We know the long and sorry history of the last couple of years about the administration of the Children and Young People Act. I do not particularly want to dwell on that. My concern is that some of these issues should have been brought forward earlier and that they do need to be constantly and vigilantly reviewed. In passing these amendments today, the opposition is not wiping its hands of these matters. It will be revisiting them in the context of further reviews of the Children and Young People Act.

MS GALLAGHER (Molonglo—Minister for Education and Training, Minister for Children, Youth and Family Support, Minister for Women and Minister for Industrial Relations) (5.47): Mr Speaker, following reports by Commissioner Vardon and Ms Gwen Murray, the Stanhope government is undertaking a comprehensive review of the Children and Young People Act 1999. The first stage of the revision has produced the amendments currently before the Assembly. The second stage will see a completely new act and will be available later this year, beginning with another round of public consultation.

The amendments made by this bill are to the principles of the act as well as in the areas of care and protection and of information protection. Mr Speaker, under these amendments, the best interests principle will remain the paramount consideration for decision makers across the act, except for young offenders. However, in the case of young offenders, the best interests of the young person will be one of a number of principles to be applied when making decisions.

The recent reviews of child protection recommended strengthening the participation of children and young people in the decision making affecting them. In addition to the best interests of the child and young person principle, the government is introducing the new principle of helping families understand care and protection procedures to guide the action of decision makers regarding consultation with, and participation of, children and young people and people with parental responsibility in decision making.

Mr Speaker, contemporary scholarship, policy development and our own territory experience dictate that we need to strengthen the representation of Aboriginal and Torres Strait Islander people on the Children's Services Council. These amendments achieve that by including the requirement that at least once council member represent their interests.

In the area of care and protection, these amendments introduce the new concept of a child or a young person being at risk of abuse or neglect. This replaces the concept of likelihood of abuse or neglect and reflects contemporary child protection assessment of risk.

The amendments also clarify that public servants working with or personally providing services to children and young people and their families will be mandated to report. The current reporting regime requires all mandated reporters to report their suspicions of non-accidental physical injury and sexual abuse. That can result and has resulted in multiple identical reports being made, which has overtaxed agency resources. That frequently occurs in settings such as schools or hospitals. To avoid that, an exception to mandatory reporting will occur in circumstances where a person reasonably suspects that someone else has already made a report about the same child or young person in relation to the same incident of abuse or neglect.

Also, presently all reports on children and young people for whom the chief executive has parental responsibility, principally those in care, are required to be given to the Office of the Community Advocate. In practice, that has resulted in many reports being provided which do not involve significant care and protection concerns; for example, a young person absconding from placement for a short period. These amendments will ensure that the Office of the Community Advocate will be provided with all those reports where a report of abuse or neglect has been received which involves the carer authorised by the chief executive to care for the child or young person.

Amendments are also being made to the reporting regime, which under section 267 currently requires appraisal reports be made annually for children under care and protection orders. While the chief executive will continue to report once each year for a child or young person subject to a final care and protection order, these amendments mean that if the order is in force for less than one year the chief executive will report at least one month, but not earlier than two months, before the order expires.

An innovation of which I am particularly proud is the amendment elevating the status of family group conferencing. In particular, not only are facilitators of family group conferences empowered to undertake preconference work with children, young people and families, including mediation, resolving conflict or doing anything necessary to

facilitate a conference, but also the information acquired by the facilitator during the preconferencing stage will be provided with legal protection.

Mr Speaker, these amendments introduce a framework for the release of protected and sensitive information under the act. Guidance is provided as to what information may be released by an information holder. Finally, the power to make standing orders for places of detention have been extended from the current date of July 2006 to December 2006 to allow for the detailed and comprehensive consideration of the policy matters related to youth justice to be completed.

Mr Speaker, I would like to thank the opposition and the Greens for their support for these amendments and for their contributions to the debate today. I would also like to thank Adam Stankevicius, Angela Buchanan, Fiona McIntosh, Ronia McDade and Lou Denley, officers of the Office of Children, Youth and Family Support, for their commitment of thought and effort to bringing the review and consultation recommendations to fruition in these amendments. I commend the bill to the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 3, by leave, taken together.

