Debates

WEEKLY HANSARD

Legislative Assembly for the ACT

SIXTH ASSEMBLY

9 MAY 2006

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Tuesday, 9 May 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.

Legal Affairs—Standing Committee
Scrutiny report 25

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 25, dated 8 May 2006, together with the relevant minutes of proceedings.

I seek leave to make a brief statement.

Leave granted.

MR STEFANIAK: Scrutiny report 25 contains the committee's comments on seven bills; 24 pieces of subordinate legislation; and five government responses. The report was circulated to members when the Assembly was not sitting. I commend it to the Assembly.

Estimates 2006-2007—Select Committee
Membership

MR SPEAKER: I have been notified in writing of the following nominations for membership of the Select Committee on Estimates 2006-2007: Dr Foskey, Mr Gentleman, Ms MacDonald, Ms Porter, Mr Pratt and Mr Smyth (Leader of the Opposition).

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

> That the Members so nominated be appointed as members of the Select Committee on Estimates 2006-2007.

Revenue Legislation Amendment Bill 2005 (No 2)
Detail stage

Clause 26.

Debate resumed from 4 May 2006.

Clause 26 agreed to.

Remainder of bill, by leave, taken as a whole.

MR MULCAHY (Molonglo) (10.33): I would like to make some concluding observations. There were nine amendments introduced in relation to this bill, seven of which the opposition have supported and one which the opposition did not support and on which the government backed down—that was the matter of sales tax on new motor vehicles. There is no need to canvass the detail of the arguments here. The point I want to make is that the government's attempt to base sales tax on the list price, rather than on the actual purchase price of a car, reflected the government's failure to consult with the affected parties.

The government failed to consult with the motor vehicle dealers and seemed to believe that it did not have a need to do so. Naturally they were outraged and made extensive representations not only to the opposition but also to the government. It seemed initially that there was casual indifference in relation to this matter, although it was evident from my discussions with the former Treasurer that he was not across the detail of the consequences of this and what it would mean when the measures were first introduced. The government also failed to consult with other users—customers. It did not raise its proposal with the NRMA or any of the other motoring bodies. It all seems rather elementary that you would take these steps when bringing in legislation that would have such a specific effect on one industry sector. It really raises a question as to why the government failed to embark on this consultation.

It also beggars belief that no-one in the former minister's offices or in cabinet picked up how absurd the initially advanced proposal was. No-one with any experience of life expects the asking price of a car to be the ultimate sale price; so it is curious how this ever slipped through the regulatory process. Sadly, this reflects an administration that is becoming increasingly out of touch with everyday life and one which feels itself to be immune from the concerns of people whose decisions it affects. There is a measure of arrogance that goes with believing you can do what you like with majority government.

The other proposal the opposition sought to change was to remove the draconian penalty for not registering within seven days for payroll tax. Notwithstanding the advice that this could not be changed, I understand from other discussions with Treasury that there have been negotiations going with interstate treasuries to look at changing these arrangements. Threatening individuals with penalties of $25,000 and threatening corporations with penalties of $250,000 if they fail to comply with the seven-day rule is extraordinarily harsh for a government that purports to present itself as friendly to business and to be encouraging business to move into this territory. It seems to have a measure of retribution against an employer with any reasonable payroll; and it certainly does not send a message that the penalty is appropriate for the oversight, which is probably more likely the case, when somebody is outside the seven-day period. On that point, I conclude my remarks.

Bill, as amended, agreed to.

Standing orders—suspension

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

> That so much of the standing orders be suspended as would prevent order of the day No 8, Private Members' business, relating to the Terrorism (Preventative Detention) Bill 2006, being called on and debated cognately with order of the day No 2, Executive business, relating to the Terrorism (Extraordinary Temporary Powers) Bill 2006.

Terrorism (Extraordinary Temporary Powers) Bill 2006

[Cognate bill:
Terrorism (Preventative Detention) Bill 2006]

Debate resumed from 30 March 2006, on motion by **Mr Stanhope**:

> That this Bill be agreed to in principle.

MR SPEAKER: I understand it is the wish of the Assembly to debate this bill cognately with private members' order of the day No 8, Terrorism (Preventative Detention) Bill 2006. That being the case, I remind members that, in debating order of the day No 2, executive business, they may also address their remarks to order of the day No 8, private members' business.

MR STEFANIAK (Ginninderra) (10.38): The debate we are going to have today is possibly one of the most important debates we will have in the Assembly, not just this year but perhaps at any time in the near future, for a number of reasons. That is because this debate, which is essentially about how best we can prevent terrorist activity in our community, turns on a number of very important principles such as principles of freedom and democracy, which are what distinguish us from the oppressive and dictatorial regimes of the world.

On one level, we need to ask whether we can justify the withdrawal of freedom from an individual or individuals suspected of planning horrendous acts—in this case terrorist acts—in a free and democratic society. There are a number of other important principles too—first and foremost the responsibility of governments to protect law-abiding citizens from criminal activities and, in this case, from unlawful attacks, which can be quite horrendous, as recent history has shown. Article 2 (1) of the European convention on human rights states that, "Everyone's right to life shall be protected by law." The scrutiny report of 8 May states at page 13 that where current laws are inadequate to provide protection against a threat which exists, the state is required by human rights law to make laws to counter that threat.

Section 9 of the ACT Human Rights Act deals with the right to life. It has been said in debate that the most fundamental right here is the right of innocent law-abiding Canberra citizens to live. The opposition accepts absolutely and without any reservation the need for strong anti-terrorism legislation, and we accept absolutely the need for consistent legislation across the country. There are some significant problems in the government's bill in that regard. The Australian Federal Police Commissioner, Mick Keelty, is a leading Australian expert on terrorism. On 31 January, before the legal affairs committee inquiry, he stated:

> In responding to terrorism, we are focusing on minimising the risk to the community that comes from the gap between the behaviour criminalised by existing offences

> and our authority to collect evidence to charge individuals and the methods employed by terrorist groups to plan and execute their attacks. In stark terms, 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.

As we all know—and even the Chief Minister has said, even though he has had his disagreements with him—Mick Keelty is a very well-respected international expert on anti-terrorism. He is a person who has the respect and high regard of other police services and anti-terrorism organisations, not just in Australia but throughout the world. When he says something, we should take note and listen. Sadly, the biggest problem with this bill is that the government was not listening and seems to have been absolutely blinkered by its own Human Rights Act and a misinterpreted approach to that.

The ACT is an obvious target for terrorist activity because it is the nerve centre of the commonwealth government and home to around 90 embassies. The problem with the government's bill is that it is deeply flawed. In fact, we believe that this government bill is so ideologically blinkered and out of kilter with the rest of Australia that it cannot adequately protect the people of the ACT. If anything happens—and God forbid; we hope it does not—it is going to have to be amended.

The bill is flawed because it differs from the legislation in all other jurisdictions of Australia, as well as from the commonwealth law, in a number of crucial and significant aspects. It has been slightly amended—I will pay some credit to the government there—with the words "reasonable and necessary"—one of the tests—being changed to "reasonably necessary", which is in kilter with the rest of the country, but in relation to several other tests it has not been amended. The tests police have to satisfy in the ACT before our Supreme Court in order to have a person detained on the basis of an alleged or probable terrorist act will be much harder. This will perhaps make it quite unlikely that our police will be able to have suspected terrorists placed in detention in the ACT.

A significant problem with the Stanhope legislation is that police have to show that detaining a person is the least restrictive way of preventing a terrorist attack, instead of substantially assisting in the prevention of a terrorist attack. That is a very big difference. Having been involved in quite a large number of cases where various tests have to be applied in the criminal law, that will be a very difficult and perhaps almost impossible test for police to satisfy. It is completely out of kilter with the rest of the country. As Mick Keelty, the Australian Federal Police commissioner, said, this means that police will have to use two tests—one for the rest of the country and one for the ACT. The test for the ACT is a lot harder. All you need do is go to the scrutiny of bills report—and of course our scrutiny reports are based on rights; they are based on the Human Rights Act—which states that the test is certainly more defendant-orientated and much harder for police than the tests applied at commonwealth and interstate level.

A different test under another section of the bill is that detaining a person under an order is the only effective way of preserving evidence. This is also a very difficult, if not impossible, test for police to satisfy because, again, it is different from the rest of the country. This is something we will probably deal with in the detail stage of the government's bill. But why do we need to have tests that are different from those of the rest of the country? Harking back to the other bill before you, I refer to something that was said in the committee and which I think the Chief Minister pooh-poohed—that the

New South Wales bill is a much simpler bill. If you read the committee's report, which you have before you, in respect of scrutiny of that bill, in some aspects the rights of would-be terrorists are less than they are under the Stanhope bill. I think that is what the community would expect.

Even in looking at your own Human Rights Act, section 28 refers to laws that need to be done to protect society, that can be ticked off on the basis that the overall community need overrides the human rights of individuals. The individuals we are talking about here are pretty horrible individuals who have no compunction about killing and maiming tens, hundreds or thousands of people. Human rights is a balancing act and here I think you have failed in that act. You have been blinkered by your ideology; you have been blinkered by the ideology of protecting, overly, the rights of criminals and ignoring the rights of law-abiding, ordinary Canberra citizens who go about their everyday business without wanting to kill, maim or harm anyone.

When it comes to protecting those rights, that should be the paramount right. If that means making it a little bit easier for our courts and, along the lines of the rest of the country, locking up would-be terrorists for an absolute maximum of 14 days, then so be it. That is not a very difficult equation. You are not being a responsible government by putting an overemphasis on the rights of the terrorists and criminals to the detriment of ordinary, law-abiding people in the ACT whom you have a fundamental duty to protect. So the bill is flawed; it is out of kilter with the rest of Australia; and we feel that it cannot adequately protect the people of the ACT as it stands. It differs from all other legislation in Australia, as well as from commonwealth law in those crucial aspects.

I have mentioned a couple of areas where the bill is out of kilter. It also differs from all other jurisdictions—this is perhaps not quite so important a point but nevertheless one that is of importance—in that it does not provide for the detention of 16 to 18-year-olds. Given what we know about the preparedness of terrorists to influence and enlist vulnerable young people, this is totally unrealistic. One only has to look back through recent history. There have been problems in the Middle East with the intifada in Palestine and Israel, where naive young people are being used by much older people to push their brand of fanaticism—in that case, blowing themselves and other people up; killing themselves and a lot of other people.

Sadly, it is a fact of life, certainly in terrorism, that age is no barrier and that 16 and 17-year-olds can be used. In fact, by making it possible for the authorities to detain a 16 or 17-year-old, you are probably doing them a great service. One, you will possibly be stopping them from being killed; and, two, perhaps some sensible person or persons can get to them and persuade them how stupid their course of action would be. But you do not have that; again, you are out of kilter with the rest of the country. You are not only doing a disservice to the people of the ACT; you are also doing a disservice to any 16 or 17-year-old who might be enlisted by these evil people who go about committing their nefarious schemes.

Another area of difference is the five-year sunset clause, as distinct from the 10-year sunset clause in other jurisdictions. I do not see that as being as big a difference as perhaps the different test but it is also a significant difference. It perhaps shows a reluctance or lack of willingness to grapple with this very important issue—and makes our legislation different from that of the rest of Australia. In practical terms, it is

probably less of a problem in that it can be reviewed and, if need be, extended. But why do you need to be different from the rest of Australia in something as important as this?

Appendix 3 of the legal affairs committee report sets out exactly how the ACT bill compares with both the commonwealth and New South Wales legislation, which has been described by no less than the AFP commissioner as template legislation. Indeed, we had evidence to that effect before the committee when it looked at these issues. I will touch briefly on the New South Wales legislation, which has simpler tests and, it seems, does not have the same constitutional problems as may arise in this legislation. There has been a legal debate about that, as to whether we are confusing the separation of powers here in respect of the simpler and more traditional role the New South Wales Supreme Court will play as opposed to that of the ACT Supreme Court. I suppose only time will tell.

Legislation which was used as a template by a number of other jurisdictions and even in human rights terms was described by Dr Helen Watchirs. She likes the ACT one, naturally enough, but New South Wales comes second. Mr Stanhope does not want to settle for second-best but, again, he has got it absolutely upside down and around the wrong way. I was going to say something reasonably rude there, but I will not. The issue is not about bending over backwards to protect the rights of would-be terrorists; it is to strike a proper balance in a democratic and free society, which every other state and territory but us in the commonwealth seems to have done; it is about that other fundamental right of ordinary people—to live and to be protected by their governments from criminals, as far as any legislation can do that. You fellows got the balancing act wrong.

The New South Wales legislation, which is very similar to the commonwealth legislation, ensures that the Supreme Court may make a detention order on the grounds that it is reasonably necessary and would substantially assist in preventing a terrorist act or is necessary to preserve evidence. If you have a look at appendix 3, that is exactly the same test as an issuing authority has, to be satisfied at the commonwealth level. If you look at the scrutiny report, especially pages 61, 62 and 63, you will see where, in pretty simple and effective terms, our learned adviser Peter Bayne goes through the fundamental differences in relation to the tests. He does that quite effectively on page 62, where he lists the two different tests in respective sections of both bills.

I certainly commend that to members. It is a very well-written dissertation. He states that there is a lower threshold in my bill—and there is. That is what the commonwealth has done and that is what New South Wales has done. In respect of what we are looking at here, I would submit to you that that is essential in ensuring that would-be terrorists are able to be detained. I have no dramas with that whatsoever; it is a low threshold. Looking through the rest of his dissertation, he also talks in relation to other differences.

There are differences in relation to contact between the detainee and others and in relation to contact with lawyers. In a couple of fairly minor areas the Stanhope bill is probably not quite as detainee-friendly as the commonwealth and New South Wales bills. But in the substantial areas, the Stanhope bill clearly falls down and fails that most important test of enabling police to do their job properly—to apprehend would-be terrorists and place them before the court with reasonable anticipation that they will be detained.

People often ask, "Does it matter if there is a lack of consistency between state and territory jurisdictions?" Maybe in some minor areas of the law it does not matter. But this government, along with previous governments, has made an issue about trying to have consistency—certainly where it suits them—in a wide range of legislation in various areas. We often hear from ministers that this legislation enacts a national scheme; that this legislation was agreed at COAG; that this legislation was agreed at the environment ministers conference; that it is template legislation and we enact it—but not when it gets in the way of your own precious Human Rights Act and your own strange interpretation of that act; and not in an important area like this where national and territory security is fundamentally at risk.

The chief reason for introducing this bill—that is, my bill—and it should be the government's bill too, is the need for consistency in anti-terrorism measures in Australia. Again at the inquiry we had, the AFP commissioner and his colleagues expressed serious concerns that the government bill would not give the police extended powers "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". This bill leaves the ACT less protected than the rest of Australia and is therefore a failure of the duty of care towards the people of the ACT by the Stanhope government. The AFP commissioner stated before the legal affairs committee that terrorism should not be underestimated. I quote:

> If ever I have seen people with the intent, motivation and capability to do something catastrophic, it is the terrorists. Let us not forget … 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.

We know, further, that terrorist threats are real. To its great credit, the AFP has already apprehended 19 terror suspects under other laws. Canberra is an obvious target. I again quote what the AFP commissioner stated:

> 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 committee heard that terrorists, like international criminals, do not take note of jurisdictional impediments to their activities; and our own weak Stanhope bill here, that is weak on its very raison d'etre—the power to detain suspected terrorists—would be a real factor, together with the attractiveness of Canberra as a target, both symbolically and functionally.

The Chief Minister's response to this was typical. He rubbished the idea to the media as if it was a case of Osama bin Laden being some grotty peasant with a grenade or two in his belt living in a cave in the Tora Bora, who would hardly know where Canberra was, never mind know anything about its relatively terrorist-friendly laws. That is unrealistic and untrue. Terrorists have shown themselves to be educated, motivated and with

homegrown representatives in the countries they seek to terrorise. That was one of the lessons of the terrorist bombings in the United Kingdom last year. Those terrorists were educated, middle-class young men from immigrant families.

The government's bill really fails the people of the ACT. I would submit that, by its very nature, unless it is amended, it puts this community at an increased risk. Again, as I have said before, it is blinkered by the Chief Minister, especially with his preoccupation with human rights. You cannot do that at the expense of everything else. I reiterate that the ultimate human right is to be allowed to live, and to live in peace.

We have some other questions. Will it ever be used? Is it going to be a white elephant? The police already have powers under the commonwealth law and under ASIO laws. Whilst the opposition will support this bill, however weak, because it is necessary to enact legislation, however weak, to increase our ability to take measures to prevent terrorism, we say that it is flawed and that it is an irresponsible bill which is out of sync with the rest of the country. For that I think the government should stand condemned.

MR PRATT (Brindabella) (10.58): I rise to support Mr Stefaniak's proposed amendments in this cognate debate. I also state at the outset that I will most reluctantly be supporting the Stanhope legislation. That is the opposition's position. I want to speak now about what I consider to be the weaknesses and the inconsistencies in this legislation.

There is still a very real threat worldwide from terrorism. This threat will be ongoing for quite some time. Experts, more expert than any of us in this place, have stated that the determination to strike Western targets, including Australia and Canberra, is a threat that will be on our radar screen for a very, very long time. Terrorist groups are a very real threat to Australia. We now know that there have been attempts to perhaps set up cells and organisations across the country.

Unfortunately, Mr Stanhope's proposed laws substantially weaken our ability to crack down on terrorism compared with the rest of the country. The Stanhope legislation puts our police, as well as the AFP national component, in the very invidious position of operating in a cross-border environment where the inconsistencies will make counter-terrorism operations in our region that much more complicated.

I was only half joking when I said to the committee that frustrated police might need to consider a rendition of those that they arrest in the ACT to Queanbeyan in an attempt to avoid having to implement our loopy laws and in a bid to avoid our loopy and unreliable courts. If our courts are unreliable in matters affecting graffiti, how are they going to be when faced with these serious challenges?

In this proposed legislation, Mr Stanhope puts the rights of suspected terrorists above the right of the law-abiding community to be protected from this threat. Mr Stanhope's first instinct, via comments on radio on 26 July 2005, I remind this place, was to declare Australia-wide government statements about tightening counter-terrorism laws as "draconian" and "knee-jerk reactions". Indeed, he widely flaunted his opposition to the mooted laws.

But then after appearing on television, exiting white-faced from a frank and fearless three hours briefing given to him by ASIO and other authorities on the federal counter-terrorism laws, Mr Stanhope unexpectedly and dramatically made a last-minute turnaround and supported the federal legislation, much to the surprise of his socialist-set supporters. Whatever it was that frightened Mr Stanhope during that ASIO briefing has now been forgotten by him—perhaps another unindexed memory lapse, it would appear—because, by tabling his new bill, he is weakening the federal government's laws and opening up the ACT's laws to potential terrorists once again.

I highlight the yawning gaps in the Stanhope legislation and the yawning gaps between this legislation and that which we see in other jurisdictions, including the commonwealth, by referring to Commissioner Keelty's warnings to this government, as expressed to a committee of this place and as expressed at other venues. I also demonstrate the *Canberra Times*' analysis of that warning given by Mr Keelty and their analysis of the juxtaposition between the position of this Chief Minister of this government and that position taken by Mr Keelty and other national authorities. I refer to a *Canberra Times* article dated 1 February, in which they said:

> Canberra will be the most vulnerable city in Australia to terrorist attack because of flaws in the ACT Government's anti-terrorism laws, Australia's highest-ranking police officer said yesterday. Australian Federal Police Commissioner Mick Keelty told a Legislative Assembly Legal Affairs Committee potential terrorists would look to exploit Canberra's rights-conscious anti-terrorism laws and seek to plan and commit terrorist acts within ACT borders.

Quoting Keelty, the article continues:

> "Canberra is a target," he told the committee. "The more difference there is—

between laws in different jurisdictions—

> the more vulnerable the ACT makes itself for exploitation.

Keelty goes on to say, according to this article:

> We know criminals will exploit differences in legislation, they will go to wherever the weakest link in the legislation is.

The article goes on to say, quoting Mr Keelty again:

> The ACT stands to be an island within the rest of Australia if its legislation is not consistent with the other jurisdictions that surround us.

The newspaper then goes on to say:

> There was no current, specific threat to the ACT, but Mr Keelty said it would be naive to think that Canberra—as the seat of government as well as home to more than 90 diplomatic posts and institutions—could not be a terrorist target.

You might add, of course, that it is the seat of military and Australian Federal Police power as well. The article quotes Mr Keelty again as telling the committee:

> Let's not forget the ACT has been the target of a planned terrorist attack before.

It continues:

> In 2004, Perth man Jack Roach was sentenced to nine years' jail after pleading guilty to conspiring with terror groups Jemaah Islamiyah and al-Qaeda to bomb the Israeli embassy in Canberra.

To quote the Chief Minister, as this newspaper does:

> But ACT Chief Minister and Attorney-General Jon Stanhope said almost all of the provisions in the ACT's Terrorism (Extraordinary Temporary Powers) Bill were based on provisions found in interstate and Commonwealth legislation.

Mr Stanhope said, according to that article:

> It is simply wrong to suggest the rest of the country is following a single path, with the ACT somehow isolating itself.

What a naive statement. The article goes on to say:

> Australia's new regime of anti-terrorism laws has two components, with the Federal Government and all state counterparts enacting complementary legislation. The Commonwealth's laws legislate for control orders—where terrorism suspects can be placed under house arrest, banned from going to work or from using the telephone or Internet for up to a year, all without charge—as well as an expanded definition of sedition. The ACT's proposed anti-terrorism laws, like those of every other state and territory, will legislate for preventive detention orders—where terrorism suspects can be held without charge for up to 14 days if an attack is considered imminent—and increased police stop, search and cease powers.

But here is the rub, and this is the issue that the *Canberra Times* really seized upon. They say:

> But the "tests" which police must satisfy in order to apply for a preventive detention order are much higher in the ACT than other jurisdictions.

The paper goes on to say:

> Under the proposed ACT laws, a senior police officer must be satisfied that detaining a person is "reasonable and necessary" to prevent a terrorist attack to apply to the Supreme Court for a preventive detention order. Under the NSW and Commonwealth laws, police only need to be satisfied—

only need to be satisfied—

> that a preventive detention order "would substantially assist" in preventing a terrorist act.

If I can depart from this demonstration: there is a yawning gap between the two standards. I do not know why Mr Stanhope does not feel he can bridge that gap. The article then goes on to say:

> Mr Keelty said the AFP also had concerns about the ambiguity in the ACT's legislation over the detention of children … He said the ACT should look to adopt NSW's anti-terror legislation or amend its own so that the two laws were compatible. "It would be simpler if the ACT adopted NSW legislation," Mr Keelty said. On this particular, important piece of legislation we do need to have consistency.

That is where the *Canberra Times* got to on that particular issue. That demonstrates very clearly the yawning gap and the inconsistencies in the standards that we need to see in this law. This is very, very new law for Australia and has not been introduced by the federal government on the advice of its agents and authorities for the sake of some demonstration or some political joke. This is a very, very serious issue, and there are very smart people, much more experienced and smarter than the people in this place, who have deemed the risk to, and seen the need for these laws to be brought to, this country, in particular to Canberra, the seat of government power.

But we do not see this government taking this risk seriously. We see instead an attorney-general too frightened of his default lefty human rights position to take any sensible notice of expert advice from the hardened men and women in Australian society who are only too frighteningly aware of the terrorist dangers facing this country and, here today, this community of ours.

Jon Stanhope would risk betraying—I do not think he wants to betray; I think he is a better man than that—his community in general, he would risk betraying his police and his emergency services, he would risk betraying his hospital and other ACT professionals in the face of the lefty lawyers and civil rights activists; rather than stare down his cosy, but minority, and, I must say, too-often arrogant and social inept leftist power base. He risks, instead, degrading law and making it much more difficult for his professionals to do the job that they have to do.

But that is okay, I suppose, because at least Mr Stanhope came part of the way and most reluctantly—and, I reckon, perhaps a little too, too bitterly—grasped part of the Howard laws. After all, he is Chief Minister of one of Her Majesty's Australian territories; so there is only so far even lefty Stanhope can go in defying Australian norms. He is a chief minister; he is an officer, if you like, of the crown.

It is absolutely pathetic that the Stanhope government is so concerned to bend to human rights concerns regarding the application of the national benchmark, counter-terrorist laws that he would turn his back on the broader community and, specifically, his police who have to implement these laws. It is the height of arrogance that a chief minister would bustle off to chatter in some comfortable, warm and friendly alternative cafe to primarily, tearfully perhaps, discuss the challenges facing him: what to do with these wretched Howard laws, especially when all those other nasty, hard Labor men and women around the country seem to be moving with undue haste, in consultation with all those brutish, insensitive police and special branch types, to implement their laws, my God, in the best interests of their citizenry?

But that is what one can imagine must have happened with Mr Stanhope when the balloon went up and the feds and their agents presented all of these nasty challenges to him. It is too pathetic for words the way this Chief Minister and this Labor government consistently let down the community, whom they were elected to govern, in the interests of their narrow, sectional interests.

Here we are seven months after the Howard government rushed, but sensibly so and with measure, the urgent legislation into place and this mob are still faffing around, agonising over the merest detail and worried sick they will offend their human rights, socialist lobby. No wonder Mick Keelty and his officers are throwing up. No wonder the AFPA have loudly, and again in recent days, stated they have lost faith in this mob. Rome burns while Mr Stanhope fiddles, as usual.

Here we see a Labor government in just one of so many examples of behaviour where they let down our police force. Where is the compassion? Where is the sense of concern for their police service regarding their counter-terrorist work? Where is the overriding concern to ensure that CPO Fagan and her police have the tools needed to quickly respond to and meet any terrorist threat that they may encounter? Where is Mr Stanhope's acknowledgment that his police now face additional and more intense threats in their carriage of duties to protect their community than has traditionally been the case since 2000?

Does Mr Stanhope have any idea of what counter-terrorist operations entail and what sort of people police are faced with who are intent on terrorist or terrorism-support activities? Does Mr Stanhope know that the intensity of behaviour of those who were threatened targets within our community is far greater than that of the vast majority of bad fellows that our police generally deal with?

I suggest Mr Stanhope and his ministers read very quickly a short list of the following to better acquaint them with the attitudes and hell-bent intent of those who would do Australia, Australians and, therefore, Canberrans a good deal of harm. And in these dark and evil attitudes, there are no niceties such as sparing the women and children. I refer to the following texts: *Nida'ul Islam [Call to arms]*, the Islamic Youth Movement magazine, Sydney, February-March 1997, to better examine the travels in and out of Australia of JI's Hambali and other JI and al-Qaeda lieutenants, establishing bases and cells for operations across the country, including Canberra. I am sure Mr Stanhope would find this text through local resources here in the ACT, as the entire country now knows that Mr Stanhope will encourage the freedom of black-hearted types to access, download, bring in and keep this sort of trash here in the ACT anyway.

The No 2 item is: Brian Michael Jenkins's *Countering Al Qaeda: an appreciation of the situation and suggestions for strategy*, RAND, 2002. Read this for a chilling but clear understanding of the deep hatred and single-minded determination of the people wanting to target Western nations, including Western nations' capital cities. No 3 is Rohan Gunaratna's *Inside Al Qaeda*, Scribe Publications, Melbourne, 2002. Mr Gunaratna carefully lays out the threats to this country and Canberra, specifically Canberra's diplomatic, defence, AFP and seat-of-government targets, which I remind this Chief Minister our citizens would be collateral targets against.

