Debates

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Legislative Assembly for the ACT

SIXTH ASSEMBLY

11 MAY 2006

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Thursday, 11 May 2006

Answers to questions:

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

Petition

The following petition was lodged for presentation, by **Mr Stefaniak**, *from 1,710 residents:*

Civil Unions Bill 2006

> **The Petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly that**: the intent of the Civil Unions Bill 2006, tabled in the Assembly on Tuesday 28 March, is to treat a Civil Union for all purposes under Territory law in the same way as marriage (Div2.1Sec5.2). We the undersigned believe that this creates a marriage like relationship which so mimics marriage as to confuse and diminish it, and further that it may be unconstitutional. We believe it is the responsibility of all governments to not only protect and encourage this longstanding institution of marriage which carries so much public good, but also to take no unnecessary action that would create vulnerabilities for it, as we have seen occasioned by similar legislation overseas.
>
> **Your petitioners therefore request the assembly to**: Call upon the Chief Minister to withdraw the Civil Unions Bill 2006 and instead introduce legislation that would allow for the registration of same sex and caring relationships, which does not mimic or diminish marriage, such as is in force in the state of Tasmania.

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

Revenue Legislation Amendment Bill 2006

Mr Stanhope, by leave, presented the bill, its explanatory statement and a Human Rights Act compatibility statement.

Title read by Clerk.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs and Minister for the Arts) (10.32): I move:

> That this bill be agreed to in principle.

The Revenue Legislation Amendment Bill 2006 amends the Duties Act 1999, the Payroll Tax Act 1987 and the Taxation Administration Act 1999. The Duties Act imposes duty on transfers of dutiable property and certain transactions that are treated as transfers. Section 54 of the Duties Act offers concessional duty treatment when a trustee of a trust retires or a new trustee is appointed, provided that none of the trustees are or can be a

beneficiary of the trust. Most trusts structure their affairs to take advantage of this concession.

An issue has arisen whereby commonwealth legislation requires a beneficiary, member, of a self-managed superannuation fund to also be a trustee of the fund. This has the effect of triggering ad valorem duty when a member of a self-managed superannuation fund retires or a new member is appointed as the remaining members are trustees and new members must become trustees of the fund. It is not equitable, nor is it intended, to collect ad valorem duty from self-managed funds while other superannuation funds are able to access concessional duty.

To protect retirement incomes of members of self-managed superannuation funds and to ensure that self-managed superannuation funds are able to access the same concessional duty treatment as other superannuation funds, this bill provides a duty concession for self-managed superannuation funds when a trustee retires or a new trustee is appointed. It is difficult to estimate the impact that this amendment will have on the bottom line, as it is dependent on the turnover of trustees of self-managed superannuation funds that hold dutiable property.

The bill also modernises the Payroll Tax Act to include payments made by means of an instruction to credit an account in payment of wages, such as an electronic transfer of funds, as wages for the purposes of the Payroll Tax Act. This provision clarifies the scope of the existing section, which currently refers to instruments such as cheques or money orders, by including wages paid by an instruction to credit an account, such as an electronic transfer of funds, as wages to which the act applies. Wages paid by an instruction to credit an account are taken to be paid at the place where the account is credited and when the account is credited.

Finally, the bill amends the Taxation Administration Act to provide greater protection of taxpayer information and certainty for tax officers administering the secrecy provisions contained in the act. Section 99 of the act currently seeks to prevent a tax officer from producing "confidential" information and documents to a court unless it is related to the administration or execution of a tax law. The act does not define "confidential", meaning that tax officers are reliant on the common law definition to determine whether information or documents are confidential or otherwise. This is an ambiguous definition and could lead to circumstances in which a tax officer may or may not release information or documents to a court that the court or taxpayer might consider confidential.

It is desirable to prevent the inappropriate release of taxpayers' information under the current provisions. It is also desirable to provide certainty for the tax officers who administer tax laws and to prevent litigation on the matter of whether information or documents may or may not be confidential. As such, the bill strengthens section 99 of the act to prevent a tax officer from being required to produce protected information or documents to a court. Protected information and documents are defined in the act to mean information and documents obtained, or also created in the case of documents, in the administration or execution of a tax law.

It should be noted that this amendment does not, and is not intended to, prevent the disclosure of information or documents where it is in the public interest; nor will it

change any of the other circumstances listed in the Taxation Administration Act where information can be produced. I commend the Revenue Legislation Amendment Bill 2006 to the Assembly.

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

Health Legislation Amendment Bill 2006

Ms Gallagher, by leave, presented the bill, its explanatory statement and a Human Rights Act compatibility statement.

Title read by Clerk.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Disability and Community Services and Minister for Women) (10.37): I move:

> That this bill be agreed to in principle.

The proposed Health Legislation Amendment Bill 2006 amends the Health Act 1993 to address a number of issues in relation to quality assurance and clinical privileges committees. In addition, the bill amends the default commencement provisions of the Health Professionals Act 2004 to extend them by six months. The operation of qualified privilege and quality assurance committees under the Health Act has been a matter of discussion between public and private hospitals, several health professional organisations and ACT Health for a considerable period of time.

The need to use information about health care outcomes and activities to improve patient care is now well recognised. However, many health care professionals fear that the information they contribute to those activities might unfairly be used for purposes other than for which it was intended. As a result, some health care professionals have been reluctant to contribute sensitive information to health professionals and committees involved in health care safety and quality improvement activities. Quality assurance legislation seeks to provide for the confidentiality and protection of certain information generated by or for the purposes of health care quality improvement committees.

The Health Act 1993 was amended in 2001 by adding a set of provisions which regulate the establishment and conduct of quality assurance committees in private health facilities and provide protection from litigation to members of those committees in relation to their conduct as members of the committees. Provision has also been made for the minister to declare a quality assurance activity.

The bill focuses on the following areas in particular. The existing legislation fails to clearly establish performance indicators and outcome requirements for approved committees. In addition, there is no requirement to identify the reason why a committee requires qualified privilege to undertake the functions of their committee or that it is in the public interest to restrict disclosure of information. The proposed amendments will ensure that these requirements are incorporated into the legislation. This amendment will also allow the establishment of combined public and private health quality assurance committees and as a consequence will enhance quality assurance activities that support members of the community who utilise both the public and private health sector.

Amendments to the act in 2001 allow me to declare a process as a quality assurance activity for the purpose of an approved committee. However, there are activities that require qualified privilege to function in the best interests of patient safety but need to operate outside of a committee structure. They are processes of reporting, monitoring and evaluating system enhancements in the clinical area that do not formally report to a quality assurance committee. I propose that the legislation provide qualified privilege to quality assurance activities as well as quality assurance committees.

There may be specific reasons for release of information covered by qualified privilege legislation; for example, disclosure of recommendations from an approved committee to the Coroner's Court and/or health profession registration board. The current legislation does not recognise these circumstances. This bill will allow release of information in specified circumstances.

An additional amendment is proposed to the Health Professionals Act 2004 to postpone the default commencement provisions for a period of six months. The Health Professionals Act requires the gradual transition of identified health professions in the ACT from their current legislative arrangements to the Health Professionals Act 2004. The medical, nursing and midwifery professions have already undertaken the transition and the remaining 10 professions are ready to undertake this transition.

The transition process requires that individual professions develop new schedules specific to their particular profession. Once the new health profession schedules are formally commenced, the corresponding health profession registration act is repealed. The default commencement provisions in the Health Professionals Act 2004 are scheduled to take effect on 9 July 2006. On that date all remaining ACT health professional registration legislation that has not been transferred by way of a health profession specific schedule to the Health Professionals Act 2004 will be repealed.

This would lead to uncertainty and confusion in the health professional registration area if the current registration acts are repealed without a corresponding health profession specific schedule to replace that legislation. To overcome this problem, this bill will amend the default commencement provisions of the Health Professionals Act 2004 to extend them by six months. This will allow sufficient time to ensure that the remaining schedules and consequential amendments are made. I commend the bill to the Assembly.

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

Standing orders—suspension

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (10.43): I move:

> That so much of the standing orders be suspended as would prevent, upon presentation of the Asbestos Legislation Amendment Bill 2006 (No 2), debate on the question "That the bill be agreed to in principle" being adjourned until a later hour this day.

I realise this is a little unusual, but the Minister for Industrial Relations will outline in his presentation speech shortly the reasons why the passage of this bill is urgent for the government. This is a very short bill that simply changes a date in relation to the commencement of legislation but, due to the time constraints being faced by the government, the bill will need to be debated and passed later this day; thus the reason for the suspension of standing orders.

Question resolved in the affirmative, with the concurrence of an absolute majority.

Asbestos Legislation Amendment Bill 2006 (No 2)

Mr Barr, pursuant to notice, presented the bill, its explanatory statement and a Human Rights Act compatibility statement.

Title read by Clerk.

MR BARR (Molonglo—Minister for Education and Training, Minister for Tourism, Sport and Recreation and Minister for Industrial Relations) (10.44): I move:

> That this bill be agreed to in principle.

I present the Asbestos Legislation Amendment Bill 2006 (No 2). The main objective of this bill is to amend the commencement of the Asbestos Legislation Amendment Act 2006, which was passed in the Assembly last week. As members will recall, the act establishes new asbestos management regimes for the residential sector and those occupations that handle asbestos on a regular basis or in the course of their work.

As previously indicated by me and by the former Minister for Industrial Relations, these laws are intended to commence from 1 July 2006, starting with the residential regime. The amendment proposed accurately reflects the intentions of the government and provides greater certainty to those professions and industries affected, by ensuring that these new laws will take effect from 1 July 2006.

I also flag for members' attention that the government will be seeking to debate this matter later today and I now commend the bill to the Assembly.

Debate (on motion by **Mr Mulcahy**) adjourned to a later hour.

Working Families in the Australian Capital Territory—Select Committee
Amendment to resolution of appointment

Debate resumed from 30 March 2006, on motion by **Mrs Burke**:

> That the resolution of the Assembly establishing the Select Committee on Working Families in the Australian Capital Territory, agreed to on 5 May 2005, be amended as follows:
>
> Omit paragraph (3), substitute:

"(3) noting that the Committee has tabled an interim report which indicated at paragraph 5.12 that time and evidence are needed to reliably and validly determine the effects on working families in the ACT of reforms to the industrial relations system:

(a) suspends the operation of the Committee from the date this motion is agreed to until March 2007; and

(b) calls on the Assembly to amend the terms of reference in March 2007 in light of comments in the interim report; and"

MRS BURKE (Molonglo) (10.46): Mr Speaker, it is obvious, from the insistence by Mr Gentleman, that the committee is taking the opportunity to conduct, in the words of Kim Beazley, "all forms of ratbaggery" in an attempt to crystal-ball the longer-term effects and the impact of the new legislation. Indeed, this is a grossly embarrassing attempt by the Stanhope government to string this out for all it is worth—at taxpayers' expense, let us not forget. Of course, we are unable as a jurisdiction to make any legislative changes to the act anyway, given that it is federal government legislation.

It is also blatantly clear now that the Stanhope government desperately needs a major political diversion, given the atrocious state of affairs that the territory is now facing regarding the functional review and forthcoming budget. Sadly, Mr Gentleman is the poor puppet being pushed forward to try and achieve this—

Mr Mulcahy: He's being paid for it.

MRS BURKE: Yes, of course; he is being paid. Predictably, the release of the WorkChoices regulations has sparked a round of hysterical claims—a word that the Stanhope government likes to accuse the opposition of—by the ALP and the union movement. Deliberate misleading is the order of the day, to prop up a large number of false, or at this point unsubstantiated, cases.

I would also point out that this may all be an ignorant attempt by some commentators to provide a viewpoint of the legislation and regulations without enough time passing to see any real impact or changes to Australian and, in our case, ACT workplaces. That goes to the nub of this issue: enough time is needed to pass by to see real impact and change.

We would all most likely agree that this is a radical overhaul of duplicated, and at times confusing, state and federal industrial relations systems. The federal ALP have made attempts to seek some reform in their approach to industrial relations legislation in the past. Yet the federal Labor leader, Kim Beazley, just cannot support the changes to the system now, built incrementally on the reforms that were first made by Mr Keating when he was Prime Minister in 1993, built upon by further reforms in 1996.

I wonder if the federal Labor leader, or indeed any Labor premier or chief minister, maintains an interest in the future of the economy or prosperity of this nation. The trouble for them, of course, is that it appears that the current federal government does, and it recognises the importance of change and the capacity of the business sector to adapt to the pressures brought on it by global economic influences. I believe the federal industrial relations minister, Kevin Andrews, summed the matter up quite well:

> We're saying to the Australian people we believe this is in the best interests of this country, we believe we have got to move forward, we have got to continue being productive if we want to sustain the economic growth that we're experiencing at the present time and to ensure that our kids get the sort of future that we have today.

That was on 27 March 2006. Let us not forget that the earlier changes made to the industrial laws by the Keating government in 1993 naturally received some robust and rampant resistance from the union movement. The protest movement was alive and well. Members may recall that at that time Laurie Brereton, the then Minster for Industrial Relations, attended a meeting at the Sydney Town Hall. The union movement howled him down because he dared to suggest that we needed to move away from the old award system in Australia. It is historically significant to point out that the Howard government in a sense is now trying to fulfil at one level that which Paul Keating set out to achieve in 1993 as to the direction that Australia had to go in in order to achieve reform in industrial relations.

To continue with some more background and context, I am enlightened by comments made by Ms MacDonald in this chamber on 2 May 2006. I will cautiously and selectively quote her. She said:

> I was around when Laurie Brereton was the federal minister for industrial relations and he changed the act. There was a lot of discussion amongst the union movement and employer organisations at that time about the changes and what the impact would be, and I was not necessarily one who was totally opposed to some of the changes that the federal minister, a Labor minister, was putting in. But of course I did not agree with everything that Laurie wanted to put in place, because I, as somebody working on the ground with those people at the coal face—I was doing that on a daily basis—I believed it would make life more difficult.

Ms MacDonald went on to say:

> On the other hand, I would also say that I certainly have never been one to suggest that the way that the industrial relations system is set up should be balanced so much to one side, so unfairly balanced to the employee side, that it would send small businesses, medium businesses or large businesses broke, because the fact is that everybody is affected by that. The people who own the businesses, whether they be small business owners or large shareholders, are affected, as well as the people they employ. There is no point in sending a business to the dogs, should I say, because at the end of the day all you do is hurt the working families.
>
> But, as I said at the start, I have recollections of some fairly shadowy behaviour from individual employers—and that was under the previous system.

Ms MacDonald said that on 2 May 2006. I find this is a balanced opinion, and coming from a member of the ALP in the ACT it is refreshing. It is based on sound observation, and it recognises a need for equity in the law for both the employer and employee and, in my opinion, it acknowledges the need to constantly review the laws to protect and afford rights and responsibilities to both employees and employers.

But let us just refer back to the interim report, which indicated at paragraph 5.12 that "time and evidence are needed to reliably and validly determine the effects on working

families in the ACT of reforms to the industrial relations system". That is why I am proposing in my motion that we suspend the operation of the committee from the date of this motion until March 2007, for those very reasons—and it is sensible; it is very sensible.

I am certainly not in any way opposed to the establishment of the Select Committee on Working Families in the ACT. And let us remember that we are talking about a select committee—we are not talking about a standing committee—and 18 months for a select committee is absolutely disgraceful. It is an abuse of what select committees were specifically set up for: do the business, report, get out, get on with it. This is a disgrace. I have made it abundantly clear that it is important we have such a debate—absolutely. What I have consistently said, however, is that this select committee was pre-emptive in its establishment. As I said earlier in this place and have said often, how can any of us justify expending taxpayers' money on such a committee at this time? How embarrassing it is: "We are going to continue pushing forward. This is our agenda. Blow you lot, blow you taxpayers—you can pay for it while we just bash on and bang on about something that we really can have little to no impact about as legislators."

Even the government's own submission did not address all aspects of the terms of reference. Page 23, paragraph 3.11, displays that it cannot fully address the perceived impacts of the new WorkChoices legislation. It was a sensible response. To do so is simply pre-emptive. The position of the Liberal opposition is quite clear. We support debate on any policy issue that may impact upon the ACT. Statements made by other members of the Assembly that imply that we do not support the rights of people employed in the ACT are most disingenuous and incorrect. They do little more than display to our community that some wish only to engage in the game of blame in this arena, simply because the voices of the union movement and the ALP are no longer heard and appear to hold no relevance in the federal sphere.

I am here to represent all Canberrans, and to that end if I believe we are not effectively utilising taxpayers' money I would be derelict in my duty if I did not openly and publicly say so. I am concerned, as I have said time and time again, that this is a blatant abuse of the select committee system and it degrades the purpose for which they were intended. We should all look very carefully at the reasons why we set up a select committee and for how long that committee should be in operation.

This select committee, if allowed to just amble on, will run for over two years after its inception. I do not believe this is a reasonable time frame for a select committee to continue to operate. Given that the taxpayer will fork out around $10,000 per annum remuneration for the chair, plus other associated administration costs, for doing little to nothing for a period of 12 months or more, as in this case, it is deplorable. I ask members to very carefully and conscientiously consider the amendment I propose and to ensure that we do make the best use of already stretched resources. The question is, however: is the Stanhope government prepared to accept such a point and display to the electorate that it would be wise to suspend this select committee until enough time has passed so that evidence will surface that reliably and validly determines the effects on working families in the ACT, positive or negative, arising from the changes to the federal industrial relations system?

I could say a lot more, but I will not. I am sure my colleague Mr Mulcahy is going to reinforce many of the things that I have said. Mr Gentleman sits there grinning and smirking. It is quite embarrassing, Mr Gentleman, that you can sit there so boldly while we are struggling in the ACT to get our budget in order. We are putting the committee system here under great duress by insisting on pushing forward with this committee at this time. I ask the government to reconsider very carefully and I ask the Assembly for support for my motion today. Thank you.

MR GENTLEMAN (Brindabella) (10.57): I am pleased to see that Mrs Burke has seen fit to be present in the chamber this time. I can only hope that the reason we are debating this today and not during the last sitting period—that being that Mrs Burke was not in the chamber when her motion was due—is not work related, because I think the irony would bowl us over.

This is an important issue that needs and deserves rigorous debate, and it is this very debate and discussion that Mrs Burke's motion attempts to stifle. The government will not be supporting Mrs Burke's motion as written. I have circulated an amendment, which I now move:

> Omit all words after "as follows:", and substitute "in paragraph (3), omit '2006', substitute '2007'".

The importance of the Select Committee on Working Families in the ACT cannot be understated. This committee gives Canberrans the only opportunity to bring forward their concerns about WorkChoices and related legislation, as well as providing an avenue for possible change. The committee is the first of its type in the country: a no-holds-barred committee that does not seek to silence witnesses on the basis of limiting parameters. This committee has at its heart the best intentions for working families, and I define "family" in its broadest, most inclusive interpretation.

WorkChoices came into operation on 27 March, just a few weeks ago. Already we have heard of employers restructuring their businesses to entities of 100 and fewer so as to legally sack eight union members. We have heard about kitchen installers in Melbourne being sacked from full-time employment, only to be offered casual positions at a substantially lower rate. And here in our own region we have heard of the father of five Tim Bollard, sacked because he sustained an injury whilst on the job for his employer, Boral. Tim was reinstated by his employer, but not because of the generosity of Boral. No, Tim was able to continue to financially support his family because he camped out in the front of their yard, and as his colleagues, unaware of his sacking, turned up for their shifts they joined Tim in his contest for reinstatement.

Three days after this legislation came into operation, employers had already capitalised on the opportunities presented to them by the federal government. It is for this reason that I amend Mrs Burke's motion and seek to extend the committee's inquiry until August 2007, with a final report to the Assembly in the first sitting of that same month. Within three days of the legislation coming into effect, we had three clear cases of the economic impact of WorkChoices on working families, one of these cases involving a Canberra employer—three days and three clear cases of the social impact of WorkChoices.

In each of these cases, there is a family who frets about how to pay the bills; there are children trying hard to understand the frustration and despair of their parents; there are children themselves having to deal with the abuse this legislation allows for. Sixteen-year-old Amber Oswald had her pay cut from $14 an hour to just $8.57 after management at the juice bar she worked at decided to renegotiate staff agreements. With the help of her union, the Shop Distributive and Allied Employees Association, Amber took her case to the Industrial Relations Commission. Irrespective of the outcome, which in Amber's case was a win, the question must be raised: is the system fair? Is it about work choice when 16-year-olds must fight to be paid their legal entitlements? I think not.

This Assembly would be doing an injustice to the working families in the ACT to ignore these immediate impacts of WorkChoices for 12 months simply because Jacqui Burke thinks she has something better to do with her time. We are elected to represent and serve the people of Canberra. We must hold their best interests—men and women, workers and their families—at the core of all our decisions. We must hold the interests of those men and women who seek to run law-abiding and morally honourable businesses. These are the men and women who wish to compete on entrepreneurial ability, not on a race to the bottom in wages and conditions of employees. It is for this reason that we must continue the work of this committee, for workers, employers and families alike.

This committee must examine the chain that forms beyond a change to workplace conditions. When a worker is placed on an AWA that reduces annual leave by two weeks, what impact does this have on the worker's family? Does this create greater demand for childcare? Does this place greater pressure on extended families to reduce caring costs? For an employer we need to know whether the cost of buying out two weeks annual leave equates to an increase in total productivity, or we will see a decrease in average productivity as a result of all work and no play.

I raise this hypothetical point to highlight the impact a seemingly innocent exchange—two weeks in exchange for increased pay, possibly on a voluntary basis—will have on those individuals directly and indirectly involved. I have not even included the economic impact on tourism businesses that rely on holidays for income. The chain, the ripple effect if you prefer, already exists. It would be neglectful for this Assembly not to allow the committee to continue its inquiry as to how each link, each ripple, impacts individuals and the community as a whole.

It interests me that an opposition member on this committee looks to cease our inquiry. I assume she has the backing of her party, which interests me even further. We in this Assembly have had to tolerate the anti-worker addresses of Messrs Mulcahy and Seselja, Mrs Burke and Mrs Dunne. We have had to sit through the WorkChoices love song as sung by the ACT Liberal opposition. And now? We have the opportunity to examine just how good WorkChoices is—note the sarcasm—for workers and employers alike, and the opposition seek to dissolve the inquiry. Now? So little faith in the object of your affections, as this action clearly demonstrates, makes me smell a rat.

Mrs Burke raised the term "ratbaggery" earlier on. Let me just try to describe the rat for our members. It is an old rat, a rat that will not go away. It is a rat called Endoxos. I want to share with the new members of this Assembly the tale of the old rat Endoxos. Endoxos

employed 70 cleaners. These cleaners, loyal workers of the rat, were paid a wage, received paid annual leave—

Mrs Burke: Mr Speaker, I raise a point of order on relevance to the issue and personally attacking a member in this place. That is a disgrace. He should come back to the subject matter.

MR GENTLEMAN: Mr Speaker, on the point of order: I am talking about a company called Endoxos, not a member of the Assembly. So—

Mrs Burke: On the point of order, Mr Speaker: that is splitting hairs and the member knows it.

MR SPEAKER: The member is entitled to refer to people outside this chamber, although strong language like that might invite a response. It might be better to refer to it differently. I think the member is entitled to refer to a company; that is fair enough. But the names of these companies only need to be used to the extent it is necessary to include it in the debate. I think it is relevant to raise these issues in the context of a debate about a committee that is looking at industrial issues.

MR GENTLEMAN: Thank you, Mr Speaker; I will take that on board. So I will share with you, members of the Assembly, the tale of that company. That company employed 70 cleaners. These cleaners, loyal workers of the company, were paid a wage, received paid annual leave and accumulated long service leave. They even received allowances. These cleaners worked hard, and should any one of them receive a work-related injury the company had insurance to cover these costs. But the company was greedy. It calculated that the profits from its successful cleaning business could be increased if it changed the way it contracted its cleaners.

Mrs Burke: I raise a point of order, Mr Speaker. Mr Gentleman knows fair well what he is talking about here. I still maintain he is splitting hairs. He knows full well that I was a director of this company. He knows full well that my husband was denied—

MR GENTLEMAN: What is the point of order, Mrs Burke?

Mrs Burke: Please let me have my say, Mr Speaker.

MR SPEAKER: Well, what is the point of order?

Mrs Burke: My husband was denied a citizen's right of reply in this place. I ask that the member stick to the industrial relations facts, not go towards the personal. It is getting too close to being personal and the member knows that, Mr Speaker.

MR SPEAKER: Well, it is appropriate. This is a discussion about a committee that represents—

Mr Stefaniak: Mr Speaker, I raise a point of order.

MR SPEAKER: Hang on a minute. One point of order has been raised. Do you want to add to that point of order? What do you want to say?

Mr Stefaniak: It is quite clear—we have had this debate on a few occasions—that it is an imputation on a member. It is splitting hairs and being highly legalistic to hide behind the fact that a company does have a separate legal entity. But the company, everyone knows in this place because it has been made quite clear, is Mrs Burke and her husband. It clearly comes back then, I would submit, Mr Speaker, to an imputation on a member.

MR SPEAKER: Well, I do not think it is. We have a long-held tradition in the parliaments in the Westminster system to respect the right of members to freedom of speech in the parliaments, and I think Mr Gentleman is entitled to discuss this issue in the context of this debate. This is a debate about a committee that is looking at industrial issues and he is entitled to raise those issues.

Mrs Burke: Actually, I would be interested to hear what he has to say, because it will be useful.

MR SPEAKER: Indeed, Mrs Burke, you would be entitled to respond in that debate.

Mrs Burke: Indeed, except that it is being shut at 25 past, I note also.

MR GENTLEMAN: I am quite disappointed that my speech has been interrupted by the opposition; it may not allow me to continue it to its end. But I will go on about that company. As I said, the company calculated that the profits from their successful cleaning business would be increased if they changed the way they contracted their cleaners. So they set about requesting all the cleaners to form their own businesses and become contractors. What exactly does this mean? This relates specifically to industrial relations and the WorkChoices legislation. Does it mean a once-in-a-lifetime opportunity to become self-employed? Did the cleaners have the opportunity to be their own boss? No. It meant they had to obtain an ABN and do without their normal process.

Mrs Burke: What do you know? You don't know anything. Sit down. You're embarrassing yourself.

MR GENTLEMAN: Mrs Burke wants to shut down this committee—not because she does not support WorkChoices; it is not because she is afraid of what might surface about WorkChoices in the next 12 months, because she thinks it is wonderful. It is because it is all a little bit too close to home. Mrs Burke found no issue with attacking witnesses at the select committee hearings. She accused them of scaremongering. She told witnesses at the committee that the committee was a waste of time, and this was after a witness had told the committee of the serious concerns he has for his son's safety when he hops behind the wheel of a truck.

The only time Mrs Burke silenced her attack on witnesses was when the Construction, Forestry, Mining and Energy Union representatives described the practice of forcing workers from employment to contractor status as a means of reducing employer costs at the expense of employee entitlements. This is the real reason the opposition want to shut this committee down—not for any concern for the workers of the ACT but for their own personal concerns. I have to say that I did not think those animals were communal creatures until today.

Through her motion, Mrs Burke has failed to acknowledge the number of witnesses who congratulated this Assembly for creating the committee. She has failed to acknowledge that the effects of WorkChoices are already being felt, not just around the country but here in our own territory. Mrs Burke does an injustice to working families in her electorate by putting forward her motion. It is shameful that she uses their name as a basis for her argument.