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

Adjournment

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

> That the Assembly do now adjourn.

Depression
Good neighbour day

MRS BURKE (Molonglo) (5.53): Tonight, if I may, I would like to bring a couple of matters to the attention of the house. Firstly, I would like to give a real pat on the back to a lady by the name of Leanne Pethick, the CEO of depressioNet. Each year more than 200,000 Australians turn to depressioNet for information, help and 24-hour peer support. That figure has increased by 20 per cent each year. Of that figure, 79 per cent are workers who say depressioNet has helped them maintain their employment while living with depression. Bullying in the workplace is identified as a contributing problem.

There are many interesting statistics here. For example, in the 24 hours following the resignation of Geoff Gallop, depressioNet registered an increase of 48 per cent in visitors and a staggering 104 per cent increase in registrations to join the service's online support community, which includes message board and chat rooms.

Depression in the workplace has been identified as the fastest growing mental health issue in Australia, and I know that we all know that. But bullying in the workplace is also a major issue right now. Dr Rob Moodie, CEO of Victoria Health and board member of depressioNet, has said:

> Bullying makes people depressed and politicians in particular need to cope with this problem—parliament being the hotbed of acrimony that it is. The rise of bullying and depression in the place of work is something people often stew over in the middle of the night. That's why it is important that a unique service like depressioNet exists to confidentially help people at any time of the day or night.

Since June 2000, more than a million people have visited depressioNet. Many of these people do so on a regular, ongoing basis. There are many statistics here: 78 per cent of depressioNet users agree, and strongly agree, that depressioNet helps them learn new ways to help themselves; 75 per cent of users of depressioNet who are working state that using depressioNet has helped them to improve their performance at work; 62 per cent say it has helped them to better manage their symptoms and using depressioNet allows 87 per cent of users to understand that they are not alone. There are many more statistics, and I urge people to have a look at this website and support people like Leanne Pethick. It is depressioNet.com.au.

The second matter I would like to bring to the Assembly's attention is that 12 months ago I suggested that the government should adopt a good neighbour day. I uphold that view. In the Assembly today we have talked about policing issues and community problems or uprisings, if that is what you want to call them. I know that Mr Hargreaves got very dramatic when he talked about this. But I think there is a real role for government to adopt something like a good neighbour day. It could underpin the great work done by Neighbourhood Watch.

I was interested to see that in the Northern Territory there is a pamphlet called *Good Neighbour*. It is about participation, but it is broader than that. We need to see tenants working with private residents and with people in their local communities. In the immediate vicinity, Oaks Estate, Red Hill, Manuka, Kingston and Griffith, wherever we have multi-unit complexes, we could engage those communities to work together. Whilst I acknowledge and appreciate that the government is doing some things in regard to tenant participation, it is in isolation to the broader community. The government needs to work with the opposition. The minister seems to want to do that, but the boot is on the other foot. He wants to do it the other way around. I am asking him to work with me and I will work with him to make sure that we have a community that works together and fully engages at every level.

I ask the government to consider my media release of Sunday, 6 March 2005 about adopting a good neighbour day in the ACT. It might help to alleviate current problems.

Health care

MS PORTER (Ginninderra) (5.58): Mr Speaker, it was obvious earlier that Mrs Dunne was very uncomfortable with what I was saying about her apparent disloyalty to our public service and that of her colleagues. She was uncomfortable when I reminded members of the continual attempt of those opposite to undermine those who deliver this

government's essential services to the public. I drew members' attention to this pattern in light of yet another attack, this time on ACT Health.

Since it has been in power this government has improved all levels of health care. As Mr Corbell said, no other ACT government has made a greater investment in the health of our people. Let me give you another example of this government's achievement in health. I refer to the latest newsletter from ACT Health's newsletter *Healthy territory*. Under the heading "Population Health" the newsletter states:

> Immunisation is one of the most cost effective public health interventions against the morbidity and mortality of vaccine preventable diseases. When coverage rates are high enough, immunisation protects not just the individual, but also the wider community by preventing vaccine preventable diseases getting a foothold.
>
> The Australian Capital Territory has become the first state or territory in Australia to achieve 95 per cent immunisation coverage in any group. The figures were revealed in the immunisation coverage rates released recently by the Australian Childhood Immunisation Register, which collects data from immunisation providers on immunisation given to children up to seven years of age.
>
> Immunisation and coverage rates are measured at three milestones—12 to 15 months of age, 24 to 27 months of age and 72 to 75 months of age. No other State or Territory in Australia has achieved above 95 per cent immunisation coverage for any cohort.
>
> ACT Health has implemented a number of initiatives to increase coverage rates in all age groups, including following up unimmunised and under-immunised children; capturing data that may have been lost; and transcribing overseas immunisation records.
>
> This achievement has been a collaborative effort by immunisation providers, ACT Health, the Australian Childhood Immunisation Register, and the ACT Community and parents.

I can only refute Mrs Burke's earlier claims and those of her colleagues about the ACT health system. I echo the remarks of earlier government speakers. In refuting Mrs Burke, I express my confidence in the ACT public health system and thank all those frontline and behind the scenes staff that work in it.

Hilton Hotel bombing

DR FOSKEY (Molonglo) (6.01): I am sorry that Mr Stefaniak is not here because I want to put on the record for his benefit in particular a record of the Hilton Hotel bombing. Of course he can read it later. During the recent inquiry into the government's draft bill on terror, Mr Stefaniak referred to the bombing as a terrorist attack. The report states:

> … in February 1978 … a bomb exploded outside Sydney's Hilton Hotel, killing three people and injuring seven others.
>
> The bomb was in a garbage bin outside the hotel, which was the venue for a meeting of 12 Asia-Pacific leaders of the Commonwealth group of nations.

> The bomb exploded early on the morning of February 13, killing two workers who had picked up the bin and were loading it into their garbage truck. A policeman on duty outside the hotel … also died in the blast.

So it was truly a terrible event. The report continues:

> Australia's then-Prime Minister Malcolm Fraser, who was staying at the Hilton Hotel, immediately cancelled the meeting of Commonwealth leaders and called out the army to strengthen security in Sydney against perceived "terrorist activities".
>
> At the time, it was believed the Indian Prime Minister, Morarji Desai, was the target of the attack. But later investigation cast doubt on that theory ...
>
> No-one claimed responsibility, though Desai blamed the Indian religious organisation Ananda Marga, whose members had been demonstrating outside the hotel, for the attack.

Of course, as a visiting dignitary, his words had to be taken notice of. The report continues:

> In June 1978, three Ananda Marga members in Australia were charged with conspiracy to murder in an incident unrelated to the Hilton bombing, but were pardoned in 1985 after a judicial enquiry.
>
> One of the three members, Tim Anderson, was arrested on 30 May 1989—

That is 11 years later—

> over the Hilton bombing. The next day a former Ananda Marga member, Evan Pederick, confessed to the bombing and alleged Anderson was the planner. Pederick claimed to have placed 20 sticks of gelignite in the bin outside the Hilton. He was convicted in September 1989 and sentenced to 20 years in jail.
>
> Pederick testified at the trial of Anderson, who was convicted in October 1990 and jailed for 14 years. But Anderson's conviction was overturned on appeal the following year and he was released. Pederick is also now free—

He spent eight years in jail—

> and there is considerable doubt as to whether he really was the Hilton bomber.
>
> Terry Griffiths, a policeman injured in the bombing, later claimed he had been told by other police it was an event staged by people within various Australian security forces.

Mr Mulcahy: Oh, conspiracy theory!

Mrs Dunne: For goodness sake!

Mr Mulcahy: Dreadful!

Mrs Dunne: So the police put several sticks of gelignite in a garbage bin!

DR FOSKEY: The report continues:

> The bomb was to have been "found" by police in a sweep of the area but the garbage truck had arrived unexpectedly.
>
> … in 2004, Griffiths told a filmmaker; "The Hilton bomb exploded because no-one told my shift to prevent the garbage men from emptying the bin in front of us."
>
> One consequence of the event was greater resourcing for Australian police anti-terror units and for the domestic security organisation, the Australian Security Intelligence Organisation.

That report comes from CNN.International.com—

Mr Mulcahy: It must be true. It's got to be true.

DR FOSKEY: Not CNNNN.

Mr Mulcahy: Are you sure?