Why do I recommend this very short list at least? Space precludes my listing many others. Clearly Mr Stanhope and his ministers do not trust Mr Keelty's advice or the advice of other federal experts. If the government think that Mr Keelty and his police's advice is too unfashionable to comprehend—and, given the disrespect we have seen both from Mr Stanhope and Mr Corbell in recent days, this would seem to be the case—then I strongly urge this government's ministers to quickly read these references. Have a reality check, Chief Minister. If they do, I guarantee that there will be conversions on the road to Damascus. The government will be back here in a flash to upgrade this pithy legislation faster than the flash of a suicide bomber.

Our police must be equipped to deal quickly and safely with the very different types of criminals they may encounter in their counter-terrorist operations. There is little room in which to muck around. You are not simply letting go a burglar caught by our police for the sixth time—too often a feature of local criminal justice. We are asking police to monitor, track and arrest people highly likely to kill and to suicide if necessary in the act of killing or in the act of final defiance to avoid arrest.

Do I need to remind the Chief Minister of the young Spanish Islamists, a number of them Spanish born, who recently blew themselves and police up when police closed in on them? Spain did not comprehend that these things might happen. You are not on your own, Mr Stanhope, at least in that sense.

You must arm your police, Mr Stanhope, with the tools and the confidence to be able to quickly and cleanly carry out operations with some certainty that, like in all other states, people arrested will be safely and securely held with sufficient time to allow police to interrogate with comfort and thoroughness and that police will have the knowledge that people arrested will not be able to communicate with their associates, particularly where that communication perverts or obstructs the course of justice or when that communication allows the continuation of terrorist crimes on track to be continued. You must support our police, Mr Stanhope. You must give them confidence to put their bodies on the line, because that is the mindsets they have. They are willing to do that.

But you must also give the community confidence that their police force can protect them and that their police will remain safe. You are not doing this, Chief Minister, both because of your watering down of human rights in this first model that you are peddling here today and because of the inordinate amount of time it has taken to even get this to this place today.

I am also reminded that we have yet to see, by the way, any concrete evacuation management plans, either tabled here or publicised to the broader Canberra community, or terrorist threat management plans across the ACT. It really underlies again the attitude of this government that they shy away from these frightening realities. They are just not equipped to approach these very, very serious matters in terms of the risk to our community.

I call upon this government to come back to this place as soon as you can, after we support this legislation here today—for the sake of time, we will support this legislation; for the sake of time, to get something expedited—and, for God's sake, put some teeth in

these laws, support your police, support your community, remove these risks and get consistent with the rest of the country.

MR MULCAHY (Molonglo) (11.18): I make a few comments in support of my colleague Mr Stefaniak's preventative detention bill, which has been presented to the Assembly, and to echo some of the concerns that have been raised by Mr Pratt. Briefly, I reinforce the major differences between the two bills at issue and why Mr Stefaniak's recommendations really should be adopted.

Terrorism as a form of crime is now at the forefront of everyone's thinking. This means that the legislation used to deal with it must be as up-to-date and consistent across the board as possible so as to ensure that the perpetrators are caught and the potential disasters are prevented and averted.

The ACT government is responsible for Australia's capital city. Arguably, it is the most important city in the country from a political perspective. It is the home of our federal government, some 90 official diplomatic missions and 1,000 or so diplomatic representatives. And it does not take a genius to figure out that these could easily be considered potential terrorist targets, all concentrated in a relatively small area.

We have in fact seen over a number of years that disputes within those countries have overflowed into Australia and into Canberra. Indeed, there have been attacks on representatives of various missions. The Indian embassy, I know, was the subject of a violent attack on one of their officials. I think it was a knifing. There was occupation of the Iranian embassy, I believe. There have been others that have been threatened.

Despite the Attorney-General and Chief Minister's pre-occupation with the plight of people who may get caught up in these things, it was interesting to observe the way he reacted when he was before my committee, the public accounts committee, giving evidence one day last year and, suddenly, the threat of a terrorist attack on the Indonesian embassy in Canberra erupted. The look of composure changed very dramatically as all the forces of this city and the federal and territory agencies had to be called into action against what appeared to be potentially a very serious threat that could have not only impacted the lives of the officials in the embassy but others, particularly those resident in Yarralumla.

It is well to have this theoretical advocacy of the human rights of people who may get caught up under this legislation but, regrettably, the level of passion that one would like to see about potential victims is not as evident. The ACT faces the real challenge of having a range of potential terrorist targets all concentrated in a relatively small area.

There are many similarities in terms of Washington DC in that it has major institutions in a close area, and I do not think we ever hear from that part of the world people saying, "Let us not worry too much about the plight of the ordinary citizens. We have to be very careful about the human rights of suspects and potential terrorists." The attempt to water down what was agreed at COAG is an extraordinary measure and not one that the people of Canberra will ultimately thank the Chief Minister for.

Mr Stefaniak has quoted the opinions of Mr Mick Keelty, the Commissioner of the Australian Federal Police, an obvious authority on issues of crime prevention and

combating terrorism. I add to that the thoughts of Mr Paul O'Sullivan, who is Director-General of the Australian Security Intelligence Organisation and another laudable source of information on terrorism. In a speech in Sydney Mr O'Sullivan commented:

> Our legislative framework previously was focused on the criminal prosecution of the perpetrators after an attack rather than on the act of preparing for, or supporting others engaged in, terrorist acts.

This is the significant difference between the ways the law enforcement agencies are attempting to tackle this issue. He continued:

> The Parliament has put in place a legislative framework that better reflects the circumstances of the current security environment.

We are not dealing with people who play by Marquis of Queensbury rules, and we need to ensure that the appropriate agencies are equipped to head off terrorist attacks rather than be convinced that we can successfully prosecute perpetrators after the event when the damage is already done. We saw what happened on the subways in London on two occasions. Ask those people what they think about this advocacy of human rights in the context of terrorism. They would much prefer that the authorities are equipped to adequately head off these attacks.

To go back to Mr O'Sullivan: he has said publicly on a number of occasions that Australians and Australian interests are at threat and will continue to be so for some time. He said:

> Planning for attacks in Australia has been detected and disrupted but a terrorist attack in Australia remains feasible and could well occur, possibly without warning.
>
> Our own experience and that of other countries with the threat of terrorism in particular shows that those who would do harm are persistent, resourceful, capable and committed. As a result we need to be even more persistent, determined, resourceful and innovative if we are to stay ahead of the challenge.

Mr Stefaniak's bill is all about ensuring that the authorities are adequately resourced and capable of taking on these threats to our way of life.

Having a law existing in one of Australia's states and territories that is noticeably different from the others, indeed from that of the commonwealth, is both inefficient and dangerous. It creates legal opportunities for those who would seek to represent the individuals who are the targets of this legislation. We do not want to contemplate a scenario where terrorists have selected civilian targets according to the laws governing that state or territory because it makes neutralising the threat more difficult or catching the perpetrators more cumbersome or intervening in their planning more difficult.

Firstly, Mr Stefaniak correctly points out that Mr Stanhope's bill makes the tests required to satisfy court approval before a terrorist suspect is apprehended and detained more stringent and unreasonable than anywhere else in this country, so stringent in fact that they may prove to overly impede rather than assist the work of law enforcement officials. Surely in the interests of speed and efficiency, which are paramount in combating

terrorism, we should be aiming for legislation that makes the job of law enforcement officials easier.

We have heard Mr Keelty quoted. Anyone who knows him would realise that he is a very sensible and balanced leader. He is not some latter-day J Edgar Hoover who is desperately trying to accumulate power. Mr Keelty is respected in the entire South East Asian region as an authority on these matters. Whilst one does not always automatically accept police perspective, on the basis of his experience and his bilateral work in the region, we ought to give considerable regard to the view he has expressed that these changes are required to enable his officers and the related security agencies take appropriate steps to head off potential terrorist attacks.

Secondly, the sunset clause attached to this legislation should be in line with best practice in other states and territories and in the commonwealth generally, and that is 10 years, with a review period after five. In the government's legislation, the ACT's sunset clause is set at only five years. Mr Stefaniak's bill brings the ACT in line with the rest of Australia by proposing 10 years.

Thirdly, in the government's legislation, the Supreme Court may make a periodic detention order on the basis that it is "reasonable and necessary". However, such an order must also be deemed to be the least restrictive means to prevent a terrorist act or the only effective way to preserve evidence. This is a very difficult and cumbersome test for law enforcement officials to satisfy and will overly burden the efficiency and effectiveness of their work.

Mr Stefaniak's proposal simplifies this process and adopts the detention requirements used in New South Wales, where they have a Labor government, and other jurisdictions, ensuring uniformity and efficiency in dealing with suspected terrorists. These impediments using descriptions such as "least restrictive means to prevent a terrorist act" leave too many opportunities for advocates to prevent the full apprehension of individuals who may be contemplated as being involved in potential terrorist activity.

In addition, periodic detention orders apply to children between 16 and 18 years of age in legislation across the country. In the ACT, however, it would only apply to people 18 years and older. How extraordinarily naive, incredibly naive, on the part of this Chief Minister, to believe that that is reasonable? We must not pursue any further people under the age of 18. Pick up the court notices every day. People do not go through a stage of innocence and naivety until they are 18 years of age.

As Mr Stefaniak and Mr Pratt pointed out, young people are recruited in matters of terrorism. We see it on our television screens every week. We have seen some horrific examples in the Middle East of suicide bombers and the like. I can assure you, Mr Temporary Deputy Speaker, that this is not a case of there being a qualifying age before people embark on these terrible crimes. We have to ensure that there is appropriate legal framework for the authorities to intercept potential terrorist acts well before they occur, to prevent disruption to our lifestyle and to prevent injury to the citizens of this territory and, indeed, to our guests at the diplomatic missions.

It is interesting that the Supreme Court can only grant interim preventative detention orders for 24 hours, compared to the 48 hours enjoyed in all other Australian

jurisdictions. We need to ensure that the ACT has the same protections as the rest of Australia against the threat of terrorism. Mr Stefaniak's preventative detention bill proposes a reasonable and effective solution that achieves consistency with other Australian jurisdictions. For that reason, I have been very pleased to support what he is doing.

I know the fashion in this place is often to be critical of and negative about the federal government. In many areas I am critical of the federal government. I am not happy with some of the changes to the Snowy Mountains scheme and the potential sale there. I back Mr Stanhope on such matters.

But when we come down to preserving our lifestyle, when we come down to protecting ourselves against potential terrorism attack, for heaven's sake, the naivety that came out of his mouth during that debate at COAG is extraordinary. I honestly believe that it is simply a position that is based on a skewed view of human rights; it is a position that is based on a lack of appreciation of what goes on in the world. It is regrettable for the territory that our elected leader in this city in fact has such a poor command of what goes on in the real world.

The fact is that in Australia we are very fortunate that we have been spared much of the terrorist activity that has occurred in other societies. But if he had lived elsewhere in the world and seen what goes on and talked to people who have to live with these threats on a daily basis or talked to people who have lived in these environments, he might realise that these are matters on which his human rights arguments become pretty thin, when people fear that their kids might be killed when going on a bus to school in Jerusalem or when people catching the tube in London, innocent tourists, fear they might get killed, as happened last year. These are the concerns that he needs to come to terms with. The strident opposition to the federal government was somewhat a fit of pique but also very much a position based on a naive understanding of the real threats that lie there for this country.

Much of these things are intercepted. You can sense that from the reports we see in the media. I do not expect that we are going to hear chapter and verse every disclosure and interception that goes on but it is certainly clear, if you talk to officials involved in this area, that there has been a lot of activity in intercepting potential attacks. But we need to ensure that they have the legislative framework to be able to do those tasks without impediment, without clever lawyers attempting to slow down the law enforcement agencies who are trying to ensure that we have a safe society in which we live.

I do not think that Mr Stanhope's bill goes far enough. As Mr Pratt has indicated, we will support that bill if Mr Stefaniak's bill is not supported, because something is better than nothing. We, as an opposition, believe that this is going to be an ongoing process. Those such as Mr Stanhope may take longer to come to appreciate how serious these issues are, but I hope it is not at the expense of people in our community.

So many in this community are involved in these issues. We have large numbers of commonwealth officials; we have diplomatic people. You would think that, if time was taken to talk to those people in our community who deal with security, who deal with counter-terrorism and who deal with the intelligence world, he might bring himself up to speed and appreciate that this is not some frivolous political stunt that has been brought

in here. This is to ensure that we can preserve our lifestyle and protect ourselves against threats that are being made to this country and to other Western institutions.

Mr Stanhope's bill fails to go the distance. Mr Stefaniak's measures make sense and are worthy of support by the Assembly. I hope, in the final stages of this debate, the Chief Minister might reconsider further, having already conceded in some areas, the approach he has taken on this matter where his priorities are wrong and coloured by a lack of understanding of how serious these issues are.

MR BERRY (Ginninderra) (11.33): I express some concern and discomfort about the limitation on human rights, which can occur with this sort of legislation. When the Human Rights Act was introduced into this Assembly in 2004, it set out an agenda of the Stanhope government to ensure that civil liberties would be protected. No doubt this agenda is an honourable one and one that was set to improve the rights and liberties of people here in the ACT.

Of course, this is the only jurisdiction that has taken this step. I look forward to the day when other jurisdictions, and indeed the commonwealth, find a way to have human rights legislation of their own. If it were the case that other states and the commonwealth had human rights legislation of their own, the debate on these issues would have been more interesting because all jurisdictions might be considering their approach to the terrorism issue from the same standpoint, that is, some sort of human rights statute.

Proposed sections 18 and 28 are the ones of most concern to me in my contribution today. Proposed section 18 refers to the right to liberty and security of person, the contents of which are most affected by limitations on human rights set out in this bill which is being discussed here today. Section 28 sets out that human rights may be limited. Human rights may be subject only to reasonable limits set by territory laws that can be demonstrably justified in a free and democratic society.

I note that the committee that considered the draft laws recommended that the "reasonable and necessary" element set out in clauses 17, 19, 21, 25 and 29 of the proposed bill be replaced with "reasonably necessary", so that the test is not as onerous and is consistent with other jurisdictions' legislation. I mention that because it goes to my initial comments where I said that it would be a good thing if all of the jurisdictions had human rights legislation because they might be considering their response to terrorism against the same background. In the ACT, we have a different task to perform because we have got to set our response against the background of human rights legislation. The government has, in due course, accepted the recommendation of the committee and it is set to become part of the law, part of the legislation, which is before this place.

I took the opportunity to talk to the Human Rights Office about this particular change. I quote from an advice I received from the Human Rights Office on this change from "reasonable and necessary" to "reasonably necessary":

> We note that page 4 of the Attorney-General's Presentation Speech to the Assembly states that Bill adopted a higher test as "recommended by the Solicitors-General"—it is unclear which test this relates to in clause 19 (4). We do not support the Bill's acceptance of the Committee's recommended change to lower the threshold criteria for detention in order to make the ACT provisions more consistent with other

> jurisdictions to prevent an imminent terrorist attack from "reasonable and necessary" to "reasonably necessary" in sub-clause 19 (4) (b). These higher thresholds mean that preventative detention is less likely to breach section 18 of the Human Rights Act 2004 as "arbitrary". Having legislation not fully consistent with other laws in other jurisdictions is inevitable because this legislation has been drafted in the ACT with explicit reference to a human rights framework.

I go to an advice on the matter by Ms Kate Eastman, which was tabled in this place. She is a learned human rights lawyer who has provided some advice to us here. It is necessary for us to study it in some detail. On pages 5 and 6 of the advice "reasonable and necessary" is mentioned and, in particular, clause 22 states:

> The incommunicado nature of the detention is further reinforced by section 32 (7) of the Bill which allows the Supreme Court to make a "prohibited contact order" where such an order is *reasonable and necessary*—

I emphasise "reasonable and necessary"—

> for one or more of the purposes identified in sections 32 ...

I understand that Ms Eastman has been asked to confirm and has confirmed her advice on the amendments which have been agreed to by the government and which reflect the recommendations of the committee that looked into the draft legislation and the changes that they recommended.

However, there is some commentary that needs to be looked at, and it can be found at pages 12 and 14 of the Standing Committee on Legal Affairs scrutiny report which was issued just yesterday. At this point we have to take into account, too, that the advice by Ms Eastman was not available to be considered by the committee, according to the report which was issued yesterday. I quote:

> These interferences are likely to be reasonable limits that can be demonstrably justified in a free and democratic society for the purposes of section 28 of the Human Rights Act on the basis that the obligation to respond to the threat of terrorism, including through legislative means, is an important and significant objective. The restrictions on rights are reasonable and necessary, taking into account the importance of achieving consistency with a national regime, and the bill incorporates extensive safeguards which in the context of a national regime represent the least restrictive options available.

It goes on to say later:

> The assumption of the fact that a Territory law will operate as part of a national scheme of legal regulations as a matter relevant to an assessment of the justifiability under the Human Rights Act section 28 is perhaps questionable, but the committee leaves it to each member of the Assembly to determine whether they accept this reasoning.

I take you, then, members, to page 14, towards the bottom of the page, where there is some commentary about "reasonable and necessary". It refers to some learned comment by AS Butler, and I quote from the penultimate paragraph:

> Before turning to that single standard, the point is well made by Butler that the words of section 28 have a bearing on how that standard should be formulated and applied. First, it speaks of a derogation being a "reasonable" limit to the right. This is a significant point of difference here with other human rights which require that a derogation be "necessary". Butler points out … that the European Court of Human Rights recognised in an early case that the word "necessary" does not contain the "flexibility of such expressions as 'reasonable'. Hence 'necessary' and 'reasonable' need not necessarily be equated, and this can have substantive effect on one's approach to limitations."

I use those quotes to emphasise my point that, by removing those tests or weakening those tests, the opportunity to infringe upon civil liberties is greater. I must say, at the same time, that part of our human rights obligation is to protect our community, and we have to find reasonable ways forward to do it. But it is something that causes me some great discomfort when you start tinkering with the human rights of our citizens to achieve an aim which, on the evidence in Australia, is yet to be shown clearly. Let me go back to Ms Eastman's advice, and I quote from paragraph 63:

> In the context of the Human Rights Act, "necessity" is the proportionality test. The preamble explains why the Bill is necessary but there is very little publicly available evidence to explain the nature of the threat terrorism poses to Australia and/or the ACT as at late 2005 and into the future.

Paragraph 64 states:

> Further there is little, indeed no, publicly available evidence that with respect to known threats that the use of preventative detention orders and prohibited contact orders are necessary and would be appropriate to address the particular threats. Likewise, there is no information which would allow one to comfortably conclude that the means of preserving evidence after a terrorist attack will require a person to be detained within the immediate 28 days after an attack. This assumes that the usual powers for preserving evidence of criminal conduct would not be either available or effective. I am not sure how such a conclusion could be reached in light of the existing means available to police forces for investigating criminal conduct. The absence of any objective information which may be relied upon to show the laws are necessary makes the task of determining the Bill's compatibility with the Human Rights Act very difficult.

In due course, Ms Eastman forms the conclusion, in paragraph 69, that the bill is compatible with the relevant rights in the Human Rights Act. But she points to the difficulty of it. That is why it is important to express one's concern about tampering with the human rights of our citizens, albeit for the noble cause of protecting our citizens. Is it not always the argument, though, that we hear from those who want to diminish human rights that we need to protect our citizens by diminishing the human rights of others?

Mr Mulcahy: That is life.

MR BERRY: Mr Mulcahy interjects, "That is life." Perhaps that is. But we have got to ensure that we take a very reserved position in relation to that; otherwise we will find ourselves in the situation that the citizenry in the countries of some of history's greatest

despots found themselves because at some point in time somebody said, "I need to protect my citizenry by taking away some other part of the citizenry's human rights."

That is why it is entirely appropriate for people to be uncomfortable, notwithstanding the protestations of the police, with a reduction in human rights. I am certainly uncomfortable about it. I do not like being in a position where we have endorsed a human rights act which sets a course for us. I suppose this is the issue for us: it is quite easy to have a human rights act but it is more difficult to comply with it. It creates some discomfort when there is some threat to compliance with a human rights act which you really believe in.

Having said those few words, I will listen to the debate carefully. It is not as simple as somebody saying, "We need to tamper with your rights to make it easier to get a particular result," when the evidence is not clear. We will have to wait and see, I suspect, if somebody is detained in accordance with this legislation, whether in fact the courts will find that it is totally compliant with our Human Rights Act. Maybe that is life too. It is, nevertheless, important to be anxious about any move. Notwithstanding all of the publicised claims about it, we ought to be concerned about any diminution of human rights.

MR SESELJA (Molonglo) (11.48): I will be supporting Mr Stefaniak's Terrorism (Preventative Detention) Bill. Terrorism has been with us for a long time. As well as being a century of war, the last century was also a century in which terrorism was a consistent feature. The terrorist organisation, the Black Hand, acted as a trigger to the First World War with its assassination of the Archduke Ferdinand in 1914. In 1972 terrorists killed 11 Israeli athletes at the Munich Olympics, sending shockwaves through the world community. During the 1970s and 1980s a variety of terrorist groups hijacked and downed planes, with the Lockerbie disaster perhaps being the most well known example. The IRA committed numerous terrorist atrocities throughout the latter decades of the last century.

On September 11, 2001 the terrorist threat was taken to a new level. When the two planes hit the World Trade Centre and we watched live on television as thousands of people were killed as the towers collapsed, it is fair to say that we saw the beginning of a new, more destructive and more sophisticated terrorist threat than the world had seen previously. Subsequent to that we have seen the Madrid bombings and the London bombings. Of course, Australia has not escaped from this new threat. In Bali in 2002 we lost 88 of our sons and daughters to an evil, murderous act by Jemaah Islamiyah. This event and the subsequent Bali bombing demonstrated to Australians that this new brand of terrorism was not some remote or distant problem. It was a problem being faced by the whole world and we were not, and are not, immune.

The question for the world, and for Australia, is how we respond to this new and heightened threat. One response was to commit troops to the war in Afghanistan. The Taliban regime supported terrorists as well as oppressing its own people, particularly its women. It was necessary that the Taliban regime was defeated, and that was one response to terrorism.

We are now as a nation turning to our domestic response to the terrorist threat. Canberra is a terrorist target. Jack Thomas was convicted of conspiring to blow up the Israeli

embassy in Canberra. With significant national institutions here in Canberra, such as Parliament House, the Australian War Memorial, the Lodge and numerous others, as well as foreign embassies, Canberra would have to be amongst the higher profile terrorist targets in this country.

In a former life I worked on legislation which tightened security restrictions at airports, including background checking of individuals who have access to security restricted areas of airports. This was one part of the domestic response to terrorism. But, as we have seen with Bali, terrorism is not restricted to aircraft. A robust, intelligence-led response is now necessary to protect our citizens from terrorist attacks. It was with this background in mind that in September last year the Council of Australian Governments unanimously agreed to a series of counter-terrorism measures.

The Chief Minister, when faced with the overwhelming evidence presented to him by police and intelligence agencies, agreed to the necessity of the government's legislation. On 27 September the Chief Minister agreed to the outcomes as discussed with the Prime Minister, the premiers and the Chief Minister of the Northern Territory. The Chief Minister agreed to empowering Australia to better deter terrorists through the provision of control orders and preventative detention structures, and this has now been altered. The Chief Minister went to these meetings, took a hard line and said, "They have to convince me that this is necessary." The AFP and the intelligence agencies did just that, and the Chief Minister agreed. But then he went away and changed his mind. I think that is what has brought us to the debate we are having today. In fact, the arguments that the Chief Minister put were that the proposed terrorism legislation was not compliant with the Human Rights Act and, of course, that brings me to the Human Rights Act.

The Chief Minister used the Human Rights Act as his reasoning for not honouring his commitment at COAG. This demonstrates the truth of one of the major criticisms of the Human Rights Act and of bills of rights in general. Mr Stefaniak might be able to clarify something for me: did 90 per cent of Canberrans who have made submissions oppose the act?

Mr Stefaniak: Something like that.

MR SESELJA: So this Human Rights Act, which most Canberrans opposed, is being used by the Chief Minister as an excuse to derogate from his fundamental duty to protect the residents of the ACT. At the time the Human Rights Act was proposed, the point was made that by putting absolute protections on the rights of some, the rights of many would be compromised. And this is precisely what we are seeing here.

Mr Berry, who has just participated in the debate, cited precedents from the European Court of Human Rights, and I think it is a real concern when we start using the decisions of foreign courts to inform our own legislation in this country. A lot of people in this nation have significant concerns that through things like the Human Rights Act we seem to be taking matters out of the hands of law-makers and more and more are likely to put them in the hands of judges, and the attitude that we heard expressed by Mr Berry gives some weight to that.

The police commissioner, Mick Keelty, has been quite critical of the ACT's approach and it is worth reflecting a little on what he had to say. He was reported in January as

saying that the ACT's proposed laws make it too difficult for police to enact preventative detention measures where they suspect a person might be planning to commit an act of terrorism. Commissioner Keelty says that any weakness in the ACT laws could actually make Canberra a bigger terrorism target.

I know that the Chief Minister ridiculed those statements, and that is unfortunate, but I think the average person would have much more faith in what Mr Keelty says on this issue than in what the Chief Minister says. Mr Keelty is not politically pushing a particular barrow. I believe that Mr Keelty is speaking what he absolutely believes to be the truth based on his many, many years of experience in the area and based on the activities of the AFP and ASIO in tracking terrorist activities and seeking to prevent terrorist events in this country. So I think it is important that the views that Mr Keelty expressed and the significant concerns that he raised are not dismissed lightly.

I think Mr Stefaniak's bill reflects that certainly we have more confidence in what people like Mr Keelty have to say and what the intelligence agencies have to say than what Mr Stanhope has to say. In fact, when Mr Stanhope was presented with the evidence at COAG he seemed to agree with it, but it was only when he went away and thought about it, and got his human rights advice, that he changed his mind.

I would now like to turn to some of the key differences between the opposition's bill and the government's bill. This has been covered very well by previous speakers, so I will not focus on it too much. But I will focus on a couple of key differences. The bill proposed by the opposition creates uniformity with the rest of the country, and the government's bill does not. Mr Keelty has already highlighted the significance of that. Of course, once again the statement by Mr Keelty that this could make us a bigger terrorist target was ridiculed by the Chief Minister. I believe that just last week in this place Mr Stanhope was saying, "Well, you know, whatever legislation is there is not going to make any difference to a suicide bomber." But, of course, that absolutely misses the point.

Terrorist organisations are not stupid. Experience has taught us that there are well organised, sophisticated terrorist organisations out there. It may well be that a factor in decisions made by those organisations will be whether they are likely to be hindered. If they think they are less likely to be hindered somewhere, of course that might play a part in the kind of decisions they make on terrorist attacks. It is ridiculous to completely dismiss that argument as not having any merit, and I think that is one of the significant things to consider.