Irrespective of the length of time you shut down this committee, the shameful story of that previous company will not go away, and I ask the opposition to come clean with the people of Canberra, once and for all. For months we have had to hear of your love affair with WorkChoices. Now we hear that you will not support the very inquiry that seeks to examine the object of your affections. Come clean with the people of Canberra. Let them know that you remain interested only in looking after yourselves and your federal mates. Tell them that their best interests are not at the core of your decisions; rather, avoiding your own red faces. I ask them to tell Gowrie childcare worker Emily Connor that when she was sacked without warning or recourse this was fair—it was about choice! Tell her that five years in the childcare centre did not entitle her to some form of explanation or warning. But the Liberal opposition will not be talking to ordinary working people; it is just not in their nature.

We heard the other night about Mr Seselja's position on women. What an achievement, Mr Seselja—third place in the Greg awards. Your continued support of anti-women WorkChoices legislation may see you take out top honours next year. I was going to continue on about some of the other members in the chamber and their position regarding industrial relations, but we are running short of time.

Governments, and indeed oppositions, are remembered by what they stood for. History shows us that great leaders are made from times of social and political upheaval. The Liberal opposition, with this motion and their continued ostrich-in-the-sand approach to industrial relations, will not be forgotten by the people of Canberra. Their failure to represent their constituents on this fundamental issue will be their undoing.

I applaud this Assembly for having the foresight to establish the committee and I implore you all to support my amendment.

DR FOSKEY (Molonglo) (11.12): I remind Mr Gentleman that it is possible to oppose the WorkChoices legislation, and oppose it vehemently, campaign strongly against it and yet support Mrs Burke's amendment. I note that the whole nature of your response to the motion was about the Liberal's stance federally and, assumedly, locally on WorkChoices. Yet that was not what the motion was about. I agree. I oppose their response, but I still support the motion. You hinted at a lot of stories about hardship that has already been experienced under the WorkChoices legislation.

If I thought your committee was going to solve those problems and get rid of the legislation, I would be absolutely behind it. But I cannot imagine that the committee, as constituted, leads to robust discussion which is going to do anything but score political points. I believe that the Assembly is the place for that robust discussion. I am glad we are having it now. I also believe, Mr Gentleman, that your position as an MLA gives you the authority to collect and comment upon these stories. Indeed, I see it as very much

a central part of the job that you see as your role as MLA. I do not think you need a committee to do that.

I also wanted to say that I heard what you said, which was obviously causing Mrs Burke some distress. I am talking about issues that may or may not be true. I am not party to the information, but I am looking at the implications of talking like that about something that a member is associated with. It makes it very difficult for a member to do a critique. Yet that is the role of members of the Assembly. No matter what we have done or are associated in, it is legitimate to express a point of view that has some bearing.

In this case, Mrs Burke has moved a motion that asks that a report of a committee be deferred for a time. She has moved that, regardless of her history in industrial relations. It is a political point scorer, I guess. I need to refer here to the speech that I made when this committee was set up. I guess today's discussion bears it out. I saw that, as the committee would have two Labor members and a third member—it could have been me; as it ended up, it is one of the opposition—it would just be another arena in which the whole debate about the WorkChoices legislation would be played out. I question the sensibleness of that.

As it was, the terms of reference were launched upon us without discussion. To me—and I was new; I am not as new now—that went against the whole idea of how committees work. Everyone in the Assembly should have an opportunity to influence a select committee of the Assembly, but that was not offered to us at that time. Sometimes I hear members of the government talk about the Assembly, when really they are talking about the government. That is possible because there is a majority; that is the way the numbers fall. When a motion can be amended, with the numbers, to become the motion, then it is not really fair to say that it was the Assembly, even though technically it is true.

While absolutely committed to a campaign against the WorkChoices legislation and very concerned about the impact it is having in our community—and I believe that I, as a member, can talk to constituents, can go to meetings with unions and can do all kinds of things—I do not think that a committee is necessary, especially when it is a committee that has a political agenda rather than perhaps a fact-finding one, although there are many facts to be found, and especially when it is used in the way that I have heard it used today.

MS PORTER (Ginninderra) (11.18): Mrs Burke would have us believe that there is little happening on the industrial relations front in this country. Her motion ignores the evidence and comments that we have heard in the committee since we have been holding public hearings. Mrs Burke's motion is simply an attempt by the Liberal opposition to distance themselves from this legislation. It is not just parliamentarians that are very uneasy; 72 per cent of voters support unfair dismissal laws that protect workers; 59 per cent of voters believe that the government's new IR laws alone are strong reasons to vote against the federal government at the next federal election; and 66 per cent believe that the laws are a threat to every working family.

We have heard from Mr Gentleman about several cases of employers abusing the rights of workers already—drivers behind the wheels of trucks, for instance, and the worker that he mentioned making juice at a juice bar. We have heard from Mr Gentleman also about the Canberra childcare worker sacked without any warning or right to unfair

dismissal legislation. Mrs Burke would have us believe that workers' rights, their health and safety and their working conditions are not under threat. She accuses us of "crystal-balling".

This week, after an agonising 13 days and 14 nights, the two trapped miners at Beaconsfield, Todd Russell and Brant Webb, walked free. All of us were hugely encouraged by their rescue and thank from the bottom of our hearts those who risked their lives to rescue them. The miners and their courage and that of their families will always remain in our memories, I am sure, particularly the family of Larry Knight, the miner who tragically died as a result of the rock fall. The courage and thoughtfulness of that family in the face of such tragic loss shone through. We saw how professionally the rescue teams worked in such difficult circumstances—

MR SPEAKER: Ms Porter, have you drawn a link between that and the motion? You need to draw a link between what you—

MS PORTER: I am going to. May I continue, Mr Speaker?

MR SPEAKER: Yes.

MS PORTER: Thank you. We saw how professionally the rescue team worked in such difficult circumstances to free their colleagues. However, Kim Beazley recently copped a lot of flack for stating that one of the reasons these two miners are still alive is union safety training. Unions have a significant role to play in protecting the health and safety of employees. WorkChoices will remove the protection unions can offer in occupational health and safety, and it is entirely likely that safety conditions will deteriorate in some workplaces because of the removal of the protection offered by unions.

Quite clearly, though, Mrs Burke is not interested in finding out whether ACT workers health and safety conditions will deteriorate or not. Maybe Mrs Burke does not care. Not only are workers' rights and conditions under threat; it is happening already. Canberra employers are using WorkChoices to sack, to change working conditions and to enforce individual contracts that are below award. Her motion is naive. It is disrespectful of those workers and their families who have already had a raw deal under WorkChoices.

Someone has had to ask the hard questions, Mrs Burke. It is not easy at a time like this to ask them, and you would prefer, I know, for us just to light the blue touch paper and sit back and watch the results. I am afraid that this legislation may cause an explosion of workers' rights like nothing we have ever seen in this country. No effects for at least a year, Mrs Burke? Unsubstantiated claims, Mrs Burke?

According to a report circulated on Tuesday of last week, a major employer, Spotless Services Australia, is offering its cleaners and catering staff a new contract that cuts their wages and removes or reduces important entitlements such as part-time and casual loadings, overtime and redundancy. In a document given to unions by lawyers acting for the company, Spotless specifically mentioned flexibility and decreased costs that the WorkChoices system have given to the company's competitors. The company claims it must drive down its own work and pay conditions in order to compete. The race to the bottom has already begun. How long do you want us to stand around for and watch it happen, Mrs Burke?

The recent edition of the *Australian TAFE teacher*, the official journal of the Australian Education Union, TAFE division, devotes an article to the IR reforms. The article poses the question: who is caught by the new federal IR laws? It points out that it is the territories and Victoria that are immediately affected. That means the ACT, Mrs Burke. The recent United Services Union's official journal devoted a number of pages to an attempt to give members information about WorkChoices and pointed out that the most vulnerable at the moment are those who are about to start a new job. I quote:

> Any new worker who has to accept an individual contract—or an Australian Workplace Agreement—as a condition of employment will only be entitled to a minimum wage of $484 a week and will have no entitlements to automatic penalty or overtime pay.

The Private Hospitals Association, an organisation that might not immediately be thought to be left leaning, has a cover story on the IR reforms in their latest journal *Private hospital*, headlined "IR changes shake the workforce". The article gives an outline of the mean features of the legislation and Kevin Andrews' and John Howard's views. It also references the nurses federation, stating:

> The IR legislation may also have a negative effect on the current nursing shortage and the quality of patient care. We already know that nurses walk away from the profession when they feel undervalued. We know that nursing will not be an attractive option for young people entering university if these laws lead to the erosion of employment conditions … We have already seen employers gearing up to take advantage of the extreme laws, in aged care facilities where nurses face a wage gap of around $200 per week.

This situation could be even worse in the ACT. I recently discussed in this place an ACT aged care nurse's wages gap of nearly $300, and it may well be worse under the federal government's so-called reforms. Registered nurses are in short supply. Do we want to attract nurses to this profession or do we want to drive them away?

It is ironic that this motion appears before us even as the states' High Court challenge on WorkChoices continues. When the rest of the country wants to talk about WorkChoices, we have the ACT Liberals wanting to shut down the debate, discussion and inquiry. Despite the attempts of the opposition, I believe this Assembly will not neglect the working families of the ACT. I will support Mr Gentleman's amendment.

MRS BURKE (Molonglo) (11.25): I draw members' attention to *House of Representatives Practice*. I may have said this before in reference to house select committees:

> Select committees are appointed, as the need arises, by a resolution of the House. Select committees, in Australian practice, have a limited life which should be defined in the resolution of appointment. The creation of a select committee is seen as a measure to meet a particular and perhaps short-term need

It seems to me that the comments from both Ms Porter and Mr Gentleman try to have a bob each way in this. They certainly wandered off the essence of what I was saying here. That is their call; they can do that. But obviously they then resumed the well-worn

approach: "Let us personally attack Mrs Burke." I can stand that; I have got big shoulders.

I will be interested to read the *Hansard*, Mr Gentleman. I suggest, as I have said before, that you make an appointment to talk with my husband instead of taking on the propaganda nonsense and rubbish that you continue with. You probably do not know this, but we have succeeded in the Industrial Relations Commission and have been awarded costs, often not heard of, against the union. That is something that you did not know, I am sure.

It is interesting to see that Mr Gentleman, fully supported by the government, totally ignores *House of Representatives Practice*, at page 626. I will not be moving from the committee. This is something that Mr Gentleman tried to get me to do early in the piece. I am sorry, I am not going anywhere. I am interested in workers; I am interested in having this debate. It is of great disappointment to Mr Gentleman that I will not be going.

It is a fact that I had, prior to coming to the Assembly, over 14 years of business experience. That poses a big problem for Mr Gentleman because he simply does not know what he is talking about when it comes to running a business. When it comes to organising how to conduct business, he has no idea. Clearly, the ignorant remarks he has made in this place demonstrate that.

I want to be on the committee; I want to be involved and will be. I will not be removing myself from that committee. I will be there to add what I can. I make no apologies for being a thorn in Mr Gentleman's side. Hopefully, that will make for robust discussion.

Let us move on to the amendment. It is strange that, in the argument that both Ms Porter and Mr Gentleman put up, they argue against their own argument. They are both saying that we have evidence. Of course we have. I have been hearing it. Some is substantiated; some is not; some is still in abeyance. You would all agree with that. If we have the information, therefore, and we have a good case to make, why are we now extending the life of the committee and the reporting date of the committee?

You are telling me that we have information; we can now report. Let us do what *House of Representatives Practice* says: do the job; get a snapshot of what is happening, if that is looking like it is going to be the way that things are going; and report. There is no need for an extension of the life of the committee and of the reporting date. Your argument flies in its own face. You cannot have it both ways. You cannot be saying you have the evidence, yet you need longer to report.

Mr Gentleman: Because more evidence is coming out.

MRS BURKE: No. You used a standing committee for that, Mr Gentleman. Somebody should have explained that to you and, happily, we could have found somewhere to discuss this. As I have said, there is no impact that we can have in a legislative way to make any changes to federal legislation. We know that. The ACT government put a good argument forward to the Senate committee.

We are here spending taxpayers' money, wasting time, debating an issue that we really cannot have significant legislative impact upon. You cannot deny that. We can make a case, through the report of the select committee, but we should not be taking this embarrassingly inordinate length of time to string it out for as long as we can, firstly, as Dr Foskey said, to make cheap political points; secondly, to continue to beat on the federal government; and, thirdly, to be the big smokescreen for the problems that the Stanhope government sees itself facing.

It has become very convenient. You will continue to do that. You will do that because you have the numbers; I am well aware of that. You are going to continue to sit there, cheeky and hard-faced, continuing to run this committee at taxpayers' expense, in the hope that we can keep plucking out, via the various unions, people who are going to be put like lambs to the slaughter. I am sorry, but in my experience there are a couple of poor unions who have done just that—picked up people, used them for their own means and then dropped them. I will talk to you outside the chamber about that, Mr Gentleman. I could put to you a very sad case that recently happened to a local union that used somebody from the cleaning industry. That person has had a heart attack and is now unable to work.

We talk about this committee being able to achieve things. All it will do is stir things. It will mean that we string it out for as long as we can. It will not really achieve anything at the end of the day. We all know that. It really flies in the face, as I keep saying, of *House of Representatives Practice*. I will not be supporting Mr Gentleman's amendment.

It being 45 minutes after the commencement of Assembly business, the debate was interrupted in accordance with standing order 77 and the resumption of the debate made an order of the day for the next sitting.

Education, Training and Young People—Standing Committee
Statement by chair

MS PORTER (Ginninderra): I seek leave to make a statement regarding a new inquiry.

Leave granted.

MS PORTER: The Standing Committee on Education, Training and Young People has resolved to inquire into and report on the responses of the vocational education and training sector to skill shortages in the ACT work force, with particular reference to: the demand for vocational education and training and whether this demand is being met in the ACT; incentives and impediments to the commencement and completion of apprenticeships or traineeships; the appeal of apprenticeships and traineeships as career development pathways, including general community perceptions; the effectiveness of apprenticeships and traineeships in addressing skills shortages; and other related matters.

Administration and Procedure—Standing Committee
Membership

MS MacDONALD (Brindabella) (11.32): Pursuant to standing order 223, I move:

> That Ms MacDonald be discharged from the Standing Committee on Administration and Procedure, for the meetings scheduled for 23 May and 15 August 2006 and that Ms Porter be appointed in her place for those meetings.

Question resolved in the affirmative.

Terrorism (Extraordinary Temporary Powers) Bill 2006
Detail stage

Clause 16.

Debate resumed from 9 May 2006.

MR STEFANIAK (Ginninderra) (11.34): My amendments Nos 7 and 8 probably go to the real crux of this matter because they deal with the tests and what they would do. Amendment No 7 deletes clause 16 (3) (b) and in its place inserts a provision that, basically, would not apply to New South Wales and the rest of Australia. Clause 16 (3) (b) at present states that a senior police officer has to be satisfied on reasonable grounds:

> (i) that it is reasonably necessary to detain the person to prevent a terrorist act; and
>
> (ii) that detaining the person under the order is the least restrictive way of preventing the terrorist act mentioned in subparagraph (i); and
>
> (iii) 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 act.

There are two things there we have no drama with, but I suggest that the test should be that he or she be satisfied on reasonable grounds:

> (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 hap

The key words there are "substantially assist in preventing a terrorist act happening", as opposed to "the least restrictive way of preventing a terrorist attack happening". This was an issue that was before the legal affairs committee, the federal Attorney-General's Department and the Commissioner of the Australian Federal Police, Mick Keelty. They all had problems with "least restrictive way of preventing a terrorist attack".

As I said earlier in the in-principle stage, it is crucially important that we have the same tests nationally. It is ridiculous if the AFP have to operate under two different tests. It would be very difficult, and maybe even impossible, for anyone to properly define the least restrictive way of preventing a terrorist attack. That makes it so much harder for the police and for the courts to interpret a different standard to what is applied in the rest of

Australia. Surely, if we are being fair dinkum about this, we want to ensure that the police and the courts are able to have detained someone who should be detained.

We are talking about quite extraordinary situations here. People really need to have a reality check and get out of their comfort zone. It is all very nice here on a lovely, sunny, autumn Canberra day, a very peaceful place, debating this matter in a civilised way, as we tend to do and have done traditionally in Australia for over 100 years. But our freedom comes at a price: 100,000 Australians died in various world wars and other conflicts fighting to preserve our freedom.

Let us not kid ourselves. We face—and even the Chief Minister recognises this—a threat. At COAG he admitted that, in the briefings he had, we are not pussy-footing around here; we are not dealing with people who share the same values as we do; we are dealing with people who want to kill us. What on earth is wrong with detaining for up to 14 days someone who wants to kill us, to help prevent that, especially when there are provisions here to ensure that they are detained in a very humane way?

I find it ludicrous that we are not following the same test as the rest of Australia and that you are making it so difficult—we are not—for our law enforcement agencies to seek to detain people who want to kill us and who hold all these strange views. In some instances, I understand, some of these mad groups think that, if they blow themselves up and kill a lot of people, they will get 72 virgins. That is medieval stuff. It makes a nonsense of what we are all about in terms of being a civilised society.

But civilised societies have regularly been called upon to defend themselves. Australia has always answered that call most effectively, even though we are only a little-ranking power. We have lost many, many people in the past, defending the rights of us here today to remain free. In this parliament, we have a duty—and the government certainly has a duty to the citizens of the ACT if it introduces laws like this, which it is doing—to make sure they work and not have impossible tests that may well prove to be nigh on impossible and that discourage the police from perhaps using them and having to forcibly do something else. As much as anything else, that is a horribly inefficient and problematic way of dealing with things. You have a duty to introduce laws that protect your law-abiding citizens.

The problem here is that you are not doing so. These laws have been framed to be compliant, it seems, with our Human Rights Act. I do not agree with that act. The Liberal opposition does not. We see that act as an act that panders to criminals—in this case, would-be terrorists. I have yet to see it used for the benefit or ordinary, law-abiding citizens.

There were similar concerns raised in places like the UK, who went down the same path a little before we did. They are seeing real problems now with how that act is being interpreted by their judiciary. I read an article in the *Spectator* referring to activist judges and the problems they have got with over 1,000 people who are citizens of the UK, who have been imprisoned and who are not being deported. As a result, they have got problems in terms of error being interpreted again in favour of those criminals. There are suggestions in the UK that they might have a substantial look at some of the conventions they are party to and maybe look at substantially rewriting some of their legislation as a result.

This is the problem when you are giving slavish attention to an act such as the Human Rights Act. You are probably even going too far there with section 28 of that act, which at least gives some opportunity for you to bring it back to reality. If you look at the scrutiny report on my bill, which has these tests which are applied in the rest of Australia, it is not necessarily incompatible with the Human Rights Act either.

You are applying here a very stringent test on the AFP. You are making it very, very difficult for them to satisfy that test. You are making it much easier, I submit—and running the risk of allowing—for terrorists to shop around. You are putting the ACT in a different category to everywhere else in Australia. Be it on your own heads if something goes wrong here. I sincerely hope we never have to use this act or any other similar act in Australia. That would be wonderful. That would be a great outcome for everyone. But there is an obvious threat. The Chief Minister knows it.

We probably do not have the same detail he does or anyone else at COAG does; none of us were there. But there obviously is a very real threat. I take very, very seriously warnings from experts like Mick Keelty and the AFP. I take it very, very seriously when they say they need legislation that at least, as far as the tests that have to apply for police, is the same across Australia. I take it pretty seriously when the federal Attorney-General's Department gives similar evidence to that on the need, in these crucially important parts, for the test that law enforcement authorities have to operate under to be the same.

We are not dealing with parking matters, we are not dealing with traffic offences, we are not even dealing with minor matters under the Crimes Act; we are dealing with potentially horrendous crimes against humanity—in this case, ordinary, law-abiding Canberra citizens. You are letting them down if you do not have the same tests; you are needlessly causing problems; you have a duty to the community to ensure the security of that community; and you really are doing it the wrong way around. You are putting far too much emphasis on your Human Rights Act and far too much emphasis on the rights of criminals and would-be terrorists—people who want to destroy us and our society—and you are doing nothing to help the ordinary men, women and children of Canberra.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (11.43): The government will not be supporting these amendments. Furthermore, the government—and I think I speak for all members on this side of the chamber—takes great offence at the assertion that in some way, through this amendment, the government has ignored the contribution, for example, that Australians have made in war to defend our liberties. What liberties were they defending, Mr Stefaniak? They were defending the rule of law, they were defending the right to be free from arbitrary detention, and they were defending the right to a fair trial. Those were the rights they were defending, and those are the same issues that we are defending here today in our legislation.

We are not prepared to accept an easy threshold on detention without trial, and that is what preventative detention is. It is detention without trial and without charge, and that is something that the government considers is an extreme course of action that must be taken as—and only as—a last resort. That is what the provisions in the bill provide for. It

is, as the terminology is used in the bill, the least restrictive test. Essentially it is the last resort. So it should be.

You stand up in this place and talk about our betraying the liberties fought for by our forefathers and others. But what were those liberties? Those liberties were the right to be free from arbitrary detention, the right to a fair trial, and those same issues that we are now having to address in this legislation. If we simply accept that any course of action is acceptable to prevent a terrorist attack, then we become the thing that we are seeking to prevent; we become the people that we feel so opposed to and, rightly so, who do not operate a society in accordance with the rule of law with regard to human rights and with regard to human liberties. It is not about protecting the rights of criminals; it is about protecting the rights of ordinary citizens.

I have already, in the in-principle stage, talked about the fact that in this county in the past decade, indeed in the past five years, we have already seen instances of innocent people being detained without charge for extended periods of time. We have already seen in this country examples of innocent people being detained without charge and forcibly expelled, deported from this country, because of inadequate safeguards on the protection of their rights and liberties. It has already happened. It is not some hypothetical situation. It has already happened.

It should not have happened. It is not acceptable for it to happen in a democracy, in a society that values the rule of law. That is why the government holds to the least restrictive test. It is a fundamental threshold and goes to the heart of this legislation's compatibility with not just the ACT's but Australia's international human rights obligations.

Mr Stefaniak in this debate seeks to characterise this government's commitment to human rights as some left-wing, radical notion.

Mr Stefaniak: It is an obsession.

MR CORBELL: An obsession! The rights that are enshrined in the ACT Human Rights Act are not radical notions. In fact, the rights that are enshrined in the Human Rights Act are simply the rights that our nation has agreed to and is a party to under international law. There is nothing radical or unusual about this, and it is certainly not pandering to some radical elite or clique within the community, as those opposite would seek to characterise it. These are the rights enshrined in international law and in national agreements which Australia is a party to—full stop. Australia is a party to these agreements and rights, and our Human Rights Act simply reflects that. I am yet to hear an argument from those opposite about why that is a bad idea.

The government does not accept these amendments. We do not accept the assertion that it would make it more difficult for police to take appropriate action and seek court orders on preventative detention. It proposes, in the government's view, a proportionate response on these issues. Yes, it places a significant onus on law enforcement authorities to justify the need for a preventative detention order. But so it should, because preventative detention is a measure of last resort. It is detention without charge, it is detention without trial, and it should be a measure of last resort.

If the Assembly were to accept the Liberal Party's amendments, Mr Stefaniak's amendments, it would reduce the human rights compatibility of this legislation; it would undermine the obligations we all have, not just the citizens of the ACT but the citizens of Australia, to abide by our international human rights obligations; and it would do so without any demonstrable reason. There is no evidence to suggest that a lower threshold will achieve anything greater than the threshold test that is proposed by the government. There is nothing, there is no evidence to suggest that.

The government does not support these amendments. This is a threshold issue. This is the central issue, and the government believes that what is in the legislation is the appropriate approach.

There is one other point I make. If there is a terrorist attack in Canberra, it will be because it is in Canberra; it will not be because of clauses in our legislation. The government does not accept the assertion that terrorists go jurisdiction shopping before they decide where they are going to undertake a terrorist attack. We all, I am sure, sincerely hope that we never see such an instance in our city, or indeed anywhere else for that matter. But it is a very significant leap of logic to say that terrorists go jurisdiction shopping, peruse legislation and then decide where they are going to undertake a terrorist attack. It is not an assertion the government agrees with.

The approach reflecting the government's bill is proportionate, and "proportionate" is an important requirement. That is consistent with the COAG decision that it be a proportionate response—not an over-the-top, let's-go-for-it response—that has regard to our obligations as elected representatives and governments to protect both community safety and the rights and liberties of individual citizens in our community. Both of those things must be had regard to in a proportionate response. Mr Stefaniak's amendments are not a proportionate response.

MR PRATT (Brindabella) (11.52): I rise to support Mr Stefaniak's amendments and to address a couple of issues raised by Minister Corbell. Firstly, in the interests of ACT Policing operations and ensuring that our ACT police force has the same consistent national benchmarks to operate by as other police forces in this country, I call upon the minister to support Mr Stefaniak's amendments.

Mr Stefaniak is seeking to ensure that the ACT jurisdictional, justice and policing environment is the same as everywhere else in this country. I remind the government again that our police will often be operating in, shall we say, a cross-border environment. They have to be able to operate hand-in-glove with the New South Wales police force. ACT community police also need to operate hand-in-glove with AFP national policing operations. Therefore, it is important that they have the same clear-cut benchmarks and the same instruments of power, otherwise you will have a sea of some confusion. The government would serve our police better if it made sure that the operational playing field, so to speak, was consistent.

Another consideration is that police have to be trained to carry out these measures. What is happening at present? Are there different types of standards and applications in the training of AFP national, ACT community policing and New South Wales police? I know that is currently the case with—

Mr Corbell: That is the case for everything else we do.

MR PRATT: You are right, minister. That is currently the case for domestic crime and domestic law and order. But we are talking about—and I say to you again what I said the other day—a different level of crime. We are talking about a national-interest, terrorist-threat bag of criminal activity, and the stakes are much, much higher. The time fuse to be able to respond to and intervene in the commission of this sort of crime is so much shorter. There is not the same amount of time that the police in this country currently have in policing their communities against the background of garden-variety domestic crime. And that is the point. That is why new legislation is being enacted across this country. The point of Mr Stefaniak's amendments is that this is a different playing field.

The application of the tests that police undertake to determine whether they will detain somebody for 14 days needs to be part of that national benchmark. Preventative detention is a very, very serious decision for police to take, and we would maintain that the testing should be made against a national benchmark and that the testing needs to be consistent.

What is the primary purpose of the police taking a decision to use preventative detention? In many circumstances it is to avoid taking chances in the community in highly dangerous circumstances when the facts are not clear about what is going on. We are talking about circumstances in which police do not want to take any chances when, on reasonable grounds, they are concerned about a potential threat, the truth is unknown and investigations are continuing. If they have to make perhaps the regrettable decision to detain somebody on the basis of those high-risk concerns, then they need the power to be able to do so.

Let me refer to a case that has occurred in the last 24 hours in this country, which I believe illustrates the point I am making. Without going into the details of the case or prejudicing the case—and I am talking here in general terms only—I refer to the arrest in Queensland overnight of Mr Amundsen who, it is alleged, may have been making some bombs. It is alleged. Thank God, the magistrate did not give him bail in this particular case because—this is now on the public record—the police have said that the nature of what they found on this man's property was sufficient to level five blocks. The nature of the—

Mr Corbell: He was charged with an offence. It is entirely different.

MR SPEAKER: Order! This is a matter before the courts, Mr Pratt, and there are some rights assigned to people about whom allegations have been made. You should be very careful about referring to that matter.

MR PRATT: I understand, Mr Speaker. I am referring to what is in the public arena now.

MR SPEAKER: Order! That is of no import here.

MR PRATT: I am not reflecting on the charges per se. I am simply pointing out that it is now on the record that explosives were found on a property, and they had the capacity to—

MR SPEAKER: Order! There is no need for you to go to evidence that might be brought before the courts in a criminal matter, and I think you should desist.

MR PRATT: Mr Speaker, can I not reflect on the procedures undertaken by the court in this case?

MR SPEAKER: Well, there is a matter before the court—

MR PRATT: In terms of the application for bail?