DR FOSKEY: I have heard the expostulations of the Liberals. I just want to say I do not necessarily believe everything I have read out. The reason I read it is that we do not know. Mr Stefaniak does not know. I do not know. CNN does not know. There are various people who do know. Mr Tim Anderson, who was wrongly suspected, has now completed further study and is a well-recognised, respectable and responsible citizen. No doubt he is no longer a member of Ananda Marga. We need to remember that some people, especially when they are young, join groups and are sorry about it later. All these things need to be seen as part of the complexities of the situation that one little bit of legislation cannot be expected to solve.

Mental Illness Foundation ACT
Clean Up Australia Day
Jewish food fair
Government House open day

MS MacDONALD (Brindabella) (6.06): This evening in the Assembly I want to mention a few events that happened in the last week and a half. The first one is the Mental Illness Foundation ACT trivia night on Friday, 24 February, which I was lucky enough to go to. I am happy to report that the event was a great success and over $4,000 was raised.

I have just been reading the Mental Illness Foundation ACT newsletter and I note that they raised over $4,000, which ACT health minister Simon Corbell, who was among the trivia players, has undertaken to match dollar for dollar. That is a great success for them. I wish them success for their future trivia of nights. Of course, it will be great when they get the sound system to work as well. A lot of the time we could not actually hear what was being said, so it was good that we could read the questions on the screen.

The other events I wanted to mention all happened on the Sunday just gone, Sunday, 5 March. The first one was Clean Up Australia Day. It started for me on Friday, 3 March,

when I helped some of the students at Melrose High School to clean up. I want to thank Sally Paton, the principal of Melrose High School, as well as Kristy—whose surname I do not have on me, I am sorry—who is the youth support worker who organised that event. It was a great success. A number of students came out. It was a voluntary thing, although I understand that, for every small bag of rubbish they collected, they got a raffle ticket in a pizza lunch. I think a few of them were there for that. They were not in it for the health benefits.

I also wanted to thank the people of Torrens and Pearce who came out on Sunday and helped me at the site that I organised on the corner of Athllon and Beasley drives. We filled approximately eight of the large Clean Up Australia Day bags with rubbish, and one particular corner is looking much tidier, I have to say. I found a lot of lolly and chip wrappers on Sunday.

Also on Sunday, after a five-year absence, the Jewish food fair occurred. I am happy to say that I participated in the National Council of Jewish Women of Australia cake stall, including working on it and baking some orange and date loaves with my own fair hands. I am not yet sure how much was raised but, judging by the numbers that turned out and the queues that were in evidence, especially for the blintz, we should have made quite an amount of money for the community. That is a great thing to see as well. It was great to actually have the Jewish food fair back in full swing after the absence. It is nice to see that it is back in the community. It was a big event in previous years and it was sadly missed by many people in the community. You do not have to have Jewish blood to actually enjoy Jewish food, as many people who were there will testify to.

The third event I wanted to mention was the Government House open day on Sunday, which was held to raise funds for the Smith Family. I managed to get along after the other events, but I was not there for very long. It was also, I understand, very well attended. John McManus, who is the partnership manager, has emailed me and said that the event was a huge success, with 4,791 people attending and $26,400 being raised. Apparently the Governor-General appeared very pleased with the attendance and spent time during the day in meeting and greeting the patrons. It was a very pleasant afternoon to be in the beautiful gardens of Government House, which I had not seen before. I did not brave the queues to go into the house. I just looked in through the windows.

ACT softball championship carnival
Foxtel operations

MR MULCAHY (Molonglo) (6.11): During this past weekend members of the ACT Softball Association played a series of games at the Mawson playing fields. There were teams from all parts of the ACT, with a range of ages participating. I spent a deal of time there on Saturday and Sunday. My wife spent considerably more time. It was great to see the level of participation. It was encouraging to see so many parents out there supporting their children. The weather conditions obviously were excellent on the weekend and it was a great thing for the Woden area.

Our focus was in relation to the under 14s, which was won by North Canberra, but I certainly commend the efforts by the Woden Valley under 14s who lost by a point against Tuggeranong, an 11-10 result. I would like to pay regard to the coach, who has put in an extraordinary effort. Anyone who has been involved with softball or has

children involved in that area would know of Mon Bourke. She is a formidable individual.