Our bill recognises that age is not necessarily a variable in identifying threats. As Mr Mulcahy as identified, 16 and 17-year-olds are capable of committing terrorist acts. There is no doubt about that, and to suggest otherwise is naive. Our bill recognises the need to monitor communications from an identified threat, even under custody, and the government's bill does not.

The key difference here is in relation to preventative detention orders. Mr Keelty thinks that the watering down of these provisions may actually make us a bigger terrorist threat than if we adopted what the commonwealth has. I have already raised that issue. Of course, under the ACT government legislation, the Supreme Court may only make a preventative detention order on the basis that it is reasonably necessary, the least

restrictive means of preventing a terrorist act and the only effective way to preserve evidence. That lies at the heart of the problem with this legislation.

Preventative detention orders, as discussed at COAG, are key to this legislation. They are key to protecting the community from potential terrorist acts. We are not necessarily talking about terrorist acts that have already been committed. We are talking about potential terrorist acts and trying to stop them occurring, and preventative detention orders are the key. If we make that test too difficult, if we make it too restrictive—and you know that as soon as you make the wording ambiguous, as we have here, judges and lawyers will drive a hole through the legislation—we will see police and intelligence agencies unable to do the job that we expect them to do in relation to protecting the community, and that is significant.

The biggest problem with this legislation is that police and intelligence agencies—and they have told us this—will be restricted from doing their job in preventing terrorist attacks. If the legislation cannot provide that then it is not good legislation; it does not go far enough and it does not do what the community would expect it to do. The arguments that we have had are based on the Human Rights Act. We have put in place the Human Rights Act and now we are not going to protect the human rights of the vast majority of this community, we are not going to protect their right to life, because there may well be severe restrictions on our police and intelligence agencies in being able to act to prevent these kinds of activities.

As I said, I will be supporting Mr Stefaniak's bill, which fixes some of the problems in the government's bill. As has been mentioned by previous speakers, we will eventually reluctantly support the government's bill simply because it is better than nothing. Although it is much better than nothing, it has significant problems which the government should take a good hard look at. They should review and fix their bill.

DR FOSKEY (Molonglo) (12.00): Before I launch into my substantive speech, I will address some of Mr Seselja's comments. Mr Seselja said that the Chief Minister agreed on the need for legislation of some kind and then went away and changed his mind after the September COAG meeting. I do not see how he can say that the Chief Minister changed his mind when here today we are debating a body of legislation that substantially answers the federal government's requirements.

Secondly, Mr Seselja said that the ACT community did not want a human rights act, that 90 per cent of Canberrans who made submissions on the Human Rights Act opposed it. I will make two points about that. One is that everyone knows that when anything comes up in regard to human rights—for instance, reproductive rights or the right to euthanasia in ending one's own life due to serious illness and so on—every politician receives many letters and submissions. We also know that the results of surveys do not necessarily represent the views of the major part of the community. However, a part of the community seems to be actively opposed to human rights and other safeguards of our civil liberties.

Mr Seselja also is concerned about using the decisions of foreign courts to inform our own legislation. I believe that Mr Seselja has a law degree and knows that our whole body of law comes from courts in foreign countries. I suppose we could change and go back to some sort of customary law. However, a lot of the issues that we are being forced

to grapple with have already been addressed, and the whole of jurisprudence is based on previous cases. So let us not be insular.

Mr Seselja also said that he has more confidence in ASIO and Commissioner Keelty than the government elected by the ACT people. If 90 per cent of the ACT people opposed the Human Rights Act, why did they elect the Stanhope government, which went to the polls very much committed to that act? They did not hide the fact that they supported human rights legislation, which this whole Assembly has agreed to. So I do not think that argument really works. I do not think the community shares the confidence in ASIO and Commissioner Keelty that the opposition has claimed here today. Does Mr Seselja believe that there is the secret cache of weapons of mass destruction still hidden in Iraq, as we were told by our intelligence agencies? Instead of fearing communists under the bed, as we saw with those who took a Cold War stance in the 1950s, in the post-Soviet era it is now a case of terrorists under the bed. I want to explore some of these issues in my speech.

The bar association and the Law Council of Australia, among others, have given evidence to the legal affairs committee of this parliament and to the federal and state governments that existing laws are sufficient to deal with any of the threat scenarios which have been put forward as reasons why we need to pass these laws. I tend to take the advice of these independent and highly skilled experts ahead of the advice of the federal government's own advisers.

As I see it, my primary task as a legislator is to be satisfied that the interests of my constituents and the interests of society at large are best served by the passage of any particular legislative proposal. I imagine that similar calculations inform the decisions of all of us in this house. As a political scientist, when looking at a new legislative proposal, one of the first questions I ask is: whose interests are being served with the passage of this legislation? While I acknowledge that the interests of the general public in being protected from violence are of enormous and overwhelming priority, there are also countervailing interests in protecting the public from the unnecessary intrusion of the coercive powers of the state into areas of their lives where freedoms of expression, association, movement and thought ought to remain supreme. The key word is "unnecessary".

In some extraordinary situations the utilitarian calculation is such that the interests of the general public must trump the interests of the individual to many of their various freedoms. The outbreak of a highly contagious and deadly disease is one such situation where extraordinary coercive measures may be justified in defence of society as a whole. Nuclear or biological blackmail would similarly demand extraordinary responses. But the key word here is "extraordinary". Such a measure should never become commonplace, and I fear that there is a push from the federal level to entrench such practice as a commonplace response to low-level threats.

Given the alacrity with which federal bureaucrats are being authorised by successive government legislation to put aside basic freedoms and detain innocent people, I fear that there is a push to establish such measures as a tool which can be used in the increasing arsenal against perceived political enemies and to foment fear among the poorly informed, politically disinterested and gullible members of society. Fear has ever been a powerful device and a great distracter. We know that governments and other political

actors seek to distract public attention and garner support by using fear of "the other" as a rallying point for identification with their own projected reality. I wonder to what extent is there a conscious effort on the part of the federal government, business or security organisations to create a deployable image of "the other" out of religious extremists—stereotypical figures who deserve no sympathy in the public eye and in much of the media, with whom we can have no empathy and whose purported presence threatens our very existence. Even their children are somehow demonised.

Again, I am not denying the existence or possibility of there being violent extremist people in Australia. What I query is whether the spectre of such people is not being exaggerated and exploited, both by those who seek to obtain greater coercive resources and by those who seek to focus attention away from areas such as income inequalities, education, health care, industrial relations, indigenous rights, environmental concerns and the war in Iraq. Such allegations would have appeared preposterous only a decade or so ago. But the incontrovertible evidence has been mounting that there is an agenda of control, a willingness to use fear as a political tool, and a psychology that fears criticism and is setting up a range of measures to silence dissent.

In the absence of imminent and catastrophic threats, except perhaps the "natural" ones which governments of all stripes are in denial about, the damage to society and our democratic freedoms from unnecessarily draconian policing powers is too great. By weakening our respect for the social contract we run a real risk of creating the very evils that coercive laws ostensibly aim to prevent. I echo the views of virtually every independent or non-government legal and human rights expert who has given evidence or published an opinion on this matter in stating once again that I have seen no evidence that such imminent and catastrophic threats exist in Australia today, except environmental ones, extreme weather events and the like.

In the deafening silence of support for these laws outside of government, the opposition has been forced to rely almost entirely on the evidence of Commissioner Keelty. I am interested to know what they make of the fears of the Pentagon and of the Australian Federal Police Association itself that their respective governments are not giving similar attention to the now generally accepted high level of threat posed by human-induced climate change.

No doubt there are people who are willing to use indiscriminate violence to further their particular personal, political or superstitious beliefs, and I suspect that some of them may now be in police custody. I also agree with the analysis implicit in what Mr Keelty said before he was nobbled by the federal government: it would be surprising if such sentiments did not crop up in Australia, given our uncritical and foolhardy participation in an illegal and unjustifiable wars that support the aims of allies and do damage to our own internal security.

The time for good people to defend liberty is now. Some of you may feel that the way to do that is to pass these laws. I disagree. I hope I am wrong. Unfortunately, I have heard no-one address and refute the arguments and concerns that I am putting here today, which I have heard as a member of the legal affairs committee and which I hear and read as a member of the public. I fear that we may be on a slippery slope to fascism, and with this legislation the ACT is playing its part to assist us in slipping a little further down that slope.

I agree with retired US Supreme Court judge Sandra Day O'Connor when she said:

> Autocracies—

and to them I would add military, single-party and fascist governments—

> in the developing world and former Communist countries provide lessons for where interference with the judiciary might lead … It takes a lot of degeneration before a country falls into dictatorship, but we should avoid these ends by avoiding these beginnings.

The links between state actions which alienate and demonise particular sections of society and the formation of violent responses among those who, rightly or wrongly, feel disaffected by such actions are well documented. The committee of which I am a member received expert advice warning us of these possibilities.

We trample on well-established principles of international human rights law at our peril. The Chief Minister was right to insist on a proportionate human rights compliance undertaking from the Prime Minister. What he got in return was an undertaking that was as valuable and reliable as the word of the Prime Minister. Its value can be measured by the extent to which human rights considerations are lacking in the federal government's laws. The federal government ignored the bipartisan federal parliamentary committee's recommendations and blatantly breached its side of the COAG agreement. In contract law terms, there has been a clear breach that goes to the heart of the COAG agreement, and the Chief Minister would be within his rights to repudiate the contract.

As the Standing Committee on Legal Affairs report points out, the explanatory statement makes no attempt to justify the assertion that the bill achieves consistency with human rights. This task is left to the statement of independent counsel Kate Eastman. Unfortunately, her advice appears rushed in places, with a large number of typos as well as some apparent inconsistencies between her reasoning and her conclusions. I would be interested to know how comfortable she is with her advice that was distributed in the Assembly. The advice goes on to say that on balance, having regard to all the safeguards et cetera, the incommunicado nature of the detention may be a justified limitation on the rights afforded by section 18 (1) of the Human Rights Act. Well, I would have thought that to get a compatibility statement it would either be justified or not. There should not be any "mays" about it. But Ms Eastman gives no such unqualified approval.

The watered-down, or perhaps more accurately, beefed-up laws, in terms of human rights compliance that are before us today, play a part in a vast panoply of new forms of state control measures introduced by the Howard government. They fit in with the new ASIO laws, the new phone tap laws and the new sedition and control order laws. They fit in with the new WorkChoices legislation designed to attack the power of organised labour and minimise the rights of individual workers. They fit in with attacks on the independence of the judiciary and the High Court, the independence and funding of the ABC, and the independence and objectivity of the CSIRO. They fit in with the imposition of voluntary student unionism and the intimidation and destruction of non-government organisations which dare to criticise government policy. These laws fit in with the imminent commonwealth laws that will threaten the funding of any NGO that dares to engage in political activity or commentary which the government does not like,

and they fit in with attacks on any church leader that dares not reflect the government's compassionless world view.

It is depressingly familiar to witness the way in which any view in the media or in public discourse which does not accord with the views or interests of the ruling party is labelled as biased, political, subjective or even seditious. And what defines big "L" liberal values these days? Will they defend to the death our right to express views contrary to theirs? Yes, some will, and strength to their arm, but recent preselection battles in Victoria indicate that their hold is tenuous.

My vote on these bills is already well known. I am in the fortunate position of being able to vote according to my conscience, according to my knowledge and according to my party's stance. I know that not everyone else in this house is comfortable with the way they have to vote. I commend Mr Berry on saying so and I sympathise with those who are in a position where they cannot follow their conscience.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (12.15): I would like to begin by thanking all members for their contribution to this important debate today. Can I perhaps paint a picture for members that I think vividly illustrates why the government has adopted the approach it has in relation to this legislation. Imagine a country where a woman is found wandering in a remote rural location. She cannot tell police who she is or where she comes from. As a consequence, she is jailed, detained without charge and is retained in detention for an extended period of time. In fact, it is only discovered after over a year that this woman is an Australia citizen, that she suffers from a mental illness and that she should not be in detention at all.

Imagine a country where another Australian woman from a non-English-speaking background is also detained without charge. Not only is she detained but she is also forcibly expelled from Australia. She is an Australian citizen and it is later discovered that she also suffers from a mental illness and has had an enormous injustice done to her. These are two examples of how the lack of adequate safeguards and protections can impinge dramatically and in wholly unacceptable ways on the rights and liberties of Australian citizens. The Cornelia Rau and Vivian Solon cases should be well known to all members. But in my mind they are a telling and exemplary reminder of the dangers and risks associated with diving headfirst into a willingness to embrace any form of detention measures without appropriate safeguards.

We have heard the commentary from members opposite in relation to the importance of relying upon the advice and the expertise of intelligence agencies and police forces. Indeed, any responsible government should have due and proper regard for the expertise and advice that is offered by people in those important positions of responsibility. This government does that, but it does it cognisant of its understanding of a failure of intelligence and police organisations. These organisations are not infallible. They are not the fonts of all knowledge. They have an important and, indeed, vital role to play in protecting public security and safety but they are not infallible.

Witness the failure to properly advise Western democracies across the world on the threat posed by Iraq or, indeed, the absence of threat posed by Iraq. And witness the failure of our own intelligence agencies to detect and save a boatload of refugees coming

to our country, which subsequently resulted in the deaths by drowning of close to a hundred people. These are failures of intelligence and police organisations, and they are a timely reminder that we must be at all times proportionate and considered in looking at all of the issues that as elected governments and elected parliaments we should look at.

The primary objective of this bill is to allow for the temporary detention of a person in response to a credible threat of terrorism. The powers are to be used where there is insufficient evidence to arrest or charge a suspected terrorist but where reasonable suspicion exists that a terrorist act is imminent. The government acknowledge that we live in a climate where there are security threats to our nation. We recognise that such threats must be taken seriously, particularly in a jurisdiction that houses the seat of the federal government and the offices of some 90 diplomatic missions. We must take reasonable steps to protect our community against such threats.

Much has been said about the threat of terrorism to the ACT, and at the end of the day the ACT government, the Assembly and the community can rely in an informed and considered way on the assessment by commonwealth agencies of this threat to the country. We have no option but to accept that opinion, in an informed and considered way, of the heads of security agencies and of the police. We acknowledge that community awareness of the threat of terrorism is also incomplete.

It is important to stress that the laws we are debating today make up only a tiny fraction of the legislative response to terrorism, which spans the suppression of terrorist financing of proscribed organisations, ASIO questioning and control orders. These are one part of a broad range of measures.

The government has been called upon through the Council of Australian Governments to address gaps in existing counter-terrorism laws that arise because of constitutional constraints on the commonwealth. The government has implemented the COAG agreement of September 2005, but with the approach necessary to also maintain freedoms, rights and liberties which are appropriate for ACT conditions. This is a mature response to the threat of terrorism.

Justice Michael Kirby, in relation to the legislative response to terrorism, said:

> Every erosion of liberty must be thoroughly justified.

He also said:

> Sometimes it is wise to pause … to keep our sense of proportion and to remember our civic traditions as the High Court Justices did in the Communist Party Case of 1951.

Those civic traditions and their historical legacy are shared by our common law neighbours and echoed in their own experiences of threats to national security. During the Second World War the US Supreme Court set limits on the detention of aliens, consistent with these basic principles. But that court said:

> The judicial test of whether the Government … can validly deprive an individual of any of his constitutional rights is whether the deprivation is reasonably related to a public danger that is so "immediate, imminent, and impending" as not to admit of

> delay and not to permit the intervention of ordinary constitutional processes to alleviate the danger.

More recently the House of Lords set limits on the detention of foreign nationals suspected of planning the commission of terrorist acts. It said:

> Indefinite imprisonment without charge or trial is anathema in any country which observes the rule of law. It deprives the detained person of the protection a criminal trial is intended to afford. Wholly exceptional circumstances must exist before this extreme step can be justified.

The overwhelming lesson from all of these cases is that every limitation on rights must be tested against an unwavering standard of proportionality, that every erosion of liberty must be subject to ongoing judicial oversight and review, and that every extraordinary measure must be confined in time to the particular emergency. For all of these reasons, the bill has been drafted to be consistent with the Human Rights Act. It is why the bill has been drafted to give key decision-making power to the courts and it is why the bill is subject to a five-year sunset clause. This is the requirement that our Human Rights Act sets us and it is the only approach that we can take.

Whether a limit is reasonable or justifiable depends upon whether it is proportionate to achieve an important and significant objective. Every limitation must be necessary and rationally connected to the objective. Every limitation must be the least restrictive in order to achieve the objective, and no limitation can have a disproportionately severe effect on a person. This is the standard of proportionality which is in the government's bill. We do not accept that people should be detained without sound justification and as a last resort. We do not accept that children should be subjected to preventative detention and we do not accept that the privacy of legal contact should be easily breached.

The government considers this legislation to be model law. We have not relied on a single template. We have used all available resources. I would particularly like to thank the scrutiny of bills committee for preparing their report on this legislation and I welcome the committee's assessment that the bill fulfils an important and significant objective to protect the community and that the measures adopted are rationally connected to that objective.

Some of the issues raised by the committee's report would improve the bill. We have the opportunity to make some of those changes now, and I would like to foreshadow some minor amendments that will be dealt with during the detail stage. The amendments are a direct response to some of the queries raised by the committee. They clarify aspects of the legislation but make no real substantive policy change. I table the following paper:

> Supplementary explanatory statement to the government amendments.

I would now like to turn to the criticism made by the opposition in relation to this bill. Primarily their key criticism is that it is not nationally consistent, it is not the same as all the other jurisdictions, and therefore it opens up the territory to some higher level of threat. The government does not accept this argument because, first of all, there is no national or uniform template for counter-terrorism legislation in this nation. The COAG agreement does not establish uniform provisions. It does not establish template

legislation. Instead, it sets out a range of principles that it asks all states and territories to address.

If Mr Stefaniak were so committed to template or uniform provisions, he would have made sure that his own bill was consistent with the commonwealth legislation. But he has not even done that. So to hear the opposition stand up in this place and say this is not consistent, this is not the same as everywhere else, only highlights the fact that their own bill is not the same as the commonwealth's legislation—the legislation that they regard as the example. And let us take a few examples.

Under the ACT legislation and under Mr Stefaniak's proposal, all preventative detention orders, both interim and final, may only be made by the Supreme Court. We welcome the fact that Mr Stefaniak accepts that approach. But that is not the approach of the commonwealth. In the commonwealth, preventative detention orders may be made by a senior police officer within a 24-hour period, and continued preventative detention orders may be made by a retired judge, a serving judge, a federal magistrate or an AAT member. This highlights the inconsistency with Mr Stefaniak's own legislation. There is no requirement for notice under the commonwealth legislation of the making of a PDO but there is in Mr Stefaniak's legislation and in the government's legislation. These are two glaring examples of inconsistency with the commonwealth's own legislation. I would have thought that would have been of concern to Mr Stefaniak.

There are a number of other issues. I would like to turn to the areas where we believe Mr Stefaniak's legislation is inadequate and why the government will not support it. First of all, I refer to a range of issues around preventative detention orders. Our legislation requires a statement of reasons to be given to the court; Mr Stefaniak's does not. Our legislation has an expressed prohibition on the admissibility of evidence obtained by torture; Mr Stefaniak's does not. Our legislation requires a public interest monitor to represent the public interest at a hearing for a preventative detention order or prohibited contact order, and this will protect a person's right to a fair trial; Mr Stefaniak's does not.

Our legislation provides for no facilitation of the questioning of detainees under a preventative detention order and the lapsing of that PDO once the person is released for any form of questioning; Mr Stefaniak's does not. Mr Stefaniak's legislation would permit someone to be released before questioning and then returned under a PDO. Our legislation provides support for persons with special needs, including psychiatric needs. Mr Stefaniak's legislation is silent on that issue. Our legislation ensures that it is reviewed after a five-year period, stressing the temporary nature of it; Mr Stefaniak's is 10 years. These are all failings on the part of the Liberal Party's legislation and they are reasons why the government does not support it.

A range of other issues needs to be addressed in the detail stage. I commend the legislation to the Assembly and indicate that the government will not be supporting Mr Stefaniak's bill.

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

Sitting suspended from 12.30 to 2.30 pm.

Questions without notice
Budget—forecast outcomes

MR SMYTH: My question is to the Treasurer. Treasurer, in 2003-04 the forecast GFS outcome was for a loss of $5 million but the actual GFS outcome was a loss of $203 million. That was a most dramatic change in only 12 months. In 2004-05 the GFS operating loss was forecast at $17 million, but by the end of that year it had blown out to a loss of $293 million—that is, an even greater change over 12 months. Treasurer, how can you claim that you have been surprised by the deterioration in the outlook of the ACT budget, when your own data proves that there was a budgetary collapse already under way two years ago and that the situation has worsened since then?

MR STANHOPE: I thank the Leader of the Opposition for the question. It is interesting, isn't it, how we scrabble for statistics or numbers that we think suit our purpose. From time to time, of course, when we do not have a statistic or a number that suits our purpose, we simply manufacture one. Last week, of course, we all witnessed the rather demeaning spectacle of the Leader of the Opposition manufacturing a $390 million deficit in the year 2007-08. You all know it; most of us were here last week and we saw the efforts of the Leader of the Opposition in his manufacturing of a completely fictitious number through some Chinese-whispering campaign around what the real underlying position was. Because the numbers did not suit the Leader of the Opposition's position, he simply created, manufactured, an anticipated deficit for the year 2007-08—and then, of course, compounded the felony of the manufactured alleged deficit by claiming that it would inevitably result in the slashing of $200 million from the health budget. That was the position that was put last week as a sort of solemn truth—hand on heart; "this is what I know". It is completely fictitious—and here we have it again today.

Mr Smyth: I raise a point of order, Mr Speaker. Under standing order 118 (b) the minister cannot debate the subject. My question was about his GFS figures—not what I said last week.

MR SPEAKER: I think your question had a solid part of it made up of figures and statistics, and I think the Chief Minister is entitled to respond to them.

MR STANHOPE: The $390 million was an Australian accounting standard deficit. Last week we had an Australian accounting standard alleged deficit produced, or revealed, by the Leader of the Opposition of $390 million in the year 2008-09. That was the allegation last week—an AAS 2008-09 $390 million deficit. That was the allegation last week. But today we have slipped off the AAS and we have strayed into the GFS now, an accounting standard that has never been utilised in the ACT—never utilised by the Liberal Party in government and not utilised by us.

Let us have a look at the AAS: four consecutive surpluses, accumulated surpluses over the four Labor government budgets, of about $250 million—a record, of course, that matches anything that you achieved or produced at any time when you were in government—$250 million of accumulated surpluses over our first four budgets. But let us not talk about that; let us not talk about the extent to which we in government have met our commitment to produce surpluses over the cycle—four years in a row, $250 million of accumulated surpluses.

Admittedly, we budgeted for a deficit of $91 million and certainly that even grew to $110 million, I think, in one of the quarterly reports, before in the midyear review being revealed now as an anticipated deficit for this financial year of $37 million. So I have to say that it has come back quite nicely, and, of course, time will tell whether or not that particular trajectory will continue or otherwise.

Those are the facts. The fact is that we utilised the Australian accounting standard. We always have, as did you in government; you always did. We have achieved four surplus budgets in a row. We have achieved $250 million of accumulated surpluses over that particular period. We have the strongest balance sheet of any jurisdiction in Australia. We have the strongest economy. We have the lowest rate of unemployment. The economy is sound. The balance sheet is the strongest in Australia. We have achieved four cumulative surpluses in a row.

You can jump between this number and that and, as you were wont to do last week, you can even manufacture a range of numbers and suggested outcomes, completely manufactured, completely false—not a skerrick of truth in the mischief that you created last week in relation to your manufactured alleged deficits. And you then, of course, compounded your felony by attributing it to others, in a completely false way. My office now has had a contact with, I think, every single one of the people that attended that meeting, bar one, the one that we have yet to contact. I know at one stage in the media you said there were "a number of people". That is simply not true—or they are not being honest with my office.

MR SPEAKER: The minister's time has expired.

MR SMYTH: I have a supplementary question, Mr Speaker. Treasurer, what advice did Mr Costello provide to the ACT government to reduce the significant disparity between forecasts and outcomes for the ACT budget?

MR STANHOPE: I beg your pardon, Mr Smyth. I did not catch the start of the question. I would be pleased it you would repeat it.

MR SMYTH: Let me do it again. Treasurer, what advice did Mr Costello provide to the ACT government to reduce the significant disparity between forecasts and outcomes for the ACT budget?

MR STANHOPE: Thank you for repeating the question, Mr Smyth. I genuinely did not hear the opening part of the sentence. As members are aware, the advice of Mr Costello and Mr Greg Smith is contained within a detailed report, which is still receiving the attention of cabinet. Cabinet has not yet concluded a response to the particular issues that were raised by Mr Costello and Mr Smith in their report to government. As I have previously indicated, the report was commissioned by me for the purposes of budget cabinet. It is a document that, in that particular instance, at this stage attracts cabinet confidentiality and I do not at this stage propose to release it or to reveal the detail of its content. It is a document that, for very good reasons, attracts the confidence of cabinet.

Budget—forecast outcomes

MR MULCAHY: My question is to the Treasurer. According to data on GFS outcomes—and you include those in your budget—there has been an amazing collapse in the projected outcomes as we get closer to the year to which the forecast applies. Two years ago the outcome for 2005-06 was estimated to be a loss of $19 million. By the time of the latest budget midyear review, which was released in February 2006, however, the projected GFS deficit for this year had increased 20-fold to $394 million. That change represents a blow-out in the forecast deficit of $375 million in only two years. Treasurer, what has caused this dramatic change in the GFS outcome for 2005-06?

MR STANHOPE: I thank the member for the question. Welcome back. It is good to have you back. I hope New York, Venice and London were as pleasurable as they might be as the Northern Hemisphere moves into spring and summer.

It was interesting for each of us to read Mr Mulcahy's missive on his world study tour. I am talking about the issues that he assumed, on his trip, are relevant to his shadow ministry and to mine, namely, the rating by the agency Standard and Poor's. It is of passing interest that Mr Mulcahy, in order to determine what Standard and Poor's believe or think, thought it appropriate to visit them in their office in New York. The rest of us simply get on the phone and ring them in Melbourne. Nevertheless, I guess there is some advantage, from time to time, in going to the source. It is one of the delights—

Mr Seselja: He just can't answer the question.

MR STANHOPE: I think it is relevant to be armed with the good oil from New York on Standard and Poor's approach to rating, where we mere mortals rely on the telephone and the telephone connection between here and Melbourne. Welcome back, Mr Mulcahy. It is good to have you back. I have no doubt that you feel a little bit sore that you missed the sitting week last week and the interesting debate that we had on the establishment of the estimates committee.

Mr Smyth: Relevance.

MR SPEAKER: Chief Minister, come to the subject matter of the question.

MR STANHOPE: The relevance is the significant pain that the Leader of the Opposition suffered on discovering that he was not going to chair an estimates committee when we know that the real interest was the shadow Treasurer's exclusion from the estimates committee—a very interesting result in the context of the dynamics within the opposition.

Mr Smyth: You can't answer the question.