MR SPEAKER: Some allegations have been made against a person and the person is being charged, and I think it is best left to the courts and not run some sort of a kangaroo court in this place.

MR PRATT: Mr Speaker, I am not debating whether the man has committed an offence or whether he is guilty or not guilty. I am not doing that. I am talking about what police have said they found on a particular property and therefore reflecting on why it was a good thing that the—

MR SPEAKER: I order you not to refer to matters which might come before the courts in Queensland on this matter.

MR PRATT: Okay, Mr Speaker. I refer to a number of cases in this country where police have found weaponry or explosives on people's properties and have sought to oppose bail. In those particular cases the courts have been wise not to allow bail. That is an example of where sensible authorities have said that chances cannot be taken during the investigation of certain circumstances because of the potential outcome of those crimes, and that is what we are saying here. What we are saying is that where police are concerned that an investigation might find that mass-murder weapons could be used, the police want to make sure that no chances are taken while those investigations are under way.

I also implore the government to understand the need for the safety of police in these issues. If police have reasonable grounds to detain somebody because they feel that that person may be in the process of committing offences which will have catastrophic outcomes, then it is important not only that the state detain that person, pending further investigations, but also that the safety of police be taken into consideration. If people are not going to be detained, if people are going to be given bail, if people are going to be released when it is thought they represent a high risk, then you are asking our police to perhaps go back at a later time and continue the investigation and the arrest process. This is an example of where we may be putting our police at unnecessary risk, bearing in mind that they have made a determination that there is a very high risk to public safety.

Mr Corbell talks about the need for these things to be used as a last resort. The opposition would absolutely agree with that. He talks about the great risk of innocent

people being detained without trial. He is quite right: that has occurred. Mr Corbell quite rightly gave a number of examples where, very regrettably, people in this country have been wrongly detained. That has been happening forever in every democracy and will continue to happen because law is not perfect. But the law is there to be applied in the interest of community safety. Sometimes you cannot take a risk and, therefore, people can be innocently detained. That has happened and will continue to happen. I put it to you, Mr Speaker, that the concern raised by the minister is a red herring and in fact undercuts the sort of law that we want to see in place.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (12.03): The example put forward by Mr Pratt is a poor one; the scenario that he puts forward is a poor one. He said that there have been cases in Australia over the years where the courts have agreed not to provide bail to people who have appeared before them in relation to explosives and firearms offences. That is exactly the point that the government is making. In those circumstances, and in the scenario that Mr Pratt paints, those people have been charged. A charge has been levelled against them and has been considered by the court.

Preventative detention—and this really weakens the position that the Liberal Party is putting—is about detention without charge, without sufficient evidence. That is what preventative detention is about and that is why a much higher threshold should apply. It is quite reasonable for the police to go to the court and say, "We have found these persons and they have all these explosives on them." They can be charged. But preventative detention is about detaining someone without charge. It is an entirely different set of circumstances. It is disappointing that the Liberal Party does not see the distinction between those two issues, and it only underlies the importance of imposing a much higher threshold in relation to the issue of preventative detention and why the government's proposals are the most appropriate approach.

MR STEFANIAK (Ginninderra) (12.04): I use my second 10 minutes to make a few comments on what Mr Corbell has talked about and to address subclause 16 (5) (c), which has a similar effect. I did not do that the first time. I will do that first.

That particular clause has a similar but slightly different test. This relates to preserving evidence. I am seeking to omit clause (c), which states that detaining the person under the order is the only effective way of preserving the evidence mentioned in paragraph (b). New South Wales has (a), (b) and (d) but not (c). Again, we say this is one of the most unreasonable tests and will be very hard to operate in practice. How on earth do you show it is the only effective way?

You have there already that it is reasonably necessary to detain the person to preserve evidence, that the terrorist act has to have happened within the last 28 days, and that detaining the person under the order is reasonably necessary to preserve the evidence. Those are the tests other states have. Those tests are fine and should apply here. To add an additional test that detaining the person is the only effective way of preserving evidence causes the same problems to arise as I indicated in my speech on the first lot of amendments.

Mr Corbell made a number of comments on the mantra of this government in saying terrorists will not shop around. We have again got Commissioner Keelty basically

indicating that is what sophisticated terrorists may well do. Mr Corbell himself concedes, as we all know, that at any rate the ACT, the seat of federal power, is an obvious target.

I remind the minister that organised crime shops around. We have seen in Canberra in recent times some facts and figures which indicate that there is a lot of drug activity. There is probably more drug activity in certain drugs like ice and ecstasy than in other parts of the country. There are organised gangs who come up here from Sydney, for a number of reasons. There is a ready market; it is easy to access; you do not have to travel too far; we are seen as an easy touch; our laws are different from interstate laws; the courts are seen as an easy touch, not much happens if you get caught; again, it is a good market. People shop around.

Mr Corbell: On a point of order, Mr Speaker: Mr Stefaniak is reflecting on the courts in quite an inappropriate way by suggesting that the courts are an easy touch. It is quite inappropriate and disorderly and he should not reflect on the judiciary in that manner.

MR STEFANIAK: No, I am not.

Mr Corbell: You should withdraw it, Mr Stefaniak.

MR STEFANIAK: No. I refer you to standing orders, Mr Corbell. I will move on. That is probably the easiest. The point I am making is that organised crime—

MR SPEAKER: I will have to refer to the *Hansard*, because I did not hear exactly what he said, Mr Corbell.

MR STEFANIAK: Organised crime shops around, and you must take heed of that particular fact. You must take heed too, I submit, of what experts like Commissioner Keelty say on that. Your arguments on that are quite wrong and perhaps even facile, in that it is a nonsense to say that sophisticated criminals and sophisticated terrorists are not going to check out things like legislative differences between places. There are obviously a lot of other known factors as well. But to say that is simply not a factor is wrong. I back Commissioner Keelty's opinion that he gave to members of the government here.

In terms of the unique nature of these types of laws and the fact that they are detention and are not after someone is charged, of course the opposition recognises that. Morris Iemma, Mr Bracks and Mr Beattie obviously recognised that. Yet when you look, for example, at the law over the border in New South Wales, which is exactly what I am basing these amendments on, they have not got any particular problem at all in having effective laws, reasonably strong laws, with checks and balances in them. All you have to do is read my bill, which is basically the New South Wales law, to see the checks and balances there.

At the same time, you should not hamstring the law enforcement authorities in terms of being able to go to court and seek the detention of a person because they might be committing a terrorist act or seek their detention so that evidence cannot be destroyed. There are checks and balances within their legislation. So it is a nonsense to say that what we are proposing is unreasonable. It is eminently reasonable.

Perhaps the most eminently reasonable part of this entire legislation is the fact that in all Australian jurisdictions you cannot detain someone without charge or trial for a period of longer than 14 days. Those persons have to be detained in humane situations. There are other checks and balances in relation to the nature of their detention, including the ability to talk to lawyers, to members of the family et cetera. Those are the hallmarks of a very civilised society. The fact is that the longest anyone is prepared to go here is a maximum detention of 14 days.

Yes, Mr Corbell, it is quite possible that someone might be wrongfully detained. That is possible if we get a lot of this happening in Australia, but there are checks and balances even there. The other jurisdictions have their remedies and, at the end of the day, people are not going to be detained for the lengthy periods you state in relation to some other examples you were giving, because these laws have those proper restrictions in them. That is where you get your checks and balances, and that is what your Human Rights Act should be about.

I hark back to section 29, which enables sensible laws, I hope, to be made. If it is interpreted that it does not, that backs up my argument that, unfortunately, all we have seen so far is an act that protects the rights of criminals and, in this case, would-be terrorists. But even if you look at your own act, there is ample provision and ample argument to say that what is being proposed here is not necessarily incompatible with that whole act. I recommend you have a look, too, at that fundamental right to life in section 9. It is right up there up front. One of the first rights, the most obvious one, is the right to live. It refers to natural persons. It refers to every man, woman and child in Canberra and their fundamental right to live. And you have to balance that with the rights of would-be terrorists.

In my bill and in these two particular amendments, the test is a proper balance and a very reasonable balance. Other democratic countries detain people for much longer than just 14 days. Other democratic countries have much more stringent provisions than we have here in Australia; in the bill I have before the house, which you are going to vote against; in your own bill; and in the bills interstate. You have to have a proper balance. I again submit to you all here today that you are putting your heads in the sand here. You are going off on a tangent. You might be doing it in a very well-meaning way, but you are going off on a dangerous tangent.

I doubt very much whether the AFP is going to use this legislation, because these tests are so different and so much harder than other states' tests. That means they have to revert, if they do that, to commonwealth legislation and things like perhaps the ASIO Act. That is not, I do not think, an ideal situation. Why does the ACT have to be so completely different when it comes to something as fundamental as a test in such a fundamental issue as this where there is obviously a real danger—a danger I do not think any of us here could probably completely appreciate because we were not party to the briefings—that could see significant death and destruction in our community if these things ever happen, which we all pray and hope they do not?

But this is very serious stuff and this is an area where it is so crucially important to have at least a threshold issue—and I agree with Mr Corbell there—on the same tests as apply interstate. That is what these two particular amendments do and that is what I am urging

on the Assembly. Obviously you are going to vote against it, but you really are putting your head in the sand there and you really do totally miss the point here.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (12.14): Very briefly, these are important points to refute, and it is important to do them now. Mr Stefaniak has indicated that there are other safeguards that protect against abuse and that is, therefore, the reason why the threshold should be less stringent than that proposed by the government. The government does not agree.

In addition to the reasons outlined, it is worth reflecting on the other safeguards that Mr Stefaniak makes reference to. For example, Mr Stefaniak makes reference to the rights of detainees to talk to their lawyers. If Mr Stefaniak had looked at the New South Wales legislation, for example, and the commonwealth provisions, he would know that there is very little protection for communication between detainees and their lawyers to be confidential, which is what I would have thought Mr Stefaniak regards as a very important, basic entitlement for someone in detention.

Indeed, it is only in the ACT where the presumption would, if this bill is passed, be based on the fact that that communication will be private and confidential, and good reason will have to be given for that communication to be monitored, whereas in New South Wales and under commonwealth legislation the presumption is the reverse. The presumption is that all communications between a client and their lawyer will be monitored.

If Mr Stefaniak makes the claim that somehow the threshold issue is not as significant because the focus should be on these other safeguards, look at how those safeguards themselves have been watered down in other jurisdictions—an approach that Mr Stefaniak believes is acceptable. The confidential communication with lawyers safeguard has been left out. It is not absolute under the ACT's bill, but the presumption is that it will be confidential, whereas the presumption in other jurisdictions is that it will not be.

It is the same on contact with family members. There is a much greater restriction on contact with family members in other jurisdictions' legislation than there is in the ACT bill. Even on basic things such as access to interpreter services there are much greater restrictions in other jurisdictions, including in New South Wales, which Mr Stefaniak regards as model legislation, than in the ACT. So those safeguards are watered down in other jurisdictions, and watered down significantly.

Those issues should also be brought into play when Assembly members consider the issue of the threshold test for whether or not a periodic detention order should be granted. Mr Stefaniak's arguments do not stand up when you look at the approach adopted by other jurisdictions and the watering-down of those other safeguards that he uses as an argument to justify a lower level of test for gaining a PDO.

MR PRATT (Brindabella) (12.17): To take up my second option, I have a couple of points. Firstly, I can see the point made by Mr Corbell that charges had been laid in one of those examples that I put forward earlier. But the example that I was using in terms of the weaponry available was still relevant. The point that I make is this: where

mass-murder weaponry is discovered, or intelligence has been gathered that undiscovered weaponry is intended to be used, then preventative detention must be a clear option to police, and the test for the police to apply must be reasonable.

The point that I make is that this government's test is not reasonable, and that is why Mr Stefaniak is calling for this government to allow his amendments to apply so that the test here for ACT police is the same as the test for all other police in every other jurisdiction. The intention is this: if the police think they have arrested accomplices but are not too sure who is who amongst those accomplices, they have to have the confidence and the ability to detain all the accomplices until they can get to the bottom of the matter. Mr Stefaniak is quite right: our preventative detention systems are humane and fair, and they will ensure that people who may be unreasonably detained will not be unfairly treated.

The other point that I go back to is the point about terrorists going shopping. What have terrorists been doing in Europe for the last 15 years? The European example is a great example in terms of the EU states and their comparative legal systems. Al-Qaeda operatives in Europe have very carefully selected which cities they base themselves in according to how effective the local laws and the police forces of those states are. Where the judicial systems are known to be liberal, then you will find al-Qaeda operatives, their sympathisers or their extremist logistical supporters, those who have good access to criminal systems to obtain all the things that need to be obtained such as false passports, explosive materials et cetera. Where they find that states are weak in their law, they will exploit them, and they do. That is on the public record too. I again recommend to this government that they go and read these references. We are in a new ball game here in Australia, and we need to look at the history of what has been happening in Europe and in South-East Asia now for a decade or more.

Going to the point made by Mr Corbell about why the opposition is always concerned with the application of the Human Rights Act in relation to the development of this law, the point that has to be made is this: the rights that are enshrined in the Human Rights Act here in the ACT may not be radical. I do not think we say that those human rights or those rights enshrined in the ACT Human Rights Act are radical; that is not the point. I agree with Mr Corbell; they are not radical.

This government has placed those human rights and the act itself up on a pedestal, through legislation. We find that the act or the application of human rights cuts across and impedes the sensible application of law combating very, very serious issues going to the heart of the terrorist threat. That is irresponsible of government. It is irresponsible that it would seem that the human rights provisions always come first when this government has a duty to develop reasonable law to make sure that it protects its community. We do not say that the Human Rights Act is radical or that the rights therein enshrined are radical, but when you put those on a pedestal and cut across the debate and the proper determination of sensible law, then perhaps you are using those rights irresponsibly. That is the default position that this government has continually cut back to.

We call upon the government to be a lot more sensible in how they develop this law and ensure that they are consistent with other Australian benchmarks and that, in the interest of ensuring that our police know what operational playing field they are playing on, they

ensure that the tests which apply in the application of this law are consistent with the tests in other jurisdictions.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (12.23): The concept that the application of human rights as a paramount consideration is in some way radical ignores the fact that that is exactly—

Mr Pratt: You twist my words.

MR CORBELL: That is exactly what Mr Pratt said. Mr Pratt makes the argument that human rights impede sensible law. That is essentially what Mr Pratt is arguing. I am sorry, but this nation has signed up to international agreements and is a party to international agreements that recognise that these rights are paramount. They should inform all elements of government decision making and parliamentary law making. That is what we have signed up to. That is what we have signed up to as a nation. As a nation, we have signed up to those principles. We, as a territory, have legislated that we will have specific regard to those rights in making laws here in the territory.

The whole issue here that Mr Pratt ignores is that human rights do not override automatically other rights or ignore other issues that have to be had regard to; the whole issue is that they must be proportionate and the response must be proportionate. When you are considering a complex issue, such as the right of a community as a whole to be safe and to live in a safe and secure environment, against individual rights, you must balance these considerations. Any infringement of rights, either the right to—

Mr Pratt: That is a really big defence.

MR CORBELL: No, it is entirely the issue, Mr Pratt, and you ignore and misunderstand it in a way which is very disappointing. The whole issue is that, where there is an infringement on rights—and infringements on rights occur—it must be proportionate. That is the argument. Human rights law internationally recognises that infringement, where it occurs, must be proportionate to protect other rights.

Those are the issues that are at the nub of this debate. Unfortunately, the simplistic assertion by the Liberal Party, that some rights are ignored so that others are upheld, ignores the proportionality argument and ignores the issues that we are trying to grapple with in this legislation.

Question put:

> That **Mr Stefaniak's** amendments Nos 7 and 8 be agreed to.

The Assembly voted—

Ayes 7		Noes 10	
Mrs Burke	Mr Smyth	Mr Barr	Mr Gentleman
Mrs Dunne	Mr Stefaniak	Mr Berry	Mr Hargreaves
Mr Mulcahy		Mr Corbell	Ms MacDonald
Mr Pratt		Dr Foskey	Ms Porter
Mr Seselja		Ms Gallagher	Mr Stanhope

Question so resolved in the negative.

Amendments negatived.

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

Public service—Oracle financial system

MR SMYTH: My question is directed to the Chief Minister and Treasurer. On 18 April you announced that all shared services, including finance, would be located within Treasury. The following day you admitted that the task of bringing together human resources systems in the ACT was "somewhat easier" because the ACT has a "single finance system". Indeed, Oracle is the central financial software used by the ACT government.

However, on 27 April you said that there are now in place 10 versions of the Oracle platform. By implication, you suggested that Oracle is no longer providing the functionality required by the government. What is the status of the Oracle financial system? Is it the government's intention to replace Oracle with a new financial system?

MR STANHOPE: The point I was making about Oracle—as an example or explanation of some of the issues that might be resolved in creating a shared services centre for a jurisdiction as small and compact as the ACT and our public service—was that one might have hoped, expected or anticipated that Oracle, at its genesis, would have provided a single, unified, same service across agencies. Indeed, in large measure, it has done that.

Of course, in a decentralised, perhaps silo, administrative structure, each organisation will, from time to time, for its own purposes—in relation to upgrades, software and day-to-day usage—make changes. Different upgrades take slightly different directions or turns. In relation to Oracle, we discover—at the outset one would have anticipated that a single service system across a public service or administration the size of ours would remain the same—that that has not happened.

It is essentially the same service working appropriately but amended, changed, from time to time as a result of or as a response to different managers, a different view of the world or slightly different requirements across agencies. It has lost that unique capacity; it is not now precisely the same service that it was at its initiation.

I use it as an example of what happens in a decentralised system, which creates inefficiencies and which creates a system or a service that does not provide the economies that a shared services arrangement would provide. We will bring it back into a centralised, shared services corporate arrangement where the particular changes that currently exist will be melded into a single system. But it is working.

Mr Smyth: Are you replacing it or not?

MR STANHOPE: No, we are not. But we are creating a shared services regime under a single manager with corporate overall management responsibilities overseen by each of our chief executives to ensure that the particular agency requirements are met, and met well and appropriately. That was the purpose of the example I used in relation to Oracle.

MR SMYTH: Mr Speaker, I have a supplementary question. Chief Minister, as you have now confirmed that you are not replacing Oracle, does that mean that your statements that Oracle does not provide a central financial system were yet another example of your inept handling of the shared services proposal?

MR STANHOPE: No, it does not. I just explained the purpose of my example. I think it was a good example. It was an example that provided simply one explanation for some of the disadvantages of decentralisation and some of the efficiencies that can be gained through the creation genuinely of a shared services corporate sector management structure.

Budget—deficit

MS PORTER: Mr Speaker, my question is to the Chief Minister and Treasurer. In recent days the Leader of the Opposition has made repeated assertions and allegations of a serious deterioration in the ACT's budget position, to the extent that he has asserted that the territory will face a deficit of $390 million in 2007-08. Does the Chief Minister have any information on the current budget position that he could pass on to the Assembly?

MR STANHOPE: I thank Ms Porter for the question, which is a very relevant and pertinent one to be asked in the context of the hysteria that has been whipped up by the Leader of the Opposition in relation to this particular issue—namely, the current state of ACT finances. I am in a position today to update members on the current—and I emphasise "current"—budget position of the territory. Members would be aware of the requirement on the Treasurer to table a quarterly consolidated financial report. The report for the March quarter of 2006 is due. In fact, I will table it today but I can give members a preview of what it contains.

The March quarter consolidated financial report clearly indicates—and, of course, it is the March quarter—that, despite any catastrophic, unforeseen event, the ACT is indeed heading quite clearly for its fifth consecutive budget surplus. That is a surplus for every year Labor has been in office: five consecutive budget surpluses. The report obviously does not project the extent of that surplus—it is not meant to—or even indicate an imagined or apparent outcome but, on the results, it reports that there is no other conclusion to be drawn but that for this financial year this government will produce a fifth consecutive surplus.

The March quarter results in the main reflect the impact of large gains in territory superannuation assets, driven by the very strong performance of financial markets in the first nine months of 2005-06. The gains mean that the general government sector year-to-date operating result for the end of March is a surplus of $155 million. The

public trading enterprise sector result for the same period is a surplus of $49 million, with a total territory result of a surplus of $198 million—$198 million higher than expected.

The June quarter is traditionally a quarter in which government spending is high and it is obvious and certain that the final outcome for 2005-06 will not be as high as the $198 million surplus to date. Nevertheless, it is a very welcome outcome for the end of March and one that puts the lie to the theories generated by the Leader of the Opposition in the last few weeks in relation to the current state of the budget and the direction in which the financial position is headed. I need to reiterate that. For the last month we have had the Leader of the Opposition insisting, falsely—

Mr Smyth: Very tender, aren't we?

MR STANHOPE: I am very tender in the face of a complete distortion of the truth. We have a Leader of the Opposition leading a party in this place who for one month has consistently misled the people of the Australian Capital Territory with claims, in the first instance, of a $190 million deterioration which then advanced to a $390 million deterioration which today we reveal is the mirror reverse of the exact situation. In fact, there has been a $198 million improvement.

The stark, revealed truth today, in the face of claims by the Leader of the Opposition and his front bench of a $390 million deterioration, is that there is an inevitable fifth consecutive budget surplus and an improvement in the budgetary position to the end of the March quarter of $198 million. I hope this puts the lie, once and for all, to the malicious, hysterical falsity of a position which the Leader of the Opposition has been putting around without a skerrick of truth.

Mr Smyth: Will you be tabling the report?

MR STANHOPE: I will be tabling the report in an hour's time, which reveals the position as of the end of March. I repeat the point that this is the position at the end of March; and that, to some extent, it reflects very much what I have been saying in relation to our budgetary position.

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

MS PORTER: Mr Speaker, I have a supplementary question. Can the Chief Minister say if there is any indication of a figure of $390 million in the updated budget position? Does the figure have any significance for Mr Smyth?

MR STANHOPE: I think the primary significance for Mr Smyth of a number of the order of—

MR SPEAKER: I do not know whether you are the minister responsible for Mr Smyth.

MR STANHOPE: I will not go to that part of the question. The Liberal Party is responsible for Mr Smyth, and they will bear that responsibility heavily.

Mr Smyth: The supplementary question is out of order, Mr Speaker. It asks for an opinion.

MR SPEAKER: Part of it is not.

MR STANHOPE: I will conclude with the point I make that, whilst this is an unanticipated, very significant and, of course, most welcome change in the territory's financial position and fortunes, of itself it goes to the heart of the issue I have been seeking to discuss in a mature way with this community in recent months—that is the serendipitous nature of windfall gains from land sales or as a result of superannuation investment returns.

It goes to the heart of why it is important that a government, for once in the time of self-government, grasps and accepts responsibility for initiating and carrying through the structural changes needed to ensure that no government in the future is held captive to wild swings in revenue such as have been the history of ACT governments since self-government in relation to land receipts and superannuation revenue receipts.

You get a good year; you get a bad year. But the swings and roundabouts on which successive governments have relied is not a sustainable approach to budgeting in the future. As a government we have committed, through the process of the commissioning of the Costello-Smith report and through a determination by me and my colleagues, to ensuring that we begin the tough, hard road of structural change and reform.

Here we have—and I am proud and pleased to be able to report—a significant turnaround in the budget position for this year. We budgeted for a $91 million deficit. We now have an expectation—and at this stage I repeat it is an expectation and we will not know until the end of June—based on a $198 million turnaround, of a fifth consecutive surplus. This confirms and reinforces the need, in some senses, for us as a government, for us as a parliament and for us as a community to grasp the nettle of genuine governance and structural reform. We, as a government, will do that, but the task we have set ourselves is not assisted by the hysterical scaremongering, distortion and fabrication which is now, and will forever be, a hallmark of the leadership of the Liberal Party by Brendan Smyth.

I repeat for the information of members that there has been a significant change in the current financial position of the ACT government—one which is a mirror reverse of the position the Leader of the Opposition has been spouting for the last month. One wonders about the way in which he will remove the significant amount of egg from his face as he faces the media and the community; and how he says, "Well, I have been championing a $390 million deterioration and I now have to accept that in fact there has been a $198 million improvement." One looks with some interest at Mr Smyth's attempts to explain the basis of the assessment he did that led to his $390 million concoction. We await with great interest the outcomes of that.

In conclusion, these strong returns are, of course, very welcome but we cannot assume that the budget can or will continue to be supported by booming investment markets into the future. That is why we need to take a longer-term focus on the budget to ensure that good budget outcomes are delivered into the future. This is the right time for examining

the way in which services are delivered in the ACT to make sure that the budget is strengthened to meet future challenges.

I am hopeful that the surplus which we now anticipate will be delivered. Of course, we will have to wait another couple of weeks to guarantee that but, on the strength and basis of this report—this dramatic change as a result of unanticipated superannuation revenue—we will celebrate, and I am sure the Liberal Party will celebrate with us, a fifth consecutive budget surplus.

Public housing

MRS BURKE: My question is to the Minister for Housing. On pages 35 and 36 of the Auditor-General's report on public housing of May 2006 reference is made to fraud control and the point that currently there are no penalties for fraud or for providing false information by applicants to Housing ACT under the Housing Assistance Act 1987. Minister, what are you doing to make sure that Housing ACT staff are adequately trained to detect incidences of fraud and consequently are provided with the resources to vigorously pursue cases of fraud against the department?

MR HARGREAVES: The picture that Mrs Burke seems to be trying to paint here is that there is a stack of people in the community who would knowingly provide false information to get themselves onto the housing list or people on the housing list who, through using wholesale or large-scale fraudulent processes, are making sure that they maintain things such as their rebates.

The incidence of fraud against any sort of government service is, of course, of concern to us. I am confident that the processes within housing are applied with integrity and with a reasonable amount of vigour. I do undertake to have that looked at to see how it can be strengthened. However, I reject any notion that our officers do not have the wherewithal there.

One thing is for sure, Mr Speaker: by the time people actually come to housing these days they are usually in such a state, having a low income and a whole series of other issues, that they are already at a pretty low ebb. There is no way in the world that I am going to allow my department to treat these people as guilty without trial and to presume that these people are actually crooks. That seems to be the suggestion which is coming from Mrs Burke. I reject that absolutely and completely.

We employ empathetic experts, people who in the context of our housing managers and our applicant services are skilled in dealing with people's problems. I have no intention whatsoever of sending the housing managers and their staff on ASIO-type courses to determine whether they are dealing with financial terrorists, with people out there who are hell-bent on ripping off the public purse.

Mrs Burke: Have you read the report?

MR HARGREAVES: For the edification of Mrs Burke, the people who front at the counters of housing are people in need, and we will treat those people with the respect that they are due, with the empathy that they deserve. We are there to assist. We are not there to put every single piece of their private information on the counter for everybody

to see. We are not going to assume that people at a low ebb front our counters with mal-intent. In fact, I have every confidence in the officers employed by housing. They are a wonderful bunch of people and I have no intention whatsoever of making them special constables so that they can prosecute these people.

MRS BURKE: I have a supplementary question. That was a very interesting response. Minister, how many incidences of fraud committed against Housing ACT have you failed to act against and when will you be adopting the advice offered by the Auditor-General in recommendation 8 on page 36, for your information?

MR HARGREAVES: The question was about how many of these incidences I have failed to investigate. I hate to say it but that is not my job. My job is to administer a department. It is not to go and check into these things. As instances of fraud are detected, naturally enough we treat them particularly seriously. I would be very much surprised if there were not an entry in the annual report regarding that sort of activity.

The Auditor-General's report actually commended the department on its management systems and its processes. Mrs Burke, as usual, masquerades as a fruit-picker. She is a fruit-picker, Mr Speaker. She wanders through the orchards of the Auditor-General's report looking for a particular piece of fruit to use to criticise, yet again, the officers of the Department of Disability, Housing and Community Services. The first time I had occasion to call her to account was when she went personal on child protection workers. Then she went on a crusade against the workers in housing, and she has been doing that for the last 15 months.