In this era, when people seem to retreat more into their own worlds and think more about themselves than sometimes the rest of their community, to come across somebody whom I have come to know lately who has given 35 years of her life is an enormous reflection on her positive contributions to sport and young people in this territory. So often these people who work away not seeking recognition or praise are doing wonderful things behind the scenes in Canberra and it certainly gives me pleasure today to ensure that the records of the Assembly reflect the wonderful work that she has undertaken and continues to undertake.

The ACT Softball Association said to me today they had marvellous feedback from the weekend. It was the Woden Valley group's turn to host this tournament, which meant they had to organise the various facilities and canteens and the like. They did that with exceptional skill, and great credit goes to those involved in putting all those events together this past weekend. I would like that to be recognised and I commend all of those involved with that competition.

I want to mention just one other minor matter unrelated to that, Mr Speaker. This is a consumer affairs issue, and I do not have responsibility for that policy area in the Assembly. It is Mr Stefaniak's area and I did mention this to him. I would like to see possibly a bit more vigilance on consumer affairs issues from the Chief Minister. I know he has a lot of things on his plate, but this particular experience reflects quite poorly on the Foxtel organisation.

I learnt through experience a couple of weeks ago that people who have not yet subscribed to digital television who experience any equipment failures with either remotes or set top boxes are advised that the practice of Foxtel is to refuse to repair that equipment and to tell people they have to pay to go on to the digital system as a condition of getting any service.

I think that level of arrogance and disregard for loyal customers in this territory should be condemned. I would hope that the consumer affairs officials in the territory, if they monitor these discussions, will take action to ensure that Foxtel respect their obligations to consumers, who are paying fees in good faith and who are clearly basically under the assumption that their equipment will be maintained if it breaks down and not simply told that they will be leveraged into a digital service that has been struggling to get rapid uptake.

I think the whole digital saga in Australia is a reflection of how rather badly the federal government has handled it. But I think a private operator has a duty to consumers to operate with integrity and decency. I certainly do not think that stunts like this will endear them to their Canberra customers. I have been a loyal subscriber to this service since the early days of Galaxy, and there are thousands of others in the territory who have subscribed to pay TV services. If they are going to do business in Canberra and have such a privileged position, they do have a duty to ensure that they observe normal good consumer practice and honour the service and maintenance of equipment.

Unions
Mr Samuel Kautai

MR GENTLEMAN (Brindabella) (6.16): Mr Speaker, just last week I met with union delegates from the Transport Workers Union of Australia. These delegates from a variety of industries were meeting to discuss and formulate programs about two very important workplace issues—WorkChoices and workplace safety. These men and women met because they believe it is their responsibility to best protect their members' interests and safety. I want to make that point clear. They believe it is their responsibility—not a right, not an entitlement.

In contrast, when this Assembly last sat, we discussed whether or not a union representative should have the right to inspect a certificate of currency in respect of compulsory insurance policies. This was a very specific debate confined to the role and rights of union representatives in such matters and, at the heart of this debate, two conflicting beliefs about the role of the union representative in any workplace matter.

On the side of government, there is a firm belief that there is a legitimate role for a collective association of workers, be this in the negotiation of workplace agreements or in respect of occupational health and safety matters. On the side of the opposition there is a firm belief that workers should not form a collective and should not have the right to be involved in matters of occupational health and safety in the workplace. They believe in a furphy world where the desire for profit does not challenge an employer to cut costs and where good employers are not forced to compete with those unscrupulous bosses who will stop at very little to ensure their pockets are lined from the toil of their employees.

Well, wake up and smell the subterfuge because the real world is not such a picnic. For the benefit of those deluded members of the opposition—in particular, for the benefit of Mr Mulcahy—I am going to tell another story. I tell these stories not because of any personal satisfaction in yet again proving the opposition wrong, but because those who enter parliament have a duty to all members of their electorate, not just the ones who attend their fundraising events.