MR STANHOPE: I can. That was just an interesting preamble, setting out the context of the basis on which we are scrambling around with the GFS and ignoring the Australian accounting standard. Under the Australian accounting standard, a standard that the opposition utilised in government, we, as a government, have delivered four consecutive surpluses, to the tune of around $250 million, and have met all of our

commitments to balanced budgets over the cycle. We have not just had net balanced budgets over the cycle but have accumulated surpluses of the order of $250 million over the cycle to date. As the cycles roll, it is our determination to maintain our commitment to achieving that.

That is not what the opposition want to hear. They do not want to hear about accumulated surpluses, surpluses achieved in every budget under this government. They wish to go to an accounting standard which, historically, has not been adopted. One of the reasons why the Liberal Party did not adopt or embrace GFS was the particular circumstance of the territory—the historical reliance by my government and by your governments on land sales. The issue about the blow-out in the GFS is related very much to land sales.

In the conversation I have been seeking to engender, at the heart of the issue which this community and successive governments, including this government, need to grasp, is the reliance on the serendipitous nature of land sale revenue and receipts and superannuation revenue. At the heart of the enormous fluctuations in the GFS over the period is the level of land sales and the receipts from land sales. We have come through an historic land boom in the ACT. In regard to land sales and superannuation, as you know, Mr Mulcahy—I assume you know; perhaps you do not; one would not be surprised if you do not—the reason you did not adopt GFS in government is the incapacity, under the general finance statistic method of reporting, of accounting for land sales or superannuation receipts.

What did we budget for over the last couple of years? It was $159 million. Our land sales revenue was vastly greater than that. Yes, we have, in responding to those gaps in service delivery from you, invested those funds.

MR SPEAKER: The minister's time has expired.

MR MULCAHY: Can the Treasurer tell us whether Mr Costello provided advice to the government on how to go about restoring the GFS outcome to surplus?

MR STANHOPE: It is interesting that it is the same supplementary question as Mr Smyth's. I do not know whether Mr Smyth did not have a supplementary and pinched yours, Mr Mulcahy, in the way that last week the Leader of the Opposition pinched your position on the estimates committee. We know he did. Let us not blush about this; let us be open about it. While Mr Mulcahy was away in London during a sitting week—an uncomfortable place to be during a sitting week—the Leader of the Opposition brought on, unannounced and unexpectedly, a motion seeking to establish an estimates committee. It did not need to be done last week; it could have been done next week in the presence of the shadow treasurer. We find the shadow treasurer missing off the list.

MR SPEAKER: Come to the subject matter of the supplementary question.

MR STANHOPE: I was just commenting on the fact that it is exactly the same supplementary question that the Leader of the Opposition just asked and that I have answered. I do not know whether it is appropriate, in that context, for supplementary

questions to be repetitive. I was simply mulling over the fact that the shadow treasurer has used exactly the same supplementary question as the Leader of the Opposition.

As I just explained to the Leader of the Opposition, these are questions which the Leader of the Opposition will pursue during the estimates hearings on the budget and which, unfortunately, the shadow treasurer will not have an opportunity to pursue because he has been left off the estimates committee. The Liberal Party have this quite quaint managerial arrangement where, in relation to the most significant examination of budgets and budget matters, you do not engage the shadow treasurer.

Mrs Dunne: On a point of order: standing order 118 (a) requires the minister to be concise and compliant to the subject matter of the question. The subject matter is: did Mr Costello provide advice to the government on how to bring the GFS into surplus? It is not the same supplementary question as the previous supplementary question.

MR STANHOPE: I have answered the question.

MR SPEAKER: Thank you, then, if you have answered it.

MR STANHOPE: I have answered the question, but I will repeat it. Mr Costello and Mr Greg Smith have prepared detailed advice to the government on a range of issues on the full suite of government service delivery and a whole range of governance issues. I have explained in detail that there are very good reasons for this. I explained most of this during the period that Mr Mulcahy was overseas. I have explained in detail over the last five or six weeks during Mr Mulcahy's absence why it is important that the report which the government has received be retained as cabinet-in-confidence. There are very good reasons for that.

Everybody that has ever been in government knows that. Certainly everybody that has sought to understand cabinet governance, the importance of cabinet government and the strengths which cabinet government delivers knows that. It is central to our Westminster notions. One of the central notions of Westminster and the strength of our democracy is cabinet government. One of the essential features of cabinet government is the capacity for cabinet to treat in confidence a whole range or raft of information. This is the principle which every government that has adopted the Westminster system of cabinet government embraces. We had an interesting debate on this last week.

We all know the extent to which the previous government embraced cabinet government and its inherent strengths. That is why, when in government, the Liberal Party—in cabinets of which Mr Smyth and Mr Stefaniak were members—documents on the Bruce Stadium fiasco, on the hospital implosion and on the Hall/Kinlyside land scandal were never released. I assume that, in relation to the decisions which the then government made on those particular issues, it relied on the advice provided to them. At least one hopes that they relied to some extent on that advice. It is probably a shocking defamation of those officials who prepared those advisings if the actions which subsequently followed were recommended to you by officials. But that is another story.

Budget—midyear review

MR STEFANIAK: Mr Speaker, my question is to the Treasurer. Treasurer, according to the data your government issued in the budget midyear review in February 2006, the outcome in GFS terms for 2008-09 shows a deficit of $333 million, assuming there are no changes in policy. Is that estimated deficit still valid? If not, what is the estimated deficit in GFS terms for 2008-09?

MR STANHOPE: I thank the shadow attorney for the question. This is a difficult question to respond to. Of course, this is exactly the same issue as we had last week in relation to the manufactured $390 million deficit. The question some of you asked during question time last week in relation to that fictitious figure—and I was asked the same question in relation to the Australian accounting standards line—was, "Is it the fact that, in the year 2007-08 or 2008-09"—I forget which year it was; it might have been 2007-08—"the deficit is now assumed to be $390 million?"

Last week, a number of you then asked, "Has the anticipated deficit changed?" My response was that, in the context of the midyear review, it has not. That was a document provided at a point in time which reflected what the outyear anticipated operating position would be. You asked the same question. You now essentially repeat the question in relation to the GFS, and the answer is the same. I do not know whether you are asking me if the Treasury has come to me and said, "Here is the updated midyear review"—this is essentially the notion that the shadow attorney puts—"which proposes a certain operating deficit for 2008-09 of such-and-such. Is that still the case?"

Of course parameters change; governments make decisions. We are in the process of making lots of decisions in the context of a budget. If your question to me is whether Treasury has come to me and said, "This was the position during the midyear review and we have had another look at it," that is essentially saying, "Have you changed the position at the time of the midyear review?" No, they have not. Have they come to us and said, "Have you made the decisions in a budget context that the operating deficit for the outyears will look like this?"—then of course they have, or of course we, as ministers in the cabinet—

Mr Smyth: All right. So what is the update?

MR STANHOPE: We don't have an update. We have not yet completed our considerations or deliberations in relation to the budget. If the question is whether Treasury have come and said, "These midyear figures, as and of the time the midyear review was delivered have changed,"—then the answer is no. If the question is, "Are you in your budget cabinet deliberations making policy decisions that will impact on the outyears?"—then the answer is yes. Monday a week ago we made some; Tuesday a week ago we made some; and Wednesday a week ago we made some. We made some on Monday this week and we will make some more during our next budget cabinet meeting.

At every single one of the meetings budget cabinet has held over the last month we have made a decision. None of those decisions has been confirmed yet; we will do that at our final budget cabinet meeting. Guess what? The numbers change. The numbers change daily. Every time we make a decision the numbers change. The numbers change every

time the government makes an expenditure decision, as you would of course observe, without having to ask the question.

Mr Stefaniak, in the context of timing and process, the cabinet is in the process of putting together a budget. We are making many decisions along the way—decisions essentially of principle—because the process on which we work is that we will, at whatever is the final budget cabinet meeting, take a decision that we accept the draft budget as the budget. When we do that the numbers are set, but until we do that the numbers will roll all over the place. Of course that is the case in any decision-making process. That is how budgets are put together. That is how you did it and that is how we do it. We make decisions on line items. "Shall we change expenditure on this line or not? Shall we change it up, or shall we change it down?" Some we change up and some we change down; and at the end of the day we get a budget.

MR STEFANIAK: Mr Speaker, I have a supplementary question. I thank the Chief Minister for that answer. The supplementary is a little bit similar to what you have been asked but different; so listen to it. What advice did Mr Costello provide to the ACT government in relation to revenue and expenditure estimates that would be necessary to bring the GFS outcome back to surplus?

MR STANHOPE: He provided some very interesting advice on those matters, Mr Stefaniak.

Water—Snowy hydro scheme

DR FOSKEY: My question is to the Chief Minister. It concerns the forthcoming sale of the Snowy hydro scheme. Chief Minister, in reply to my question in February, you agreed that it is vital that the ecological and environmental integrity of the catchment be maintained, and expressed the hope that the federal government would devote its $400 million cut of the sale to the Murray-Darling Basin. You also said the only role or influence the ACT government would have would be moral persuasion and argument about the need to protect and enhance that much denuded and beaten river system. Will you assure the Assembly that you will put those arguments to the New South Wales Legislative Council inquiry into the proposed sale of the Snowy hydro scheme when it conducts public hearings in our region?

MR STANHOPE: I thank Dr Foskey for the question. I cannot recall exactly what I said the last time I was asked about this. But I do have a view, and I can bang my gums about it forever and it will not change the world. I honestly believe that, in the context of the commonwealth's holding 13½ per cent, or whatever it is, they robbed us. I honestly and truly believe, in the historical context of the commonwealth's holding in the Snowy hydro, that it was held for and on behalf of the territory.

The only reason the commonwealth has an ownership stake in the Snowy hydro is that Canberra is the national capital. Its only interest derives out of, and is borne of, the establishment and existence of Canberra as the national capital. That is my view, and I believe that anybody that looks at the history of the commonwealth's ownership and the basis on which it took that ownership would accept that as irrefutable. They are the facts of the matter—the historical case.

The commonwealth has absolutely no intention of giving it back to us. This is one of those interesting catch-22 situations. At the time of self-government we did not really have anybody here to articulate or argue the detail of some of the issues around transferral at self-government. I say this without bringing politics into it because Labor was in government at the time of self-government. I make the point that this issue of ownership, which is a valuable one, is one in which we have been duped. I say that again, but I am not going to cry over it; the commonwealth is not now going to change the position in relation to its shareholding. I could bang away forever, to absolutely no advantage or advance in the debate. To the extent that I might have a particular view about my capacity—and you might have a different view about my capacity, Dr Foskey—to effectively use my good offices with my New South Wales and Victorian counterparts to seek an adjustment of their position, it does not extend to influencing Steve Bracks or Morris Iemma in the sale of the Snowy hydro.

I am happy to write to them. I have not, and I am not inclined to. I have no capacity, Dr Foskey, nor would any Chief Minister in the ACT of either persuasion, to influence this decision other than to put a position on the need to ensure that, if the sale proceeds—and that is a decision that other governments will make, not this government—the integrity of the catchment is protected. The environment is uppermost in our considerations. I believe that absolutely. I am more than happy to state that publicly, and I have. I can argue a position but I do not know whether or not it would be appropriate for the ACT government to do that. We are part of the catchment. Canberra is the most significant city within the catchment and it has a vested interest. To some extent, statements by the premiers of New South Wales and Victoria about their determination have reassured me.

In passing, if some of the rumours in relation to tonight's federal budget are to be believed, the suggestion that the commonwealth will be investing an additional $500 million in the Murray-Darling Basin is absolutely fantastic news. To the extent that the commonwealth's holding within the Snowy hydro has been, anecdotally at least, valued at $400 million, if the federal Treasurer does make that commitment tonight, it is perhaps open to the commonwealth to make the claim that it is reinvesting its entire return from the sale of the Snowy hydro in the catchment, plus $100 million. It will be interesting to see whether or not that particular rumour comes to pass tonight. If so, I applaud it. It would take the commonwealth's investment in the Murray-Darling Basin in the last four to five years to $2 billion, which is quite significant.

MR SPEAKER: The minister's time has expired.

DR FOSKEY: I ask a supplementary question. Chief Minister, have you considered putting your arguments to the New South Wales Legislative Council inquiry when it conducts hearings in our region?

MR STANHOPE: I have to say that I have not actively or positively considered that that is something that the ACT government might do. I will take some advice, Dr Foskey, from my officials on whether or not that would serve any useful purpose. I do not want to spend time, energy and resources on a submission that makes us feel good but, at the end of the day, will achieve absolutely nothing. I am not one who resiles from standing up and showing leadership and putting a position. I will take some advice, Dr Foskey,

rather than saying here and now that I do not believe that would serve a useful purpose. I will take advice on whether or not we could usefully engage in that process. To date I have not given it any consideration. I will do so.

National Multicultural Festival

MS MacDONALD: My question is to Mr Hargreaves in his capacity as Minister for the Territory and Municipal Services, with particular responsibility for multicultural affairs. Many of us attended the recent National Multicultural Festival which, to my mind, was one of the most successful ever. Has the minister any evidence to confirm that that was the case?

MR HARGREAVES: How successful was the recent National Multicultural Festival?

Mrs Burke: That would have been a much better question.

MR HARGREAVES: It was a very good question. It might not have been a closely guarded secret, but it is now official. The answer is: very. Research was carried out by the highly respected University of Canberra Centre for Tourism Research. Do you know where the University of Canberra is, Mrs Burke?

Mrs Burke: Sorry? Do repeat yourself.

MR HARGREAVES: You were not listening. You have been sprung. The Centre for Tourism Research confirmed that the 2006 National Multicultural Festival was the most successful on record and one of our biggest cultural and social events. Some 165,000 attendees flocked to the heart of our city during the two-week extravaganza. The city came alive!

The research also showed that this wonderful annual event not only is an avenue for locals to share Canberra's many diverse cultures but also is emerging as a major tourism drawcard, with upwards of 15,000 visitors in town specifically for a taste of something different. Of those who attended this year's event, 91 per cent were local and nine per cent were visitors, and that was despite a largely localised and relatively modest communications campaign.

The Centre for Tourism Research was engaged to provide an independent event evaluation. These are skilled researchers who gather data on a regular basis for organisations such as the National Gallery, Questacon and the Tourism Industry Council. On reading the 23-page report, I was very pleased to find that the overwhelming majority of people surveyed—80 per cent—were satisfied or very satisfied with the 2006 National Multicultural Festival. A total of 82 per cent said that the atmosphere of the festival was wonderful, whilst 79 per cent liked the fact that it provided great value for money.

The standout figures this year would have to be the attendance numbers. There were more than 165,000 attendees at the more than 60 individual events that comprised the two-week festival. The previous year's estimate was some 135,000. At the Fyshwick fruit markets food and dance spectacular alone, 60,000 people treated their taste buds to food from all corners of the globe. At *Wizard Carnivale*, 25,000 people danced the night

away to the sounds of Latin American music. *Eurotrash 2006* drew 6,000 individuals to Garema Place to hear an eclectic mix of music.

Other standouts included the Pakistani Cultural Expo, which attracted 1,500 people, and *Botswanian Baskets*, which attracted 2,000 people, both at the new Theo Notaras Multicultural Centre. The festival's own comedy spectacular, *Show us your roots*, at the Canberra Theatre attracted more than 1,100 people. It was full.

Whilst the attendance figures for the larger events ran into the thousands, many of the smaller, more intimately staged events also attracted attendances in the hundreds. At *Mozart Magic* at the ANU Arts Centre Theatre, 340 people enjoyed renditions of the great composer's work, whilst the Beijing Modern Dance Company's spectacular performance of *Beijing Vision*, staged at the Canberra Theatre, played to a sold-out crowd of 660 people.

There was a lot of fun to be had by all those attending the festival, with 85 per cent saying that they will return next year. The organisers of individual events were also very satisfied with the proceedings. One hundred per cent of those individual organisers involved in the 2006 festival said that they would participate in the 2007 event, and 100 per cent of them also said that they would recommend the event to their colleagues and other event organisers and encourage them to participate. I have no doubt that word of mouth is inflaming the popularity of this event.

These figures show the fantastic level of support that there is in the Canberra community and by individuals from across our border for our multicultural way of life. With more than 165,000 attendees this year, we have an event that we can be proud of and promote to the rest of Australia. Each year we must continue to expand and promote the premier celebration of our cultural diversity. It may not be a permanent physical structure or a regular weekly event, but it is a showcasing of the more than 200 diverse communities that comprise our city. It is an event each year to look forward to and cherish. Planning has already started for next year's festival and interest is very high.

Budget—election promises

MRS BURKE: Mr Speaker, my question is to the Chief Minister. Chief Minister, on 15 November 2005 Mr Smyth asked whether your government would abandon any of the election promises that were made by the Labor Party in 2004 and which remain outstanding. You replied that no promise would be abandoned. Chief Minister, following the findings contained in the Costello report on the functional review of the ACT budget, how can you sustain your previous position that you will fund all of the 72 outstanding election promises made by the Labor Party in 2004?

MR STANHOPE: The question is: how can I sustain my previous position on this in light of Mr Costello's report? Well I can and I do. How long is this piece of string? We have a report that contains a rigorous analysis of a whole range of issues in relation to governance within the territory. Of course, the report is focused very much around governance and the strategic direction of government service delivery.

There are a few things that can be said and need to be said—this is constantly conveniently forgotten—in relation to some of the hysteria which has been whipped up

around the deficit and the state of the ACT's finances or budget. We have the strongest balance sheet of any jurisdiction in Australia. We have the strongest economy of any place in Australia. We have the lowest unemployment rate and the highest participation rate. The level of commercial activity in the ACT is actually challenging that of the Sydney and Melbourne CBDs. There is enormous confidence in Canberra and the Canberra community.

The decisions which I am interested in looking at and which the cabinet and the government are, of course, dealing with were, as I have said repeatedly, essentially the impetus for the decision which I took around about last August/September to initiate an external look or review of governance and strategic directions in the territory. It was not about an anticipated midyear review which revealed a deteriorating outyear position. It was about a belief that I have had for some time, which has been occupying my thinking, around the way in which we as a community have simply not addressed or grappled with some of the structural issues that we face. You all know about it. We see it now in the language and body language of Mr Seselja when he responds to questions on school closures. There is an inherent understanding. Mr Pratt went to the last election acknowledging the need to consolidate schools. I have been actively seeking to generate a community debate and conversation. We can use schools and education as an example to underpin what it is that I am saying and what was at the heart of the functional review.

Of course, the response of the Liberal Party to what it is that we are seeking to achieve and the conversation that we are seeking to have is based around self-serving, short-term cheap politics—namely, let us not have a conversation around whether or not the inherent structure of government education delivery is sound in an environment—

Mr Smyth: Well, table the report and we will have the conversation.

MR STANHOPE: You do not need to table anything. You know this. The numbers are there in the context of student numbers, student decline, ageing infrastructure, number of schools. Over the last week I have heard Mr Seselja on the subject acknowledging that in an ever-expanding school system with falling enrolments and increasing costs, a good government—a government with some courage and integrity—will look at it and say, "This is a conversation which we need to have with the community." The government is seeking to have the conversation.

Every time we pursue the issue, the Liberal Party—particularly through Mrs Dunne, as the shadow, shadow minister for education; the shadow of the shadow—simply, cheaply politicises the conversation and the debate. I have to say that it is a problem to have two shadow ministers for education. It is confusing for the community.

MRS BURKE: Mr Speaker, I ask a supplementary question. Chief Minister, as the aggregate cost of these outstanding election promises is some $276 million, what advice did Mr Costello provide to the ACT government about not proceeding with some of these promises?

MR STANHOPE: I think the first thing we have to say in relation to any number conjured up by any member of the opposition is, "Refer to the Liberal Party rule book." If you are going to tell a lie—and Mr Mulcahy, of course, is attuned to the Liberal Party rule book on politics—

Mrs Burke: Just talk about the promises, then.

MR STANHOPE: The first rule, Mrs Burke, is if you are going to use statistics or if you are going to tell a lie, tell a whopper. So there is rule 1, Mrs Burke. You are following on dutifully, of course, from your leader in relation to the utilisation of this particular rule book. Grabbing numbers like $276 million out of the ether falls fairly and squarely within rule 1 of the Liberal Party rule book—if you are going to tell a lie, tell a whopper. Of course, then you go straight to rule 2, Mrs Burke. We see you run straight to rule 2, just like your leader did. Of course, when you are struggling, when you are not up to the job, when you are really in strife or when you have painted yourself into a corner and you feel you have to lie to get out of it, go straight to rule 1.

Mrs Burke: On a point of order, Mr Speaker. Really, it is a matter of relevance under 118 (a). Can the Chief Minister come to the supplementary question, which was: Chief Minister, as the aggregate of these outstanding election promises is $276 million by your figures, what advice did Mr Costello provide to the ACT government about not proceeding with some of these promises? It is simple.

MR SPEAKER: Mrs Burke, to be fair, the Chief Minister was referring to the $276 million.

MR STANHOPE: Mr Speaker, in responding to questions such as that, it needs to be said up front that I have yet to see a single number that a single member of the opposition has ever utilised as representing the truth that I have been prepared to take as the truth. We saw this particularly last week. I would have thought that one week after Mr Smyth's confected $390 million deficit—an absolutely complete fabrication—to have Mrs Burke now stand up and throw around figures like $276 million is, of course, not something that I am going to accept as a given or take at all. So let us just clear that up for a start. I do not accept that number, although that does not mean that it will not, of course, be run vigorously all through the media. In response to the question, I have given this government's position in relation to the promises we have made.

Education—preschools

MR SESELJA: My question is to the Minister for Education and Training. Minister, eight preschools in the ACT do not have the minimum enrolment numbers required to keep operating as full-time preschools. What criteria do you currently use in determining whether a preschool will close, either permanently or temporarily, and are you currently consulting with the community about changing these criteria in coming years?

MR BARR: I thank the member for the question. I do not have that detail in front of me, so I will take the first part of the question on notice. In relation to the second part, yes, the government will be engaging in a consultation process. I have announced that before in this chamber. It will begin post the budget, next month. It will encompass everything from preschools all the way through to secondary colleges in the provision of education across the territory.

As I have said before, I believe that we need to be examining how we provide our educational resources in order to achieve the best possible outcome for students across

the territory. That means, as the Chief Minister alluded, taking some difficult decisions around the continued operation of particular school facilities. I have not shied away from that from the start and have indicated that that would be the approach that the government would need to take. I do welcome those opposite who have come out of the woodwork, so to speak, particularly Mr Pratt all the way back to 2004, who have indicated that this approach is a sensible one in agreeing with the government that this would be a sensible way to proceed.

I have undertaken in this place—and continue to—that we will consult broadly on the future provision of education across the territory. My objective is to see the public education system be as strong as it possibly can be, given the limited resources that are available to any government. We will do the best we possibly can for the parents and for the students and the teachers across the territory in ensuring that public education is as strong as it can possibly be.

MR SESELJA: I have a supplementary question, Mr Speaker. Minister, did Mr Costello make recommendations, in his report, about preschool closures, and did he suggest any preschools for the hit list?

MR BARR: I do believe that previous speakers have answered this question. I will not be revealing anything, prior to the budget, in relation to our program for school renewal. We will be undertaking, as I said, a comprehensive program of renewing school infrastructure across the territory and looking at the provision of the best possible student outcomes in our public education system.

Schools—canteen policy

MS PORTER: Mr Speaker, my question, through you, is to the minister for education. Can the minister please inform the Assembly of the government's canteen policy for schools?

MR BARR: I thank Ms Porter for the question and for her interest in the health and wellbeing of students in the territory. The ACT government has a firm commitment to support the health and wellbeing of all students. Whilst there has been a good deal of media coverage on the importance of good nutrition and concerns about obesity, the ACT has been proactive in this regard for some time. Tackling obesity, poor eating habits and lack of exercise are important issues facing communities across the country.

One of the strategies to support student health is to promote and encourage healthy eating habits in schools. Over recent months, the ACT Department of Education and Training has been working with key organisations and representatives to revise the school canteen policy that assists ACT government schools and their canteen managers. After this extensive consultation, the department released a new policy last week. After final consultation, this policy will be implemented later in the year. The policy will assist ACT schools to take a whole-school approach, where responsibility for encouraging healthy eating habits will rest not just with those that set the menu in the canteen but also with those in the classroom. Contrary to reports in the media, the new policy for government schools does not contain a ban on soft drinks, confectionery and crisps in all government schools from 2009.

Members interjecting—

MR BARR: Rather than a punitive approach, the department's consultation has confirmed the benefits of an educative approach, Mrs Dunne, where staff and students are fully informed of the facts relating to poor diet.

With the new canteen policy, schools will need to gain canteen accreditation by 2009. The accreditation process ensures that school canteens are committed to the principles of promoting healthy choices. Since 2004, the department has been developing the accreditation program in partnership with the National Heart Foundation. The program sets criteria at three levels: bronze, silver and gold. The new canteen policy will expect that all government schools will be accredited at the bronze level. Over time, as school communities seek to aim for a higher award, the program will support them to meet this target.

At the bronze level, the program does not ban all soft drinks and sweets; rather, the bronze level accreditation will ensure that all government school canteens provide a range of health foods and limit the sales of foods high in fat, sugar and salt. This approach is based on nationally recognised Australian guidelines for healthy eating. With all government schools operating at the bronze level by 2009, students will be able to purchase healthy bread, milk, fruit and vegetables from the school canteen each day that it operates. Also, if the school has a vending machine, it is not to contain just soft drinks, chips and confectionery but some more healthy alternatives.

It is only if school communities wish to aim higher and seek silver accreditation that the school canteen is to be free of soft drinks. If a school community wants to gain the top level of gold accreditation, the school canteen, in addition to not selling soft drinks, will not sell high-fat and sweet snack lines. The new policy does not prohibit the sale of food such as chocolates as fundraisers. The policy asks schools to avoid, through fundraising, the promotion of foods that are high in fat, salt and sugar. Schools are provided with alternative ideas for fundraising activities that are consistent with the whole-of-school approach to education.

Another important factor in this accreditation process is that the school curriculum and promoting health foods and food hygiene practices in schools are also covered. This approach is the result of an extensive consultation and joint collaboration with the National Heart Foundation and is being supported by our school communities and their canteen managers.

Ultimately, it needs to be said that schools alone cannot be responsible for ensuring that students maintain healthy lifestyles. Schools have an important role to play in ensuring healthy eating habits, but it is only in partnership with parents that we can succeed. This policy allows parents and schools to make decisions together about how best to tackle these issues.

Budget—functional and strategic review

MR PRATT: My question is to the Chief Minister. Chief Minister, when you announced your proposals to restructure the ACT public service you emphasised the savings that

would accrue to the ACT budget as a result of those changes. I understand that, as a direct result of the proposed restructuring that you announced two weeks ago, additional staff are being sought by the agency that will manage the centralisation of the shared services. Chief Minister, at a time when you are telling ACT public servants that their jobs are not secure, why are you considering employing more people to implement your restructuring proposals? Did the Costello report on the functional and strategic review recommend employing new staff to put these proposals in place?

MR STANHOPE: I thank the member for the question. It does give me an opportunity to correct some of the misunderstanding that I think some members have around what the government's proposal entails. At the outset it needs to be clear, and members need to understand, that the older notion, which is often referred back to, of a centralisation of services should not in any way be compared with a shared services centre. To simply centralise services is not to be confused with the creation of a shared services centre; it is a completely different concept. Centralisation is just bunging everybody else together, allowing a central mode to continue to provide specific or personal services to an organisation outside that central agency, without any attempt or commitment to share in the delivery of services.