Mrs Burke: Mr Speaker, I take a point of order on relevance. In my supplementary question I asked the minister to say how many incidences of fraud committed against Housing ACT he has failed to act against and when he will be adopting the advice offered by the Auditor-General.

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

MR HARGREAVES: Mr Speaker, in the context of the Auditor-General's report, you will have noticed that we have agreed with all but one of those recommendations.

Mrs Burke: That wasn't the question.

MR HARGREAVES: The one that Mrs Burke refers to is contained in there. Mrs Burke has not acknowledged, even though she knows it, that we had already commenced action on 17 of those prior to the Auditor-General actually starting work.

Mrs Burke: What about this one?

MR HARGREAVES: Moo!

MR SPEAKER: Order!

Mr Pratt: Very intellectual, John!

MR HARGREAVES: How would you know, Mr Pratt? You and intellect have never been introduced.

MR SPEAKER: Order, Mr Hargreaves! Come to the subject matter of the question.

MR HARGREAVES: I am trying to, Mr Speaker, but there is a rabble over there.

MR SPEAKER: Mr Pratt, cease interjecting.

Mrs Burke: You have not read the report.

MR SPEAKER: Mrs Burke, you have not stopped interjecting since you asked the question. Please be quiet. Mr Hargreaves, come to the subject matter of the question or sit down.

Belconnen to Civic busway

MR SESELJA: My question is to the Minister for Planning. Minister, in your press release dated 14 January 2005 you stated that construction of the Civic to Belconnen busway could begin in late 2006. Minister, now that millions of dollars have been spent on investigative work on the project, are you able to inform the Assembly of whether construction will commence this year and, if not, when you now expect it will go ahead?

MR CORBELL: I thank Mr Seselja for the question. Detailed planning and analysis of preferred routes for a transitway or busway between the city and Belconnen are still being conducted by the ACT Planning and Land Authority. That planning work, due to the detailed environmental assessment that needs to be done in relation to a number of the routes, will continue into the next financial year, and as such there will be no government decision on whether or not this project should proceed until that planning work is complete.

Planning—Narrabundah long-stay caravan park

DR FOSKEY: My question is to the Minister for Planning. It concerns the Narrabundah long-stay caravan park. Minister, given that the land title to the caravan park is still in the name of Koomarri, it is clearly not too late for them and the new owners to walk away from the sale. In order to make matters clear to the new owners and the Canberra community, will you assure the Assembly that you have no intention of lifting the lease purpose clause, which requires that the block continue to be used as a caravan park, and that you are committed to using all the resources at your disposal to ensure that it continues to be the home of existing residents?

MR CORBELL: I thank Dr Foskey for the question. As I understand it, the ACT Registrar-General's Office has not yet received notification of the change of title by the certificate being changed to another owner's name. But I understand that the transaction has been completed, so the registration of a new certificate of title is merely a formality, which I anticipate and imagine the new owners would be progressing in the usual manner. I cannot comment on whether or not it is too late or not too late for the owner and the previous owner of the caravan park to walk away from their arrangement.

It is a commercial arrangement between two entities. It does not involve the government so I cannot comment on those issues.

What I can comment on is the manner in which this whole exercise has been conducted. I can certainly comment on the issue of what scope the government has to ensure that this facility continues to be used as a caravan park. It is my view, and I think it would be a view shared by my colleagues, that this is an important piece of land for the provision of low-cost accommodation for working people and for people on low incomes in the ACT. That is indeed what the lease purpose clause indicates the site should be used for. It should be used for a caravan park.

I have already indicated publicly yesterday, and I am happy to confirm to the Assembly that, as minister, I will not support any proposal, firstly, to vary the territory plan to permit the land to be used for anything other than its existing land use policy, which is a broad acre land use policy. Obviously that does not permit residential uses on site.

In relation to the issue of the lease purpose clause, at the moment the lease purpose clause for this site confines the use to a caravan park. I think the government would have to have a very, very strong argument put to it that the lease purpose clause should be varied. I am certainly not of the view that the lease purpose clause should be varied. In fact, I am prepared to go so far as to indicate that, if an application were made to seek to vary the lease in a way that eliminated its use as a caravan park, I could not rule out using my powers under the act to not approve that lease variation.

That is the approach that I am wanting to adopt on this issue. I have indicated to the owner's legal representative that I would like to meet with them to discuss issues around potential use of the site and to basically make clear to them what I have just made clear to the Assembly in terms of not permitting the caravan use to be eliminated.

I think it is interesting to note that this whole situation that we are in has come about by a decision of Brendan Smyth to sell this caravan park in the first place. It is very interesting to refer to the *Hansard* of a few years ago. Even more interesting is to refer to a media statement issued by Mr Smyth on 30 June 2000, when he announced that he had decided that the ownership of the long-stay caravan park was to be transferred to the Koomarri Association. Mr Smyth went on to say—indeed, he said so in *Hansard* as well—that he thought that, first of all, the ownership of the caravan park was not the core business of the government and that the caravan park should be sold.

Mr Stefaniak: Did you disagree?

MR CORBELL: Yes, we did, actually. It is on the record. Further, he said that he thought this decision would result in very significant public benefits and that the government had therefore decided that the very significant public benefits justify forgoing the revenue which would have been generated by a sale. I think it is time now for Mr Smyth to indicate what he thinks the very significant public benefits are to the residents of the Narrabundah long-stay caravan park given the letter of eviction that they received from the new owners less than 24 hours ago.

DR FOSKEY: I ask a supplementary question. Does the government have the power to

require the land to be returned to the government at reasonable cost and managed as social housing?

MR CORBELL: The government does have powers to acquire land for public purposes. That is outlined in legislation. But the issue that the government has to address now is that a previous government decided that this site should be sold and transferred to another person's ownership, another entity's ownership. That entity has now decided to sell to a new owner and the new owner has decided not to renew the tenancy arrangements of the existing tenants.

My view is that the government should bring full force to bear on the new owner to act in a way that is consistent with their lease purpose clause. The reality is we have a caravan park existing in the ACT. That is what the lease has been granted for—a caravan park. The owner has purchased it on the basis that it is a caravan park, and I am going to indicate to the owner that the government is certainly not in any way inclined to permit it to be used for anything other than a caravan park and, therefore, they should take appropriate steps to ensure that they abide by their lease purpose clause. That is where the responsibility now lies.

The decision to sell is a decision that has been made. We believe it was the wrong decision, but there is no walking away from the fact that that is what now has occurred. It is not a failing on the part of this government that those tenants are now in this situation. The way those tenants have been treated is, quite frankly, unacceptable. The government will use all avenues open to it to require the existing owner, the new owner, to uphold their responsibilities to run this facility as a caravan park. Hopefully that will mean that the tenants who are currently living there will continue to have an opportunity to live there.

Corrective services—prison cost

MR STEFANIAK: My question is to Mr Corbell in his capacity as minister for corrective services. The original cost of the prison was $110 million in 2001 dollar terms. That cost has been upgraded to $128 million in 2004 dollar terms. How much will the prison cost in 2006 dollar terms? Will it be delivered on time and on budget?

MR CORBELL: I thank Mr Stefaniak for the question. The simple answer to that is that the government has decided that the prison project will be delivered within the existing budget provisions. That will be how the prison is delivered. That is $128.6 million precisely. They are the parameters that I and the previous minister, Mr Stanhope, have given to the project team for the delivery of the prison. A prison will be delivered within that budget. Currently, the project is on track to open towards the end of the next calendar year.

MR STEFANIAK: Thank you, minister. If the project looks like going over budget, what will be cut from it?

MR CORBELL: At this stage, the tender process for the construction of the actual buildings for the Alexander Maconochie Centre, or AMC, has been completed. Members may have noticed that a large amount of infrastructure work has already been completed.

Roads and so on have been put in place. The earthworks for the infrastructure for the prison site are now clearly visible.

I am not privy to the details of the tender process and whether or not tenderers have been able to deliver the project consistent with the financial envelope that the government has provided. If it is the case that the total scope of the full project cannot be delivered within the $128 million envelope, the project will be adjusted so that it can be delivered within that envelope. The detail will depend on the scope of the overall tender price and what can feasibly be adjusted to ensure the program is delivered on time.

I indicate that the key elements of the prison will continue to be delivered no matter what. They will deliver new remand facilities, new facilities for sentenced prisoners, both male and female, and the range of basic services that are needed to house and service that prison population.

Without being privy to the details of the tender process, I cannot itemise the types of changes to the scope of the project that may result if—and I have to stress "if"—the tenderers indicate that they are unable to deliver the project within the $238 million envelope. The bottom line is that the project will not cost more than the budget provision. That is the requirement the government has put in place, and that will be the way it is delivered.

Calvary Public Hospital

MRS DUNNE: My question is to the Chief Minister. Chief Minister, prior to the 2004 election you promised that you would spend $5.3 million to modernise the intensive care unit at Calvary hospital. This promise was also accompanied by an additional recurrent spending of $1 million in ICU at Calvary, starting next financial year. On 15 November last year you told this Assembly that the election promises that you made in 2004 would be honoured, and you confirmed that earlier this week. Minister, when will the ICU at Calvary hospital be modernised.

MR STANHOPE: I thank Mrs Dunne for the question. As members are quite clearly aware—at least I hope they are—the government is in the process of developing a budget for the next financial year. We have not yet concluded our deliberations on that. The budget will be delivered, however, on 6 June and the decisions that this government takes in relation to expenditure in the next financial year and the outyears will be revealed in the budget on 6 June.

MRS DUNNE: I have a supplementary question, Mr Speaker. Chief Minister, in that case can I take it that that is a commitment for this coming financial year?

MR STANHOPE: The decisions which this government takes in relation to next year's budget and the outyears will be reflected in the budget, which I will, of course, take great pleasure in delivering on 6 June. I do not at this stage intend to engage in a game of "rule this in" or "rule that out". I think everybody in this place understands very well the conventions in relation to budget cabinet deliberation around a budget and its delivery. A budget will be delivered by me on 6 June and issues of expenditure decisions will be revealed on that occasion and in that document.

MR SPEAKER: Before I call the next question, I need to comment on a question that was asked of Mr Stefaniak to the "minister for corrective services". Lest it causes confusion: there is no minister for corrective services; it is one of the responsibilities of the Attorney-General.

Industrial relations

MR MULCAHY: My question is directed to the Minister for Industrial Relations. Both the *Sydney Morning Herald* of Wednesday, 3 May 2006 and the *Weekend Australian* on the following weekend featured articles quoting learned lawyers on the Australian constitution and industrial relations casting significant doubt on the likelihood of the High Court challenge by the states and the ACT against the federal government's WorkChoices legislation succeeding.

The *Weekend Australian* noted that "no respected legal academic expects victory" and that Peter Beattie indicated that he expected to fail. Why are you wasting $100,000 of Canberra taxpayers' money for no other reason than to do as the unions tell you, when the High Court's decision can have no impact on the ACT and is expected to fail in any case?

MR CORBELL: I will take that question as Attorney General. I am responsible for the representation of the territory in the High Court. Mr Barr is quite happy for me to answer this matter. And I am very happy to answer it. Mr Mulcahy's supposition is simply wrong. The challenge by the states and territories to the WorkChoices legislation in the High Court is predicated on the basis that the commonwealth does not have the power, under the corporations power in the constitution, to legislate in this way.

However, it is very important that both the ACT and the Northern Territory be represented in this action because, if the High Court decides that the commonwealth is beyond power and has used the corporations power in an inappropriate and unavailable way, the territory and the Northern Territory will need to demonstrate to the High Court that, because the commonwealth's intention is to establish a national scheme, the WorkChoices legislation has no effect in the territories.

The intention was to establish a national scheme. If the High Court decides that that national scheme cannot be established because it is beyond power, then we must demonstrate to the High Court that it should not be established in the territories either because it is meant to be a national scheme.

That is why the ACT is represented. If we were not there, we would be abrogating our responsibilities. If we were not there and the High Court decided that the WorkChoices legislation was beyond power, then no argument would be put to the High Court that it should not apply in the territory. That would be exposing ACT employees to being victims of a piece of commonwealth industrial relations law that would not be applied in the states but would apply to people in the ACT and the Northern Territory. That would be inequitable. That is why we are represented. It is entirely appropriate that the territory be represented.

I love hearing Mr Mulcahy come out and defend the WorkChoices legislation. We all love hearing how Mr Mulcahy and the Liberal Party think that the WorkChoices legislation is a fine piece of legislation that will benefit Canberra families. We know that it will not; we know what it means. More tellingly, so do the people of Canberra. They understand what this legislation means and they expect their government here in the ACT to represent their interests before the High Court in the same way that every other state and territory in the country either is already represented in the High Court or intends to be very shortly.

MR MULCAHY: Mr Speaker, I have a supplementary question. Can the minister confirm that the ACTU and Unions ACT have refused to contribute funding to the High Court challenge? What are their reasons for doing so?

MR CORBELL: You have to ask that question of the unions; I cannot answer that question.

Taxation

MS MacDONALD: Mr Speaker, my question, through you, is to the Chief Minister and Treasurer, Mr Stanhope. Yesterday in debate the shadow treasurer asserted that the ACT is already up with New South Wales as one of the highest taxed jurisdictions in Australia. Is this statement correct? Can the Chief Minister tell the Assembly what the facts are?

MR STANHOPE: I thank Ms MacDonald for the question. We all recall yesterday Mr Mulcahy's assertion that the ACT is the highest taxed jurisdiction in Australia, alongside New South Wales. It is important that we address that particular allegation. The short answer to the question is that Mr Mulcahy was simply wrong; his assertion was false, a practice which is catching.

Mr Smyth: On a point of order, Mr Speaker: is this question reflecting on a vote of the Assembly yesterday?

MR SPEAKER: No. She asked a question of the Chief Minister.

Mr Smyth: A vote was taken on this issue yesterday.

MR SPEAKER: It is not a reflection; it is a question of the Chief Minister. The Chief Minister is entitled to answer it.

MR STANHOPE: Mr Mulcahy was wrong yesterday to assert that the ACT, along with New South Wales, is the highest taxed jurisdiction in Australia. He was wrong to make the assertion, based on either taxation per capita or taxation as a proportion of GSP.

Here are the facts: first, on a per capita basis, on the latest information available on comparative taxation regimes, from the Australian Bureau Statistics catalogue 5506 of 29 March 2006, it is clearly the case that the claims of the shadow treasurer are, on a per capita basis in relation to the ACT, wrong. On a taxation per capita basis, the ACT is well below the national average.

The most recent Australian Bureau Statistics figures available, released on 29 March of this year, show that, for 2004-05, taxation per capita, both state and local taxes in the ACT, is $2,193, compared to an average across the states and territories of $2,462. The ACT is 11 per cent lower than the average of all states and territories.

Let us look at New South Wales, with whom Mr Mulcahy compares us. New South Wales is the chart topper. New South Wales taxes, on a per capita basis, at $2,645. Per capita, that is $183 more than the national average and $452 more than the ACT. Mr Mulcahy's claim, on a per capita basis, is, as I said, simply outright wrong.

The ABS figures, as I say released in March this year, also reveal some other interesting facts. For instance, the ACT takes relatively less tax per person today than it did in 2000-01, the last year of the Liberal government. In 2000-01, the Liberal government, of which Mr Smyth was a member, along with Mr Stefaniak, the ACT's taxation per capita was the third highest in Australia behind New South Wales and Victoria. It was on a par with the average of the states and territories.

In 2004-05, under this Labor government, the ACT taxation per capita was around $270 lower than the national average. In other words, under the Liberals, it was the third highest taxing regime in Australia. Under this government, it is the third lowest taxing regime in Australia. There is the difference; there is the distinction: the high-taxing Liberals, the low-taxing Labor government.

Mrs Dunne: On a point of order, Mr Speaker: I seek your ruling on whether the Chief Minister's answer to the question is in order, given standing order 117 (e) that questions should not refer to debates which have taken place in the calendar year.

MR SPEAKER: The question did not refer to a debate.

MR STANHOPE: It referred to a statement made.

MR SPEAKER: Order! I have been asked for a ruling. Let me give it. The question asked the Chief Minister to comment on some other statements that were made in question time or in debate yesterday.

Mrs Dunne: Yes, in a debate. The comments were made in a debate yesterday. The answer that the Chief Minister is now giving is almost verbatim what he said at the time in that debate yesterday morning. It was not something that arose in question time.

Mr Corbell: There is nothing in the standing orders to prevent Ms MacDonald asking a question of the Chief Minister on taxation levels in the ACT and, in doing so, making reference to comments made in a previous debate. There is nothing in the standing orders to prevent that. It is not reflecting on a vote of the Assembly; it is not reflecting on a debate; it is making reference to comments that have been made in this place and elsewhere on the claimed high levels of taxation. Mr Stanhope is the Treasurer. He has responsibility for taxation matters. He is entitled to answer the question.

MR SPEAKER: Ms MacDonald, would you read the question again.

Ms MacDonald: Yesterday in debate—

MR SPEAKER: I have to rule in favour of Mrs Dunne.

Ms MacDonald: Can I ask a supplementary?

MR SPEAKER: No. The question is out of order. You cannot ask a supplementary question to a question that is out of order.

Ms MacDonald: Can I ask a separate question?

MR SPEAKER: No.

Policing—numbers

MR PRATT: My question is to the Minister for Police and Emergency Services. Minister, in what way did you misconstrue Commissioner Keelty's comments last week on the issue of policing numbers in the ACT?

MR CORBELL: I thank Mr Pratt for the question. I am not going to go into the details of the discussion I had with Commissioner Keelty. Commissioner Keelty made clear to me that what he felt he was trying to communicate around resourcing issues was not what I heard, and I accept his version of events. We had a full and frank discussion on the issue and I welcome his reassurances about what he was trying to communicate in his interview that morning on ABC radio. I have apologised for misconstruing those comments, because I think that is the only reasonable and decent thing to do. As a result, we are now in a position to be able to move on on these issues and, hopefully, forge a new policing agreement for the next five years with the AFP here in Canberra. I look forward to continuing to work with Commissioner Keelty and Chief Police Officer Fagan in doing so.

MR PRATT: I have a supplementary question, Mr Speaker. Minister, will you therefore be checking with Commissioner Keelty in the future before you make such criticisms as you did make in the Assembly and the media without checking with him?

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

MR SPEAKER: I think that is right; it was hypothetical.

Taxation

MR GENTLEMAN: My question is to the Chief Minister and Treasurer. Chief Minister, how do the ACT's taxation levels compare with other jurisdictions in Australia?

MR STANHOPE: I am very pleased with the question, Mr Gentleman, and one has to ask why it is that the Liberal Party in this place are not interested in relative taxation levels in the ACT. I would have thought it was a very important issue and a very important question. Why don't the shadow Treasurer nor the Leader of the Opposition

nor Mrs Dunne want to know about the most important subject of relative taxation levels within the ACT? Why do you not want to know the truth of the matter?

Mrs Burke: Let's hear the truth.

MR STANHOPE: It gets down to truth, I suppose, doesn't it? Let us hear the truth. The truth is a subject that does require some airing and some discussion in this place, and by some within this place. If one were to wonder why it was that Mr Mulcahy might assert that we had the highest taxation levels or rates within Australia, one would be forced perhaps to conclude that he had borrowed Mr Smyth's guide to politics, the rules of Liberal Party politics for the ACT.

MR SPEAKER: Order! Come to the subject matter of the question.

MR STANHOPE: There are some hints, though, to be gained from that Liberal Party rule book. It is important that we do put the lie to these allegations that we are the highest taxing regime in Australia. We are quite clearly and palpably not. As I said, and was in the process of saying, the ACT takes relatively less tax per person than it did in 2000-01. In 2000-01, under the last year of the Liberal government, we were the third highest taxing regime in Australia after New South Wales and Victoria. In fact, as I was saying, the Liberals taxed at a per capita level of over $270 higher than the national average.

Over the four-year period since Labor took office in the territory, the ACT has had the lowest increase in taxation revenue of state and municipal taxes of any state or territory in Australia, at nine per cent. Taxes in the ACT under this government have increased by nine per cent in the period of government, against taxation increases in every other jurisdiction of between 11 per cent and 43 per cent, with a national average of 22 per cent. In the ACT, we have increased taxation at the rate of nine per cent against the national average of a 22 per cent increase, including 24 per cent at the commonwealth level and up to 43 per cent in other states and places.

The Commonwealth Grants Commission also assesses taxation effort of a jurisdiction in the context of its capacity to raise tax; that is a different measure from the one published by the Australian Bureau of Statistics. The ACT has a relatively lower capacity as, of course, it cannot impose payroll tax on commonwealth agencies. The grants commission takes that into account in its deliberations on this. The Commonwealth Grants Commission's 2006 update, this year's update, on relative fiscal capacities indicates that the ACT's own source revenue is on a par with the average at 100.27 per cent, and lower than Western Australia, South Australia, Tasmania and the Northern Territory. Once again, the commission confirms the Australian Bureau of Statistics assessment that the ACT is not a high-taxing government. Once again, assertions that Mr Mulcahy has made cannot be sustained. They are wrong.

A measure that economists generally use when comparing taxation is the ratio of taxation to gross state product, the size of the state/territory economy, noting once again that we cannot tax the commonwealth. The taxation to GSP ratio for the ACT is 3.9 per cent, well below—one-third below—the national average of 5.6 per cent, and the second lowest in Australia after the Northern Territory. That is a third measure of comparative taxation effort and revenue gathering that proves that Mr Mulcahy was wrong.

Those are the facts of the matter. Whether you look at the Australian Bureau of Statistics figures for March this year, at the Commonwealth Grants Commission's assessments, the taxation to gross state product measure—all three measures, all released this year, show that Mr Mulcahy was wrong and that the ACT is not a high-taxing jurisdiction.

MR SPEAKER: The minister's time has expired.

MR GENTLEMAN: I have a supplementary question, Mr Speaker. Treasurer, can you provide any additional information on taxation in the ACT?

MR STANHOPE: I cannot provide any additional information other than to provide some interesting reading. I was going to table it, just for those who do not have the interest now that the myth has been debunked, now that another attempt at distortion and talking down of the ACT and the ACT economy has been trashed. It is interesting and instructive to look at relative changes in taxation effort and relative efforts across Australia.

The increase in taxation take in each of the states and territories and the commonwealth reads like this: between 2000-01, when this government came to office, and 2004-05, the last year of records, New South Wales has increased taxation and the taxation take by 11 per cent, Victoria has increased its taxation take by 19 per cent, Queensland has increased its taxation take by 43 per cent, South Australia has increased its take by 31 per cent, Western Australia has increased its take by 37 per cent, Tasmania by 21 per cent, the Northern Territory by 36 per cent, the commonwealth by 24 per cent—and the ACT by nine per cent—with a national average of 22 per cent.

Those are the facts and it would be of benefit to the ACT if we could put our petty political aspirations aside and from time to time put the interests of the territory, territory business and the territory economy above our political distortions of the truth. It would be of benefit not to have the Liberal Party rushing around to all its business meetings and its business mates and saying that this is not the place to do business because we have the highest taxing regime. How many times I heard it out there, being sprouted by the Liberals out in the community.

At every business meeting or function that I attend, the mantra from the Liberal Party is: "We've got to do something about taxation. The high level of rapacious taxation being ripped by this government out of this community is deterring business. It is sending them across the border to Queanbeyan." How many times have you heard that? How many times have you said it? How many times have you falsely raised the spectre with the business community, the broader community and the rest of Australia that this is not the place to come to do business? How often have you talked down our economy and our capacity to attract business to this town and to this place by talking up in an extreme and false way the taxation take in the Australian Capital Territory? You should be talking up our low-taxing regime and our low tax take. You should put the territory first, instead of the distortions and mistruths that you peddle about the taxation regime. Mr Speaker, I table the following document:

> Australian Bureau of Statistics—table on taxation takes across Australia.

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

Supplementary answers to questions without notice

Gungahlin Drive extension

MR HARGREAVES: On 4 May, I took on notice a question from Dr Foskey about the plant *Swainsona recta*, the small purple pea. The Gungahlin Drive extension work is being conducted within a carefully defined corridor that has been identified in consultation with ecologists and other relevant experts. Work or damage to the vegetation is not to occur beyond this defined corridor. The progress of the work is reported and inspected by Environment ACT on a regular basis to ensure compliance. The population of *Swainsona recta* in south-east Belconnen is well outside the work boundaries and is protected in this way.

I also have a response to the member's supplementary question. Action plan No 27, the ACT lowland woodland conservation strategy, supersedes nine separate action plans for the yellow box-red gum grassy woodland community, including action plan No 9 for *Swainsona recta*. The woodland strategy provides an integrated approach to the requirement of the ACT Conservator of Flora and Fauna to prepare action plans for declared threatened species and ecological communities. Action plan No 27 includes the south-east Belconnen population of *Swainsona recta* at appendix 1.2 on page 105. The superseded individual action plans have been retained on the Environment ACT web site as they still contain relevant information on the species or communities.

Environment—pine plantings

MR HARGREAVES: On 10 May, I took on notice a question from Mrs Dunne in relation to pine plantings in the lower Cotter catchment. The original commitment to replant pine plantations in the lower Cotter catchment was not wrong-headed. The commitment to plant pines in the first instance was based on advice obtained at that time and predicated around the preservation of water quality and maintaining soil and landscape stability. However, the emergence of stronger than expected vegetation regeneration has meant that the artificial and highly interventionist approach of planting pines is no longer required. I think I indicated that in the substance of my answer. The amount spent on the purchase and planting of pines in the lower Cotter catchment in 2005-06 was around $100,000, which would be about one per cent of the $8.9 million.

Personal explanation

MR SMYTH (Brindabella—Leader of the Opposition): Mr Speaker, I wish to make a personal explanation under standing order 46.

MR SPEAKER: Do you claim to have been misrepresented, Mr Smyth?

MR SMYTH: Yes. Yesterday, in the debate on Mr Mulcahy's excellent motion, I stated that the Follett government had signed up to the uniform presentation framework in May 1991. It has been brought to my attention that the Alliance government was still in operation at that stage, so it would have been Trevor Kaine. I just thought I would correct that in the Assembly.

Secondly, today Mr Stanhope seems to imply that my reference to $390 million was for the 2005-06 financial year. I have not said that. My comments have always been, clearly, that the information was that if an estimate of the necessary financial savings were not made for the bottom line it would occur in three to four years.

Papers

Mr Stanhope presented the following papers:

Financial Management Act—

Pursuant to section 14—Instrument directing a transfer of funds within the Office of Children, Youth and Family Support, including statement of reasons, dated 3 May 2006.

Pursuant to section 19B—Instrument varying appropriations related to the Regulation Reduction Incentive Fund, including a statement of reasons, dated 3 May 2006.

Consolidated financial management report
Paper and statement by minister

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs and Minister for the Arts): For the information of members, I present the following paper:

Financial Management Act, pursuant to section 26—Consolidated Financial Management Report for the financial quarter and year-to-date ending 31 March 2006.

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

Leave granted.

MR STANHOPE: Mr Speaker, I am very pleased today to present to the Assembly the March quarterly management report for the territory. This report is required under section 26 of the Financial Management Act. At the end of March 2006, the operating result for the general government sector was a surplus of $154 million. The operating result for the total territory was $198 million.

The year-to-date surplus was primarily driven by large gains on superannuation and investment assets, reflecting the very strong performance of financial markets in the first nine months of 2005-06. At the end of March, superannuation-related investment gains were in the order of $264 million, around $61 million greater than the midyear review full-year estimate of $203 million. However, of course, the year-to-date gains on superannuation investments should be treated cautiously as they are dependent on the prevailing market conditions, which can be volatile.