I want to tell you about 19-year-old Samuel Kautai, a Cook Islander who arrived here in Australia two years go to do guttering work with a Sydney contractor. As part of the working contract Samuel had to live with his employer for these two years. His wage over this period averaged at just $56 a month. For this he worked 12 hours a day, six days a week. The work contract, deemed illegal by the building union, required Samuel to perform whatever duties demanded by his employer and forced him to remain in the job for two years.

No one would wish such working conditions upon any worker, and in Samuel's case I wish that this were the worst of his experiences as a worker here in Australia. But it was not. Last August, whilst on site, Samuel was hit on the head by his employer with a hammer. This was just one incident over a period of the two years I mentioned. Over his two-year stay, for the sum of $56 a month, Samuel was choked, kicked and bashed with a claw hammer. He was made to clean up his own blood. As a result of these attacks, Samuel has had his nose, jaw and teeth broken, he has lost the sight in one eye and he is

now partially deaf. His family are saving up for an eye operation to repair the damage to his second eye.

It is shameful that this happened to a young worker with his life ahead of him. But there is hope for Samuel and it comes in the form of the Construction, Forestry, Mining and Energy Union. The CFMEU have established a fund to assist Samuel and his family with the ongoing medical costs associated with his injuries. When addressing a rally last Friday, Samuel's mother Atirua Kautai thanked the CFMEU for their support during this very trying period.

The CFMEU is a proactive union. Whilst they are always prepared to assist those workers who have had to pick up the pieces as a result of their dealings with their employees, CFMEU members want to prevent such events from ever occurring. They want to be involved in workplace safety matters because they know it will save lives and prevent accidents.

Unlike Mr Mulcahy, they see their involvement not as intrusive, but as essential to workplace OH&S matters. Samuel's workplace was not a union site. Unfortunately, his contact with the CFMEU came after this shocking treatment by his employer. But, unlike the federal government and the Building Industry Taskforce, the CFMEU will be there, now and in the future, to assist Samuel and his family.

Question resolved in the affirmative.

The Assembly adjourned at 6.21 pm.

Schedules of Amendments

Schedule 1

Crimes (Offences Against Pregnant Women) Amendment Bill 2005

Amendment moved by Mr Pratt

1
Proposed new clause 17A
Page 5, line 20—

insert

17A New section 42A

insert

42A Offences relating to unborn children

(1) This section does not apply to—

(a) a lawful abortion; or

(b) anything done by a pregnant woman in relation to her own unborn child; or

(c) anything done to save the life of, or preserve the health of, a woman who is pregnant, or her unborn child; or

(d) anything done otherwise within the usual and customary standards of medical practice.

(2) A person commits an offence if the person—

(a) engages in conduct that causes the death of an unborn child; and

(b) is reckless about causing the death of, or serious harm to, the unborn child by the conduct.

Maximum penalty: 2 000 penalty units, imprisonment for 20 years or both.

(3) In this section:

harm, in relation to an unborn child, means physical harm to the unborn child, including disfigurement and infection with a disease, whether temporary or permanent.

serious harm, in relation to an unborn child, means any harm (including the cumulative effect of more than 1 harm) that—

(a) endangers, or is likely to endanger, the life of the unborn child; or

(b) is, or is likely to be, significant and longstanding.

unborn child means an embryo or foetus at any stage of its development.

Schedule 2

Crimes (Offences Against Pregnant Women) Amendment Bill 2005

Amendment moved by the Attorney-General

1
Clause 18
Proposed new section 48A (2) to (5)
Page 6, line 13—

omit proposed new section 48A (2) to (5), substitute

(2) The offence is an ***aggravated offence*** if—

(a) the offence was committed against a pregnant woman; and

(b) the commission of the offence caused—

(i) the loss of, or serious harm to, the pregnancy; or

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

(3) However, the offence is not an ***aggravated offence*** if the defendant proves, on the balance of probabilities, that the defendant did not know, and could not reasonably have known, that the woman was pregnant.

(4) If the prosecution intends to prove that the offence is an aggravated offence, the relevant factors of aggravation must be stated in the charge.

(5) To remove any doubt—

(a) it is not necessary for the prosecution to prove that the defendant had a fault element in relation to any factor of aggravation; and

(b) the Criminal Code, chapter 2 (other than the applied provisions) does not apply to an offence to which this section applies, whether or not it is an aggravated offence.