A shared services centre is a completely different concept and requires a completely different approach. The significant difference, of course, between the centralisation of services of, say, 15 years vintage and that today is most apparent in the enormous changes in technology that have occurred in the last 15 years. That is at the heart of our capacity to now look seriously at a new method of centralised corporate services service delivery. That is a capacity that has become so much more obvious or available as a result of the enormous changes in technology that have occurred and continue to occur. I need to say that, because much of what I have heard members opposite and others say is really quite seriously wrong-headed. You need to perhaps undertake some analysis of the difference between a simple centralisation of services and the creation of a shared services centre—a completely different concept with a completely different focus and modus operandi. You simply misunderstand; you display your ignorance. In some of the comments you have made, you have displayed a significant level of ignorance.

It is accepted, Mr Pratt—and your question goes to this—that this is an incredibly complex notion. That is why we have allowed seven or eight months of implementation. As I have also indicated, there will be some significant up-front costs in the establishment of a shared services centre—of some millions. I am not quite sure but I think something between $5 million and $7 million is the estimate of the establishment costs for a shared services centre for the ACT of the order of the model that I have outlined.

In answer directly to your question, yes, it was always anticipated that there would be significant issues to be addressed—quite technical and complex issues—in relation to the establishment of a shared services centre, that there would be up-front costs and that a particular or significant level of expertise, which would not necessarily be found within the ACT public service sector, would be required, would be necessary, in order to ensure that we bring this together and that we meet at this time our anticipated start-up date of, I believe, 1 February.

MR PRATT: I have a supplementary question, Mr Speaker. Thanks, Chief Minister. Notwithstanding questions around the concept of centralised services or whether a shared service will be established, specifically how many additional staff—not transferred; additional—will be employed by the ACT government to implement your restructuring proposals?

MR STANHOPE: I do not know whether the question relates just to the decision that I have announced to create a shared services centre. If it does, I do not have an answer to that. I am not sure whether the question relates to other decisions that have yet to be finalised but which will be made. It is not a question at this stage that I can answer. Those—

Mr Smyth: Why not? Surely it's within the estimates.

MR STANHOPE: The budget has not been completed yet.

Mr Smyth: It's about the shared services.

MR STANHOPE: It was not clear what the question was about—whether it related just to the shared service or it related to—

Government members interjecting—

MR STANHOPE: The question was very much around restructuring.

Mr Pratt: General restructuring—the entire box and dice.

MR STANHOPE: Yes, there we go. There is a general disagreement here between the Leader of the Opposition and Mr Pratt on what the question was about. Leader of the Opposition, can I suggest that you listen to your members' questions before you interject in future.

MR SPEAKER: Order! The Leader of the Opposition is not a player here. Mr Pratt has asked a question.

MR STANHOPE: I have concluded the answer, Mr Speaker. But you should listen to your members' questions in future, Mr Smyth.

Budget—functional and strategic review

MRS DUNNE: My question is to the Chief Minister. Some months ago, after Mr Shane Gilbert was appointed as CEO of the Department of Economic Development, he was removed from that position after a falling out with the then minister and former Treasurer, Mr Quinlan. Mr Gilbert was then seconded to work with Mr Costello on the functional and strategic review. Chief Minister, as at 2.17 pm this afternoon, the online ACT government directory listed Mr Gilbert as the chief executive of the functional review of the ACT public sector and services. Now that the report of the functional review has been presented, what is Mr Gilbert doing, where is he located, is he being

effectively employed, and what value is the territory receiving from his quarter of a million dollars salary?

MR STANHOPE: I would need to take that question on notice. I think that the details of the answer go to some matters in relation to Mr Gilbert around which there are some issues of privacy in relation to his personal circumstances. I would need to be briefed on his exact position or status in any event. I will take the question on notice, but most certainly will seek to respond in the next day or so, Mrs Dunne.

MRS DUNNE: Mr Speaker, I have a supplementary question for the Chief Minister. Are you really the Chief Minister and do you exercise any authority at all over the Chief Minister's Department? Has Mr Costello, in his review, suggested reviving the Office of the Special Adviser for Mr Gilbert?

MR STANHOPE: Yes, I continue as Chief Minister.

Mr Smyth: You had to think about that, though.

MR STANHOPE: Yes. I was just trying to think of how much longer I anticipate continuing as Chief Minister. I was just wondering. I had thought that 2012 might see me out but no, 2016. I will be around John Howard's age by then. I must say, as I have said previously, that I do admire the Prime Minister's energy and his capacity. Yes, I continue as Chief Minister and I think that I have probably got another 10 years in me. Crikey, in 10 years I will be younger than the Prime Minister is today; so, 2020, how about that?

Yes, Mrs Dunne, I will continue as Chief Minister, in light of the extent to which the contenders now line up over there. We did hear of the grand tour. It is the message that came back from London that intrigued us: "Bill, I give in. I am never going to get the numbers. I will back you, mate, but, for God's sake, somebody has got to do something." It is interesting that it has now been reduced to that. Mr Mulcahy, with an eye to the main chance, just could not crack the numbers.

I must say that there is a believability about it. I have know Mr Stefaniak since 1970 and I can read his body language like a book. When I put it to Mr Stefaniak that Mr Mulcahy had delivered the numbers, that Mr Mulcahy had fallen on his sword and had decided to put his own ambition on hold but put the interests of the Liberal Party first and felt that the interests of the Liberal Party required that he, Mr Stefaniak, stump up, that he actually stick his head in that scrum for the first time in his life and take on the issue, I could read him. Mrs Dunne is no great shakes at hiding her feeling or thinking on that, either.

I must say, standing on this side and delivering the suggestion that Mr Mulcahy, by carrier pigeon, had sent back the message, "Bill, I have fallen, I concede. It is up to you. The party needs you. The territory needs you," that Bill, with that little blush he gave, gave it away. We were expecting it this week. Bill, you can only stand at the back of the scrum for so long, mate, before you reach a position where you have just got to get over and fit your head in there.

Mrs Dunne: I take a point of order under standing order 118 (a). The Chief Minister is supposed to come to the subject matter, which is whether he has he received advice on reviving the Office of the Special Adviser for Mr Gilbert.

MR STANHOPE: No, Mr Speaker.

Women

MR GENTLEMAN: Mr Speaker, my question is to the Minister for Women. Minister, could you update the Assembly on opportunities for ACT women to empower themselves, and other women, to reach their potential?

MS GALLAGHER: As members will be aware, we are currently in the middle of Fair Trade Fortnight—two weeks devoted to promoting fair trade in Australia and New Zealand—which runs from 29 April to 13 May. On Friday this week I will speak at the "meet the makers" fair trade luncheon, which has the appropriate title, "From the cocoa bean to the chocolate bar—women empowering women." The fair trade fortnight is about publicising the fair trade initiative, which is a trading partnership that aims to promote sustainable development for excluded and disadvantaged producers. It seeks to do this by providing better trading conditions; by awareness; and by campaigning.

Throughout Australia over the last two weeks, Fair Trade Fortnight has been promoted through events including coffee, tea and chocolate tastings; display stalls; discussions; photo exhibitions; conferences and forums. Dr Foskey has already been involved in Fair Trade Fortnight. She hosted a meet the makers coffee tasting last week and has been a champion for the fair trade partnership for some time.

Women in the ACT can make a positive difference to the lives of women in Third World countries by making informed decisions about their purchases, and consider choosing and requesting fair trade products. Our choice of product can make a difference to the lives of women who are living in poverty and marginalised in global trade. Women producers comprise the majority of the work force in international trade, yet they suffer the worst labour conditions, whether in factories or on production farms. Fair trade seeks to empower these women through viable work, rather than simply through charity.

Here in the ACT we have developed the ACT women's plan, to guide policies and programs to empower women, and we have the women's grants program. I have announced 20 projects that will share $100,000 in funding to improve the status of women in the ACT. Projects to receive funding included a major research initiative, which will receive $14,000 to examine how victims of family and sexual violence experience fairness within the criminal justice system; a program to support isolated Muslim women to gain an ACT driver's licence, enabling them to transport their families and other community members to essential services; and a series of workshops for young women to improve their general health and wellbeing and enhance their understanding of the causes and effects of domestic violence.

Further, last week I called for applications for the ACT women's director scholarships program. This program is part of the ACT government's commitment to achieving a culture of equal representation of women in senior decision-making roles. As Minister

for Women, I am proud to be involved in all these events and initiatives. I encourage all members of the Assembly to get involved in empowering women through the fair trade fortnight.

MR GENTLEMAN: Mr Speaker, I have a supplementary question. Thank you, minister. Could you provide the Assembly with further details of the ACT government's support for women in the ACT?

MS GALLAGHER: I thank Mr Gentleman for his supplementary question. Perhaps I can talk a bit more about the women's director scholarships. Four scholarships will be available under the 2005-06 program. Successful applicants can choose to undertake one of the two directorship courses—"company directors" or "directors' essentials"—which are conducted in an arrangement with the Australian Institute of Company Directors. Application packages can be obtained from the community affairs group located within the Chief Minister's Department. Applications close on Friday, 2 June and I look forward to announcing the successful applicants in early July 2006.

It is unfortunate that not all in this place are supportive of the Stanhope government's strong commitment to women. We have the opposition spokesperson on men's issues, Mr Seselja, who recently finished third in the Women's Electoral Lobby's Greg awards—awards that recognise the most misogynist quotes made during the year. I think it has been some time since we have had a winner in the Greg awards, but Mr Seselja took out the bronze. He won the award by calling loudly for an ACT minister for men.

I think we had hoped that, by winning this award, Mr Seselja might wake up to the politics behind calling for an ACT minister for men. However, he repeated the claims in yesterday's *Canberra Times*. I want to say I am not here to denigrate the issues raised by Mr Seselja in that article—high suicide rates amongst young males, the safety of young male drivers and the number of men in prison are all serious issues. However, they are issues for the community as a whole and are being tackled in that context. Mr Seselja does not help his cause by using dodgy statistics. While it is true that more men commit suicide, as Mr Seselja suggests, the sad reality is that more women attempt it. According to the national suicide prevention website, in 2001-02, females accounted for 60 per cent of the self-harm cases nationally.

Mr Seselja also suggests in his article that statistics show that men from disaffected or lower-educated backgrounds are the perpetrators of domestic violence. It is rather disappointing that Mr Seselja denigrates these issues by relying on urban myth, because we know that domestic violence is not an issue of the working class; it occurs far too widely across all economic backgrounds. That is the point here. Whether more women attempt suicide than men is academic to Mr Seselja's argument. These are not issues tackled by the Minister for Women but rather by the community as a whole and the particular ministers responsible for health, mental health, justice, et cetera. It is unrealistic to believe that a minister for men would be able to solve these issues; and it is politicking in the extreme to suggest that the ACT government is not considering these issues in the context of the portfolios in which they fall.

Mr Seselja has been overseas recently too—to South Korea, I think—as a guest of the Moonies and the Universal Peace Federation. He has done a bit of travelling, like Mr Mulcahy, although not quite as extensive as Mr Mulcahy—not five weeks in

paradise; just a couple of weeks in South Korea. I was interested to see whether some of the information Mr Seselja is using in his writings on men and the issues facing men may have been informed by the Moonies, but we will not get the details of how his trip over there has benefited him in his performance as a parliamentarian because it was a junket that was being paid for, not—

Mr Mulcahy: Mr Speaker, I wish to raise a point of order. As fascinating as this dissertation is, what Mr Seselja may have done has absolutely no relevance to the supplementary question. So I think the minister ought to be asked to return to the subject.

MS GALLAGHER: Mr Speaker, it does have relevance to the question. I am merely raising a question about a trip overseas funded by the Moonies that could have assisted Mr Seselja in some of his thinking around his policies for men and how they relate to women. Unfortunately, we will not be able to receive that information; there will not be a study report about this trip, as the junket was paid for by the Moonies.

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

Paper

Mr Corbell presented the following paper:

> Legal Profession Bill 2006—Revised printed Bill.

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

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning): For the information of members, I present the following paper:

> Land (Planning and Environment) Act, pursuant to subsection 229B (7)—Statement regarding exercise of call-in powers—Development application No. 200503431—Blocks 13, 24 and 25 (part) Section 46 and Block 25 (part) Section 47 Mawson, dated 2 May 2006.

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

Leave granted.

MR CORBELL: On 7 March this year I directed, under section 229A of the land act, the ACT Planning and Land Authority to refer to me development application No 200503431. On 6 April this year I advised the authority that I had decided to determine this application. This advice was notified on the ACT legislation register. On 2 May this year I approved the application using my powers under the act.

The application allows for the expansion of the Woolworths supermarket at Southlands, Mawson, and an associated lease variation to permit the development. The proposal will allow an extension of 2,070 square metres to the existing Woolworths supermarket, including off-site engineering works, new and relocated services and a new public car

park south of the existing car park, and a lease variation to consolidate two blocks and use the land for supermarket, shop and/or community use, with a combined gross floor area of all buildings of a minimum of 3,500 square metres and a maximum of 4,040 square metres.

In determining the application, I have considered my particular responsibilities under the act, which provide that the minister may consider an application if the application raises a major policy issue, the application seeks approval for a development that may have a substantial effect on the achievement or development of objectives of the territory plan, or the approval or refusal of the application would provide a substantial public benefit.

I have approved the application because this development will have a substantial effect on the achievement of objectives of the territory plan by ensuring that the group centre at Mawson remains viable and well used by the community. Group centres play an important role in Canberra's retail and commercial hierarchy and are a key planning policy. Through their contribution to economic vitality, community wellbeing and environmental quality, they have a substantial impact on being able to achieve the objectives of the territory plan.

The significant public benefits that can be achieved as a result of the expansion of this supermarket include being able to continue to provide an essential service to the local community and the surrounding areas, and to assist in maintaining the viability of the Mawson shopping centre. Members of the Assembly will be aware that many of our local shops have been declining, which prompted the previous government to introduce a change-of-use charge remission to encourage revitalisation.

This government no longer sees that such a financial incentive is warranted and recently removed it; but, as I said when I announced that change the other day, the government wants to retain local shopping centres wherever possible. The expansion of Woolworths will play a key role in maintaining and enhancing the shopping space at Mawson for the local community, particularly as this area of Woden has seen an underprovision of retail supermarket services to date.

I have set conditions in the approval that will improve the pedestrian network, traffic circulation and car park layout from what was originally planned. The conditions will also help to ensure that, while Woolworths is an anchor for the Mawson group centre, the many other small businesses that are part of that shopping centre for local residents will be better integrated within the expansion than the original application proposed.

Twenty-nine submissions were received during the public notification of this proposal earlier this year and it is clear that people and businesses at Mawson value their local shops. The community had the opportunity to comment on the proposal through the statutory public notification period for the development application earlier this year. The major concerns raised in the submissions—about car parking, traffic circulation and interface with existing buildings—have been addressed through amendments made to the application and conditions I have attached to the approval. With the expansion will come an additional 131 parking spaces, which, in addition to the available vacant car spaces, more than satisfies the parking requirement for the development.

I have made the decision to approve the application to ensure that development can proceed without further delay. In particular, objections raised by competitors I have not considered to be valid as grounds for appeal. I do not consider that rivals to proponents making development applications should use the planning process to delay or stymie such applications.

The extension will be subject to a deed of agreement between the lessee and the territory to ensure that development occurs as required. The enhancement of the north-south pedestrian spine and additional signage consistent with the existing centre signage will considerably help to market the variety of businesses at the centre and direct shoppers to those businesses.

Mr Speaker, the land act specifies that if I decide an application I must table a statement in the Assembly within three sitting days of the decision.

Papers

Mr Barr presented the following paper:

> Occupational Health and Safety Act, pursuant to section 228—Operation of the Occupational Health and Safety Act 1989 and its associated law—Third quarterly report for the period 1 January to 31 March 2006.

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. 6)—Disallowable Instrument DI2006-72 (LR, 24 April 2006).
> >
> > Education Act—Education (Non-government Schools Education Council) Appointment 2006 (No. 1)—Disallowable Instrument DI2006-71 (LR, 4 May 2006).
> >
> > Housing Assistance Act—Housing Assistance Redundant Programs Revocation 2006 (No. 1)—Disallowable Instrument DI2006-68 (LR, 24 April 2006).
> >
> > Public Places Names Act—Public Place Names (City) Determination 2006 (No. 1)—Disallowable Instrument DI2006-73 (LR, 2 May 2006).

Justice and corrective services
Discussion of matter of public importance

MR SPEAKER: I have received letters from Mrs Burke, Dr Foskey, Mr Mulcahy, Mr Pratt, Mr Seselja, Mr Smyth and Mr Stefaniak proposing that matters of public importance be submitted to the Assembly. In accordance with standing order 79, I have

determined that the matter proposed by Mr Stefaniak be submitted to the Assembly, namely:

> The state of justice and corrective services in the ACT.

MR STEFANIAK (Ginninderra) (3.51): Mr Speaker, in addressing this most important subject, I will be addressing mainly some of the problems and issues in relation to finances as the government puts to bed its very difficult budget, a difficulty brought about by its own incompetence in booming good times, as the Chief Minister tells us we have. I too delight in seeing six or seven cranes in Civic. That reminds me a bit of scenes in Victoria under the Kennett government. Despite that, surprisingly, as we have seen, the ACT is on an economic slide, due to the mismanagement and, dare I say, economic illiteracy of the Stanhope government. Even the great GST and stamp duty bonanzas seem to have disappeared into a great sinkhole of spurious grand visions, such as the arboretum and, dare I say it, a prison project which, whilst I am very supportive of it, I wonder whether we need at this time, due to the government's economic mismanagement.

We are now on track for an estimated operating loss of $390 million. There is very little left in the kitty, by the government's own figures, very little left in our unencumbered cash reserves. Even our credit rating is on amber alert. We see the results of mismanagement everywhere in the reduction of services. As with everything else, justice and corrective services have been affected and are suffering.

In the public accounts committee inquiry earlier this year into an Auditor-General's report on courts, the ACT Bar Association lodged a submission which stated that the DPP appears to be significantly underresourced. The barristers called on the ACT to implement a South Australian model whereby the courts would have an independent administrative body with its own budget. The association submitted that the adequacy of funding for the territory's legal aid office also was not addressed in the Auditor-General's report, which found Canberra's courts to be amongst the slowest and most expensive to run in the country.

Just on that, as some members might know, not all that long ago I visited the Magistrates Court and the Supreme Court. Whilst the Supreme Court seems to be operating fairly well, there are some significant problems in the Magistrates Court, including low staff morale, the fact that the court has to get permission from central office even to take on board an ASO4 officer and the fact that for the last couple of years it actually had its budget cut by about $1 million.

There are problems concerning corrections officers. They are no longer in court, and delays are being experienced as a result. Previously, when reports were due from corrections officers, they were able to give them verbally. That often means further adjournment of cases. So there are some significant problems there in relation to that court.

I was pleased to see that steps were being taken, as best they could, by the magistrates themselves and by the practitioners, including the legal aid people and the DPP, to streamline and improve the efficiency of how the lists run. Indeed, steps will be taken to have common rules between the Supreme Court and the Magistrates Court. Those are all

very good, efficient things being done by the profession itself, with no thanks to the government.

Last month we learned from the Director of Public Prosecutions, Richard Refshauge SC, that a lack of resources is hurting his office's ability to perform its functions. He wanted some more prosecutors. It is an office that has been underresourced. During recent hearings of my committee into annual reports he indicated that having about three extra prosecutors would be very much appreciated and were needed. He told the public accounts committee inquiry into the audit report that his officers' ability to deliver the services the community expected was being affected adversely. He told the committee that the most pressing issue relating to resources was staff numbers, closely followed by their level of experience and quality, and that a third issue was the need to outsource work. He stated:

> We can service all the courts, but not necessarily with the degree of preparation that is necessary, because preparation is the elastic part of the process.

The director described what happened as a result of a lack of financial resources in the courts by stating:

> … what happens sometimes is that cases fall into traps in the courts which we would like to think we should have been able to avoid, and so the prosecution does not succeed because we have not necessarily been as prepared as we would like to have been.

He also said that the police force was "perhaps less experienced" than it used to be. I will briefly touch on that, although no doubt Mr Pratt will have more to say on it. Yet the ACT government spent close on $1 million, $953,000, on external counsel, the third highest in Australia. On a per capita basis, it was in fact the highest. New South Wales spent only $414,000. The Northern Territory spent $53,000 and Tasmania did not spend a cent.

Julian Burnside QC received $250,000 for his role in the appeal against the coroner's inquest. The unprecedented step taken by the Stanhope government of appealing against its own coroner has cost the community dearly, having financial implications running into millions of dollars. David Buchanan SC, well known indeed to Mr Stanhope and me as a colleague from university, received $178,000 for appearing in the Eastman case. So there has been a lot of use of external counsel there.

As to the police, we have heard regularly from my colleague Mr Pratt and from the AFP that their numbers are well below the national standard. Commissioner Keelty has even indicated that we need at least another 100 of them. How is that going to be funded? Is that going to happen? We do have lots of old-timers in the police force who are retiring, people around 55 years of age. They have a huge amount of experience. The younger ones simply do not have the same expertise and, because of demands and lack of resources, it is harder and harder for them to do their job of effectively protecting our community, despite the magnificent job they do. The lack of resourcing there and the continual refusal of this government to adequately support that section of the justice area are telling and, indeed, are appalling, given the magnificent job that they do under such trying circumstances.

What is the vision of the government in relation to the justice area? It seems to be hell-bent on going ahead with the jail. You might find that a little bit strange for a left-wing, ideologically blinkered government, but it intends to go ahead with its jail. The other area, of course, is its obsession with human rights, which we heard about in an earlier debate today. I will come to that as well. Those are areas where I think some improvements and savings can be made.

As to the jail, I am very supportive of a jail and probably have been one of the main supporters of it since the start of this Assembly, for two reasons. One is that there are probably far too many people wandering the streets of Canberra who in any other state or territory would be in jail. Sometimes the courts even say that they would send them to jail except that they have no control over the system and what happens to them when they go interstate. Secondly, if we did run our own prison, we would be able, one would hope, to do a much better job than other prisons. I have no problems with that but the fact is that, because of the economic muddle into which this government has got itself, it is really going to have great trouble funding this prison.

The prison itself has been described by some as a Hilton hotel for prisoners and is not going to look like a prison. Be that as it may, it will be a very expensive prison. On present figures, which are quite old now and need to be updated by the minister, it will cost $128.7 million for a complex at Hume within cooee of the lucky residents of Jerrabomberra! There are still issues as to whether it is in the right place. The preferred place would be Majura, but the government seems to be hell-bent on going ahead with it at Hume.

The running costs have been conservatively estimated at $19.63 million per year. I think that these figures are a bit outdated, too. There will be, as we know, cells for 374 full-time prisoners. On current figures, which again I think are outdated, it is anticipated that $914 million will spent over 40 ears at a cost of $61,000 per prisoner per year. In reality, with the way expenditure increases with inflation, those figures are conservative and it will cost a lot more.

The committee I chair has also been told by the corrections people that there are about 200 corrections staff at present in the ACT and the number will rise to over 300 once the prison is up and running. That will probably means that the recurrent costs will be greater indeed than they are at present in terms of the 200 corrections officers plus the cost of sending prisoners to New South Wales. Of course, the complex is not going to be called a prison; it is going to be called the Alexander Maconochie Centre. We all know that Scottish prison reformer Maconochie was indeed a pioneer in his time, but I wonder why the government cannot simply call it a prison. Even Maconochie stated that offenders are sent to prison as punishment, not for punishment, but he did not shy away from calling the place a prison.

There are some issues around that. Is that the best way in these difficult economic times of spending money? I do not think that it is. I say with some sadness that, because of the muddle into which this government has got itself, it needs to defer that project and it needs to spend that $130 million on other more telling and more needy pieces of government infrastructure and expenditure. For example, one of the promises that the government has committed to is modernising the Calvary intensive care unit, at

$5.3 million. One of the other priorities is the Gungahlin to city busway, which is several years overdue and which involved the commitment of $10 million to capital works projects in, I think, the next year. There are a number of other proposals on capital expenditure that it could go towards.

Even if you used some of that money, indeed all of that money, for recurrent purposes, you would certainly be able to have the extra 100 police for quite a few years before you would have to dip further into the public purse for that recurrent expenditure and you would certainly have very little problem in terms of providing the three extra prosecutors. I commend those ideas to the government. You would certainly be able to do things such as bring back some of the ovals to help combat child obesity. You would certainly be able to fulfil your promise, if you intend to do so, in relation to a dragway. You could do certain things in relation to urban infrastructure improvements. The look of the city is indeed of real concern for lots of citizens. That could well be a capital expenditure that is much more necessary now than funding for a prison.

Mr Corbell: We still have to pay for a new remand centre.

MR STEFANIAK: I hear what Mr Corbell says about the remand centre. All right, it might not be ideal, Mr Corbell, but you have got yourself into a real muddle there. We have managed. We have sent prisoners to New South Wales. I do not think that that is an ideal situation and I, for one, would like to see people who should be in jail actually in jail. As much as I would have liked to have seen a prison built yesterday, I think that the project is one which, because of the muddle you have got yourself into through your own economic mismanagement and incompetence, sadly you could put on hold and spend the money better.

I turn now to one other area where it would be quite easy to save money. I have mentioned in this place on a number of occasions that in the current budget year, 2005-06, the part of the JACS budget for human rights and ancillary officers went from $5 million a year to $7 million a year or thereabouts. There are a number of additional positions, new commissioners, new public service positions. This is particularly relevant when the Chief Minister seems surprised that somehow under his administration an extra 2,000 public servants seem to have magically gone onto the books and appeared over the years without any ministers really being terribly aware of that, which I do find surprising.

I am sure that you can quite easily rattle off where you probably need an extra 500 or so, perhaps for the teaching initiatives which we started with primary school teachers, for example. Sadly, you have done very little in relation to the police. There are more childcare workers, sure. You could probably easily account for about 500 public servants. Where did the other 1,500 come from? One area where I have yet to see anything done for the benefit of ordinary, law-abiding Canberra citizens is the human rights area under the Human Rights Act. We have a burgeoning bureaucracy.

I have heard from talking to public servants that even in areas where you would think that there would be virtually no relevance in terms of human rights, that it is a mere formality that they have to be consulted and a process gone through, delays are being experienced with things as basic as changes to legislation in areas where you would not

expect human rights to be particularly relevant whatsoever. An additional layer of bureaucracy is something we are seeing there.

Has that benefited anyone at all? Has that act benefited anyone at all? I have given instances on a number of occasions of several people, ordinary citizens, trying to access that act and utilise it because they thought their rights were affected being told basically that they could not be helped. What evidence do we have so far as to who has benefited from that act? It seems that a few people seeking bail may well have benefited, probably not all that many but some there. We are now dealing with a bill which will see would-be terrorists benefit from the act, but not law-abiding, ordinary Canberra citizens.