Other revenues continue to trend generally in line with the budget. Expenses to the end of March 2006 were $2,099 million, marginally above the year-to-date expectations. The

financial results reported in the quarterly consolidated financial report should be, of course, interpreted with some caution. Quarterly results can be volatile and care should be taken in using these results as a basis for making projections for the year. The operating result for the general government sector will be revised as part of the 2006-07 budget to be released on 6 June 2006. I commend the report to the Assembly. I move:

That the Assembly takes note of the paper.

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

Papers

Mr Barr presented the following paper:

Preferred approach to the distribution of funds for students with disabilities—Letter from the Non-Government Schools Education Council to the Minister for Education and Training, dated 17 April 2006.

Mr Corbell presented the following papers:

Subordinate legislation (including explanatory statements unless otherwise stated)

Legislation Act, pursuant to section 64—

Land (Planning and Environment) Act—

Land (Planning and Environment) Amendment Regulation 2006 (No 1)—Subordinate Law SL2006-12 (LR, 10 April 2006).

Land (Planning and Environment) Amendment Regulation 2006 (No 2)—Subordinate Law SL2006-13 (LR, 20 April 2006).

Water Resources Act—Water Resources Regulation 2006—Subordinate Law SL2006-14 (LR, 1 May 2006).

Roads and infrastructure
Discussion of matter of public importance

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

The state of roads and infrastructure in the ACT.

MR PRATT (Brindabella) (3.41): Mr Speaker, I rise today to bring on this matter of public importance about the state of roads and infrastructure in the ACT in the hope that we will see this government do something about the state of these infrastructure items in the budget. Roads and other infrastructure in the ACT are the backbone of support for

our territory. All people in the ACT use our public infrastructure, particularly roads, yet we continue to see priority projects being put on the backburner due to this government's financial mismanagement. Only late last year, Minister John Hargreaves said that planned upgrades to Majura Road and Pialligo Avenue would be postponed indefinitely following the $73 million cost blow-out of the Gungahlin Drive extension. The minister also confirmed that "numerous other smaller roadworks" would have to be shelved to accommodate the GDE blow-out.

If this government were serious about improving Canberra's roads network, it would have planned for the future and locked away funds for ongoing works to ease congestion on many of our major arterial roads, such as the Monaro Highway and Pialligo Avenue. However, this government has squandered years of windfall gains, has allowed the Gungahlin Drive extension project to blow out by more than $70 million, not to mention the delays in its completion, and has not developed a new roads program to plan for future years.

The five-year roads program implemented by the former Liberal government in 2000-01 has been completed, it has expired, but this government unfortunately has failed to develop a new program, a complete dismissal of the responsibilities that this government accepted on coming to power. It has failed our community and will continue to fail in this regard. But for federal funding, this government's general ongoing roads program would be bankrupt.

There are some short-term possibilities for easing the traffic congestion that has been so prevalent in the airport precinct, to take one example, and between the airport and the city. The government should undertake preliminary work to attempt to find affordable solutions to traffic congestion in the area and work more closely with the airport about any road changes in that vicinity. That would not fix the problem; only a commitment to fund substantial roadworks would. Any insignificant commitment to fund additional roadworks in the area, though, has been put back by the minister. Planned upgrades have been postponed or they have been downgraded, and there is no evidence that they will not continue to be postponed or downgraded while this government fails to take control of its poor financial management.

The opposition believes that these roads do form part of the national road network, and the opposition has been making representations to the commonwealth, asking it to contribute in terms of its being a strategic road network that has impacts on the ACT's arterial systems. The ACT government must act now; it has failed to do so to date. Amazingly, while we are seeing cuts to such projects that Canberrans demand, the Stanhope government has managed to continue to promote and is proposing to fund a Belconnen to Civic busway. Until we see an announcement to the contrary, we must expect the worst.

A better investment would be to ensure that our current infrastructure is up to scratch and to ensure that our community's pressing needs for upgrades to existing roads and other infrastructure are met. It is unfortunate that this government would rather see our existing roads go to pot than take funding away from its grand visionary projects, projects that are not of a pressing community need.

There are major problems with traffic flow on important road links such as Canberra Avenue for our neighbours in Queanbeyan who bring a lot of economic activity into Canberra. Traffic will increase in this area once the new defence headquarters at Bungendore are built, yet the government fails to plan for these types of important future traffic needs in terms of the road surface, infrastructure, lights et cetera.

We are concerned not only about the lack of commitment to road projects but also about the Stanhope government's lack of commitment to road safety improvements. According to the Department of Urban Services, there is only funding in each year's budget for two road safety improvement measures. This might include things such as roundabouts, chicanes, slow-down points and the like throughout Canberra suburbs. Only two projects per year can be identified and funded across the entire ACT.

The minister certainly knows, I know, we all know, that there are many examples of some pretty urgent works that need to be done in terms of traffic control and traffic speed control. I continue to receive numerous complaints from residents about reckless driving, burnouts and hoons driving dangerously along Canberra's suburban streets. You would think that slow-down measures in well-known trouble spots in residential zones would be a priority under this government, but that does not appear to be the case.

The lack of funding for the Tharwa Drive duplication is an issue that affects the many commuters from the Lanyon Valley. Suburbs in the Lanyon Valley continue their rapid rate of growth. It is this growth that the government has failed to plan for. The length of delays on Tharwa Drive, for example, that can be seen most days are frustrating for residents of those areas. I receive much correspondence from constituents that make use of Tharwa Drive. They constantly express their disgust with the road and plead for action to be taken. Has the government done anything for these residents? According to the response to question on notice No 821 that I put to the minister:

> The project has been deferred and the funds have been transferred to the Gungahlin Drive Extension Project … The Tharwa Drive upgrade will be reconsidered in future budgets …

That is great news for the residents of the Lanyon Valley, I say sarcastically. The government cannot afford to fund their road upgrade at the moment. Watch this space, but do not hold your breath. Perhaps this is a classic case of robbing Peter to pay Paul.

Among the many emails I have received on the issue was one from a constituent who had initially sent Mr Hargreaves the same email some three weeks prior. Unfortunately, the constituent was tired of waiting for a response from the minister's office and wanted an explanation. Some comments were made in the email regarding Mr Hargreaves's use of the Tharwa Drive upgrade as an election platform. This particular fellow said, "I voted for you, Mr Hargreaves, because of it. I guess that was a mistake."

The resident touches on other concerns. Why did funding need to be diverted from the Tharwa Drive upgrade to the Gungahlin Drive extension? Could funding not have been transferred from a non-essential project such as the arboretum? It appears not. That is just one example of a host of correspondence I have received about road infrastructure priorities, and space precludes me from reading another half a dozen of them. That one, I

thought, was fairly representative. My main concern with the performance of the Stanhope government is that, as with the arboretum, misplaced priorities appear to be all too common. Funding goes to many non-essential projects that have large funding requirements, instead of to projects that are very important to our residents and the future strength of the ACT.

Mr Speaker, I do not understand why this government cannot get through its head that the budgetary position of the ACT is so poor that all funding that we can ever get in the ACT must be productively focused on both the delivery of essential services and the maintenance of essential infrastructure. We cannot afford the luxury of expensive, white-elephant, ideologically driven projects which are created so the government can pander to minority lobbies. The problem for the government soon will be that if it is not careful the portion of the sensible silent majority which voted for the government last time will reject it in 2008, as they see roads and essential infrastructure, not to mention essential services, crumbling around their ears.

Take, for example, the busway, the new real-time information system for bus services, and some of the more expensive extensions of the on-road bicycle lane system, all relatively expensive but non-essential transport programs. The opposition absolutely supports a robust public transport system and does wish to see a reduction in the dependence on the car, but our road system of supporting a car population will be a reality for some years to come.

The federal budget recently handed down shows the strong level of support that the federal government offers to the ACT. It also demonstrates or at least highlights the neglect of the ACT by the Stanhope government. In the last few days the federal government has delivered $22.7 million for transport projects for the ACT during 2006-07 and an additional $5 million for 2005-06 that is available to be spend immediately, a total of $27.7 million. The feds have again come to the government's rescue. I wonder whether this government will continue to rely on their assistance to get out of its deep, fond of white elephants, budget hole. Every jurisdiction expects to get and deserves to get federal road funding for various programs, but this government clearly is overreliant on that assistance, given that it has not banked money for ongoing road programs.

Going back to the federal contribution, $16.5 million in untied financial assistance grants, combined with a $5 million Roads to Recovery program grant, can be spent at the discretion of the ACT government. Let us hope it goes to some essential areas. Funding for investment in black spot programs totalling about $1.1 million also has been provided. So a fair swag in federal funding has been provided for our road systems.

Something interesting to note with regard to the federal budget provisions for the ACT is the lack of funding from the AusLink strategic regional program for 2006-07. Perhaps Minister Hargreaves has fallen asleep at the wheel, failing in his duty to apply for funding from this key program. I would like to hear what he has to say about that.

Another important project is the duplication of the Barton Highway from the ACT border to Murrumbateman. This will greatly assist those residents who commute to Canberra and the many other users of this essential transport route and perhaps reduce the congestion in areas just adjacent to our border.

Looking now at some other infrastructure matters, late last year Engineers Australia released its report card on the state of ACT infrastructure. The report card identified many areas of the ACT's current and future infrastructure needs that were not adequately provided for. Take, for example, community paths, including footpaths. Engineers Australia found that 18 per cent of these paths required immediate attention. Not only was this immediate attention needed, but also Engineers Australia concluded that the ACT would need to allocate an additional $2 million per annum just to achieve the annual maintenance target of two per cent of the territory's total path length.

Engineers Australia noted in relation to street markings and signs that a significant portion of these assets in the ACT are reaching the end of their design life. Many of these assets will need to be replaced shortly, and to do this would require additional funding of approximately $3.2 million. It is this inaction by the government that could be placing a greater threat on the safety of the community, as well as those issues I have raised pertaining to road infrastructure and road safety. We know from figures recently tabled in this Assembly, the December 2005 quarterly criminal justice statistical profile, that injuries and deaths on our roads had doubled in 2005 compared with those that occurred throughout 2004. That is a disturbing trend which I would hope will not continue.

In conclusion, I would have to say that in the good times, and this government has been blessed with some good times regarding inflows of funding, the government has not banked the money for ongoing road programs. When the previous Liberal government left office it left in place a five-year funding program. I stress that it was a funding program, not a strategic program for roads. It put that money there to run this program right through. That program has expired and we have not seen any evidence of a continuation. If there is, let us see it today.

I want to know how much money the ACT government has promised to appropriate over the next five years for essential ongoing maintenance tasks, road upgrades and road expansions to better service our community. I doubt that that is going to happen because this government has failed to ensure that its priorities go to essential services and essential infrastructure.

MR HARGREAVES (Brindabella—Minister for the Territory and Municipal Services, Minister for Housing and Minister for Multicultural Affairs) (3.56): I must say that there was a reasonably decent little fishing trip at the end but, bad luck, there are no fish in the water, Mr Pratt. You will have to wait for the budget to find out what the government is going to do in the next financial year and onwards. I am not going to engage with you on that.

As members of the Assembly would appreciate, there are over 3,000 kilometres of roads in the territory and there is a wide variety of assets, ranging from stormwater systems to street signs. The management of the majority of these assets was handed over to the ACT government at the introduction of self-government in 1989. Whilst needing ongoing maintenance, the majority of our roads are in a satisfactory condition. Officers of the Department of Urban Services are continually working at maintaining and improving the condition of all our roads through the annual road maintenance and capital works programs that can be seen in the budget papers.

Late last year, as Mr Pratt indicated, Engineers Australia issued a favourable infrastructure report on the ACT's broad range of public assets. The report card covered everything from roads to airports, stormwater and telecommunications. Mr Pratt did not tell us that roads in the ACT, on which most of his speech was centred, received a B rating in the infrastructure report card, indicating that they are fit for current uses and anticipated uses into the future. He neglected to say anything about that B rating for our roads. That is strange, is it not? He is another cherry picker, Mr Speaker.

Mr Pratt: Do you have the funding to maintain that rating?

MR HARGREAVES: Mr Pratt, I heard you in silence. Whilst the report acknowledged that the ACT's roads are generally in better shape than those in other jurisdictions, Engineers Australia argued that we cannot afford to be complacent, given our population forecasts and the ageing nature of our infrastructure. I fully agree with the sentiments expressed in that report.

It is also pleasing that a recent independent survey conducted for Urban Services revealed that 83 per cent of Canberrans are satisfied with the maintenance of main roads and arterial roads—83 per cent, almost the same as the number of people that voted for the Labor Party at the last election. There is still much work to be done to sustain the condition of the ACT's roads.

My department has development a management plan covering existing and future requirements as well as systematically inspecting the condition of the total arterial road network on a three-year cycle. A significant investment has been made in developing a system to collect and retain information on road conditions as well as to assist departmental staff in identifying and developing future road maintenance programs.

We are also looking at what other jurisdictions in Australia are doing, with a view to ensuring the practices we adopt in the ACT are most appropriate for our environment. For example, officers of Roads ACT recently visited Brisbane City Council to get some understanding of how they managed their roads. In April, an officer of Roads ACT attended the asset management conference run by the Municipal Association of Victoria which attracted a large number of councils from Victoria as well as New Zealand.

Roads in the ACT are generally in a satisfactory condition, but it takes a major effort and a large continuing investment of funds to sustain them. Good roads are important not only for the community to safely and easily get round town but also for the economy to prosper and grow. This government recognises the importance of maintaining our existing assets well into the future.

Mr Speaker, I need to address some of the things Mr Pratt said in his speech. Firstly, he laid at the government's door the blow-out for the GDE. I suggest that it was in fact the now opposition that started the bunfight about the alignment which delayed the project a very long time. The court challenges delayed it even further. While the delays were going on because of court challenges, the price of fuel went up. Even Mr Pratt would know that diesel is part of the actual fabric of the road itself. Not only does the big machinery use 70 litres of it an hour but also it is in the road itself. Because of the

influences of overseas oil prices, the price of diesel has gone up incredibly, and the price of diesel has had an incredible effect on other prices.

The government accepted my advice on how to address that funding difficulty, which was to try wherever we can to do things in-house. We decided to reprioritise funding for roads. It was my decision to temporarily apply the funds from the Pialligo Avenue, Tharwa Drive and Lanyon Drive areas to the GDE project. We do recognise that those three are priority projects. If the federal government comes up with a couple of quid and so can we, we will get on with them. In fact, I am fairly hopeful that something around Lanyon Drive might be able to emerge fairly soon.

It is interesting that Mr Pratt should say how much difficulty the Tharwa Drive people are going through. I have not had that level of complaint. I have had some, but I have not had the level of complaint that he indicated in his speech to the motion. Certainly, I feel for the people in the Conder, Gordon and Banks areas. We will address that as soon as we can, and they can have my assurance on that.

Mr Pratt extolled the virtues of the federal government, saying that they have this large bucket of money that they are hurling all round the ACT. Even he knows that the major highway funding that came out of the federal government stops at the border. Every other jurisdiction was named by the Treasurer in his speech as receiving money for major highway works. Where was Majura Road? It was nowhere to be seen. Where was the Monaro Highway? Where was the Federal Highway? Where was the Barton Highway? They were nowhere to be seen inside the ACT.

Indeed, the one that concerns me more than any is the Kings Highway. Mr Pratt lays at our doorstep the problem of roads to get to the defence headquarters. It is in fact sitting on the Kings Highway, the worst deathtrap, in my view, in New South Wales. Where is the money for that? It is nowhere to be seen. Where was Mr Nairn in trying to push that forward? He was nowhere to be seen. These highways stopped at the border.

I am grateful for the $5 million that the federal government have put into the Roads to Recovery program. Why do you reckon they could do that? It is because they have overtaxed the citizens of the ACT and everybody else to the point where they have billions of dollars to slosh around. If they want to slosh some money around the Roads to Recovery program, I will very gratefully receive it and we will apply it to roads in the ACT.

Mr Pratt talked about financial assistance grants. He ought to go and have a lesson in budgeting 101. FAGs are not necessarily applicable to roads. There is a whole stack of competing priorities on that. He also talked about funding priorities and wastefulness, saying that we are wasting things on the Belconnen to City busway. He continues to run this line like the $390 million furphy. He has not listened when he has been told that the money currently being spent on the Belconnen to Civic busway has been about preparing it for the time when we can actually build the thing. We do not want to pay for the retrofit of that particular facility at four times the cost, as we had to do with the GDE. We will do the work now and, when the construction funds are made available, then and only then will we do something. If that does not clarify it for Mr Pratt, I will get out some pictures and show him.

Members of the opposition talk about the arboretum. This is a classic from these guys. Let's talk about their funding priorities. I am fixing up roads that these guys should have fixed up years ago, but what were they doing with their money, Mr Speaker? I will tell you what they were doing with their money. They were fixing up Bruce Stadium. They were painting grass green. We did some painting too, but it was not of grass; it was of a bit of highway to protect cyclists. No, they painted a whole bloody oval green. And then, of course, we had the Kinlyside debacle, we had the overnight loans debacle and the Manuka Oval debacle.

How about the advertising on jets? Mr Speaker, do you remember the Feel the Power campaign? We certainly felt the power, didn't we? I certainly felt the power when I went to Melbourne to visit friends and they said, "You come from Canberra, don't you? That was a good one." What about the Impulse Airlines investment, Mr Speaker? That was a good one. And then, of course, we had some classic land swaps. If all of the money that was applied to that had been applied to infrastructure such as roads or to essential services, we would not have been in half the pickle that we were when we took government in 2001.

Mr Speaker, a lot of what Mr Pratt was going on about is essentially out of date. Obviously, he only listens to himself on the news and watches himself on the telly and does not pay attention to anything else. He says that I have not done anything about the AusLink program. He ought to know that the ACT government has been in a running gun battle with the federal government over AusLink for more years than I can remember. The AusLink program is all about the major highway network right around the country, and we argue that the ACT, through the Barton Highway, the Monaro Highway, Canberra Avenue to a degree and certainly the Majura parkway, which we would love to see up and running, is and should be part of that network. But what has happened is that the federal government has just excised this territory and said, "No, we are going to go from Yass through to Goulburn and you do not exist; you are not in the network."

Every year we open it up for discussion and every year their hearing aid fails and we get nowhere, but we continue to fight. I do not see Mr Pratt getting on the phone to his mate little Jimmy Lloyd and saying, "Give us some money, please, mate. Put us into the system." We do not want more money than we are due; we just want to be in the system. No way; he does not do that. What he does is he comes in here and complains.

I come to the Pialligo Avenue issue, one which the guys opposite blow completely out of proportion. I went there and sat in peak hour traffic. Firstly, I have to say that peak hour is only 20 minutes long. It is like Mr Pratt, who takes 90 minutes to watch *60 minutes*. The problem with that particular piece of highway is attributable to what? Is it attributable to the airport getting more passengers? Yes, that is a fair call. How about the residential development boom in Queanbeyan? Do we have more people coming into town through Canberra Avenue, the Monaro Highway and Fairburn Avenue? Yes, but that is not of the ACT's doing. How about the potential for the defence theatre? Yes, that is going to contribute. Mr Speaker, there is a whole heap of reasons.

What I have done about that—I have had preliminary discussions and there are more to come—is that I have figured out that the problem is wider than one for the ACT

government. We know that the NCA have plans for the Russell Hill roundabout. We know that the airport wants to open up various entries and do things that were never dreamed of out there, such as retail bulk goods. We know that there are people coming down Majura Road from Gungahlin that we have to look after.

I have decided to convene a round table, and invitations will be going out in the very near future, so that we can tackle this issue as a community-type problem with the following people—there may be one or two extra that we will add to it—in no particular order: representatives of the airport; Gary Nairn, because of his ministerial rank and obvious commitment to the good burghers of Jerrabomberra; the member for Monaro, Mr Whan; and people from the Department of Defence, the RTA in New South Wales, the Department of Transport and Regional Services and the NCA. Of course, I, as the Minister for the Territory and Municipal Services, will be at the table. I have probably forgotten one or two other people.

Those people will be decision makers. The object of the exercise will be to work out how big the problem is, work out the time lines, work out the funding opportunities and see whether we can work out a strategy for fixing this particular part of the world so that we do not have another bandaid solution to the problem, we do not have another Bruce Stadium sitting on our hands, we do not have everywhere something that is not green grass but is actually paint. What we will have is a concerted effort to fix the problem of Pialligo Avenue.

We have in a road safety sense the best roads in the country and we do attack it in the knowledge that we have the best roads in the country. Mr Pratt knows that. I am surprised that he would even bother to mention that. I think that Engineers Australia got it right in terms of the roads. We got a B rating. They are brilliant roads. We are putting a lot of money into them, we have lots of experts going into them, and Mr Pratt, in his struggle against relevance deprivation, is coming up with spurious little MPIs such as this one. The issue of road safety is important, but it is not a matter of public importance for this place.

MR SESELJA (Molonglo) (4.11): I note that the minister does not believe that the state of roads and infrastructure in the territory are any more a matter of public importance. I find that quite telling. The minister just engaged in an exercise in buck-passing in the extreme. Nothing is this government's fault. It is all the commonwealth's doing. Did you hear that, Mr Pratt? Did you hear that, Mr Speaker? It is all the commonwealth's fault. We heard that for the last 15 minutes.

The delay in the GDE was someone else's fault. It was the previous government's fault. It was the protesters' fault. It had nothing to do with the fact that Mr Corbell was pursuing a flawed route in order to appease the Save the Ridge activists. It had nothing to do with that, of course. The minister did not really address any of the issues. All we have heard is: it is the commonwealth's fault; if the commonwealth would only give us more money, it would all be okay. Despite what the minister thinks, this is a matter of public importance; it is an issue for this government. As well, there are some commonwealth crossover issues, which I will deal with in a moment.

One area in which I would agree with Mr Hargreaves is the Kings Highway. I think many Canberrans would agree that the Kings Highway needs an upgrade and will need

more of an upgrade as we get defence headquarters out there. It is a road that many Canberrans use frequently, and I would like to see both the New South Wales government and the federal government putting some more money into making that a much better road, a much safer road.

Mr Pratt has given the Assembly a clear insight into the current and future standard of infrastructure in the ACT. We have heard how this government has ignored the warning signs and we have heard Mr Hargreaves's response, which is that it is all someone else's fault.

The point does not need to be made that infrastructure investment during a strong economic period is crucial. Let us be clear: there have been boom times all around this country over the last few years. Certainly the last 10 to 15 years have been a good time in Australia. There has been a lot of money coming into government coffers, and the people of the ACT expect their government to actually plan for the future. One of the ways to plan for the future is to invest in infrastructure. That is why this matter is so important. We seem to have squandered these good times. Mr Stanhope tells us constantly that hard times are ahead. Given that over these boom times not much has been done, it will be interesting to see if there is any significant investment in infrastructure over the coming years.

I welcome the emphasis on infrastructure spending in the federal budget. If I have one criticism of it, I would have liked to see more spending. I think that when there are such big surpluses, there is a responsibility to be putting that into infrastructure that the people of Australia can enjoy in the future.

In the 2005 Engineers Australia report card, which was referred to by previous speakers, addressed critical areas of infrastructure in the ACT. It graded their condition, performance and suitability for the near and long-term future. Mr Hargreaves has said that we got a B rating for our roads. Clearly we inherited the best roads in Australia in 1989. I do not think there is much doubt about that. In fact, the Grants Commission actually takes into account the fact that we are the national capital and we are expected to provide a high level of service in the territory.

It is all well and good for Mr Hargreaves to say that we have got great roads. I think all Canberrans would agree with that. But we have seen them deteriorate over the years. They are probably not quite as good as they were 10 or 15 years ago. Under this government we have seen a failure to provide for the future of our roads infrastructure. The GDE is the clearest example. Mr Hargreaves has sought to blame everyone else for the blow-out and the delay in the $100 million plus GDE.

In the end what the people of Gungahlin and Canberra have received in the GDE is a one-lane road. This project has turned into a debacle. I have no doubt that the people of Gungahlin will be very grateful when the GDE is built, but it is not the optimum outcome. The people of Gungahlin expected a dual-lane road. That has not been delivered, and that has been one of the big failures of this government. They can blame everyone else all they like, but they contributed to the delay and the blow-out in costs.

The Engineers Australia report card notes that currently the ACT government is addressing about three per cent of the road network on an annual basis. The report

further notes that seven per cent of the roads require attention annually. Financially this requires the government to increase spending by over $10 million more per annum to achieve the targeted service level. The question needs to be asked: where will that money come from?

Mr Pratt referred to the busway. The busway is an example of misallocation of resources by this government. Mr Hargreaves says that we have not yet spent the money on a busway but, as we speak, million of dollars are being spent on preparation for the busway. If it does go ahead, and we can only hope that it will not, we are going to see between $115 million and $150 million, on current projections, spent on a busway that will save three minutes for commuters between the city and Belconnen. Three minutes will be saved at a cost of $150 million. That money could be used for more critical infrastructure. We are talking about priorities, and this government, with this busway, if it ever goes ahead, are demonstrating that they have got their priorities wrong.

I have not had anyone in the community come to me and say, "Look, you really should stop criticising that busway because it's going to be a good use of public funds. That $150 million for a three-minute saving is really what we should be doing." No one has said that, but just this week I received an email—and I think Mr Hargreaves might have received the same email—from a disgruntled Labor voter who said that, as a result of the misallocation of expenditure on various areas, including the busway, he was going to change his vote. I am sure he is not alone. No one has come to me and said that this busway is a good idea.

That is one example of the misallocation of resources. We will have a single-lane GDE and there will be no upgrade of Tharwa Drive. If the busway is ever built, people will look it and say, "Why have they gone ahead and spent millions of dollars on planning and $150 million to build the busway for a three-minute saving when our road infrastructure is running down?"

One area that we have not heard about today is this government's record on water infrastructure. The government has pushed the burden onto first homebuyers. They have said that they are not going to build a dam; they are not going to commit to the kind of infrastructure that is necessary for the territory. Everyone will have to have a water tank instead. The hallmark of this government's policy on water and water infrastructure is that, instead of the government providing these essential services, they will shift the burden to first homebuyers instead. First homebuyers will be slugged more and more to comply with the government's regulation.

Despite what the minister says, this is a matter of public importance. It goes to the long-term interests of the territory, and that is why it is important that we have this debate. The federal government has a part to play, and I call on the federal government to contribute to investing in infrastructure in the territory. Mr Hargreaves cannot simply pass the buck. He cannot say that, because we inherited our roads from the federal government, they really should be doing more; therefore we are not going to do anything about it.

There has been a misallocation of resources in so many areas. We are slowly seeing a running down of infrastructure that was, at one stage, probably the best in the country. It is slowly slipping, and that is the concern. We are not saying that infrastructure is terrible

here. A lot of our infrastructure needs are quite well serviced, but it is gradually getting worse. As the budget deficits mount in the years to come we will see the situation get worse.

MS PORTER (Ginninderra) (4.21): As members of the Assembly would know, visitors to the ACT often comment on the good state of our infrastructure, particularly our road network. In fact, many envy us and comment on the fine state of our roads and our network of cycle paths in particular. The ACT's road-related infrastructure such as bridges, stormwater systems, traffic lights, street lights, footpaths and cycle paths represents an investment of more than $5 billion over an extended period of time. We are very fortunate indeed in the standard and extent of our infrastructure in this regard.

The ACT has over 1,000 bridges, 3,100 kilometres of stormwater pipes, 60,000 stormwater sumps, over 200 signalised intersections, almost 2,000 kilometres of community paths, 375 kilometres of cycle paths and 65,000 streetlights. The condition of the majority of this infrastructure is satisfactory. It is kept in this state by the annual maintenance programs managed by various areas within the Department of Urban Services, and I can certainly attest to that. I am sure that members know people are really interested to draw our attention to work that is needed. On each occasion that I have written to the minister about such matters, they have been attended to, if not immediately then certainly in a very timely manner.