That is proving to be a very expensive and totally unnecessary extravagance of this government. I would suggest that if you want to save some money you could do so by scrapping the Human Rights Act and the human rights bureaucracy that goes with it, with a consequent saving of time for all the other areas of government and probably an improvement in real human rights that ordinary Canberra citizens can access. The act is a particular hobbyhorse of the Chief Minister and probably some of the more ideologically driven members of his government which does nothing for the ACT. Those are just a few comments from me on the state of justice and corrections in the ACT.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.06): I welcome the opportunity to discuss this matter of public importance this afternoon and I will address a range of issues across the justice and community safety portfolio. Let me start with policing, as it is a topical issue in the ACT at the moment.

Over recent weeks, we have heard arguments put forward for increasing policing resources to the extent that the number of police per 100,000 people in the population should match the national average. We have also heard arguments that the ACT should test who can "bloody well provide" policing services to the ACT, a quote attributed to Mr Pratt in the *Sunday Times* last weekend. I note the very speedy negative response of the New South Wales minister, indicating, "Thank you, but not interested." In all of this, I think it would be fair to ask: do these arguments reflect a change in direction from that espoused by the previous Liberal government?

If we are being asked seriously to adopt the national average number of police per 100,000 of the population as the only measuring stick for ACT policing matters, then there is something seriously wrong with the way in which we shape public policy and apportion resources. The Productivity Commission published its latest figures in January of this year and they indicated that the national average was 289 police staff per 100,000 of the population.

The ACT is not the only state or territory to be below that national average. For example, if Victoria were to apply the national average as its measuring stick, it would be 1,343 officers short, using the same methodology. Conversely, the Northern Territory, which is above the national average, would have to lose 762 of its 1,340 officers. That only highlights that other states and territories do not use the national average as the only measuring stick by which to calculate their policing needs, and neither should the ACT.

Having said that, it is common knowledge that this government and ACT Policing have conducted an in-depth study of the policing needs of the territory and that that study has helped inform negotiations around a revised policing arrangement and annual agreement and has helped inform negotiations around police resources and how to use existing resources. As I have previously indicated, it is the government's intention to make the finding of that study public, but only once negotiations have been finalised.

Let me turn now to the courts. The ACT law courts and tribunals are performing well in a number of areas, as measured by the Australian Bureau of Statistic in the report on government statistics collections. In 2004-05 the ACT Supreme Court recorded the best national performance on backlog indicators for criminal cases. The ACT's number of judicial officers per capita was well below the national average. The ACT is the only jurisdiction to achieve positive clearance rates for both the Supreme Court and the Magistrates Court. The Magistrates Court achieved the best clearance rate for criminal, civil and all cases in the nation.

There are, nevertheless, a number of areas within the operations of the courts and tribunals which the government has identified as requiring further attention. The efficient operation of registry services is currently being addressed through implementation of the recommendations of a recent review of operations. Work is also proceeding on addressing a broad range of issues identified in the Auditor-General's report on court administration, such as the effective listing of matters to minimise court delay and reduction of the budget overspend.

Related to courts in terms of the administration of justice is sentencing. Last year, the government introduced and had passed new legislation, including the Crimes (Sentencing) Act and the Crimes (Sentence Administration) Act. These are the result of the most substantial review and rewrite of sentencing laws in the history of the territory; in fact, since 1909. The sentencing acts will commence in 24 days, on 2 June. That indicates a commitment by the government to law reform and the modernisation of these key pieces of legislation around the operation of our courts.

The sentencing acts will improve the effectiveness of sentences and remove the anomalies in current legislation. The sentencing acts replace a patchwork of 12 different laws that have developed in a piecemeal manner with a coherent sentencing regime. The commencement date is 2 June. The new laws build upon traditional sentencing principles while also enabling modern techniques for protecting the community, rehabilitation and managing offending behaviour.

The courts and ACT Corrective Services will have a greater ability to tailor sentences to the offender. The government's new laws focus on the main goal of reducing crime and, in particular, reducing repeat offences. One of the key strategies introduced by the government is the concept of combination sentences. Old restrictions on combining penalties for individual convictions have been removed through the new acts. Courts will be able to customise the sentence to the offence, the offender and the circumstances of the offence.

The aim of combination sentences is to improve the prevention, management and rehabilitation of offending behaviour. Courts will have the flexibility of imposing any

number of orders as part of a whole sentence. For example, a court may impose a sentence combining full-time imprisonment with a period of periodic detention, followed by a good behaviour order with a community service condition. This approach maximises the prospect of rehabilitation while retaining necessary supervision of an offender.

The government regards imprisonment as an important sentencing option. However, there is no point in having such an onerous penalty if it is not used to maximise rehabilitation. That brings me to the issue of the new ACT prison. The government's commitment to an ACT prison, as I will speak to further, is also part of maximising rehabilitation.

Another method of making the most of imprisonment is periodic detention. Periodic detention allows for both the imposition of a custodial sentence and the maintenance of an offender's positive contribution to the community, such as family life, work or study. The new acts link periodic detention to a sentence of imprisonment. A court may allow an offender to serve a full-time sentence of imprisonment by way of periodic detention.

If an offender breaches periodic detention obligations, the government's new laws enable the Sentence Administration Board to order that the person experience full-time detention for a couple of weeks. If you do not show up for periodic detention, you will get some full-time detention to see how you like the feel of it. Hopefully, that would encourage you to go back onto periodic detention. That way, the offender sees the difference and it creates a distinct incentive for offenders to engage in rehabilitation and positive behaviour.

The current sentencing laws enable a range of non-custodial orders to be imposed by a court. Although these dispositions are an important part of effective sentencing, the supervision of these orders does not use a consistent method. The new acts solve that problem by enabling good behaviour orders to be the vehicle for a range of conditions that can be set by the court; for example, a condition that the offender engage in community service work or participate in a rehabilitation program. The court will have the discretion to impose any particular conditions it wishes in a good behaviour order.

Using one type of order as a vehicle for a spectrum of conditions will simplify the procedure for making orders, varying orders and fixing breaches. The obligations upon the offender are common to all of the conditions, and this helps the courts, prosecutors, defence lawyers, offenders, corrections staff and the public to know exactly what is expected, irrespective of the substance of the order.

The government has also enacted non-association orders and place restriction orders to improve the safety of victims, particularly victims of domestic violence and personal violence. A non-association order is an order prohibiting an offender from associating with a specified person for a specified time. A place restriction order is an order prohibiting an offender from frequenting or visiting a specified place or district for a specified time. These orders can be made if a court is dealing with an offence that involves harm against a person and the court believes that an order will prevent further offences or harassment. These orders will be available to the court if the offender is subject to periodic detention or a good behaviour order.

Victims of crime need to be recognised and heard in our criminal justice system. To raise the status of victims, the government has expanded the availability of victim impact statements for sentences. Currently, victim impact statements can be tendered only if the offence in question holds a penalty of at least five years jail. We have lowered the threshold to enable victim impact statements to be tendered for any offence punishable by imprisonment for longer than one year and for the summary offence of common assault.

The government has also broadened the class of people who can tender a statement. Victims, parents, close family members of victims, people who are carers of victims, and people who are in an intimate relationship with a victim, such as a life partner, boyfriend or girlfriend, will all be entitled to make a victim impact statement. The government is conscious that victims often need to be encouraged to think about making a victim impact statement. Making a victim impact statement easier to make and available for a greater range of offences sends the message that the government wishes more victims to express their experience to the courts.

I turn now to the issue of corrective services. In the ACT today, our remandees are being held in substandard conditions in the Belconnen Remand Centre and the Symonston temporary remand centre. I invite any member who has not seen the remand centres to go and have a look, and I would be happy to arrange such a visit. These remand centres are completely unacceptable; there is no other way to put it. Our sentenced prisoners, in addition, are housed in a number of different facilities in New South Wales distant from their families, friends and other support central to their rehabilitation. These are the two reasons that we need to address this issue through the opening of the Alexander Maconochie Centre, the AMC, at the end of 2007.

The government is firmly committed to ensuring that the capital costs, one-off set-up costs or ongoing operating costs will not exceed the approved budget allocation. The capital funding for the construction of the project is $128.7 million. In the event that the tenders received exceed the approved budget for the main construction works, a range of measures will be implemented to ensure that the budget is not exceeded. That will potentially include adjustments to the project brief. If necessary, every endeavour will be made to maintain the level of amenity required to ensure that the AMC operating philosophy is not undermined. The one-off set-up costs for the AMC were approved by the government in 2003. An indexation was applied by Treasury to escalate these estimates into the outyears.

The key issue here, of course, is the quality of the rehabilitation and the quality of the detention environment. There is no way that we can say that the detention of remandees and others in the remand centres is acceptable. Go and have a look at those cells, go and have a look at those cellblocks, go and have a look at the environment that remandees and others have in that environment and you will weep. It is simply not acceptable.

That is the challenge that every other government in this place has welshed on, including the previous Liberal government. They at last decided that they needed to build a new prison to address the remand centre issues, and now the Liberal Party is walking away from that commitment, walking away from its obligation to provide safe and reasonable levels of accommodation for people who are detained against their will. That is a

fundamental obligation of government and it is something that is being failed by the Liberal Party. You cannot walk away from that obligation.

One of the major challenges that the ACT is faced with in preparing for the commissioning of the AMC is the recruitment of new staff. It is estimated that corrective services will need to recruit, in addition to current staff levels, approximately 68 custodial and 12 community corrections staff next year. Based on current figures, we expect that the AMC will have an initial prisoner population of approximately 220, with 130 sentenced prisoners and 90 remandees.

The government has a comprehensive program when it comes to corrections, policing, and sentencing and administration of the courts. We have shown our commitment when it has come to law reform. We have shown our commitment in increasing the number of police, with funding already for 45 additional police built into the budget. We have shown our commitment to improving rehabilitation prospects through new sentencing options. We have shown our commitment to improving rehabilitation prospects through better remand and prison facilities that actually help prevent repeat offences, which is what any community should be interested in. That is the record of the government. It is a proud record, one we will continue to work on and one that we will focus on particularly as we head into the coming budget.

MR PRATT (Brindabella) (4.21): I stand here today to support Mr Stefaniak's MPI calling on the government to put the brakes on the longstanding—I stress "longstanding"—erosion of the justice system in the ACT, which of course mirrors that erosion that we see nationally; it is not just an ACT problem.

For my part, I intend to focus on the aspects of our justice system that I believe are not only impacting on our community but also adversely affecting our police service. Firstly, for the record, I will state that I do not propose tendering police services out to states as preferable to an AFP-provided service, the status quo, which I stated to the *Canberra Times* as being the most desirable, pragmatic and realistic, given a host of factors, including AFP experience and budgetary realities. The tendering issue was a minor comment in a far-reaching interview, 90 per cent of which was not recorded by the *Canberra Times* and I am taking that issue up with the *Canberra Times*. The priority in that interview was that we demand a continuation of the status quo but with a much stronger police agreement in place to deliver a better, more responsive service to the ACT.

Getting back to the central issue, Canberra is one of the safest communities in Australia; the opposition have never disputed that. However, like everywhere else in Australia, community standards in terms of crime and antisocial behaviour are declining here as well. Crime statistics are always mixed. Thankfully, statistics relevant to some serious criminal activities are improving. ACT police have had some excellent successes in a number of serious crime areas, particularly through targeted police operations.

However, judging from the community feedback on what we might best call the lower-level crime/antisocial behaviour bracket, things have not much improved at all. While stats across the board show improvements in some activities over three years, when you compare these with five, 10 and 20 years ago measured against population

levels, the figures are alarming, although no more alarming than for the rest of the country measured over the same time periods.

The fact is that, as justice has become administered in a more increasingly liberal way in the last few decades, generally standards of criminality and social behaviour have deteriorated. You do not need statistics to tell you that. Aggressive, sometimes drug-induced, armed hold-ups with serious injuries and even death are, pro rata, a much more accepted feature on the ACT landscape than they were, say, 15 years ago. Drug-induced psychosis and consequential violent crime features, pro rata, much more strongly on the Canberran landscape than it perhaps did 10 and certainly 15 years ago. That is certainly the assessment of older, experienced policemen.

This general deterioration is often put down to changing social standards, systems, attitudes and opportunities. Yet I would say that, while we have become more sophisticated over 30 years as a society—for example, I think we would all agree, thank God, that general domestic violence related injustice and discrimination has changed for the better—conversely, it appears that the incidence of very violent and murderous behaviour has clearly increased.

In my view, the justice system, while making excellent inroads in areas of traditional social injustice and helping to liberate many in society, has forgotten to keep up with the extreme elements of society who behave even more extremely than was the case two or more decades ago. I put it to you that parallelling this slide in justice standards, which has allowed the growth of more extreme—or at least intense—behaviour, we have seen the slide in police power.

As I said, it is all very nice to develop a more libertarian society where we can reduce some of the constraints on society, and to think that, as a much more sophisticated society, everybody is becoming more reasonable, everybody is becoming more educated and everybody is becoming fairer and more understanding of his or her fellow man and woman. But the sad reality is that this is bunkum.

Our police forces—indeed, those across the new, sophisticated Western world—have for the most part lost the power and the respect they once held. The judicial systems across our societies have really taken away the power and the respect, and the ability to respond quickly in support of the broader community, that that our police services once had. As a consequence, the police have become the punching bags of judicial systems around the world. Canberra is not isolated in that respect; I am not singling out Canberra as being criminal.

On a more local level, it has been publicised recently that police in the ACT do not have sufficient resources to arrest people and bring them before the courts in a timely fashion. This issue was raised again following a court case where Chief Justice Terence Higgins said he had been told that police do not have sufficient resources to arrest people and how it was strange that a burglary offender from 1999 had only now been brought before the courts, seven years later. I quote from the *Canberra Times* on that particular incident.

A large part of the reason cases like this one were delayed was a lack of manpower to complete paperwork and make arrests. The ACT community and the judicial system clearly cannot wait years for a relatively simple case to finally be brought to court. It is

an unreasonable amount of time. These current shortcomings, which exist both in front-line policing operations and in crime-processing duties—the important initial steps that lead into bringing offenders before the courts—are inefficient and fail to serve the community effectively.

Let us turn to recidivism. The failure of the Stanhope government to properly support police and judicial systems to stem recidivist offenders is reflected in the ACT's clearance rates for crime. The shortfall in police resources in the ACT is blatantly obvious in the slow follow-through of criminal investigations. That is why we have a dismal clearance rate for crime in the ACT, and this strongly contributes to weaknesses in the judicial system. One has to question how many cases could have been finalised, and in a more timely fashion, if resourcing had been addressed much sooner by this government.

Turning to police numbers, the issue that Mr Corbell raised in his speech, let me just remind him that the Productivity Commission report 2005 shows that the ACT is well below the national average for police, sworn and unsworn. The Productivity Commission estimates put the ACT at around 130 sworn police officers below the national average. That is to say we need to have an increase of over 20 per cent in the sworn police strength of our ACT police force, just to achieve the national benchmark for sworn police officers. The AFPA strongly agrees with this position. It has been calling on the government for a long time to increase police numbers in the ACT. Previously, in opposition, this minister's colleagues called for a rise in police strengths up to the national average. Something has changed.

With a poorly resourced police force, how can the community expect to be sufficiently protected? The police are responsible for upholding the law and for helping to ensure that justice can be served in our community. The police also need to have the confidence and the backing of the judicial system. When a government that fails to adequately resource police places police under unnecessary pressures, as we now have with our judicial system, things do not progress through the justice system as they should and the community suffers as a result. I reject Mr Corbell's rubbery-figures approach to determine what is an adequate police strength for our environment.

It is very clear that there is a lack of police presence in our community anyway. This is the constant feedback. We know that there is a lack of proactive police patrols. We know that Richardson shopkeepers, for example, state that they have not seen for years a proactive police patrol to ask: "How are things going, fellas? What is the local intelligence? What is going on here?" We get the same sort of response from Erindale shopkeepers and Red Hill shopkeepers, and I refer to feedback and information that we have collected in the last couple of months. It is this lack of a proactive police patrolling presence that people are concerned about, particularly in shopping centres, some of which are hard hit by what I call this low-level crime and vandalism.

The frustration of Canberrans in having a home burglary or a car theft adequately dealt with is highlighted in the 2004-05 ACT police annual report. Let us have a look at the clearance rate: only 35 per cent of the almost 40,000 of these sorts of offences were cleared. With burglary, it was 6.1 per cent; total burglary of dwellings, shops and others was seven per cent; vehicle and vessel theft was 9.6 per cent; total theft or illegal use of a vehicle was 7.8 per cent; and total property damage was 9.8 per cent. These are the sorts

of crimes that really get on the goats of Canberrans. It is with this lower-level crime—burglary, invasion, vandalism—that our judicial system is letting our police down.

DR FOSKEY (Molonglo) (4.31): The negativity of the opposition on these issues is so predictable that one wonders why we continue to engage in debate in the way we do. I think we need a much more constructive approach to these issues. It does sound as though we are all concerned about the same issues, but our solutions are quite different.

Mr Pratt interjecting—

DR FOSKEY: Some people are not very good about listening either.

I think there is potential for a tripartisan approach and I want to attempt to discuss that here. But I want to be very careful to avoid matters that are currently before the public accounts committee. What we heard from Mr Stefaniak is that the Liberals are not keen on us building a prison, but on the other hand they want tougher sentences. If my arithmetical skills are right, that means more prisoners. So far, we do not have the death penalty in Australia—and, hopefully, we never will—so prison is the toughest sentence that we can offer people.

What does that mean? That means that we just send them away—out of sight, out of mind. It does seem to me, from what I have heard today—there may be different, more nuanced opinions amongst individual members, but we do not get to hear them here—that prison is a black box to the Liberals; it is a place where you send people and they disappear for a while; the longer, the better. But what happens when they come back—because they do come back, because they live here? That is where it started and, if we do not have any control over the kinds of conditions that people experience in those black boxes over there, over the border, we have to deal with the consequences of what those people have experienced.

The Greens did not come easily to the idea of supporting a local prison. As Mr Corbell pointed out, we spend a lot of time sitting around in circles discussing things, but we do have certain principles that inform the decisions that we make, and social justice is one of them. That means that if you want to follow through those principles you have to agree with having a prison in the ACT.

Recently, a new group has arisen—

Mr Stefaniak: We are not disagreeing with that, Deb; we are just saying they have stuffed up the economy so much that—

DR FOSKEY: Yes, okay. We will have that later, thanks. No doubt you can respond later. This is my turn.

The main reason why the Greens have agreed to support the prison is that we need to make sure that our prisoners are subject to good rehabilitation programs. People are not prisoners just because they turn bad at a certain age; nor are people born bad. People might disagree with that, but I happen to believe that people on the whole cause crime due to life circumstances—and sometimes those life circumstances are set up very early on. That means that a prison has to be able to tackle very deep-seated behaviours, and

deprivations that may have started even before birth—for instance, if a child is the child of someone who is addicted to a drug that has a bad effect on the foetus. So that means we might need to have good nutrition, good exercise programs and good education programs. We might even have to have programs that work for the spirit, for the emotions, to rebuild self-esteem. These may be the sorts of things that the opposition refer to when they say, "The Maconachie Centre is like a motel," or whatever. But they should think about that. It can be very difficult for those of us who have, comparatively speaking, had a life of privilege to acknowledge that other people have not.

Mr Stefaniak, along with Ms MacDonald and I, went to a conference earlier this year on sentencing. One of the things that got said there over and over again was the difficulty in educating the community about the role of sentencing. There is a knee-jerk reaction that we see at every election—we even see Labor governments doing it—with the "tough on crime" approach. What does "tough on crime" mean? It means more prison sentences, and that means more prisons. Do we might want New South Wales to build the extra prisons, rather than us? I do not know; apparently we do. But it is very concerning that Mr Stefaniak, who attended that conference and had access to all the expert papers, including from people whose job it is every day to impose sentences, has not come out with a better understanding. He is saying exactly the same things he said before that conference. That indicates the problem we are going to have in educating those who rely only on the tabloids for their information.

The new ACT prison is an issue. We do have concerns about it as well. We are concerned, as I think I was mentioning before Mr Stefaniak interrupted me, that a new lobby group has arisen that is now campaigning against the prison. Well, it is a bit late to do that. That was one thing that became clear at the last election when the opposition were saying that the money that was so far dedicated to the prison should go into the health system. It does appear too late to be having that debate, and that might be something that we might have to accept.

Nonetheless, the Greens will join the opposition in opposing the prison if it turns out that there is a really good reason to and other really good ways that we can deal with criminals or offenders in the ACT. But I do not think that is likely if the only thing we are going to do is send them away to New South Wales. We are aware of evidence that if the cells are built they get filled. We know that this new prison has planned cells for 374 full-time prisoners, with room for 120 more, while currently the ACT has an average of 116 prisoners a month in New South Wales correctional centres. We want to make sure that, when the new prison is complete, judges will not feel obliged to fill it. It is essential that the whole range of sentencing alternatives continue to be available in that the sentence is suitable to the crime and also to the offender.

I have not heard the opposition complain about the rebuilding of Quamby, which is good. I hope that means that we are all behind that. I am going to take up the minister's invitation to visit Belconnen Remand Centre and the facility at Symonston because I have not been to those places. I have heard the stories about them, and I think it is part of my job to know what some people in the ACT experience.

Everyone knows that I have said that the health plan of the prison needs to be made public—we need to know how the physical and mental health needs will be dealt with—and we have also called for a program that will discourage the spread of blood-borne

diseases. Those are the kinds of issues that the Greens are tackling. We have accepted that there is a need for a prison in the ACT. We think that sentencing should be a subtle art—it is an art—and that it should be related to the needs of the individual and the community, who will do better if our offenders are rehabilitated.

MR SMYTH (Brindabella—Leader of the Opposition) (4.41): This is a very important MPI, and I thank Mr Stefaniak for putting it on the agenda today. The whole question of corrections in the ACT is currently very, very murky in the amount of detail that the former minister would put out about it. I am sure the new minister will correct that and make sure that lots of detail about what is going to happen is out there in the public so that we can have a realistic discussion about what this government intends.

This government in 2001 said that before they built the prison they would design the programs, because, of course, the programs that you have will determine what sort of prison you design; that, having designed the programs, they would then come up with a plan for the shape and size of the prison; and, once they had the shape and size of the prison, they would then go and look for a site that would accommodate the prison. That all went out the window as soon as they were elected, because all they have done is pick a site. Then they put a plan in place—and then Mr Corbell called that plan in. We are yet to hear anything about the programs that the government has designed to make sure that the prison works—and, of course, programs like that are expensive.

That gets us to the second point: we have not seen or heard from the government anything about the real costs of the prison. The former minister for corrections, the Chief Minister, said that it was $110 million, and it was $110 million, and it was $110 million. No matter how hard we pushed, it was still, remarkably, after three or four years since that figure first appeared, going to be $110 million. Then a year or two back it was suddenly $128 million in 2003 dollar terms. I am not sure what he is working on there, but if from 2001 to 2003 it went from $110 million to $128 million it is about eight per cent growth a year—$110 million this year, $118 million next year, $128 million the following year, $139 million the following year, and the year after that it would be about $150 million.

In those terms, with that multiplier of about eight per cent, the cost has got to be at least $160 million—and we know the government is cash strapped, and we know that the Chief Minister, the now Treasurer, does not know the difference between a budget and appropriation, because he constantly told us he had appropriated all the money for the prison: "The money's in the bucket. Don't you understand? I've got the money. I've appropriated the money." In fact, what he had appropriated was just under $60 million—and there is the problem: the government has still got to find $100 million to build the prison. Perhaps the minister would like to tell us at some stage in the next couple of days whether it is going ahead and has he got the $100 million.

Mr Stefaniak has been following up the whole issue of the recurrent costs. It seems that they will be okay. Currently, there are about 110 prisoners interstate at a cost of somewhere between $10 million and $12 million a year. We have a plan for a 376-bed prison. You cannot just staff part of the wall. You cannot make it secure for just a small population. You have to secure, 24 hours a day, 365 days a year, the whole prison. One figure that I think was used was that it will cost about $19 million. So to double or triple

the size of the population that we are looking after is only going to cost an extra $7 million? I am sorry, but I do not believe it; it does not make sense.

Then there is the actual cost, the financial cost. Should we borrow, for instance, to build the prison? No, apparently we are going to pay for it because all the money is in the budget; all the money is in the appropriation, according to the Treasurer. So there is a cost and we have not heard from the government how they are going to pay the recurrent costs, how that affects the budget bottom line.

When we put forward the concept of the prison, and as we worked towards it in 2000-01, all of our studies were predicated on probably half of the prison being used by New South Wales, because in the late 1990s, early 2000s, New South Wales had a problem. Their prisons were full. There was no excess capacity; indeed, they were looking for extra space. But, because this government has taken so much time, delaying this, and has not been able to make a decision, New South Wales have reopened a number of shut prisons—the closest, of course, is Cooma—and built new prisons. So my understanding is that the New South Wales system now has adequate, if not excess, capacity and it has absolutely no intention of sending prisoners to the ACT. So there is no financial support there. Every cent to run this prison will be coming out of the taxpayers' pockets—and we know the state of the budget.

You can tell the level of discomfort this week and last week among those on the government benches: there have been a whole lot of personal attacks. There are no answers on what they are doing, because you can smell the decay in the financial position of the Jon Stanhope led ACT budget.

The problem for us is that we have to pay for the prison. You cannot run it at half full. You cannot half-secure it. The number one cost is staff and security. You have got to pay for the lot. So the big problems that we face now are a blowing capital cost, and unspecified, uncertain, but I suspect blowing out, recurrent costs.

Let us look at the numbers. About 100 to 120 prisoners—it varies somewhat—go interstate. There are about 70 in the remand centre. So the ACT has probably got 180 prisoners that might have to be housed here. Let us assume that the judiciary will sentence a few more, because the judiciary for some time have been saying that they would not send prisoners to New South Wales. So make it 220, add another 30 on top and make it 250. It is not going to be a full prison, but we have to run it as a full prison. All our numbers were predicated on support from New South Wales—support that is not there, support that this government will have to make up because they have taken so long and not done the job properly.

That is why we say that at this stage, at this time when things are so tight, when we cannot get the waiting lists in the hospital under control, when we do not have an adequate number of police on the streets, when this government does not put an adequate provision in the budget for the management of assets, when the road program has just dissolved into a black hole called Simon Corbell's Gungahlin Drive Extension—and now he is building half the road for three times the money—

Mrs Dunne: On time and on budget.

MR SMYTH: Mrs Dunne reminds me so accurately of that boast: "I will build this on time and on budget." What was the date of start of on time, on budget, Mrs Dunne?

Mr Stefaniak: 1 July 2005.

MR SMYTH: We are already late. It was meant to open on 1 July 2005. We are already a year late almost and no sight of a four-lane carriageway. These are the pressures that the government must contend with and for which they have no answer; yet they are still going to build a prison. They are still going to build what for Jon Stanhope has become a personal issue. There is a bit of pride involved here and he is not willing to put good management and the needs of all Canberrans before his urge to build this prison.

We have a problem, and this problem will be decided on budget day. This problem, I believe, will add to the bottom line. So what they are going to do is cut money out of health but still build the prison, cut money out of education but still build the prison. They are not going to put extra resources into policing, even though we are well below the national average, but they are still going to build the prison. We have got a road system that is decaying, that requires money—money is being drained into the GDE—but they are still going to build a prison. We need additional water storage, but they are going to build a prison instead. We do not have a national convention centre worthy of Canberra, Canberra the city and our home, let alone worthy of the nation's capital, but they are still going to build the prison. The dragway has not been built, but they are still going to build a prison—and so it goes on.

There is the folly of this government having, as the Chief Minister tells us, an extra $250 million, four years of surpluses. Where has the money gone? When we left office, there were many hundreds of millions of dollars worth of unencumbered cash. Next year's estimate is $900,000. The superschool that Mrs Dunne has worked so hard on will cost $45-odd million. We know we need at least another $100 million for the prison, so there is $145 million straight up. I understand they want to put more money into asset management. That will take it up to $200 million. But there is no money for these things, and we have been told by the Treasurer: "We're not going to borrow. There's no need to borrow. We're going to fund all our promises as well."

There are about $180 million of capital works promises, so add that on top. But we hear: "Don't you worry about that. I'm going to stare down the deficit. I am going to conjure up the prison." This is going to be bigger than Moses at the Red Sea: instead of parting the waves, he is just going to make it generate out of the ground.

This is the problem with the state of justice and corrective services in the ACT: there is some sort of illusion that this is all going to happen without any firm plan, any firm economic management plan, any firm building plan, to make it happen. That is the problem. This government has blown the surpluses. This government has blown the cash. This government taxes as highly as do New South Wales. We are on par with the highest taxing jurisdiction in the country, and the government have made commitments beyond their means. It is inept and poor economic management of the budget by the Treasurer. That is why we have a problem with the state of justice and corrective services in the ACT.

MR DEPUTY SPEAKER: The time for this discussion has expired.

Terrorism (Extraordinary Temporary Powers) Bill 2006

[Cognate bill:
Terrorism (Preventative Detention) Bill 2006]

Debate resumed.

Mr Stefaniak: Mr Deputy Speaker, to close debate on—

MR DEPUTY SPEAKER: Mr Stefaniak, you may need leave.

Mr Stefaniak: No. I have checked with the Speaker. I am closing debate on the Terrorism (Preventative Detention) Bill 2006.

MR DEPUTY SPEAKER: Resume your seat, Mr Stefaniak. This is a cognate debate. You will need to seek leave to speak a second time. You cannot close the debate. You will have the opportunity, of course, in the detail stage to speak again. That is perhaps your best option.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 10, by leave, taken together and agreed to.

Clause 11.

MR STEFANIAK (Ginninderra) (4.54): I seek leave to move amendments Nos 1 to 6 circulated in my name together.

Leave is granted.

MR STEFANIAK: I move amendments Nos 1 to 6 circulated in my name *[see schedule 1 at page 1423]*.

These amendments remove "children" and "child" from the bill and replace them with "people" or "person" under 16 years old. As I indicated earlier, the opposition's bill, which we are yet to finalise and which the government has indicated it will vote against, would bring the ACT into line with New South Wales and, I think, every other jurisdiction.

One of the problems with the government's bill is its lack of realisation and appreciation that people who are 16 or 17 years old are quite capable of committing horrendous offences. I will not go over the earlier in-principle debate because a number of speakers spoke most eloquently and accurately about why 16 and 17-year-olds should be included specifically when it comes to preventative detention of terrorists.

It is an artificial exercise and, I think, says something about the government's rationale in quoting some European human rights legislation and saying that, because a child is anyone under 18, therefore we should not include them. There is no natural age here. A person under 18 can be potentially a terrorist. Sixteen and 17-year-olds in our community are unfortunately quite capable of committing quite horrendous crimes.

Sixteen and 17-year-olds also have a number of rights and responsibilities in our law. One example is marriage. If two young people want to get married and one is 16 and one is 18, the 16-year-old only needs the parents' consent. That is a pretty big step. At 17 you can get a drivers licence or join the army At 16 you can get L-plates. There is any number of things that the law allows a 16 or 17-year-old to do in the ACT.

Mr Stanhope: Unless you are gay.

MR STEFANIAK: You will probably pass that, Mr Stanhope. Anticipating your bill on Thursday, at 16 two people of the same sex or of different sexes will be able to enter into a civil union. So there is another example of something that might well happen.

Mr Corbell: You are saying that might well happen.

MR STEFANIAK: Yes, we do. That is something that you are pushing for. You will do that. You will accept that a 17-year-old can drive. You will accept that a 16-year-old, with the consent of parents, can enter into a marriage with an 18-year-old because that is federal law. I have never heard you to have a problem with that. I have never heard you to have a problem with 16 and 17-year-olds going out into the work force, and I mentioned the example of how old you have to be to join the armed services.

Yet here you are citing some human rights convention and saying that a preventative detention order cannot be issued for a 16 or 17-year-old. What arrant nonsense! There are a lot of provisions in respect of young people. Under our law young people are capable of being prosecuted for very serious offences. There have been instances, even in the territory, where people under the age of 18 have been prosecuted and, indeed, convicted for killing other people.

There are proper provisions in legislation in relation to where they should be housed, and that is at Quamby. We have had some quite serious crimes. At present there are young people at Quamby aged 16 and 17 who have committed very serious crimes and been convicted by the courts. The conditions there and the way Quamby operates are different from an adult custodial institution because it is a juvenile institution.

There is any number of protections for 16 or 17-year-olds who are being incarcerated. The commonwealth and every other state and territory make provision for 16 and 17-year-olds who are likely to commit a terrorist act. The ACT government is the only government that will not do so. They might laugh it off, but this again is their warped idea of human rights. To hell with the human rights of the rest of the community! We have this obsession here with the rights of would-be terrorists. Sadly, young people can be badly influenced by others to commit crimes, and this is particularly true of terrorism.

As I said earlier, and I will conclude on this point, you might be doing a 16 or 17-year-old a favour if you actually accepted my amendments Nos 1 to 6, which include 16 and 17-year-olds. You might not only stop a terrorist attack but also turn that young person away from killing not just himself or herself but as well taking out a lot of other innocent people. It might help to save innocent lives and it might also help to prevent that young person from doing something particularly dreadful. But your blinkered opposition to what every other state and territory has done will prevent that from happening. I commend the amendments to the Assembly.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, and Minister for the Arts) (5.00): I want to take this opportunity to participate in the debate and to respond to issues that the shadow attorney raised. There are a number of other issues as well that should be pursued.

There needs to be a genuine attempt to understand the implications of preventative detention legislation. At the heart of this entire debate about terrorism is the need to respect human rights. This anti-terrorism legislation is based on an acceptance by COAG—that is, the Prime Minister, the premiers and the chief ministers—that we would respond appropriately to the threats presented by this new form of criminality described broadly as terrorism, but that the response of the governments of Australia would be, consistent with our international human rights obligations, proportionate to and respectful of the rule of law, civil liberties and human rights. That was the basis on which the agreement was struck.

It is necessary that this legislation be consistent with our international human rights obligations and with our commitment to the rule of law because it has such serious consequences for individuals who may be caught up in its processes. The need to develop a preventative detention regime is an acknowledgment of the fact that there may be circumstances where evidence does not exist on which a person might be charged with an offence.

Despite the breadth of the criminal law, despite its essentially all-encompassing nature, a situation can be imagined in which our security services and our police forces cannot, in a particular situation in a particular timeframe, develop a case against a person of some interest to them. In other words, they do not have enough information on which to arrest them and charge them. They may have a suspicion, but they have no evidence.

For the last thousand years—since Magna Carta—our entire law has proceeded on the basis that no person in our society will be deprived of his or her liberty without just cause and according to the law. That is the fundamental principle upon which our law is based. It is a fundamental principle that arose out of Magna Carta and is now incorporated, as it has always been, in our criminal laws and criminal justice system. That fundamental commitment to liberty and the right of every one of us to liberty unless, according to law, we can be charged and dealt with for an offence against the law, is now enshrined in the International Covenant on Civil and Political Rights. Here in the territory it is enshrined in the Human Rights Act—our bill of rights.

We are talking here about people of some concern, not necessarily about terrorists or people in relation to whom we do not even have the information to lay a charge. We have the double whammy with this proposal, which has been accepted far too blithely around Australia and which is the position of the Liberal Party in this place, and it is that, in addition to the significant issue of detaining somebody against whom you have no evidence on which to base a charge, there is also the issue of detaining children. This brings into play another international convention.

It was interesting to hear the shadow attorney describe the international Convention on the Rights of the Child, which is the basis of the objection to detaining children, as a warped idea. Those were his words. He says that those that support the notion that, in response to our obligations under the International Covenant on Civil and Political Rights and the international Convention on the Rights of the Child, you not detain children in these circumstances are expressing a warped idea.

I do not think it is a warped idea for us as a community to draw a line in relation to those that we will subject to preventative detention in circumstances where we do not have any evidence that they have committed, or propose to commit, a crime. Mr Stefaniak says, "Let us make it 18, because we know that 16 and 17-year-olds get up to all sorts of criminality." So do 15-year-olds. But, to extend the argument, if we drop the line from 18 to 16, why not drop it to 15 or 14? Why not abandon any limitation? If terrorists are going to recruit and use 16-year-olds because the law says that people under 18 cannot be preventatively detained, then those very same terrorists will surely now target 15-year-olds.

Mr Stefaniak: They already do.

MR STANHOPE: They target 16 and 17-year-olds, but in this magical world of the Liberals they do not target 15-year-olds.

Mr Stefaniak: The rest of the country, Jon. You are the odd man out here.

MR STANHOPE: They do not target 15-year-olds.

Mr Stefaniak: The magical world of New South Wales and Labor in Queensland.

MR STANHOPE: So, according to the Liberal Party's equation of those likely to commit terrorist offences or be recruited by terrorists, we would take out 16 and 17-year-olds, but include 15-year-olds and expose them to these terrorists who go around recruiting children for their criminal activities. Why stop at 16? Let us go to 14. Let us go back to 12, which is the age of criminal intent. We know that 12-year-olds have the capacity to commit the most heinous crimes. We see the saddest examples of 12-year-old murderers. But, no, let us stop it at 16. It is a nonsense!

There is an accepted national position in relation to the rights of the child. A child is defined as somebody under the age of 18 years. We have signed the international Convention on the Rights of the Child. We, as a community and as a society, have devoted ourselves most particularly to protecting children. It is at the heart of most of the things we do. Yet, as soon as the spectre of terrorism is raised, the Liberal Party is

prepared to say that, although it is committed to protecting children, in this particular instance we should simply overturn this notion of the need to protect children.

A child is a child. A child is defined as a person under the age of 18 years. Thank goodness our community and our society have a position that children need special protection. This government—in fact, this nation, this community—has accepted that position. But the Liberal Party says that 16 and 17-year-olds really cannot be trusted; we should be able to lock them up without charge and without trial because they cannot be trusted.

The inherent nonsense in this position is that it abandons our commitment to an international convention and the need for us as a community to express—

Mr Stefaniak: So are all the other states.

MR STANHOPE: Absolutely! They are, and they are wrong, and history will judge them as wrong. As surely as the sun rises every day, history will judge this period of lawmaking as one of the darkest periods in Australian legal history. I know that, Mr Stefaniak, and I think in your heart you know it. This is a dark period that we as a nation are entering.

Encapsulated in this legislation are the simple, cheap, weak abandonment of a commitment to children and an abandonment of the rule of law, any commitment to human rights or respect for civil liberties. It is one thing to abandon the rule of law and to enter into derelict arrangements in the context of our commitment to the rule of law, but added to that is a willingness to abandon that overarching responsibility that we as a community accept, and that is the responsibility to protect our children.

When you look at 16 and 17-year-olds, you may not regard them as children, but they are children. We, as a government, on behalf of this community, will not abandon our children.

DR FOSKEY (Molonglo) (5.11): I feel duty bound to rise and follow up on some remarks I made during the legal affairs committee hearing where, rather oddly, Mr Stefaniak and I concurred on this issue. I am not going to vote for Mr Stefaniak's amendments.

There is a very grave danger that my remarks will be interpreted in absolutely the wrong way. I have a total commitment to human rights. As I said during the committee hearings, I believe that the ACT legislation to protect the human rights of children should be extended. Because the ACT's laws attempt to be compliant with human rights norms, they can be seen as a protection, not just for those in the ACT community over 18, but also for those under 18.

If the AFP, ASIO or some other federal government instrumentality is seeking to have a preventative order made on a person between the ages of 16 and 18, the prospect that they will decline to do so on the basis that they cannot do so under the ACT's laws is laughable. It is not likely that Mr Ruddock or Mr Keelty will respect the ACT's wishes in this regard. Why would they? They do not have a very good track record when it comes to showing respect for the legislative independence and integrity of the ACT.

Under the commonwealth's preventative detention regime, a person between the ages of 16 and 18 can be detained for 48 hours. At the legal affairs committee hearing I asked the AFP if they considered they had the power to detain a person in the ACT, take them out of the ACT and hand them over to another police force after 48 hours. They were refreshingly frank in their response. They said that they foresaw no obstacle in doing just that. I hope that these questions did not strike Mr Keelty as insulting.

I suspect that the AFP will completely avoid the ACT's preventative detention regime if they want to detain someone in the ACT. Why would they bother having to convince a judge of reasonable grounds in the ACT when they can apparently use unreasonable grounds elsewhere? Why would they comply with the requirement that they present evidence adverse to a finding of detention when they can pick and choose what evidence they present in other jurisdictions?

I think it is fanciful that they will decline to detain a person aged between 16 and 18 merely because they cannot do so under ACT legislation. ASIO already has the power to repeatedly detain someone for seven-day periods without charge, and I suspect that preventative detention orders will be used to detain someone incommunicado between bouts of interrogation by ASIO.

Other members of this house say that they object to the notion of 16 to 18-year-olds being detained under these laws, and I do too. But I think it will be far better for a young person to be detained in the ACT, where their family may be granted access to them, where they may have confidential communications with their lawyer and where they may have a realistic judicial review of their detention order after they have had a few days to find out what the case against them is. They will also have the benefit of many other human rights features of the ACT's legislation.

I actually believe that to support the legislation in its current form will result in 16 to 18-year-olds being placed at an even greater risk of harm. In the absence of ACT legislation, I believe that 16 to 18-year-olds will be renditioned out of the ACT. If the ACT legislation covered them, it is possible that a federal authority would decide to detain them under the ACT's laws. As I have said, it would be better to increase the chances of their being detained in the ACT if the alternative is for them to be renditioned out of the ACT. As I said in the earlier discussion of a matter of public importance, if they go to New South Wales, I am very concerned that the conditions under which they are kept will be totally out of our control.

I also note Mr Stefaniak's point that terrorist activities are not limited to those over the age of 18. I agree with him that this is not some game that is only played between adults. If the government truly thinks that these laws are necessary, it is interesting that they have chosen not to make people aged between 16 to 18 years subject to preventative detention orders. Overseas experience shows that young people are just as, or even more, susceptible to violent ideologies than more mature people.

The point I want to make here is that the opposition does not seem to understand that under this legislation it is very likely that people will be preventatively detained who will not be found to have actually had any intent to commit a terrorist act. There is a bit of an

assumption that, once people are detained, they are somehow criminals or terrorists. We have to be very careful to maintain that presumption of innocence.

Nonetheless, it may be that some people aged between 16 and 18 years will actually have the intention of a terrorist act, but I think we have to realise that they are children and that we do not expect them to have come to their position in a well thought out way after weighing up the pros and cons. Thus, I think they need special protection.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (5.17): As the Chief Minister has already indicated, the government does not support the amendments. The reasons for that have been well enunciated by the Chief Minister, but I think it is worth addressing this issue again just to clarify it further.

The Convention on the Rights of the Child makes it clear that children should only be detained as a last resort. This is a fundamental human rights obligation and one that is recognised already under ACT law. Whilst I understand Dr Foskey's argument that the provision of the opportunity to preventatively detain someone between the age of 16 and 18 under ACT provisions may be more attractive than under other legislative regimes, I still do not think that abrogates our absolute responsibility to protect children in the way that is proposed under this legislation.

It is worth making the point that the commonwealth government has not in any way indicated or given justification for what it feels is necessary in terms of children aged between 16 and 18. They have not provided any material to justify the argument that these provisions should be made available to people of that age group. As the Chief Minister quite rightly points out, what is the rationale for saying 16 is okay? Why not 15? Why not 14? Why not 13? Why not 12? Why is 16 the magical date, the magical age? The Liberal Party has not provided any justification for why 16 is the magical age.

Mr Stefaniak: Everyone else is doing it.

MR CORBELL: The only argument is that everyone else is doing it. What is the justification? Those other jurisdictions do not have justification for it either. Sixteen is not a magical age cut-off. There is only one line in the sand when it comes to determining the legal status of a child, and that is 18. That is the approach that the government is adopting.

There is no sound argument for why 16 should be the alternative. We either accept that 18 is the age at which someone becomes fully responsible for their actions or we do not. That is what this legislation does and is why the government does not support the Liberal Party's amendments.

MR PRATT (Brindabella) (5.20): Just picking up on a point made by the Chief Minister in his response to Mr Stefaniak's amendment—which, by the way, I support—he talked about the dark history we are exercising right now with legislative changes in procedures. He is quite right. It is a dark history that this community and this country, like many other countries around the world, is facing at the moment, but it is not our fault that this dark history has emerged.

This country and of course this community—and we hope this government—are there to respond to threats which are not of our own making. You might debate whether our behaviour or our actions overseas may be contributing to certain circumstances. You could debate that all day, but now is not the time to be debating it. Putting that aside, the reality is that the threat is there. That dark history the Chief Minister talked about is there; he is right, but it is not of our making; and we would be irresponsible not to be responding to it professionally. Therefore the issue of children must be looked at.

The issue of when is a child a child and when are they responsible for their actions is a very good point—and I do not disagree with the points raised by Mr Corbell in that regard. However, we are not dealing now with a 16-year-old child who might be responsible for a domestic offence.

In this case, Mr Stefaniak is asking that our law be equipped to allow the authorities to take community safety action—I stress community safety action—where they may feel that even a 16-year-old is implicated in something that can have far-reaching consequences, more so than consequences we see police dealing with in domestic crime. What do police do now if they have a 15 or 16-year-old teenager who has perhaps been implicated in a shooting, an accidental shooting or may be thought to be on his way to be involved in a shooting? Do they not detain him, at least for his own protection, as well as for the community's protection? Is this not what Mr Stefaniak is asking for?

Mr Corbell: Not without a parent.

MR PRATT: Perhaps not. There is perhaps a point there.

Mr Corbell: Yes; a kind of important one, actually.

MR PRATT: There are plenty of examples in this country and around the world where 16-year-olds have done something fairly silly. Mr Stefaniak is talking about a 16-year-old potentially doing something fairly silly but with, maybe, weapons of mass destruction or mass murder in mind. What do you do? What do the authorities do? Are they unable to detain that person, both for their own protection and for the protection of the community? I put that question to you. Dr Foskey weighed in that her total commitment and that of the Greens to human rights is what is driving their concern.

I do not disagree with that either; that is fine. But surely a total commitment to human rights, Dr Foskey, is in relation not only to this question on children; there is also a need for legislation to protect the community which may infringe on people's civil rights. Surely the balance is also that you have a total commitment to protecting the broader community's human rights to be safe. When you are totally committed to the protection of human rights, surely you are totally committed to that balance between the civil rights of the individual who may be arrested or detained and the collective civil rights of the broader community to be able to be protected against people who may be bent on mayhem. I would ask the Greens to be a lot clearer in their understanding of that.

Dr Foskey said this morning that the Liberals were weighing their case entirely against the evidence put to the committee here by Commissioner Keelty. That is not the case at all. Indeed, if Dr Foskey had been listening, I listed a number of very important

references that have certainly guided not only my position on this but also the position of other experts in this country. I commend those to her. She will be able to read them in *Hansard*.

Look at those references, particularly one I spoke about in 1997—a publication produced by the Sydney-based call to arms group which had some very dark thoughts about things. They talk about teenagers and children. Let us take a broader, more realistic understanding of the sorts of concerns we are now faced with, perhaps with a depth of concern that we have never had to face in this country before—at least before 1999, once Australia had intervened in East Timor, which really put us on the radar in the eyes of al-Qaeda, JI and other groups.

I would again ask the Assembly to consider that something needs to be done where a 16-year-old may be thought by police to present a threat. It may not necessarily be that 16-year-old's fault. We know that terrorist leaders are able, and have been able, to adversely influence young children and teenagers. There are plenty of examples of that happening around the world, where teenagers have been exploited by ruthless terrorist leaders. You have to know that; you have to prepare yourself for that; and your legislation has to be able to accommodate that concern.

MR STEFANIAK (Ginninderra) (5.27): I thank members for their comments on this section. Firstly, Dr Foskey, I understand what you are saying. I am certainly not going to misrepresent you. I certainly respect what you say; I understand it and the angle you are coming from. In relation to comments made by the Chief Minister and Mr Corbell, I point out to them that this amendment is what is in the law in New South Wales, in other states and territories and in the commonwealth. It is also referred to in the scrutiny of bills report on page 64, where the report deals with the issue of the age of a detainee. The explanatory statement to the government bill explains that their clause is consistent with the Convention on the Rights of the Child, which provides in article 37 as follows:

> States Parties shall ensure that: … (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

The scrutiny report goes on to say as follows:

> It must also be noted that by Article 1, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

The point here is that, in the scrutiny report, it states after that:

> The Explanatory Statement does not explain why the detention of a child under—

the government's bill—

> cannot not be characterised as "a measure of last resort and for the shortest appropriate period of time". Nor does it explain why "the detention of children is a disproportionate limitation on the rights of the child".

I suggest you have a look at that from the scrutiny report because, in dealing with the convention, it shows quite clearly that there are circumstances wherein it is seen to be necessary, and it lays down some provisos in relation to those as well.

Mr Corbell: It does not say that at all.

MR STEFANIAK: You have a read of it.

Mr Corbell: All it says is that there is no explanation; it does not say it agrees with it.

MR STEFANIAK: Your explanatory statement does not explain why that cannot be characterised as a measure of last resort or for the shortest appropriate period of time. I would submit to you that an interim order, maybe of 24 hours—an absolute maximum under your legislation—with an absolute maximum of 14 days, may well be the shortest appropriate period of time; and certainly as a measure of last resort. I am not quite convinced by your argument there.

The fact is that there is ample evidence that young people—16 or 17-year-olds—can well be engaged in this type of activity. We already have nine acts in ACT law—at the time of the hearings we ascertained that there were eight acts—where there is provision for detention. In many of those—and I would certainly challenge the government to show me if I am wrong here—there would be provision for the detention without charge of persons under the age of 18.

Some of the acts where there is provision for detention are health acts; some are other acts; and there are domestic violence acts. There is already law in relation to people being detained—and, in some instances, that might mean people under the age of 18. This is an important area which other states and territories and the commonwealth have. It is important because recent history shows that young people may well be particularly vulnerable to enticements or inducements by fanatics and are more likely than adults—older people—to take up those enticements, for whatever reason, and be used as the foot soldiers in some lunatic's design to inflict as much damage on our community as possible.

I see this particular amendment of mine—to put in what everyone else has—as not only ensuring that young people potentially in that situation can be detained to stop them causing mayhem among innocent men, women and children in the community but also, hopefully, by that detention to turn them around and help them. So there is a two-edged sword. I think that principle is entirely consistent with the aims of youth justice, as much as anything else, and the recognition we give to the fact that our young people might be more impressionable than older people; and that there are special needs there. In my bill, which is the New South Wales bill, and in other bills there are protections. Different types of situations are envisaged for those young people as opposed to adults, just as there are different provisions in the criminal law where young persons are convicted of offences and incarcerated in some type of custodial juvenile institution.

I again hark back to the other fundamental right which you people seem to miss so often here—that is the fundamental right of ordinary law-abiding citizens to live. You are balancing that with the fundamental right of people to liberty, even if they are on the

wrong side of the law. You are not dealing here with some horrendous deprivation of liberty. COAG came up with, in the circumstances, a pretty reasonable time period of not exceeding 14 days confinement in a humane situation. People who are in detention have to be treated humanely. It is not as if they are detained for 14 days in some torture camp or anything like that; it is humane detention.

There are protections in all the other state and territory laws, as there are in your bill. So we are not taking about something absolutely horrendous that would weigh against the fundamental right of ordinary, law-abiding people to live and give added weight to perhaps the rights to liberty of one individual, no matter how bad or how misguided they might be. It is about balance.

I make the point that that is something you need to bear in mind in terms of the worst case scenario if someone has to be detained under these provisions. In this instance we are talking about young, impressionable people of 16 and 17, who are covered by every other state and territory, who are capable for whatever reason, no matter how misguided perhaps, of inflicting just as much damage as anyone else but who are also particularly vulnerable, as recent history shows, to being enticed into these crazy criminal schemes by evil adults who prey on young persons' naivety.

A division having been called, and the bells rung—

MR SPEAKER: Order! There is some difficulty here, because once the call of the Assembly has been commenced, every member, within the seats allotted, shall vote. You cannot just walk in and out of the chamber. Dr Foskey has gone now, so I do not think there is any point in pursuing the matter. But standing order 161 plainly says that members may not move from their places until the result is announced. I did not see Dr Foskey move from her place; I merely draw that to your attention.

Question put:

> That **Mr Stefaniak's** amendments Nos 1 to 6 be agreed to.

The Assembly voted—

Ayes 6		Noes 8	
Mrs Dunne	Mr Smyth	Mr Barr	Mr Hargreaves
Mr Mulcahy	Mr Stefaniak	Mr Berry	Ms MacDonald
Mr Pratt		Mr Corbell	Ms Porter
Mr Seselja		Mr Gentleman	Mr Stanhope

Question so resolved in the negative.

Clause 11 agreed to.

Clause 12.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (5.40): I seek leave to move amendments Nos 1 and 2 circulated in my name together.

Leave granted.

MR CORBELL: I move amendments Nos 1 and 2 circulated in my name together and table a supplementary explanatory statement to the amendments *[see schedule 2 at page 1424]*.

The government's amendments are in response to a range of issues raised by the scrutiny of bills committee. None of these have major policy implications or change the intent of the bill, but they clarify wording to raise a number of issues raised by the scrutiny of bills committee.

This particular amendment deals with the issue of intent, as to whether or not a periodic detention order could potentially be extended beyond the maximum of 14 days. The scrutiny of bills committee raised a number of concerns that the provision could be interpreted to extend the provisions for PDOs beyond a maximum of 14 days. That is not the intention. This amendment clarifies the intention that the maximum time limit for detention is 14 days. Amendment 2 relates to the first amendment and is technical in nature.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs and Minister for the Arts) (5.42): I will speak very briefly. I wish to speak around the scrutiny of bills committee report—a committee chaired by the shadow attorney. The recommendations and findings of the report are interesting in the context of the attitude of the Liberal Party to this debate on this legislation, which dwells on the scrutiny of bills report in the context of the proposed section 20 of the bill introduced by the Liberal Party, which provides that the Supreme Court takes into account any evidence or information that it thinks is credible in relation to an application for a preventative detention order.