As we have already heard from Mr Hargreaves, this view of the upkeep of our infrastructure is supported by the report card commissioned late last year by Engineers Australia. Road-related infrastructure is subject to the wear and tear of traffic, the vagaries of the weather and, of course, ageing. Sustaining our asset into the future, as members would appreciate, is a major challenge. As I said, the ACT government is addressing this challenge through its various annual maintenance and capital investment programs.

Only two years ago, as part of the budget process, the ACT government introduced the capital upgrade program. This program has an emphasis on rehabilitating existing infrastructure to ensure its optimal operation, and I am pleased to say that I have witnessed several instances where it has been successful. The program is likely to play an important role in maintaining the condition of infrastructure at a level that is befitting the residents of the ACT. Naturally, the annual maintenance programs will continue to play a very important role in the ongoing serviceability of the territory's assets.

In the face of all this, I find it very odd that Mr Pratt has a problem. Surely, after five years in this place, he would be aware of the Stanhope government's commitment to roads and infrastructure and their maintenance. He should be aware that the government works very hard to ensure that our community has access to the best roads and the best infrastructure possible. Instead, we are forced to listen to a list of complaints.

In my experience, issues can easily be resolved. It is unfortunate that, instead of working to make our community a better place like I do, we are forced to sit here while Mr Pratt whinges and complains. For Mr Seselja and Mr Pratt to sheet home the delay in the GDE to this government is laughable. As Mr Hargreaves emphasised, if Mr Pratt is concerned about the federal government's plans for a defence facility adjacent to Braidwood, I suggest he should have a little chat to his colleagues in the federal government,

particularly the Treasurer, who does not seem to think that the Kings Highway is in need of any upgrade. I am certain that anyone who does travel on that highway on a regular basis, or even on an occasional basis, will certainly know that it is dangerous enough as it is without the added traffic that this defence facility will obviously generate.

Mr Seselja: Well, I said it.

MS PORTER: I am glad that Mr Seselja agrees with that point. There is a huge problem with the Kings Highway. Obviously the federal government is not taking it seriously.

Finally, I would like to take this opportunity to publicly thank the Minister for the Territory and Municipal Services, Mr Hargreaves. On any occasion that I have raised a problem with either our roads or our infrastructure, the minister has always been quick to attend to the matter in an effective way. We have just heard him outline his approach to the Pialligo matter, and we can only admire the way that he is handling it.

I would also like to thank officers of the department who work so hard not only to respond to my inquiries but also to maintain our roads and infrastructure so well. They do a wonderful job for our community. They should be publicly recognised and thanked for their contribution.

MR MULCAHY (Molonglo) (4.26): I rise today to speak in support of my colleagues and to express my concern about the state of roads and infrastructure in the ACT.

Mr Hargreaves: In Isaacs?

MR MULCAHY: RiotACT seem to take an amazing interest in my life. I am delighted that they are promoting my forthcoming meeting with the residents of Gungahlin.

Mr Hargreaves: What, both of them?

MR MULCAHY: No. There are about 11,000 up there. There are lots of letters coming in already.

Over the last few months I have received hundreds of representations from residents of Molonglo about the state of infrastructure in the territory. Comments such as "Canberra is looking unkempt", "the presence of graffiti around town makes Canberra stand out in urban areas around Australia" and "the city has a tired, neglected air" are occurring all too frequently. Residents have highlighted to me a range of issues: the need for new footpaths; the need for repairs to existing footpaths; the unkempt nature of many parks; long grass in public areas; dead or dying trees left untended; playgrounds in disrepair; the state of local shops; litter overflowing from public rubbish bins; graffiti in public areas; weeds and debris left in drains; dirty streets; roads in disrepair and a whole range of other areas of concern.

In some of the older suburbs, such as Curtin, Hughes and Garran, the problems are more noticeable. As I said very soon after I was elected to the Assembly, cracked footpaths represent a real issue of safety for our senior people in the city. Cracked footpaths and roads in need of repair are common and present both an inconvenience and a possible dangerous hazard to residents. Whilst I acknowledge that the minister made some extra

provisions for footpaths in some suburbs, I see that a number of areas, such as Yarralumla, Forrest and Griffith, are still waiting to see that extent of suburb-wide improvement in the condition of those paths.

Even in an area like Gungahlin—new suburbs with new infrastructure—there are problems. For example, one constituent from Ngunnawal has just written to me and indicated that since 1998 he has been forced to take responsibility for mowing a significant part of a public park to control a potential fire hazard and ensure that the area is safe for children to play in. In addition, the constituent has waged a two-year campaign for the removal of two dead gum trees from a park—I am advised to no avail. It is examples like this that make it clear that there are real problems developing with the maintenance of infrastructure in the ACT.

The number of representations that I have received is consistent with what we have heard today. Clearly, the state of both roads and infrastructure in the ACT is deteriorating. I, like a number of members here, have seen this occur over a long period from when I moved here in the 1970s to 2006. Back in the 1970s, obviously the city was very well maintained, but it is gradually sliding. I am troubled that this is going to get worse and worse, to a point where it is going to be very difficult to restore things to the standard that is reasonably expected.

Just as worrying as the amount of unfavourable comment is the response that we are receiving from the government. This is from a letter:

> Roads ACT has assessed the request and advise that the installation (or repair) of a path on this road is warranted in accordance with the requirements of the Department of Urban Services' Design Standards for Urban Infrastructure … However, given the number of footpath requests already on the program, the relative priorities of requests and the available funding for new footpaths, it is unlikely that the path will be constructed in the near future.

What we are hearing on this is: yes, there are problems there; yes, there is an expectation that these areas are improved, but we just do not have the money. I have just completed some media interviews outside and I was delighted to hear the Chief Minister say that things have all turned around. I know Mr Hargreaves will probably be racing upstairs to get an additional allocation of funds.

I am sure that means that we are going to have a great budget. There will not be the hundreds of public servants thrown out into the street that we were told. We will not see a cut in the standard of service delivery at the hospital. Mr Barr will be able to go home and not have to worry about closing schools. There will be no tax increases. Mr Hargreaves will be able to actually ensure that these footpaths and roads, which he knows have to be built and recognised in accordance with the standards that he observes in his department, actually materialise. It is very reassuring for members here today to know that these problems are about to go away.

I recognise that maintaining the territory's roads, parks and public spaces is a massive task that requires prioritising jobs. The fact that many of the issues that are raised by my constituents are recognised as problems by the government but are unable to be dealt with because of the lack of resources is quite worrying. Either more resources are

needed, and that is a worrying requirement given the parlous state of the budget, or existing resources need to be managed very efficiently.

I share the concern of my colleagues that road and other infrastructure in the ACT have continued to deteriorate under the Stanhope government. I note, however, with some gratitude that the minister, Mr Hargreaves, is efficient and reliable in responding to my representations on behalf of constituents. That is a quality, I might add, that is not shared by all of his colleagues.

The point of this matter of public importance is the ever-increasing problem with the standard of the territory's infrastructure, and I will have more to say about that issue of representation in due course. There are matters the public will be fascinated to hear about. The problem is borne out by the amount of correspondence that I receive. We talk about all sorts of things being near and dear to us. In the last few days we have had discussions about human rights and so forth.

I have got to say that most people who write in to my office are concerned about urban infrastructure. As I said, the minister, to give him credit, usually responds within seven days, and sometimes I get a result and sometimes I do not. But I think even he realises this is actually one of the major things that concern the people of Canberra. The issues are quite straightforward and not necessarily highly complex. They do cost money. In my view it is an issue that is growing in momentum in this territory. Clearly, it is a consequence of funding matters.

The government, in responding to concerns from constituents, indicates that people should alert them to any specific areas of concern. This is a useful mechanism, but the fact that it is needed is worrying because it suggests that there are not the resources there to go looking for these issues and we are relying on our community to alert governments. The people of Canberra cannot expect every cracked path to be fixed straightaway, but we can expect, and deserve, that the government will ensure that a quality standard of infrastructure is provided and maintained.

The government should not have to be prompted by residents to maintain ageing infrastructure, especially in the older suburbs of Canberra where there is a strong tree presence and roots are coming through the ground. We know we have a lot of older people. Very clearly, there are parts of Canberra, such as the Grange in Deakin, where there are a lot of older residents. A lot of those folk walk to shops and we need to be sure that the area near where they are walking is attended to without having to wait till some soul is injured. The failure of the territory government to manage this area of activity does impact on the quality of life for many in Canberra, particularly our senior people. Sadly, it does create a negative impression on visitors to the ACT.

I will conclude my remarks by quoting from a letter to the editor of the *Canberra Times* over the Christmas period. It came from a Victorian visitor to Canberra, who expressed absolute dismay and disappointment about the city's appearance. The letter states:

> By failing to maintain infrastructure the Stanhope government is harming not only the people of the ACT but Canberra's reputation as an attractive place to live and visit and it reflects on Australia's national capital.

Notwithstanding the presence of the federal government here, we have a responsibility to ensure that the ACT is a showplace. We have a large number of international visitors. We have the world media here regularly. We have heads of state coming to this city. The territory government needs to give Mr Hargreaves the necessary resources to do this job to the standard that people reasonably expect in our community.

It is the single highest priority issue that I have raised with me. Health runs in at second. But it is clear that this is what the people who elect us believe we need to attend to. The many letters of concern that are coming in cannot be disregarded. I certainly urge the territory government to heed the spirit and sentiment contained in the matter brought to the Assembly by Mr Pratt.

MR TEMPORARY DEPUTY SPEAKER (Mr Gentleman): The discussion is concluded.

Terrorism (Extraordinary Temporary Powers) Bill 2006
Detail stage

Clause 16.

Debate resumed.

Clause 16 agreed to.

Clause 17.

MR STEFANIAK (Ginninderra) (4.36): I seek leave to move amendments Nos 9 and 10 circulated in my name together.

Leave granted.

MR STEFANIAK: I move amendments Nos 9 and 10 circulated in my name together *[see schedule 1 at page 1665]*.

These amendments are similar to earlier amendments to include 16 and 17-year-olds. Amendment No 9 simply omits "a child" and substitutes "under 16 years old". Amendment No 10 omits "section 17 (1) (h), note". They are similar to a series of amendments that have already been debated. I will not labour the point in relation to them.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.37): The government will not be supporting these amendments. As Mr Stefaniak has indicated, they are similar to a number of other amendments he will be moving and has moved. They are contrary to the government's proposals and will not be supported.

Amendments negatived.

Clause 17 agreed to.

Clause 18.

MR STEFANIAK (Ginninderra) (4.38): I seek leave to move amendments Nos 11 and 12 circulated in my name together.

Leave granted.

MR STEFANIAK: I move amendments Nos 11 and 12 circulated in my name together [*see schedule 1 at page 1665]*.

Just as the previous two amendments related to matters we have already voted on, we have had this argument. These amendments relate to the threshold questions in relation to the standards that have to be satisfied before a person is detained. Amendment No 11 would omit clause 18 (4) (b), (c) and (d) and substitute new paragraphs (b) and (c). This would effectively include the standards from the New South Wales act and legislation of the other states and territories and the commonwealth.

Amendment No 12 would omit clause 18 (6) (c), which provides that the Supreme Court must be satisfied, on reasonable grounds, that detaining the person under the order is the only effective way of preserving the evidence. It is similar to an amendment that was debated and defeated earlier. The two amendments effectively are the same as amendments we debated earlier.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.39): Again, the government will not be supporting these amendments. As Mr Stefaniak indicates, they are associated with amendments that we dealt with before lunch in relation to a threshold test for the seeking of a PDO and issues to do with seeking a PDO for the purposes of protecting evidence following a potential terrorist attack.

Amendments negatived.

Clause 18 agreed to.

Clauses 19 and 20, by leave, taken together and agreed to.

Clause 21.

MR STEFANIAK (Ginninderra) (4.41): I move amendment No 13 circulated in my name *[see schedule 1 at page 1665]*.

Clause 21 deals with preventative detention orders—contents, et cetera. It states:

> (1) A preventative detention order (including an interim order) for a person is an order that the person may be taken into custody and detained, or detained, during a period that—(a) starts when the order has effect under section 22 (1); and (b) ends at the time (the end time) stated in the order.
>
> (2) The end time for an interim order must be no later than 24 hours after the person is first detained under the order.

> (3) The end time for any other preventative detention order must be—
>
> (a) no later than 7 days after the person is first detained under the order; and
>
> (b) no later than 14 days after the person is first taken into custody and detained, or detained, under any preventative detention order, or corresponding preventative detention order, for the same terrorist act.

Amendment No 13 would omit clause 21 (3) (a). The ACT legislation is quite different from other states' legislation, certainly the New South Wales and commonwealth legislation, in that we have an additional provision that requires that the end time for a preventative detention order, other than an interim order, must be no later than seven days after the person is first detained.

Clause 21 (3) (b) provides that the end time for any preventative detention order is 14 days from the time a person is taken into custody. That is common right across the states and territories. Of course, it was the intention of COAG that 14 days would be the maximum. There is no problem there. But we do seem to be the only place with another step, and that is that a person can be detained for up to seven days, but, to extend the period to 14 days, it is necessary to go back to the court to have the order reviewed and, if appropriate, extended.

I would see that as being unnecessarily cumbersome. There seems to be ample provision here for a court to detain persons up to, and no longer than, 14 days. There might be a requirement to detain someone for maybe a couple of days only. There might be no need to go beyond that. But that additional step of having two time frames, a seven-day period with a return to court to make it a full 14 days, if need be, seems to be an unnecessary additional step. Again, that is where we are different from the other states and territories.

I think it is needlessly complex. It would be very time consuming for the police and the courts. It might even be somewhat disruptive for the would-be terrorists themselves! There is any number of complications in the provision. There are ample provisions in terms of ensuring that a proper time frame, be it for an interim order or an order that might become a bit more than interim, is actually ordered by a court.

The fundamental principle, as enunciated by COAG, is that no-one is to be detained longer than the 14 days. COAG envisioned up to 14 days, a 14-day period. To chop it into chunks like this we think is inefficient, time consuming, probably very costly and may well have other ramifications, unnecessary and unforeseen, which might be problematic as well. Accordingly, to bring us into line with the other states and territories, we would seek to omit this subclause.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.44): The government will not be supporting Mr Stefaniak's amendment. The reason for that is that this provision that provides for a preventative detention order to be reviewed after a seven-day period is an appropriate safeguard and check to ensure that the preventative detention order is still warranted.

This is consistent with the approach adopted, for example, in the United Kingdom. Obviously the United Kingdom have a lot more experience with preventing and dealing with terrorist threats. They have an approach that allows for this check after a period of

seven days in preventative detention. We are simply following that approach because we believe it provides again for a proportionate approach to preventative detention and ensures that judicial oversight is maintained at reasonable frequencies.

The Supreme Court will be empowered to order detention, as I have indicated, for an initial maximum period of seven days and then can order detention for a further seven days, having fully reconsidered the matter. That is an appropriate level of scrutiny for what is an extreme step—to detain someone without charge. The government believes it is an important check on the rights and liberties of people who are in detention. The government will not support the Liberal Party's amendment.

MR STEFANIAK (Ginninderra) (4.46): I will respond to the attorney. I hear what he says about the United Kingdom. I am not quite certain that the United Kingdom has the same provisions as we do. It might be necessary there, but our provisions are quite clear. Clause 22 (2) states:

> (2) A preventative detention order (including an interim order) for a person ceases to have effect when whichever of the following first happens:
>
> (a) the end of 48 hours after the order is made if the person has not been detained under the order;
>
> (b) the end of—
>
> (i) the period stated in the order as the period during which the person may be detained under the order; or
>
> (ii) if the order is extended, or further extended, under division 2.4—the period as extended, or further extended;
>
> (c) the order lapses under section 42 (Release of person from preventative detention);
>
> (d) the order is set aside under division 2.6;
>
> (e) the order ceases to have effect under section 101 (2) (Expiry of Act etc).

There seems to be ample provision for a court to order detention for a certain period. If it were within 14 days, if there were a need to extend it, the authorities would come back. I think it shows that there is ample provision here for the court to have considerable flexibility in detaining a person for whatever period of time it sees fit, up to and including 14 days, or indeed stopping short of 14 days with provision for someone to come back, if need be, to seek an order to extend it to the full 14 days. I just make that point. I note the government is going to oppose the amendment. I think I will leave it there.

Amendment negatived.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.48): I move amendment No 3 circulated in my name *[see schedule 2 at page 1666]*. Clause 21 lists the matters that must be contained in preventative detention orders. Two key aspects relate to the time an order commences and the time an order ends. Clause 21 (3) defines the end time for both single orders and successive orders. Clause 21 (3) (a) states that an order must end no later than 14 days

after a person is first taken into custody and detained, or detained under a preventative detention order.

The 14-day time limit in clause 21 (3) (a) is directed to any orders in relation to the same terrorist act, whether or not they are made on the same basis. This is to prevent a terrorist act or to preserve evidence of a terrorist act. This may limit the making of orders to preserve evidence where an earlier order was made to prevent the relevant terrorist act or the making of orders to prevent the same terrorist act occurring in a different period.

The intention behind the prohibitions on multiple orders in clause 12 is that successive orders may be made in relation to the same terrorist act provided they relate to different periods or different purposes. The purpose of this amendment is to clarify that the 14-day time limit only applies to orders for the same terrorist act that are made on the same basis. This amendment is in response to issues raised in the scrutiny of bills committee report.

MR STEFANIAK (Ginninderra) (4.50): This also relates to something that has been done in the past and I see the rationale behind it. Again, how it is going to pan out in practice will be interesting if indeed it is ever used. He is right; it clarifies the 14-day time limit, applying only to orders for the same terrorist act, which seems to be the thrust behind the legislation. It was, of course, pointed out in the scrutiny report that that may not be clear. I can see the logic behind it and we do not have a particular problem as far as it goes.

Amendment agreed to.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.51): I move amendment No 4 circulated in my name *[see schedule 2 at page 1666]*. Division 2.11 deals with contact provisions under preventative detention orders. Clause 50 provides for contact with family members. Currently clause 50 (4) provides:

> The detained person is also entitled to have the further contact with the person's family or anyone else that is allowed under the preventative detention order.

The clause makes it clear that the court may allow a detainee to have additional contact rights to those expressly provided for under the legislation. One area that is specifically covered relates to contact with the detainee's children. However, the court will be able to create other contact entitlements in the order, consistent with the ordinary powers of the court to control its own orders. However, clause 21 does not specify that the court may include additional contact rights, even though it may grant such rights under clause 50 (4).

In response to a query raised by the scrutiny of bills committee, this amendment simply clarifies that a court may state in the order any additional contact rights it grants under clause 50 (4). The amendment does not change the rights that may be conferred by the court but creates consistency in the drafting of the legislation. I commend the amendment to the Assembly.

Amendment agreed to.

Clause 21, as amended, agreed to.

Clauses 22 to 25, by leave, taken together and agreed to.

Clause 26.

MR STEFANIAK (Ginninderra) (4.53): I move amendment No 14 circulated in my name *[see schedule 1 at page 1665]*. This is consequential to my amendment No 13, which we have already voted on.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.53): The government will not be supporting this amendment, consistent with our approach on previous amendments that have been attempted by Mr Stefaniak and which flow on to this amendment.

Amendment negatived.

Clause 26 agreed to.

Clauses 27 to 51, by leave, taken together and agreed to.

Clause 52.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.54): I move amendment No 5 circulated in my name *[see schedule 2 at page 1666]*. This is the final government amendment and clarifies another concern raised by the scrutiny of bills committee. Clause 52 (12) provides:

> Any communication between a person detained under a preventative detention order and the person's lawyer is subject to legal professional privilege and it is not admissible in evidence against the person in any court proceeding.

The committee has raised concerns that this provision is ambiguous. The intention of the provision is to prevent communications between a detainee and his or her lawyer from being disclosed in court and to confer the protections that would otherwise attach to legal privilege within and beyond the setting of the court, without the need to satisfy the various tests for client legal privilege in division 1 of the Evidence Act 1995.

This is an area where the ACT bill is different from that of New South Wales. The presumption under our legislation is that communication between someone in preventative detention and their legal counsel is protected, whereas the presumption in other states is the reverse. In other states, communication is not protected and can be listened in to and potentially used in evidence. This amendment clarifies the government's intent and removes any ambiguity in this regard.

Amendment agreed to.

Clause 52, as amended, agreed to.

Clauses 53 to 99, by leave, taken together and agreed to.

Clause 100.

MR STEFANIAK (Ginninderra) (4.56): I move amendment No 15 circulated in my name *[see schedule 1 at page 1665]*. In the government bill there is a review of the act after three years of operation which provides:

> The Minister must—
>
> (a) review the operation and effectiveness of this Act after it has been in operation for 3 years; and
>
> (b) present a report of the review to the Legislative Assembly before the end of the Act's 4th year of operation.

This amendment also has a 10-year sunset clause, as I understand do all the other states, the Northern Territory and the commonwealth in relation to their legislation, hence a review of the act after five years and a report before the end of the act's sixth year of operation to the Legislative Assembly.

Again, I think this is a question of consistency. This is not quite the same as the threshold question in relation to the tests that should be applied. It is not particularly difficult, I would submit, to extend the operation of an act if it is deemed necessary, whether it is five years or 10 years. All other states and territories have deemed that their acts should operate for 10 years with a review after a longer period of time than the government is proposing. For the sake of consistency in that regard, I move this amendment.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (4.58): The government will not be supporting this amendment. This seems to be a case of consistency for the sake of consistency, rather than for any other real argument. It is important to remember that this bill is called the Terrorism (Extraordinary Temporary Powers) Bill. It is therefore considered that the powers are both extraordinary and temporary.

To propose a 10-year sunset clause or a review after 10 years of operation really means that the legislation can potentially go on indefinitely. The government's view is that this legislation should be considered as both extraordinary and temporary and be subject to review after a short period of time. So our requirement is that, first of all, there be a five-year sunset clause. This was chosen to ensure that the need for legislation, and therefore its proportionality in relation to human rights, is tested within the Assembly within a reasonable period of time.

Secondly, the provision in the existing bill is that the review be conducted after three years, with a report presented to the Assembly before the end of the fourth year of the bill's operation. This has regard for the extraordinary nature of powers being granted to courts and to the police in this bill. We believe this is an appropriate level of review, given the extraordinary level of power that is proposed. The government will not support the Liberal Party's prolongation of that.

MR PRATT (Brindabella) (4.59): Mr Corbell again demonstrates that this jurisdiction or this government will be out of step with the Australian norm. He fails to identify, understand or realise with this temporary legislation that 10 years is temporary. The reason the federal government proposed a 10-year time frame and the reason all the other states have fallen into line with that time frame is that, with the international dynamics surrounding the whole issue of the war against terror and its impact on this country, this is going to be a very long-term affair.

They have quite sensibly assessed that you are going to be looking at a 10-year time frame, of a temporary nature, against a very difficult, complex and long-term struggle. Looking to have a five-year sunset clause with a three-year check and balance means you will be providing other inconsistencies to our police, who have to think about and plan ahead for the way they go about their duties in protecting our community. I commend Mr Stefaniak's amendment.

Amendment negatived.

Clause 100 agreed to.

Clause 101.

MR STEFANIAK (Ginninderra) (5.01): I move amendment No 16 circulated in my name *[see schedule 1 at page 1666]*. This is my last amendment and it also relates to an extension of the sunset clause. I will pick up where Mr Pratt left off. The earlier amendment, of course, related to a review of the act.

I think this is an important issue. It is not as big as the threshold issue but it is important for the very reason clearly enunciated by Mr Pratt—that 10 years is not a long time in relation to the war on terror. I think it is a realistic period of time in which, hopefully, legislation such as that of the other states and the commonwealth will not be necessary. But because that may not be the case, it may need to be extended.

Looking back at recent history: the episode of the blowing up of the USS *Cole* in Aden was in about 1998; the bombings of the American embassy in Kenya were some time in the 1990s as well; and September 11, 2001, was nearly five years ago. Ten years, I think, is a much more realistic period than five years when talking about terrorism, so this is an important amendment in that regard. I suppose it would not really matter if the previous amendment went down and you had a review after three years. That would not affect this. I think Mr Pratt made some excellent points there.

As this is my last amendment I will address some general aspects of this legislation. Mr Corbell makes reference to the term "extraordinary temporary powers" and indeed the act itself—it will be an act soon—uses that term. As we have heard already that detention without charge is available in eight or nine ACT acts I think that to use the term "extraordinary" when no-one else has is a bit melodramatic. As much as anything, this is somewhat truncated and emasculated legislation compared with that of the other states, the Northern Territory and the commonwealth.

It is true that we are living in fairly extraordinary times and that this type of legislation differs from the norm. However, to describe it as extraordinary I think puts too high a description on it, especially as we on this side of the house have significant concerns now that the tests and thresholds the police have to undertake and the hoops they have to jump through are very difficult indeed. In fact, this bill, which obviously will be passed, has more checks and balances than any other state or territory bill. I think the other states have got it pretty well right and have faithfully replicated what COAG expected, but that is not the case here.

The attorney says, "Well, Australia has signed up to UN conventions on human rights"—and we have. I think we signed up to conventions going back to the 1940s. We were one of the foundation member states of the United Nations. We took part in some historic votes such as the partition of Palestine. We have certainly played a major role in that body over the years and contributed more than a lot of states have to the support of the UN and the principles of human rights around the world.

That has been shown quite clearly too in Australia. The ACT is the only state with a human rights act that is not necessarily needed. You do not need a human rights act to be human rights compliant. The fundamental rights enunciated in our Human Rights Act and in conventions around the world are things we as a democratic country hold dear.

I think part of the problem when you are at the level of legal development of a country like Australia is that human rights acts can be problematic. I again refer Mr Corbell to an interesting article—and I hope he reads it—on what is happening in the UK with their human rights act and the problems being encountered in balancing the rights of wrongdoers with the rights of the general community. Fundamentally, that is one of the big problems with this particular piece of legislation.

Someone mentioned that any infringements and responses must be proportionate. That is in our Human Rights Act. It is accepted around the world as well, and I think it is accepted by the United Nations. When you face evil such as these types of terrorist acts, which have caused mayhem around the world and killed Australians in Bali and other places—one Australian tragically lost their life in London, and certainly the number of Australians who died in New York on September 11 was in double figures—surely it is very much a question of a proportionate response.

Ours is a civilised country. A lot of people would simply love to be here because of the civilised nature of this society. It is a society that has been built up on things like mateship, the true form of which was recognised in those magnificent Tasmanian miners, in the efforts of those in Beaconsfield and in the great mateship shown not only by the two blokes who were in the mine but also by the whole town, and indeed backed up by the whole country.

Australia has a wonderful tradition of mateship, fairness and giving people a fair go. We also have a good tradition of standing up to evil, being counted when we have to, going in to bat for the underdog and putting our bodies on the line as a country. As I said earlier, 100,000 Australians have died for that—to uphold our values and in the fight for what we see is wrong. In dealing with something as difficult as this—and it is difficult; this is a different type of legislation from what we are used to; and even though we have

eight or nine various acts in relation to detention, it is not the norm and it is a significant step—there needs to be a proportionate and effective response to that threat.

I would submit that the government has gone far too far maybe even in misinterpreting its own Human Rights Act. But if it has not, then I would say there is probably something wrong with the Human Rights Act in terms of placing far too great an emphasis on, or overemphasising, the rights of people who may be detained under this legislation—and I am talking would-be terrorists.