In the context of this debate and the Liberal Party's position, whilst we are talking about and debating the scrutiny report, I want to take the opportunity to ensure that members' attention is drawn to those parts of the report which refer to the Liberal Party's bill which says that such provisions raise issues about whether the parties to such proceedings receive a fair trial. It continues on page 67:

> To depart from the rules of evidence is to put aside a system which is calculated to produce a body of proof which has rational probative force, as Evatt J. pointed out, though in a dissenting judgment, in The King v. War Pensions Entitlement Appeals Tribunal …

I think these comments in the scrutiny of bills committee report really go to the heart of the debate today about this legislation and reinforce the position the government has taken on this legislation. I quote Justice Evatt, as referred to in Mr Stefaniak's scrutiny of bills committee report. It says:

> Some stress has been laid by the present respondents upon the provision that the Tribunal is not, in the hearing of appeals, 'bound by any rules of evidence.' Neither it is. But this does not mean that all rules of evidence may be ignored as of no account. After all, they represent the attempt made, through many generations, to evolve a method of inquiry best calculated to prevent error and elicit truth. No

> tribunal can, without grave danger of injustice, set them on one side and resort to methods of inquiry which necessarily advantage one party and necessarily disadvantage the opposing party. In other words, although rules of evidence, as such, do not bind, every attempt must be made to administer 'substantial justice.'

The scrutiny of bills committee went on to say:

> The courts have a particular concern with displacement of the rules governing the reception of hearsay evidence … In a recent case in the Supreme Court of the Territory, Higgins J pointed to the general risk inherent in drawing an inference of factual truth from untested out-of-court statements by unseen declarants. … Generally, to rely on such statements as representing the truth is not only unsafe but also unfair as against parties who were not present when the declarations were made. This is particularly so when the truth or otherwise of the content of the declaration is an important issue in the trial.

I draw attention to those comments and the fact that the scrutiny of bills committee report reveals that the bill proposed by the Liberal Party to substitute that of the government's would not guarantee a fair trial. What is at the heart of the system of justice in Australia and in the Western world? What is the most significant of these values, which the terrorists seek to undo? They wish to see us abandon our values. It is our values that abhor them. The Prime Minister reminds us repeatedly that the terrorists around the world are engaged in a war against Western values.

What is the greatest, in a legal sense, of the values which apparently these fundamentalist terrorists abhor? It is the rule of law. When we think of the rule of law, what do we first think about? We think about the right of every citizen to a fair trial. Here is the Liberal Party's response to the threat of terrorism—terrorism which the Prime Minister reminds us repeatedly is essentially motivated by a desire to undermine our values; values which they abhor. What is the most significant of our values? A respect for the rule of law. What do we imagine? What is the first thing that comes into our minds when we think about the rule of law, this fundamental value? What comes first in this value?

Mr Pratt: The protection of life comes first.

MR STANHOPE: The right to a fair trial. Whether or not you have been locked up in a Serbian jail or by an ACT court, what do you want? What did you most wish for over there in Serbia? You wished, more than anything, for a fair trial—a hearing.

Mr Pratt: After the protection of life.

MR STANHOPE: You wished for a fair trial, which you were denied. That is what you wanted. We have a preventative detainee in the chamber. What did he want? What did he cry for? He wanted a fair trial, and he could not get one. Now he supports a legislative package which has at its heart, in the words of Mr Stefaniak's own committee—the scrutiny of bills committee—a suggestion that the Liberal Party's legislative package would deny the right of a fair trial to those caught up by it. I think that says it all.

MR STEFANIAK (Ginninderra) (5.48): It is amazing; we had a bit of selective quoting from the scrutiny report. As Mr Stanhope well knows, the scrutiny of bills committee has a charter or terms of reference which it faithfully adheres to. He has picked out a few

little parts which he thinks suit his argument. I might remind him that, in talking about displacement of the rules of evidence, in relation to my bill at page 66 he is specifically referring to clause 20 (2) which reads:

> The Supreme Court may take into account any evidence or information that the court considers credible or trustworthy in the circumstances and, in that regard, is not bound by principles or rules governing the admission of evidence.

On page 67 the report goes on to say that such provisions are common, and are often thought to be an antidote to legalism in court proceedings. They do, however, raise issues in relation to the parties to the proceedings and in relation to a fair trial, but they are common. For example, in coronial proceedings, courts are not bound by the normal rules of evidence. You know all about that, Mr Stanhope, surely. There are other areas too where that does not apply. We are dealing with an extraordinary situation here. I do not think your bill is particularly extraordinary, because it is a lot weaker than the other bills around the country, but it is an extraordinary situation. In describing these types of laws, they are not particularly ordinary.

We are not facing an ordinary threat either. Throughout Australian history there have been acts of parliament made for extraordinary situations, especially in times of war and in times of national emergency. There have been times in Australia where in certain areas martial law has been declared. I think that, after Cyclone Tracy, Darwin had that initially, where Major-General Stretton, now recently retired and a very well-respected local practitioner, did such a wonderful job. Extraordinary times often lead to different and somewhat extraordinary laws.

You might be misguided, Mr Stanhope; you might be going completely overboard on one side in relation to this but no-one can accuse you of not respecting the normal rule of law in this country. It is because of the good sense and the respect, I think, for the rule of law of the Australian parliament and the other states and territories that what we are talking about—because there are some pretty nasty people who might be the subject of these orders—is simpler: at the end of the day, to deprive them of their liberty for the greater good of us all, the protection of our society, the protection of innocent men, women and children—to detain them for no more than 14 days in humane confinement.

There is a lot of argy-bargy going on here today in relation to this but, at the end of the day, it is as simple as that: no more than 14 days. In civilised societies, people can draw the line. Tony Blair, I think, tried to make his 90 days, or tried to extend it from 90 days. He was defeated, not only by the conservatives but also by people in his own party, because they felt that that was going a bit too far—and I agree with them. I would also agree with COAG, as does the opposition, about detaining people in these extraordinary times, with these acts—and we have not seen quite like what is envisaged here before in Australia—for no more than 14 days in humane detention, with a number of checks and safeguards.

There are checks and safeguards in your legislation. Maybe you are going overboard, but they are there and there are checks and safeguards in my bill and in the legislation of every other state and territory in the commonwealth of Australia. Because this is extraordinary, you have provisions such as clause 20 (2) of my bill. I make that point.

In relation to your amendments, Mr Corbell, I see what you are aiming at. There does not seem to be a problem with the intent there. We will see how they pan out in practice but on face value—and I have only had a chance to look at them over the last couple of hours, because they were circulated fairly late in the piece—they do not seem to be particularly problematic but follow on from a sensible comment in the report.

MR PRATT (Brindabella) (5.53): I rise to take issue with the point made by the Chief Minister about the priority of the right to a fair trial being the only and paramount right. Let us be clear about this. The right to a fair trial is a very, very senior right in the list of rights that any society has. But I put it to you, Chief Minister, that the right to a fair trial, while it is a paramount right, still runs second to the right to have one's life protected. The right to have one's life protected is the paramount right of an individual, and it is the duty of all governments to ensure that their constituencies, those that they govern for, have their collective right to be protected upheld. That is what this particular debate is all about.

We see here again a chief minister who is blind-sided by this focus on those who might be jailed. That is where the focus is. We have seen that with the Greens as well. They are blind-sided by the individual rights of those who might be arrested, detained or jailed. We never hear—there is a thundering silence on the question—about the right of the broader community to be protected. I have not heard that at all here today. Let us be reminded that the threat of terrorism leaves no second chance in the protection of innocent life. You could take risks with other people who may be hell-bent on committing a crime within the range of domestic crimes. You leave no chance for those whom the authorities may deem to be a risk of carrying out a terrorist act. You cannot get it wrong.

That leads me to the next point, a point raised by Dr Foskey earlier. There will always be a risk of innocent people being jailed under these sorts of laws. Regrettable as that is, it is going to happen. And it has happened. It is happening all over the world. But that is the higher risk that authorities take when they seek to protect their communities against a terrorist threat. Do not forget that those who would carry out a terrorist crime and seek to undertake mass murder use pretty substantial weapons. Mistakes will be made. Dr Foskey, authorities will make mistakes and innocent people will be jailed or will be detained.

I do not think that the legislation that the government is seeking to put forward here today, or even that which Mr Stefaniak is seeking to amend, is going to deny the rights of people who may be innocently and wrongfully detained, jailed or interrogated. Let us put things back in balance and let us not be overwhelmed by the emotional issues and rush to the individual rights of those who might be jailed as an issue and a question which should override every other sensible determination. Governments have a first duty to protect their communities and to protect the right of those communities to live. And that should be the determining factor in the way that this legislation is put together.

Amendments agreed to.

Clause 12, as amended, agreed to.

Clauses 13 to 15, by leave, taken together and agreed to.

Clause 16.

MR STEFANIAK (Ginninderra) (5.57): I seek leave to move amendments Nos 7 and 8 circulated in my name together.

Leave granted.

MR STEFANIAK: I move amendments Nos 7 and 8 circulated in my name together *[see schedule 1 at page 1423]*. These amendments are probably the most substantial to the government's bill. They deal with the tests that the police and the court have to be satisfied about before a preventative detention order is granted.

I was pleased to see one recommendation of the committee which looked at this issue being taken up by the government, and that was the question of "reasonably necessary", which is one of the tests. But in other aspects the government ignored recommendations of a majority of the committee and continued with the same test it had in its draft bill, which is replicated here. That can be found from page 19 onwards of the government's bill.

At present, and unlike any other jurisdiction, a senior police officer has to be satisfied on reasonable grounds, and after this the courts have to be satisfied, firstly, that it is reasonably necessary to detain the person to prevent a terrorist act—and there is no problem there; secondly, that detaining the person under the order is the least restrictive way of preventing the terrorist act mentioned in subparagraph (1); and, thirdly, that detaining the person for the period for which the person is to be detained under the order is reasonably necessary to prevent the terrorist attack. My amendment omits clause 16 (3) (b); that is, the least restrictive way of preventing a terrorist attack.

At 6.00 pm, in accordance with standing order 34, the debate was interrupted and the resumption of the debate made an order of the day for the next sitting. The motion for the adjournment of the Assembly was put.

Adjournment

Dr Peter Veenker

MR GENTLEMAN (Brindabella) (6.00): Last Thursday evening I was one of several hundred people who were delighted to attend a farewell dinner for Dr Peter Veenker at the Canberra Institute of Technology. Dr Veenker has been Chief Executive of the Canberra Institute of Technology for almost a decade, in which time he has seen many members of the community attend the Reid CIT as well as other CITs in the ACT. Peter Veenker has spent a significant time in technical and further education, TAFE, and other related areas. Prior to working in TAFE, Peter worked in private sector financial management.

Peter was the foundation chair of TAFE Directors Australia, the peak Australian national body representing TAFE and vocational education and training institutes. He has fellowships with the Australian Institute of Management, the Australian Institute of

Certified Practising Accountants and the College of Education. He has tertiary and post-graduate qualifications in business, management and education. In his message on the CIT website, Dr Veenker expresses the advantages of attending an institute of technology and, in particular, the ACT's CITs. He states:

> We provide an exciting and flexible learning environment to help you access a range of programs.

That range of programs has assisted many in the Canberra community. I, too, was lucky enough to attend a further educational facility in the ACT—the Reid TAFE, in fact—when I was working as a service technician in the early 1980s. Although Dr Veenker has been involved in higher educational facilities for many years, he is not quite old enough to have been around when I attended.

He was, however, Chief Executive of the CIT when my son began attending the institution some four years ago, in the faculty of tourism and hotel management. I was present at my son's final accreditation for the presentation side of his apprenticeship as a chef earlier this year. It was the buffet, and I was impressed to see the high levels of skills that all the students possessed. It was indeed an incredible evening for food lovers.

Although this is not entirely due to the teaching of Dr Veenker, it highlights the tremendous effort he has made to maintain a high level of success at the CIT. In the 10 years that the retired Dr Peter Veenker was the Chief Executive of the Canberra TAFE, he was involved in many of the institute's achievements. There are far too many to mention them all, but I would like to mention a few that spring to mind.

Dr Veenker was instrumental in achieving Australia's alliance with PIN. PIN is the Postsecondary International Network and is an international alliance of 31 post-secondary educational institutions in Canada, the Netherlands, New Zealand, the United Kingdom, the United States and, as I have already mentioned, Australia. PIN was one of Dr Veenker's proudest achievements, as it had the desired ability to allow students to study at different international institutions without it affecting their marks.

In 2004 he accepted, on behalf of the CIT, an Australian crime and violence prevention award for the institute's outstanding contribution to reconditioning convicted criminals with the Right Turn Program, a fully accredited course in which groups of people, known to authorities as car thieves, repair and maintain a motor vehicle and give it to a member of the community who has been affected by car theft. They are then given a chance to get into the work force, with the assistance of vocational placements.

Although Dr Veenker has been a long-serving member of further education here in the ACT, it is now time for him to spend some more time doing some of the other things he enjoys in life. Dr Veenker is leaving for the farming life in Bairnsdale, East Gippsland, Victoria. It is with great pleasure that I stand here tonight to pay tribute to Dr Veenker. It is his passion and interest in higher education that the Canberra community, including me, will sadly miss. I wish you continued success in your newly chosen life and hope the weather is good to you.

Industrial relations

DR FOSKEY (Molonglo) (6.04): I report on a meeting that I attended last Saturday, held by the Liquor, Hospitality and Miscellaneous Union, on their campaign for a fair deal for cleaners. Cleaners are one of those groups of people that we all tend to take for granted because a lot of their work is done after the office workers leave. We all expect the building to be clean when we turn up the next day. The low yearly wage that a cleaner can expect to take home interests and appals me. Something in the realm of $15,000 was quoted. The concern is that, under the WorkChoices legislation, that will not go up. Indeed, there is a chance that it will decrease. The campaign that is being run is based on talking to the owners of buildings and asking them to accept and adopt a number of principles, which they call principles for a clean start. The first three of these are:

> The interests of tenants, owners, cleaning contractors and workers in the industry are not served by high turnover in security personnel and cleaning staff, poor levels of training and staff supervision, and unacceptably high levels of occupation illness and injury.
>
> Satisfied tenants who occupy buildings which are secure and cleaned to a superior standard ensure that rental income is maximised, tenant churn is minimised, and investment in the physical fabric of the building is protected.
>
> An appropriately high standard of cleaning and security services together with the creation of good jobs capable of providing a fair reward for the effort expended, can only occur where cleaning and security contracts are designed to permit these results.

There are a number of other principles. It is pleasing to know that ActewAGL, who of course is the owner of significant properties in the ACT, has agreed to the principles and that the owners of the airport have at least asked the union to talk to the contractors who clean there. There are a number of other building owners who have not even responded to the union's letters asking to talk to them about the principles. I expect those will be named after a reasonable amount of time for their response has passed.

The campaign will involve monthly actions, starting this week with a sausage sizzle on Thursday in Woden, where the aim is to get the office workers to talk to the cleaners—two groups of workers who all have concerns about WorkChoices—to get them talking about their different concerns. There will be another action next week in Civic at the Optus building and so on.

The ACT government is also the owner of some buildings which are cleaned, including this one, and it is to be hoped that we also watch this campaign, support it and make sure that we are one of the groups of people who adopt the principles and certainly recommend to other building owners that they do so too.

Comments by Mr Corbell
Budget

MR MULCAHY (Molonglo) (6.08): I take this opportunity to place on record that I was

wrongly quoted and misrepresented by the then Minister for Health and Minister for Planning when he concluded a debate on the Duties Amendment Bill in March this year. I am not reflecting on the debate itself or the vote. As you will recall, Mr Speaker, the opposition supported the amendments to the duties legislation, and no further comment on the bill is required.

The point of my remarks today is to correct the distortion by Minister Corbell of my remarks on the expectation of a lowering of the tax burden on business. The minister's distortion is a rather old trick and, regrettably for the integrity of this Assembly, one in which he specialises. Mr Corbell asserted incorrectly that I said that there was a further commitment on the part of the ACT government to abolish certain taxes. That is in *Hansard*, 30 March 2006. But I did not say that. I said:

> The federal government are quite correct in asking state and territory treasurers to meet their side of the bargain by reducing state taxes in return for receiving GST payments. Quite frankly, I think people are right to be upset with aspects of this whole deal. The GST came in and we understood this was going to see the end of a raft of these state taxes. Yes, some have gone, and some will eventually go and many will stay. But the sentiment and the understanding of the people of Australia when this new system of tax was developed were certainly much different from what we have finally seen.

I anticipated that the Acting Treasurer would try to twist my words. In the event, my suspicions were in fact borne out. That is why I said at the time:

> I know the Chief Minister will leap to his feet and say: "Well, you know, we are doing literally what we were required. When we said we would look at the other taxes, it did not mean that we would do anything about them." But I do not think that was the spirit. I do not think that is what the people of Australia understood to be the case. It is certainly not what I think the people of the ACT believe to be the case.

Contrary to what Mr Corbell has told you, I did not say that there was a further commitment on the part of the ACT government to abolish certain taxes. I and thousands of Canberrans wish that commitment was so, but it is not. And it is not likely to be under this high-taxing and big-spending government.

The problem for the government, and now the people of the ACT, is that two and three years ago there was an opportunity to remove these inefficient taxes on business, when its revenue was booming. Instead, it committed itself to a spending program on all sorts of new schemes and political vanities such as the arboretum, the prison and the Civic to Belconnen busway.

Now that the government's budget is going further into the red—and I suspect it will be worse next year—the scope for tax cuts has virtually vanished. There is now even less prospect of removing the biggest disincentive to commercial property investment in the ACT; that is, stamp duty on commercial conveyances. The government has dug itself into a hole in which it now simply cannot afford to give tax relief and has to wear the consequences of reducing the attractiveness of Canberra as a place to live and do business.

It is through careless spending that the government has also squandered the opportunity to improve people's lives by reducing the burden of taxation. The ACT is now condemned to remain with New South Wales as the highest taxing jurisdiction in Australia. I can see the government's predicament and I certainly understand why they are worried. They can now see what the opposition has been warning for over a year: Canberra taxpayers will soon feel the further pain of the ACT government's management, or mismanagement, as they experience higher local taxes and charges to pay for Labor spending but at the same time see no improvement in waiting times at the hospital, deterioration in the quality of police services, particularly as evident in shopping centres and the like, and the general look of the city.

It is in sharp contrast to the budget that is coming down tonight, with what is estimated to be a surplus of $17.5 billion and the prospects of tax cuts, which will be especially beneficial to the people of Canberra and at a level that we are assured will not seek to accelerate increases in the rate of inflation or interest rates. We see that in a town that is buoyant. The Chief Minister and Acting Treasurer was right to say the town has been buoyant. The commonwealth government is the biggest employer in the town and has had a lot to do with that, but the private sector has also.

But the odd man out in this whole equation is the ACT budget. It fails to reflect the economic situation of the town; it fails to reflect the taxation windfalls this government has achieved, way above and beyond their expectations, in terms of the $700-odd million, as Mr Smyth reminds me, of goods and services taxes that have come back to the territory and have continually saved this government that cannot live within its means. It is quite stark to look at the two budgets and the two styles of government that we are seeing in this city at the moment. It is regrettable that the territory cannot emulate their federal counterparts.

Fundraising
Beaconsfield mine disaster
Dr Peter Veenker

MS PORTER (Ginninderra) (6.13): On the weekend I attended ACT Young Labor's annual Shave for a Cure fundraiser. This is one of Australia's largest fundraising events, with more than 100,000 people Australia wide pledging to shave or colour their hair each year. All money raised goes to the Leukaemia Foundation, which uses the funds to support people living with leukaemia and their families. The money also goes towards research in order to find treatments and cures for this terrible disease.

Last year, ACT Young Labor's Close Shave was a great success and this year was no different. I was joined on Saturday by fellow Assembly members John Hargreaves and Andrew Barr as well as our federal colleagues Annette Ellis MP, Bob McMullan MP and Senator Kate Lundy. Peter Barclay, the owner of King O'Malley's Irish Pub, kindly provided us with a venue as well as encouraging his customers and staff to donate to this wonderful cause.

Four members of ACT Young Labor had their head shaved, and I thoroughly enjoyed shaving the luscious locks of ANU student Josh Gordon-Carr. Josh has been working hard in the past few weeks to raise money for the Leukaemia Foundation. However, he

raised far more dollars on the actual day of the event when fellow members of Young Labor began calling for his eyebrows to come off as well. Luckily he was saved by Mr Barr, who made additional donations to ensure that one of our party's youngest members would retain at least a few of the hairs on his head. I took particular pleasure in auctioning off Josh's precious sideburns to the highest bidder, and he was relieved when both were finally removed. I thank Josh for being prepared to submit himself to what I fear will be a particularly cold winter for him.

I also congratulate the other ACT Young Labor members who had their heads shaved: Bernard Philbrick, Ben Sakker-Kelly and Daniel Hughes. Mandy Sharplin from Kate Lundy's office was also brave enough to have her beautiful hair shaved off.

ACT Young Labor raised more than $1,500 for the Leukaemia Foundation, and they are to be congratulated on this excellent total. An exciting result of this high total was that Mr Hargreaves was forced to follow through on his promise to remove his beloved moustache, an incident which was met with huge applause from the audience and I know is well recognised by all members here.

However, on a more serious note: this is a cause which is very much worth supporting. Leukaemia can develop in any person, at any age and at any time. More than 2,000 Australians are diagnosed every year; that is, roughly six people each day. I encourage members who are unable to attend the Shave for a Cure event to visit www.worldsgreatestshave.com to make a donation.

On an even more serious note, I recognise the momentous event that occurred this morning, an event that the whole nation and even many parts of the world have been holding their collective breaths over. Of course I talk of the rescue of Todd Russell and Brant Webb after their 13-day and 14-night incarceration in the Beaconsfield mine. We all rejoice with their families, colleagues and their community. At the same time, we remember Larry Knight with sorrow and send our condolences to his family, as we do to Richard Carleton's wife, Sharon, and her family. Life is full of highs and lows, as we know, and the roller coaster of Beaconsfield has given us first-hand experience of that, if ever we needed it.

I finish by joining Mr Gentleman in recognising Dr Peter Veenker and wishing him well in his retirement. I congratulate him on his fine career and thank him for his work and his achievements whilst Chief Executive of the CIT. I believe his farewell party went on well into the evening; I was sorry I had to leave to attend another commitment.

Public housing
Government—expenditure

MR SMYTH (Brindabella—Leader of the Opposition) (6.17): Seeing the executive director of ACT Housing in the gallery at question time reminded me of a different time. It was a time when the government had so much money that it had to try to hide it. Yes, I am speaking of the infamous $10 million for fire safety upgrades in ACT Housing properties. For new members, and for those of you who would rather forget, let me remind you what happened. I refer to a report in the *Canberra Times* of 24 April 2003, where the caption under the picture says, "ACT Treasurer Ted Quinlan admitted he should have chosen a different way to cover public housing costs".

What happened was that Mr Quinlan took $10 million of the Treasurer's advance because they had not used it during the year. They wanted to embarrass the former Liberal government and create some sort of illusion of a black hole because we left them rolling in so much cash. Of course, they could not make that stick.

In the lead-up to the budget in 2002, the Treasurer, at the last minute, in about May, flips $10 million out of the Treasurer's advance for this seemingly good cause of fire safety upgrades. But, under questioning and under FOI, it was revealed that the money went before it had been decided how it would be spent. That is not how the Treasurer's advance works. Some of the quotes from that article are:

> Labor's Ted Quinlan said yesterday he regretted his alleged misuse of $10 million of Treasurer's advance before the last Budget.
>
> In June last year, he allocated $10 million in emergency funding for fire safety upgrades to public housing.
>
> But the auditor-general has since questioned the legality of his actions.

Then it goes on to say:

> But under questioning from the Public Accounts Committee yesterday, he admitted he could have chosen to record the liability on the account without paying any funds at the time—a journal entry—and now he wished he had.

It goes on to say:

> He confirmed yesterday that he had given verbal instructions for departments to spend all money available to them that financial year, because he didn't want to be "picking up the tab" for the previous government.

I wonder what sort of use of the Treasurer's advance we are going to find out about at the end of this financial year. The house is to be informed regularly, within a certain number of sitting days, of any use, and we have not had much notification of that. One would assume the pot is still full.

I draw to the attention of members how life changes. We had formally a Treasurer desperately running the budget down so that he could claim that the former Liberal government had left the territory's finances in a mess. As you would all recall, we asked regularly to see how the upgrades were coming along. Perhaps we need to ask again, because the last time we asked there were still some moneys that had not been expended, even though many, many years had passed since the Treasurer's advance had been so desperately used.

It may well be that there is money left over this year in the Treasurer's advance. I am sure that is cash that the cash-strapped government could apply to its financial woes. Perhaps there is a lesson in all of this about good financial management starting from the day you come to government, not three or four years down the track.

Standing order 155
Statement by Speaker

MR SPEAKER: Before I adjourn the house, I clarify and correct some comments that I made earlier on voting. It was indicated to Dr Foskey that perhaps she could not leave her seat. That is not correct. Standing order 155 states:

> A Member calling for a vote shall remain seated until after the Assembly is called and shall vote with those who, in the opinion of the Speaker, were in the minority when the voices were taken.

It is open for members to leave their seats unless they have called for a vote and it is also open for members to sit in the gallery while a vote is being cast, but members have to decide whether that is a good look or not. Once a call of the Assembly has been commenced—that is, the Clerk has been called and has risen to his feet—every member within the seats allotted to members shall vote and members may not move away from their places until a result is announced. The member presiding has a deliberative vote only.

Question resolved in the affirmative.

The Assembly adjourned at 6.22 pm.

Schedules of amendments

Schedule 1

Terrorism (Extraordinary Temporary Powers) Bill 2006

Amendments moved by Mr Stefaniak

1
Clause 11 heading
Page 10, line 13—

omit

children

substitute

people under 16 years old

2
Clause 11 (1)
Page 10, line 15—

omit

child

substitute

person who is under 16 years old

3
Clause 11 (1), note 1
Page 10, line 16—

omit

4
Clause 11 (1), note 2, 3rd dot point
Page 10, line 24—

omit

a child

substitute

under 16 years old

5
Clause 11 (2)
Page 10, line 27—

omit

a child

substitute

under 16 years old

6
Clause 11 (2) (b)
Page 11, line 2—

omit

a child

substitute

under 16 years old

7
Clause 16 (3) (b)
Page 15, line 19—

omit clause 16 (3) (b), substitute

(b) is satisfied, on reasonable grounds, that—

(i) making the order would substantially assist in preventing a terrorist act happening; and

(ii) detaining the person for the period for which the person is to be detained under the order is reasonably necessary for the purpose of substantially assisting in preventing a terrorist act happening.

8
Clause 16 (5) (c)
Page 16, line 9—

omit

Schedule 2

Terrorism (Extraordinary Temporary Powers) Bill 2006

Amendments moved by the Attorney-General

1
Clause 12 (5) (a)
Page 12, line 19—

omit clause 12 (5) (a), substitute

(a) the making of a preventative detention order for a person for a terrorist act while the person is detained under an interim preventative detention order or corresponding preventative detention order for the same terrorist act; or

2
Clause 12 (5) (c)
Page 12, line 24—

omit