I am talking about where there may be a case where the authorities get it wrong. They have a pretty good track record in this country and in this territory, especially, of getting it right. I am talking about the very effective, very competent Australian Federal Police, who are in many respects the envy of other police forces around the country. They do not get things like this wrong terribly often. The worst that could happen is that someone could be wrongfully detained for a maximum of 14 days—and they have legal rights if that occurs—but at least they would be detained in a humane way.

We need to look at what is likely to happen if there are defects in this law. We on this side submit that there are some very noticeable and glaring defects when you compare it with New South Wales, the commonwealth and other states and territories. Look at what we are trying to prevent. We are trying to prevent anything from small-scale acts of terrorism that might injure or kill a handful of people through to, if some people got their hands on a nuclear bomb, something catastrophic.
It is very scary. We are dealing with some very well organised, dangerous people here. We are obviously not immune. I do not think for a minute that the Chief Minister, for example, has ever said we are immune. He was convinced that something had to be done at COAG. He got the briefing. I think it is very important that we get it right. It is very important that the response is indeed proportionate and recognises that there are infringements on some individuals' rights, but the individuals likely to have their rights infringed upon are people who would do horrendous harm to us.

In our system their rights are still important and cannot be ignored, because we are a civilised country. But you cannot swing the pendulum so far that their rights take a disproportionate view and there is a disproportionate amount of effort in ensuring they are protected whilst ignoring that crucially important point in section 9 of our Human Rights Act—the right to live. Every Australian citizen has the right to live here. We are dealing with legislation pertaining to the territory. Every innocent man, woman or child who has never wanted to kill anyone in their lives or harm their society has the right to go about their lawful business knowing there is a place which will protect them, as far as any legislation can, from horrendous harm. COAG wanted people protected against that harm as far as possible. That has been enacted in other states and territories in a far better way, I think, than in this bill.

This bill has an overemphasis on the rights of would-be detainees who are accused of being would-be terrorists—people who have absolutely no regard for our human rights, who spurn the very idea of human rights to their fellow man and fellow woman. I think it is highly unfortunate that the bill I put on the table is going to go down and that this bill is going to get up unamended. I close on that by reiterating that one of the factors here is the sunset clause. For the reasons I have outlined and the reasons Mr Pratt has so capably enunciated, I think 10 years is a far better idea than five.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (5.12): The government will not be supporting this particular amendment to amend the sunset clause. There is no doubt that these are extraordinary powers. They are far more significant and far greater in their scope than anything that has ever been contemplated by this Assembly or, indeed, by many other parliaments in Australia. So it is important to stress that they are both extraordinary and temporary, and it is important to build into the legislation a very concrete indicator and mechanism to ensure that they are temporary and are renewed with deliberate intent.

If the Assembly at a future date—in five years time—decides that these powers are still warranted, it will have to make an explicit decision that they are still warranted and continue the existence of the legislation. This is not legislation that we simply want to accept as the norm—legislation which becomes the norm and becomes something that is just on the statute book. That is a dangerous path and not one we accept.

I do not accept Mr Pratt's argument that this does not allow the police to plan. That is simply a nonsense. The review mechanism as proposed in the government's bill allows for the review to happen after three years of operation and it must be completed before the end of the fourth year of the bill's operation. That is one whole year before the sunset clause takes effect. It allows the legislature a whole year to consider the review and decide whether or not to continue the powers. It is not something that will impinge on the day-to-day operation and capacity of the police. I reject that assertion.

In closing, I want to respond quickly on a number of the issues raised by Mr Stefaniak. I again draw members' attention to the comments I made in closing the in-principle stage, where I referred to comments made by Justice Michael Kirby of the High Court. In response to the issues of legislation around prevention of terrorism the first thing he said was, "Every erosion of liberty must be thoroughly justified." He went on to say:

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

Let us remember that, as a community, we have been faced with these awful threats before. In the 1940s, 1950s, 1960s and 1970s there was the threat of communism. There was a widespread belief in our society—wrongly, in my view—that there was a significant threat to our institutions and our way of life from communism. A government of the day went as far as trying to ban a political party—the Communist Party of Australia. The High Court at that time said, "No, that goes too far."

Essentially, this legislation is about our response to threats, perceived and real. I accept that the terrorist threat is a real and very serious one. But that does not mean we should abrogate our responsibility to keep our response proportionate and considered and not have regard for the values which we consider central to a democratic society. That is why the government has adopted the approach it has adopted today.

The government is proud of this legislation. It is the only legislation in the country that has regard, first and foremost, for protecting individual and collective rights and does so in a way that is proportionate, meets the tests of our own Human Rights Act and meets the tests, values and decisions expressed in international law around human rights. This

is good legislation. It is legislation that protects community safety, gives the police and the courts the powers needed to respond to threats around terrorist activity and does so in a way that also has regard for individual liberties and individual rights. It is landmark and model legislation in that regard, and the government is proud to put it to the Assembly today.

MR PRATT (Brindabella) (5.17): I take my second bite on this amendment issue and pick up on a couple of points made by Mr Corbell. Firstly, we are strongly concerned about Mr Corbell's concerns that the 10-year time frame, which is the national norm and the standard applying everywhere else, is cut short not so much for legalistic reasons but because it is the human rights interest that seems to predominate here. As we have seen all the way through this debate, the human rights factor has been very much an overriding, determining factor in the way the government has designed and shaped this legislation.

I would remind the government that many wise people in this world, and in this country, have said it is quite a right and proper thing for Australian citizens to sometimes give up or give in some of their civil liberties and their rights at times of risk or emergency. Of course we do that every day. Whenever you and I are pulled over onto the side of a road or pulled over by an RBT unit we are giving up a civil liberty—the right to move freely. We have always agreed that we will give up the right to move freely when the authorities ask us to stop for an RBT test. Why do we do that? We do that voluntarily because we know that there are people who behave badly and drive whilst alcohol-affected.

I am using a very simple example but it is greater beyond that. In wartime our fathers and mothers gave up lots of rights and civil liberties in the national interest. The governments of this country are asking that we all bear that in mind when they impose these new laws. Every state in this country, one other territory and the feds have been able to get that point across successfully. But here in the ACT we see a government which, as I said earlier, puts the Human Rights Act on the highest pedestal and uses that as the benchmark to test where this new piece of legislation is going.
Contrary to what Mr Corbell said before lunch, the opposition is absolutely supportive of the idea that human rights must be a consideration in the shaping of this law. But we have always said that it should not override the sensible design and application of this law, which is designed to protect our community. The foremost duty of government is to protect its citizens, not always to cave in to civil rights requirements.

Secondly, the most important right we have is the protection of human life, not whether or not somebody may be detained unfairly. Mistakes will be made when decisions are taken about who will be detained but that is a risk that I think Australian society is willing to take. It is disappointing that this government has watered-down this legislation because of those sorts of overriding factors.

Amendment negatived.

Clause 101 agreed to.

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

Question put:

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

The Assembly voted—

Ayes 16		Noes 1
Mr Barr	Ms MacDonald	Dr Foskey
Mr Berry	Mr Mulcahy	
Mrs Burke	Ms Porter	
Mr Corbell	Mr Pratt	
Mrs Dunne	Mr Seselja	
Ms Gallagher	Mr Smyth	
Mr Gentleman	Mr Stanhope	
Mr Hargreaves	Mr Stefaniak	

Question so resolved in the affirmative.

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 7, private members' business relating to the Terrorism (Preventative Detention) Bill 2006, being called on forthwith.

Terrorism (Preventative Detention) Bill 2006

Debate resumed from 29 March 2006, on motion by **Mr Stefaniak**:

> That this bill be agreed to in principle.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes 7		Noes 10	
Mrs Burke	Mr Smyth	Mr Barr	Mr Gentleman
Mrs Dunne	Mr Stefaniak	Mr Berry	Mr Hargreaves
Mr Mulcahy		Mr Corbell	Ms MacDonald
Mr Pratt		Dr Foskey	Ms Porter
Mr Seselja		Ms Gallagher	Mr Stanhope

Question so resolved in the negative.

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 Registration of Relationships Bill 2006, being called on and debated cognately with order of the day No 2, executive business, relating to the Civil Unions Bill 2006.

Civil Unions Bill 2006

[Cognate bill:
Registration of Relationships Bill 2006]

Debate resumed from 28 March 2006 on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR SPEAKER: On the understanding that it is the wish of the Assembly to debate this bill cognately with private members' order of the day No 8, Registration of Relationships Bill 2006, 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) (5.29): Mr Speaker, the ACT Liberal Party supports and believes in marriage as defined in the commonwealth Marriage Act and we stand by the principle enshrined in that act, which is that marriage represents the union of a man and a woman voluntarily entered into for life to the exclusion of all others. This act has been amended and I make the point that the current provision has had the support of the Liberal and National parties and the Australian Labor Party in the federal parliament.

Archbishop Carroll, who heads the Catholic Church in the ACT, has described marriage as one of the cornerstones of our society. As indicated too by our relationships bill, which we tabled and which is being debated cognately, we believe that recognition should certainly be given to longstanding, loving and caring relationships, regardless of the sex of the people involved. I am pleased to say that in that stance we are supported by a lot of ordinary people in the Canberra community. A petition was lodged with the house of 1,613 or so signatures from residents who, whilst they oppose the Civil Unions Bill of the government, would accept a registration model that applied to same-sex couples and non-sexual caring relationships. As well as that, although it was probably an out-of-order petition, there were another 28 signatures from residents opposed to both civil unions and registration. I also am told there are a further 94 signatures from residents outside the ACT who, whilst opposed to civil unions, did not mind a registration model. So that is, in a fairly short time, not an insignificant number of people.

The government's civil unions law is flawed law because it is in breach of the commonwealth Marriage Act. There are some problems that I will deal with when we come to the detail stage of the bill. Section 51(xxi) of the Australian constitution gives the commonwealth the power to legislate in respect of marriage. This is a point that Labor, both here and federally, have struggled to understand, although they certainly

voted, federally, in favour of the Howard amendments; I think it was last year or the year before.

In terms of this bill, I think the federal shadow Attorney-General, in accusing the Howard government of interfering against the law-making of states and territories, misses the point. There is a problem here. The federal government has indicated that it will strongly oppose any action that would attempt to equate other relationships with marriage or that would create confusion over the distinction between marriage and same-sex relationships. As I said, we support its stand on the definition of marriage in the commonwealth Marriage Act.

When the bill was flagged, Mr Ruddock, the federal Attorney-General, signalled his intention to deal robustly with the ACT government's meddling in commonwealth law by default, delivering this broadside:

> And for a Territory to say, well, that's fine for the Commonwealth Parliament to have resolved it in that way, but we're still going to assert that a civil union is a marriage in all but title, and we're going to use marriage celebrants to demonstrate that, let me make it very clear that that will not satisfy the Commonwealth …

There are some significant problems in the government bill as it stands, and I do not think they are necessarily fixed up at all by the amendments. There are significant problems specifically with section 5 as it stands, which states: "A civil union is to be treated for all purposes under territory law in the same way as a marriage". Also, section 19 states:

> A marriage solemnised in a foreign country that cannot be recognised as a marriage in Australia because of the Marriage Act … section 88EA is a civil union for the purpose of territory law.

Also, people do not have to be residents of the Australian Capital Territory to enter into a civil union. Indeed, they do not necessarily even have to be residents of Australia. I am not sure if that has changed in the government's amendments. There are some further problems with it, which have certainly raised a lot of debate and concern in the community.

We have just dealt with other legislation about the age at which someone can be detained, which will be 18. Sixteen and 17-year-olds now cannot be detained under the preventative detention laws that the government has just had passed. Yet this particular bill allows—and it seems even the amendments would still allow—teenagers as young as 16 to enter into same-sex civil unions. You cannot do that under the Marriage Act; one person has to be over 18 and one person can be 16 or 17, and of course must get consent. But under the Civil Unions Bill both partners can be 16 or 17, and that is a very significant departure from a lot of traditional law in Australia, and indeed an interesting departure from the government's principles in a law we have just passed.

The government's bill also provides for the use of marriage celebrants authorised under commonwealth legislation to perform civil union ceremonies and attend to the legal requirements for registering the unions. I note that the government has an amendment to that; what effect that will have is something I certainly cannot say. But certainly the bill as it stands has that provision.

Despite the government's amendments, which I must say we have only had a very short period of time to look at, we would say that the Civil Unions Bill is unnecessary. There would be significant problems with it, I would submit, in terms of the federal government's attitude towards it and indeed the commonwealth parliament's attitude towards it. I have certainly had a number of chats with a few Labor members there, who are scratching their heads as to why the ACT government has gone down this path. I doubt very much that the Chief Minister and his cohorts here have the support of a significant body of people in their own party up in the big house.

This could well be another Stanhope white elephant. Indeed, it was introduced at the time the government was having big problems with its budget, which seem to have been miraculously cleared up today. Gee, let us hope that that is right, but I doubt it. I will believe that when I see it. It could simply be a classic case of diverting attention from yourself. When Idi Amin had troubles, he invaded Tanzania, and that sort of badly backfired on him. In a different but not dissimilar situation here, if it is grandstanding, this could simply be another white elephant and indeed could backfire on the government.

The government has presented this Civil Unions Bill as the middle road. There are a lot of people in our community who do not see it as such. It represents an extreme in terms of precedent in Australia. A lot of people have been bombarding members with emails in the last couple of weeks saying that. In fact, there is one which is—

Mr Barr: Very few from inside the territory; they have all come from interstate.

MR STEFANIAK: There are quite a few of them. Anyway, the middle road, I would suggest, would be represented by the model of a register of relationships. There is no need for the government to introduce a marriage-by-any-other-name model, which it has done, to achieve symbolic and legal equity, which the Chief Minister stated were his aims when introducing the bill. What the Chief Minister does not dwell upon is that, even among the submissions that he has received, there was no clear majority support for the position the government has arrived at. I can be corrected if I am wrong here, but there were not a huge number of submissions for this. I think the Chief Minister, when introducing it, said there were about 40 and about 50-50 either way.

Mr Barr: Four hundred.

MR STEFANIAK: Well, even so, that is still not a huge amount given that I have tabled a petition with over 1,600 signatures, Mr Barr. It is interesting that, even if it is 400 and it is 50-50 either way, that is not a huge amount of support for the position the government has arrived at. I think, too, that there are probably a lot more pressing concerns facing the people of the ACT at this point in time, and we have had debates about those in this place.

As I said, I have tabled a petition, which was gathered by the Australian Christian Lobby, objecting to civil unions yet supporting a registration scheme. It is very significant to note that in our discussions on this bill—and we have had quite a few discussions with a number of people, including groups who were very keen to see a civil unions bill—the main Christian churches in Canberra, the Roman Catholic Church, the

Anglican Church and the Australian Christian Lobby oppose this bill, backing the fundamental, unique and traditional institution of marriage, yet wanting to see fairness. They are happy to see a registration scheme very similar to—indeed, lifted from—the Tasmanian legislation; they do not have a problem with that.

The Chief Minister has been quoted as saying:

> The intent of the Civil Unions Bill is simple: to remove discrimination against people on the basis of their sexuality. Those who object to this bill should be asked to justify why they believe their fellow human being ought to be discriminated against on the basis of their sexual orientation.

I think the overwhelming majority of Australians who do not support same-sex marriage are certainly against discrimination against a group on the basis of sex. We have passed in this place, over a number of years, laws to remove discrimination. There are some people—we have had a lot of emails, largely from interstate or from people here—who think there should be that form of discrimination. I suppose you never completely remove discrimination anyway. We have had debate about human rights and the need to balance rights, and obviously there is always going to be discrimination. There is discrimination against drink-drivers, discrimination against people who speed. You can say there is discrimination against 17-year-olds, as you have to be 17 to get a formal licence; but obviously some people can drive very well before then. You get the vote at 18; people would say that is discriminatory. Any number of issues in Australia could be described as discriminatory.

I think we all want some form of procedural fairness, so that people actually get a fair go. Whilst you will never get rid of discrimination in Australia on this issue, and I think the vast majority of people would not support what the Chief Minister is doing, most people certainly do not want to see discrimination against a group on the basis of sex. If this Chief Minister wants to do something, why doesn't he follow the model of the register of relationships, which has been successfully adopted in Tasmania? That was groundbreaking stuff at the time. There was an article in the *Canberra Times* yesterday, with some interesting hypotheses, indicating that this is more than a debate about marriage.

My bill largely does relate to the Tasmanian scheme, which was welcomed by the same-sex community in that state and also accepted by the overwhelming majority of people. My bill does two things: it introduces a registration scheme where persons living together in a heterosexual or same-sex relationship can apply to the registrar-general to have their relationship registered, and of course financial and other benefits flow from that. My bill would also enable people in a caring relationship to register. That is something that is often forgotten. There are some very positive steps in the Tasmanian scheme that do not just apply to people in a sexual relationship; they apply to people in a caring relationship as well. That would enable benefits to flow to people who support each other in a caring, non-sexual relationship.

An example of that, of course, could be two family members or two old friends who are single, who depend on each other and who share the same accommodation. Why shouldn't they receive some benefits as well? It is a unique scheme in its way. It is groundbreaking, but it does not have the same problems Mr Stanhope's scheme has. The

opposition bill would give same-sex couples the same benefits as Mr Stanhope's proposal does, but it does not conflict with commonwealth law, it does not conflict with the institution of marriage as enunciated by commonwealth law, and it certainly does not put the ACT, yet again, at odds with the rest of Australia.

It is hard to resist the notion that this is a stunt by the Chief Minister, who seems driven by the need to get himself into the history books as the first to do something—or anything, it seems. The issues that the Chief Minister seeks to address also seem to be largely covered by existing legislation and practice. As I said earlier, we have the Domestic Relationships Act. We have a number of laws in the ACT in which discrimination has been removed by governments of both political persuasions. There is no need for the Chief Minister to take this divisive step. It is divisive, very much so in terms of complaints we have received about it, and unnecessary.

Property and estate settlement has already been substantially dealt with under existing domestic partner legislation, and my bill would refine this further because for a partnership—a de facto relationship, for example—there is a two-year provision with a registration scheme once you register. So that is a further improvement if you are worried about actual discrimination and if you are worried about making sure that people who are in a long-term loving or caring relationship can receive benefits from that.

We have concerns that the Chief Minister is using this issue as a distraction from his government's serious self-inflicted budgetary problems and their impact on the ACT community, which may perhaps have suddenly vanished today, but I doubt it. This could be seen as part of his need to provide bread and circuses for the population.

The institution of marriage is recognised by the vast majority of Australians as fundamental to the values underpinning our society, and we note concerns expressed about civil unions undermining these values in some way. We do not support discrimination of any kind against a group on the basis of sexual orientation. As I said earlier in another debate, I think our position on the register of relationships is not going to please everyone—that is the way of politics. A lot of the letters I and members have been getting, largely from outside Australia and many of them on a set format, are opposed to both.

We accept that what we are proposing is not going to satisfy a number of same-sex groups who basically want marriage or something so similar to it that there is not much difference. We will also not necessarily please people who do not want same-sex couples to have any rights or any form of recognition. As I said, that is the way of politics. But it is a way that I think a lot of sensible people in our community have accepted as the right way to go. One group of, I think, 15 Christian pastors believe that a register sanctions homosexuality, and, as I said, some same-sex groups insist on nothing short of marriage. You cannot please everyone. But we have consulted with individuals and groups widely over a number of months. I just wonder about the government's stance there. Our registration of relationships is certainly more inclusive of those caring relationships I mentioned, and it recognises that family relationships change, but it does not offend Christian or other religious and cultural sensibilities in the way that the Stanhope government's bill does.

Our bill is supported by the Catholic Church, the Anglican Church, and the Australian Christian Lobby in the ACT, and we have received support from same-sex couples who do not necessarily want civil unions. So, if anyone is propagating an idea that there is one undifferentiated same-sex view on this, that simply is not true. Like all other sections of the community, the views are varied. It was interesting to see the op ed by Rodney Croome in yesterday's *Canberra Times.* It put the same-sex view on Tasmania's registration scheme, but it was interesting in that he saw the Stanhope bill as the application of a conservative institution and the register as taking same-sex couples outside that conservative template. It was a very interesting article.

As I said, we have received a number of letters from people, including those who support a same-sex register and parents of people who want to avail themselves of that opportunity. We have received letters from parents saying they do not want to see same-sex unions—they do not want to see something like a marriage—but they feel that what we are putting up is the right thing to do. One woman said she was not terribly happy with the idea that her daughter was a lesbian and was very concerned about a ceremony like a marriage. She liked the idea of a register so that people can celebrate how they like, and she ended up by saying:

> So I want to thank the Liberal Party for its bill, but what I don't like is the idea that they are pretending to be married. Its meaning should not be changed by a minority group. What the Liberal Party is doing is the right thing. I don't want to watch my daughter go through some kind of marriage ceremony. My feeling is that marriage is becoming so bland. The Liberal idea includes everyone and different types of relationships.

And it does, because it is based on the Tasmanian bill. On a controversial issue like this, probably a large number of people in our community are not particularly interested in it one way or the other; they have other matters that concern them. That is also the nature of politics. We see that in this place on all issues. But it is an issue that people who have an interest one way or the other get very passionate about. It is an issue on which the federal government law will override the territory law if there are inconsistencies, and it is an issue on which I think a vast majority of people in Australia do not want to see discrimination.

But I would also submit that probably the vast majority of people in Australia—and indeed the ACT—accept the institution of marriage as defined in the federal Marriage Act and want that protected, but at the same time are happy to see that people do not suffer discrimination and do have the same financial, economic and other rights as the rest of us. I re-commend my bill to the Assembly and, for the reasons stated, the opposition will not be supporting the government's bill.

MR BARR (Molonglo—Minister for Education and Training, Minister for Tourism, Sport and Recreation and Minister for Industrial Relations) (5.49): I am very pleased to speak in support of the Civil Unions Bill. It is important to me and indeed to the whole community. I was there when this law reform process began six years ago with a series of resolutions from ACT Young Labor that led to the Labor Party putting this to the electorate in 2001, and I am very proud to be here today to vote for this bill.

This bill is about recognising and strengthening relationships. It is about supporting loving, caring relationships regardless of the sexuality of those involved. Just last week I stood in this chamber and spoke about how good governments seek to lead on important social issues. This government believes all loving, committed relationships deserve to be treated equally and to be celebrated.

This government is standing up for what it and the citizens of the territory overwhelmingly believe in. The Civil Unions Bill forms part of the Stanhope government's commitment to reform all areas of ACT law that discriminate on the grounds of sexual preference or gender identity. It is a commitment that the government has taken to two elections and it is a principled commitment that has drawn strong support from the community.

One of the reasons the people of Canberra voted so strongly for the Labor Party at the last two elections was that we stand for progressive social reform. Good governments set the social agenda for their communities. They govern as leaders, not as followers. It is the duty of the government to reflect the much wider interests of our society and the common values of fairness and tolerance that bind us all together.

Gay and lesbian Canberrans are part of our community. We are not nameless, faceless people who live on the margins of society. Gay and lesbian Canberrans deserve the respect and dignity afforded to others; we deserve equality. This bill affords us equality under the law. This equality is not only functional and practical but also highly symbolic. It allows us to hold our heads up high as equal members of the community and to celebrate our relationships. It is about dignity.

Despite the Stanhope government taking this reform process to the electorate on two occasions and winning the support of the community quite decidedly, the federal government is threatening to intervene in this territory's law-making process. The federal Attorney-General, Philip Ruddock, has made a series of outrageous statements about the federal government's intention to overturn this ACT legislation. This is in spite of his earlier comment that "the matter of civil unions is a matter for states and territories".

Mr Ruddock's first instinct was correct: civil unions are a matter for the states and territories, and the amendments that have been circulated by my colleague the Attorney-General will address the concerns raised by the commonwealth. If the federal government now seeks to intervene and say no to civil unions, it will be endorsing discrimination against people who choose, for whatever reason, not to marry or who in fact cannot marry.

Saying no to civil unions is to say that some relationships are more legitimate than others; that some loving, committed long-term relationships are, for some inexplicable reason, of lesser value. I find that an unacceptable proposition—and so too do many Liberal MPs. Dr Mal Washer, the federal Liberal member for Moore, said:

> This country is civilised enough to get beyond the fact people are different. If same-sex couples have a commitment to one another it's reasonable for us to allow them recognition of their union.

Warren Entsch, the Liberal member for Leichhardt in far north Queensland and a "fierce heterosexual", said:

> We want equal treatment for two people that are committed to each other. You're always going to get those fundamentalists whom you're never going to convince, but the more I talk to people about it, the more support I get.

What is really at play here is a battle between the progressives and the conservatives for control of the social agenda in this country. The late Professor Manning Clark spoke in his *History of Australia* of this struggle in Australian life in terms of the enlargers taking on the straighteners. He said:

> This generation has a chance to be wiser than previous generations. They can make their own history. With the end of the domination by the straighteners, the enlargers of life now have their chance. They have the chance to lavish on each other the love that previous generations had given to God, and to bestow on the here and now the hopes and dreams they had once entertained for some future human harmony.

I call on those members of the Liberal Party who still hold liberal values to stand up now and oppose the straighteners. If they do not take a stand on these issues, the Liberal Party will have given up its last vestiges of liberalism and the transformation to fundamentalism will be complete. I also call on the Liberal Party to stand up for our local democracy. If there is any member opposite who supports their federal party vetoing this legislation, they should resign from this place right now. They not only show disrespect to their constituents; they are saying that they do not believe in local democracy and that they do not believe in the right of ACT residents to make decisions about how they are governed and by whom they are led.

There are often those motivated by religious convictions who believe that same-sex relationships are immoral and that those relationships should be discouraged at every turn. They are, of course, entitled to hold such views. But, just as we tolerate the right of this minority to disagree—and let us be clear that they are a small minority of Canberrans—I would welcome, as would the community, a reciprocal tolerance to put the alternative view.

We live in a secular liberal democracy and, while much of our tradition is based on a Christian ethic, I do not believe that organised religion has the monopoly over morality or ethics. Governments permit divorce, abortion, sex before marriage and child-bearing out of wedlock. None of these things has affected the right or ability of Christians to live by their religion, and there is no reason why civil unions will either.

Another great furphy in this debate is that civil unions are some way of undermining marriage. This is simply not the case. Civil unions do not undermine marriage. The easiest way to assess this is by applying the general principle: does the conferring of rights on a minority ever undermine the majority? The answer is no, it never does. I do not think anyone's marriage is undermined because Andrew and Anthony living next door to them will have their relationship recognised in law.

We often also hear that marriage has a special place in society and should be elevated to a status above all other relationships. But what does this mean in practice? Should a

married person be treated differently in relation to the sale of a motor vehicle? Do married people deserve greater protection under the Witness Protection Act? Or, on the other hand, should both parties in a same-sex relationship be able to claim the first home owners grant? The answer to these questions is clearly no. We should treat all relationships the same—and that is the practical effect of what is proposed with this change to ACT legislation.

There is strong public support for the enactment of civil unions. A recent Newspoll taken in February 2006 found that 52 per cent of respondents supported the introduction of laws to formally recognise same-sex relationships. Support for civil unions was even higher amongst younger Australians and women. I know that Canberrans want a fair, open and inclusive society that respects and embraces people in non-traditional relationships. It is time our law reflected these changes in society and formally recognised same-sex relationships.

I would like to make some observation on the Registration of Relationships Bill that Mr Stefaniak has proposed on behalf on the Liberal Party. In the context of the recent amendments to the commonwealth Marriage Act, this bill can really only be viewed as offering grudging tolerance of same-sex couples. It is better than nothing, but really it is just recognition by the Liberal Party that absolute opposition to any form of same-sex relationship recognition would be politically untenable.

I consider this a win for the progressives. It is hard to imagine that the ACT Liberal Party of 2003 would propose such legislation. In fact, three years ago the conservatives were trying to block the Tasmanian law reforms that they are now championing in this place. Those opposite cannot continue to walk down both sides of the street on this issue by saying to gay and lesbian Canberrans on the one hand, "We do believe in you and we value you as members of our society," but on the other hand saying, "By the way, you cannot have access to a civil union." If they really do value gay and lesbian Canberrans, they will come out and support the Stanhope government's civil union scheme that enables people in loving relationships to make a legally recognised public declaration of their commitment. It takes more than showing up at Mardi Gras to demonstrate support for the community. You have to take a stand in this place, where the laws of the territory are made.

Strong relationships deliver important benefits for us all. We all define ourselves in some way by those we choose to share our lives with. Love, trust, intimacy and commitment are to be found at the heart of all good relationships. There is no good argument for allowing only opposite-sex couples to formalise and celebrate their relationships and to deny that right to same-sex couples. Those who oppose the Civil Unions Bill have frequently talked about its alleged dire effect on families. This ignores the fact that gay men and women have families too. We are sons and daughters, brothers and sisters, cousins, aunts and uncles and we are parents.

This government has seized the opportunity to support family and to say plainly that no-one deserves to be excluded simply because of his or her sexual orientation. We have drawn a line in the sand. The Civil Unions Bill encourages, empowers and protects couples who want to make their relationships loving, long term, stable and committed. We all should embrace such relationships because they enrich us all.

The passage of this bill will remove a form of discrimination—

At 6.00 pm, in accordance with standing order 34, the debate was interrupted. The adjournment of the Assembly having been put and negatived, the debate was resumed.

MR BARR: The passage of this bill will remove a form of discrimination that is intensely felt by Canberrans who have been living quietly in long-term, loving relationships. It will also help ensure that all our citizens, regardless of their sexual orientation, are shown the dignity and respect to which they are entitled. Discrimination has no place in our society. I strongly commend this bill to the Assembly and hope that this legal recognition will prompt more people in same-sex relationships to come forward proudly into our community.

Finally, I wish those couples that choose to formalise their relationships under this new law long and happy lives together. I know that their commitment will be recognised and embraced by the vast majority of their fellow Australians.

MR SPEAKER: Order! Observers in the gallery, whilst legislation in this place often has a good deal of supporters, there is a long-held custom that we observe in silence.

DR FOSKEY (Molonglo) (6.02): I am very pleased to follow Mr Barr. It must be a great thing to be speaking in favour of something that has a personal as well as a political meaning to him. The ACT Greens welcome the government's Civil Unions Bill because it delivers long fought for equality to many members of our community.

I observe that Mr Stefaniak has moved his party somewhat forward in proposing his bill but fear that this is in the spirit of protecting the privileged status of heterosexual marriage. I observe, too, that the moral right has moved with him, if the letters that I have received are any guide. This, I suppose, we can see as some progress.

The Greens have campaigned for the rights of gay, lesbian, bisexual, transgender and intersex people, henceforth GLBTI, since our inception. We recognise that the ability to develop relationships according to sexuality and gender identity are fundamental human rights. We believe, too, that the acceptance and celebration of diversity, including sexual and gender diversity, is essential for genuine social justice and equality.

While we have been attacked by right wing zealots for our policies, we have stuck to them, and I am proud to represent a party that is not deaf to or prejudiced against the needs of minority groups. Thankfully we in the ACT live in a territory where most have insight and tolerance and are supportive of equality for GLBTI people. I congratulate the Labor government on taking this brave step in providing that relationships, regardless of gender, be recognised and celebrated.

This is where the ACT government's Civil Unions Bill and the opposition's Registration of Relationships Bill differ. Both schemes recognise a relationship, but only the Civil Unions Bill celebrates it, providing the relationship with greater social standing. Although we already have provision in our legislation to recognise same-sex couples, it remains difficult for a same-sex couple to prove that they are in a long-term relationship.

The Domestic Relationships Act states that, if a party to a domestic relationship has provided personal or financial support to their partner over a two-year period, he or she is entitled to apply to the court for adjustment of ownership regarding their partner's property. However, before a person can request this type of property adjustment, he or she must prove to the court that they are or were in a domestic relationship. For GLBTI people, this usually means meeting the definition of domestic partnership.

In deciding whether or not the couple are or were in a domestic partnership, the court can consider a list of factors, including whether the couple had lived together, been financially interdependent, shared a sexual relationship or shared the care of children. In practice, proving the existence of a relationship in this context can be difficult, especially if one partner is incapacitated, dies or if the relationship breaks down. The applicant must dig through their history and try to find documents or witnesses to prove these deciding factors. And this is not always easy, as it would not be for a heterosexual person if they had to do the same.

But property division is not the only area where couples can be required to prove that they are in a domestic partnership before they can exercise their legal rights. There are many situations such as proving one's parental authority, making arrangements upon the death of a partner or approving treatment in a medical emergency. Although in the case of approving treatment in a medical emergency, the right to designate power of attorney can overcome this problem to some extent.

These are just a few examples of situations where an individual can be legally required to prove they are in a domestic partnership before being permitted to take certain actions or make decisions regarding their partner or child. The Civil Unions Bill will provide legal certainty to same-sex couples about their joint rights and responsibilities and make the process for proving relationship much easier, as the civil unions certificate could be provided rather than years of documentation.

In symbolic terms, this bill is a major step forward as it acknowledges that relationships between same sex-couples are just as meaningful and legitimate as relationships between those of the opposite sex. A long-term or even lifelong relationship between two people is significant, no matter what sex they are. Their commitment to each other should not have to be hidden or disregarded; it should be acknowledged and celebrated.

The ACT government's choice to pursue civil unions rather than a relationship register acknowledges the social standing that these couples deserve. I am sure that there are many in the GLBTI community who would like to go even further and provide marriage to same-sex couples, because only then would the relationship between same-sex people be regarded as equal to the recognition provided to heterosexual couples. At the same time, we must recognise that we are implementing a scheme that provides some of the drawbacks in marriage, with its legal requirements, for instance, in seeking the equivalent of divorce. Nonetheless, the bill was developed through extensive consultation with Good Process, the very well-organised group, which has in turn consulted closely with its community.

In financial terms, the Civil Unions Bill may have the side benefit of increasing visits to the ACT as applicants need not reside in the ACT. We all know that this is not a reason

for implementing civil union, but it will be a financial benefit, I am sure. International experience suggests that GLBTI couples from outside the ACT might be very interested in visiting our territory to participate in the new relationships scheme. Couples may appreciate the opportunity to make a social declaration of their commitment to one another, even if that civil union has no direct legal consequences in their home jurisdiction.

For instance, in the United States, many couples travel to the state of Vermont to celebrate civil union, despite the fact that their union will have little or no legal effect in their home state. The Vermont Gay Tourism Association reports that, since the passage of the civil union law, businesses all over the state have rolled out the welcome mat to gay and lesbian couples. A study of the fiscal impact of allowing same-sex civil unions in Vermont reports benefits of $22 million to the state's economy. This is a novel but legitimate means by which the ACT can increase the economy, which is currently greatly exercising the minds of Assembly members.

From a legal perspective, although an ACT certificate of civil union or a same-sex marriage might not be recognised as a legal document in a couple's home jurisdiction, any such certificate could still be used in a court of law as evidence of the couple's relationship. Given the challenge that GLBTI people face across Australia when it comes to obtaining any form of formal document which substantiates their relationship, a non-restrictive scheme could potentially provide Australia's gay and lesbian community with an important service. Specifically, it would give couples the opportunity to make a social declaration of their commitment to one another as well as the ability to produce formal documentation which evidences their relationship.

Much attention has been given to the federal government's response to the Civil Unions Bill and its disagreement with certain clauses which recognised same-sex marriage elsewhere or which equated civil unions with marriage. Some of my staff attended the Good Process public meeting on this issue, debating whether or not to request the ACT government to remove references to marriage in the Civil Unions Bill. It was an emotional meeting, with members of the gay and lesbian, bisexual, transgender and intersex community debating whether the practical achievements were more important than the symbolic achievements.

Senator Humphries also attended this meeting and had the gall at one stage to stand up and tell the community there that, if they were to have children while in their same-sex relationships, they would be engaging in socially destructive practices. In short, he was telling this community that, as senator for the ACT, he does not represent them. You can imagine the response he received and deserved.

Despite all this, at the end of the meeting the attendees voted in favour of the ACT government removing references to marriage to ensure that the federal government would not have grounds to overturn it or even remove the ACT Legislative Assembly's ability to make legislation in this area, as they have done in the past to the Northern Territory over euthanasia laws. I appreciate that the ACT government has taken on the gay and lesbian community's opinion on this matter and recognises that the fight for equality belongs much more to this community in this case than it does to the government to make points with the federal government.

Coming back to the federal government's stance on this matter, it is interesting to note that when, in 2004, the Liberal federal government amended the Marriage Act to outlaw same-sex marriage, the Australian Labor Party supported it. Our Greens senators were some of the few to oppose it.

I hope that the ACT Labor Party's endorsement of civil unions and initial equalisation with marriage sends a strong message to other state and territory Labor parties and assists them to move forward rather than following the Liberal Party's lead to the past. Any legislation that prevents same-sex couples being recognised is inherently discriminatory and endorses a homophobic sentiment in the community. It is no surprise then that up to 50 per cent of the gay and lesbian, bisexual, transgender and intersex community display severe symptoms of depression and are more likely to commit suicide.

Sadly, this disproportionately afflicts young people struggling to find and express their sexual identity. Australian studies have found, for example, that 27 per cent of gay men suffer major depression and that their suicide rate is two to seven times higher than that among heterosexuals. Meanwhile 60 per cent of lesbians report feelings of depression related to their sexual orientation; 63 per cent had contemplated suicide; and 30 per cent had attempted suicide. Rates of depression amongst transgender people are even higher.

Linked with the alienation that these people feel, Victorian —and that is the state, not the period—studies have found that many GLBTI people use drugs and alcohol to deal with and, in some cases, escape the pressures of being who they are. They are internalising the criticisms of the outspoken and disapproving Family First and religious right, whose voices are louder than their numbers. I always need to remember that when the letters start coming in.

In its submission to the May 2005 ACT government consultation on the relationships scheme, Good Process recommended:

> As part of the implementation of a new ACT Relationships Scheme, the ACT Government should ensure that comprehensive community education is provided to the GLBTI community and more generally the ACT community, such as health professionals, legal service providers and other relevant service providers. The importance of community education is highlighted in the results of the on-line survey conducted by Good Process. While 75 per cent of respondents indicated that they were aware of the changes that had been made to ACT legislation over the last two years to remove discrimination against GLBTI people, only 34 per cent of respondents believed the changes have had a practical impact on their lives.

While civil unions are a big step in the right direction in signalling to the general public that this community deserves equality, the ACT government has plenty more work to do in providing education for the public about these matters and providing services that meet the specific needs of GLBTI people.

I congratulate the ACT government on the extensive consultation it has conducted. It has been a long process. I acknowledge previous Assembly member Roslyn Dundas who began this with a motion in 2001. It has culminated in a significant debate not only in the

ACT but also across Australia. Once again, the ACT appears to be setting an example for acknowledging and implementing human rights principles.

I acknowledge the work of Good Process, the peak ACT GLBTI body, in advancing the rights of their community and responding to the Legislative Assembly and ACT government. They are a hard-working, inclusive group of people who tirelessly campaign for their rights and the rights of others. They were formed in response to the 2001-02 focus on the rights of gay, lesbian, bisexual, transgender and intersex people living in the ACT, with the intention of campaigning for legislative reform. And they have succeeded. I am sure they will continue to work on these well beyond the passing of the Civil Unions Bill, for a number of legal impediments remain to providing full equality to GLBTI people in our community.

MRS BURKE (Molonglo) (6.16): It is a bit of a quandary to me as to where I start in this debate tonight. I have to say—and my colleague Mr Stefaniak made the comment in his opening remarks tonight—the government was quite tardy in circulating its amendments, given that it is something of very big importance to us if you are agreeing with it or disagreeing with it. I register my concern that we were told so late. But I have to say too that the sheer amount of amendments that were circulated clearly shows how flawed the legislation was and still is. Put bluntly, this legislation is a dog's breakfast. I do not think it does the gay and lesbian lobby any service whatsoever.

What can I call it? I am lost for words because it is some sort of personal agenda that is being put out here as some sort of lip-service. It appals me, but I will carry on. I cannot support any moves to diminish or mimic marriage. As somebody who has been married for nearly 30 years, I cannot do that. The house knows, and many members in the gallery may not know, I have a cousin and a nephew who are homosexual.

Whilst this Civil Unions Bill is aimed fairly and squarely, I would have to say—and from Mr Barr's speech that was quite clear—at same-sex couples, the opposition's bill seeks to recognise significant partnerships of people who are in loving and caring relationships. I stand today to say at the outset that I will never concede that marriage is anything to me other than a union between a man and a woman and that marriage will never be known as anything else. However much we try to change or move it and all become the same, marriage will remain supreme under commonwealth law and as God intended it to be. As we look at one aspect of this bill, I offer this quote from John Stott's book, *New issues facing Christians*. He points out:

> However strongly we may disapprove of homosexual practices, we have no liberty to dehumanise those who engage in them.

Therefore none of us can come to this debate with a holier-than-thou attitude of moral superiority. I am trying not to do that at all. We are none of us perfect and we need to recognise that we are all, first and foremost, human beings.

I heard Mr Barr's impassioned plea in his speech. I feel your burden, Mr Barr. I am very torn about today's debate. I am a person who fights for the battler or the underdog. I am a person who cannot tolerate discrimination or injustice, despite what the government continue to hurl at this side of the house. Of me, that is not true. I am also a person of

great compassion. I am also a person who believes deeply and passionately, therefore, about the preservation and the sanctity of marriage.

The quandary is: do I support Mr Stanhope's bill and help fulfil the dream of a minority group of people in our community or do I support my colleague Mr Stefaniak's bill that ensures equity and dignity for people wanting to enter into a formal relationship whilst protecting and not diminishing in any way the true intent of marriage as defined under commonwealth legislation? The Liberal opposition has sought to cut a path that provides equity and distinct recognition for people who wish to have their relationship, in whatever form that may take, recognised by the ACT community.

Contrary to the fairly nasty assertions made by the government and the ALP, the Liberal Party in the ACT does not seek to discriminate—absolutely not. If it means we are discriminating because we are not allowing civil union or that we do not want it to be anywhere near marriage, then you can call that what it is. As to discrimination at true point of law, that is not true. Rather, it is seeking to instigate incremental change to law that would be easily implemented and in no way gives impressions that such changes would impact negatively upon current federal legislation, nor seek to elevate the rights of one sector of our community above another.

Through the bill proposed and put forward by Mr Stefaniak, it is quite obvious that the ACT Liberal Party does not wish to denigrate nor degrade the relationships of two people who are genuinely and truly committed to one another. The use of statements such as "caring relationship" and "significant relationship" must surely signify to the ACT community that inclusion has remained a high priority.

Given that the issue of civil unions is an emotive one for people and that we are debating its finer points from both perspectives, I have encountered some strong views for and against the bill put to this Assembly by the Stanhope government. As such, it should be apparent that the ACT Liberals are now seeking middle ground. Why? Because we do not want to discriminate but we will not in anyway draw back on our line in regard to marriage. We have to protect the sanctity of marriage, as under law. A sensible first step, as members would be aware, has already taken place in Tasmania. It was an important debate that had to be had in that jurisdiction. The Liberal opposition is of the belief that the model that was adopted should be implemented in similar form as a first step for the ACT.

It has been alluded to that the Liberal opposition has made no real public comment to support the Stanhope Civil Unions Bill or oppose it outright. However, we took a cautious approach and sought to consult widely and listen carefully to constituents who held strong views either way. That was borne out today by the petition tabled with some 1,600 signatures. That is by no means a small number. How many times do we see petitions of that magnitude tabled in this Assembly?

After this consultation, the opposition decided to introduce a bill to establish a register of relationships based on the Tasmanian model. We did not simply throw out of hand Mr Stanhope's bill and the desires of a minority of the community. No, we thought it through. We believe that what we are offering has that way forward and in no way diminishes or degrades the status of those people. It is understood that it will not appease everyone. This is a simple reality faced by any political party, given the polarisation of

views between those who want further recognition via the introduction of a civil union system and those who refuse to recognise the rights of anyone other than themselves, thereby showing no regard for other people's personal relationship choices.

It must be made clear that the Chief Minister's Civil Unions Bill, in its current form, has its flaws, as I have said. It is becoming apparent there are significant aspects of the bill that are contrary to commonwealth law in equating civil unions with marriage. The Liberal opposition would like to see the situation whereby the commonwealth takes up the option to override territory law where it contravenes commonwealth law. The federal Attorney-General has indicated his preparedness to do so. Therefore the ACT Liberals will oppose the Stanhope bill on civil unions and provide an alternative approach in the hope that a compromise can be achieved and, in turn, avoid commonwealth intervention in a matter that can be resolved amicably at the territory level.

Members must be aware that an inconsistency has emerged in the Chief Minister's bill. Two people who are, for all intent and purposes, in a committed relationship and are both 16 years of age can enter into a civil union, with a simple parental consent or via a ruling in court. I do not know how this will sit with the wider community, as it is directly inconsistent with the age of consent section in the Marriage Act 1961 of the commonwealth.

Mr Barr: The age of consent is 16, so you can have a sexual relationship but you cannot commit to a relationship.

MRS BURKE: I heard you in silence, Mr Barr. The same legislation reflects community standards that have been longstanding, whereby at least one person who is entering into a legally recognised relationship must be 18 years or older. The Chief Minister, in his explanation for this point of differentiation, said it is based upon the provision of equal access to law to avoid discrimination based on age. As such, he is now seeking to promote the right to equal protection under law, in this case, under the Human Rights Act 2004.

I continue on in the area of young people because it is of concern to me. If somebody can answer all those questions and tell me that any aspect of what I am saying is wrong, I will stand corrected. But I have grave concerns. I am not the only one. People of law and people who stand in the middle, with nothing to gain or lose, have come out and questioned some of these things, and I want to do that now. We need to have that debate in this place. As I said when Mr Stanhope decided he was going to do this, it would open a can of worms like the Human Rights Act did. It is going to have many problems attached to it. It will lure people into a position where they think they have got something and they have really not got what they thought they were going to get.

I pose this genuine question to the Chief Minister: how will his Civil Unions Bill 2006 provide for young people in terms of adult guardianship? Who is now their legal guardian? The parents? The state? Or do they not now need one? Once the written consent is given by the parents or guardian, by a Children's Court order, will this negate the need for a guardian? Under the conditions of the Children and Young People Act, a guardian is required for persons under the age of 18 years. What happens if anything goes wrong—for example, domestic violence or abusive behaviour by one partner to

another? Surely the parent or guardian will still be responsible for the actions of persons between the ages of 16 and 18 years.

Mr Stanhope: That is a crime.

MRS BURKE: There you go. You are going to laugh that off. Does that make it right? We are going to allow young people to get in these relationships—

Government members interjecting—

Mr Stefaniak: We heard you in silence.

MRS BURKE: Yes, we did. If we look at major players who have really tried to take a very commonsense line on this, such as the Australian Christian Lobby, they have put supports and responses to arguments. Let us have a look at that. Argument:

> It is wrong to discriminate against people therefore the state needs to recognise same sex relationships as it recognises heterosexual relationships.

Response:

> In reality, there has been positive discrimination in favour of homosexuals or discrimination against marriage. Under ACT law, married people now live in "domestic partnerships" just the same as unmarried couples and homosexual couples.
>
> There is an important difference between protecting the rights of minority groups and the endorsement and therefore encouragement of a relationship by state recognition of it. Governments have already acted to remove discrimination against homosexuals from many different laws.

Sixty-two acts have already been amended in the ACT.

Mr Barr: And you opposed every one of them.

MRS BURKE: They have still gone through, Mr Barr. It is still there. You have had your way. This bill is another way, a stalking horse, to give young people another set of rights with no responsibilities. Or, worse still, leave them in a place of limbo. Who is going to look after them? What is going to happen? They may be old enough to have this civil union, but are they really mature enough and responsible enough to face the consequences of what goes wrong once they are set away from their parents or guardians?

Mr Stanhope: They can get married, Jacqui.

MRS BURKE: One has to be over 18, Chief Minister. I have just said that. You know that. Under commonwealth legislation, this problem does not exist because one of the partners is over the age of 18 years.

I stand adamantly by the Liberal Party position in the ACT. I trust that the ACT community can see quite clearly that we fully support the traditional notion of marriage

as a relationship between a man and a woman. However, we still believe in the right of all who have loving and caring relationships to be recognised and supported by law. We support the notion that the commonwealth Marriage Act 1961 recognises.

However, the opposition's Registration of Relationships Bill would recognise both significant same-sex relationships of a sexual nature as well as caring relationships in which friends or relatives are living together providing personal care and support. There would be financial and other benefits flowing from the removal of this discrimination. The bill introduced by Mr Stefaniak still reflects the spirit of tolerance in Australia without putting the ACT at odds with the rest of Australia, as does the Stanhope bill.

Sitting suspended from 6.30 to 8.00 pm.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (8.00): Mr Speaker, there has been a great deal said about the Civil Unions Bill that we are debating this evening. In particular, there has been a lot said about what the bill does and does not do. It has been variously said that it breaches commonwealth law and is inconsistent with the commonwealth Marriage Act 1961. We have heard that claim from those opposite again this evening. Indeed, Mr Stefaniak, in his speech when introducing the Registration of Relationships Bill 2006, also somewhat vaguely referred to the lack of a residency requirement and the fact that the bill will allow young people of 16 and 17 years of age to enter into a civil union as being unsatisfactory and problematic.

I would like to take this opportunity this evening to look at some of these issues critically and logically. The Civil Unions Bill is a reflection of the government's commitment to the principle that all people are entitled to respect, dignity and the right to participate in society and to receive the protection of the law regardless of their sexual orientation or gender identity. Plainly and simply, the Civil Unions Bill allows a couple to establish a domestic partnership by making a formal declaration of their intention to do so. The bill provides that a civil union is then to be treated in the same way as a marriage under territory law.

The government developed the Civil Unions Bill following an extensive public consultation process. In May 2005 the government released a discussion paper for the purpose of obtaining views on, firstly, whether formal legal recognition should be given to same-sex relationships; and, secondly, if so, which of three models—registration, civil union or marriage—was most suitable. Of the submissions that indicated support for the notion of formal legal recognition, there was a distinct preference for the civil union and marriage models. Specifically, only 33 submissions expressed support for a registration model, while 145 expressed support for the civil union model and 133 for the marriage model. While a number of submissions expressed support for more than one model, there was nevertheless a clear preference for either the civil union or marriage model.

I am sure that members will all be aware that there are differing legal opinions on whether the states and territories have constitutional power to pass same-sex union legislation. While these legal opinions are of a great deal of interest, the government accepts that marriage provided for by ACT legislation would never have the same social or legal status as marriage under the commonwealth Marriage Act 1961. As such, it

would not deliver true equality for gay, lesbian, bisexual, transgender, and intersex people.

In addition, the government takes the view that ACT marriage legislation would be more likely than any other to result in challenge either before the courts or by the commonwealth. It was for these reasons that a civil union model was chosen as the best way to deliver functional equality under territory law for couples who either do not have access to marriage under the commonwealth Marriage Act or prefer not to marry. By "functional equality" I mean that, while a civil union is different from a marriage, it will be treated in the same way as marriage is treated under territory law. A civil union will give access to the benefits of marriage in that it will provide for a domestic partnership to be established on the formal declaration of two people that they intend to form such a partnership. The record of that declaration will provide legal recognition of the relationship and will provide immediate, indisputable evidence that the two people are domestic partners and that they are in a civil union.

Mr Stefaniak has put forward a registration model in his Registration of Relationships Bill. The model proposed by Mr Stefaniak would not, by itself, deliver functional equality. While it provides a mechanism for formally evidencing a significant relationship or a caring relationship, it would not provide the same rights as marriage. The effect of the registration of a deed of relationship, as proposed under Mr Stefaniak's Registration of Relationships Bill, would be that the relationship would be taken to be a domestic partnership for the purposes of all territory laws. While this is an advance on the current situation in that registration would provide immediate, indisputable evidence that the two people are domestic partners, it would not provide the functional equality with marriage that the government's Civil Unions Bill provides. The government is of the view that the civil unions model is a preferable model for the ACT and will not be supporting Mr Stefaniak's bill.

The commonwealth Attorney-General, Mr Ruddock, has expressed concerns both to the Chief Minister and me that the Civil Unions Bill equates civil unions with marriage and may have the effect of confusing civil unions with marriage. The government is of the view that there is a quite clear distinction between a civil union and a marriage. This distinction has been recognised in other jurisdictions and needs to be acknowledged here. New Zealand, for example, has both a civil unions act and a marriage act.

The distinction between a civil union and a marriage was considered by the New Zealand parliament's justice and electoral committee in its commentary on the New Zealand Civil Unions Bill 2004. That committee noted that there were certain differences between civil union and marriage and that the two were different things. The list of differences that the committee noted in its commentary included that marriage is available solely to a man and a woman and civil unions will also be available to same-sex couples; that, unlike the marriage act, the bill did not contain references to husband and wife in relation to civil union partners; and that the marriage act provided for the solemnisation of marriages overseas, service marriages outside of New Zealand and proxy marriage where one party cannot be in New Zealand, but the New Zealand bill did not provide for overseas, service or proxy civil union.

The committee also noted that, in terms of non-legal differences, marriage has many varied religious, cultural and societal beliefs associated with it and civil union does not,

but civil unions would develop their own characteristics over time. The New Zealand committee noted that a few submissions did not support the bill because they contended that anything other than same-sex marriage would not provide equal rights to same-sex couples. The committee went on to note that a key distinction between marriage and civil union, de jure relationships, and other relationships, de facto relationships, was that the former represented a deliberate decision to have the relationship recognised in law.

Mr Speaker, I would like to clarify that these comments were made by a New Zealand parliamentary committee in relation to the New Zealand Civil Unions Bill, but the same comments could very well be made in relation to the ACT Civil Unions Bill because, like the New Zealand legislation, the ACT bill provides for something that is different from marriage. Similarly, the Canadian Supreme Court in the Reference re same-sex marriage case, certainly considered that there was a distinction between marriage and civil unions. The court observed:

> Our law has always recognised that some conjugal relationships are based on marital status, while others are not … Marriage and civil unions are two distinct ways in which couples can express their commitment and structure their legal obligations.

Subsequent to this case, the federal parliament in Canada passed the Civil Marriage Act 2005 to extend equal access to civil marriage to same-sex couples. In explaining the reasons for extending civil marriage to same-sex couples, rather than providing for civil union, the Canadian government clearly considered that there was a distinct difference between civil unions and marriage. Let me turn quickly to the explanation that the Canadian Department of Justice provides on its web site to the following question:

> Why did the Government extend civil marriage instead of using some other term such as civil union?

The web site explains it in this way:

> Only equal access to civil marriage will fully comply with Charter equality guarantees. Any institution other than marriage, such as civil union, is less than equal.
>
> This Government represents the rights of all Canadians equally, and will not treat some Canadians as second-class citizens.
>
> Rights are rights are rights—none of us can, nor should we, pick and choose the minorities whose rights we will defend and those whose rights we will ignore.

I think that the sentiments expressed by the Canadian government are certainly something we should all keep in the forefront of our minds in the debate this evening. Of course, unlike the Canadian government, the ACT does not have federal jurisdiction. The government put up a civil union model as it was the best model that was reasonably available to the government. This is not just a case of using different words. As I have clearly demonstrated in relation to experience overseas, civil unions and marriage are different constructs. For those opposite to assert otherwise would not be in accordance with the experience overseas. I think that it is something that, in particular, the federal government should have very close regard to.

The Civil Unions Bill is quite clear that a civil union is not a marriage. A person cannot be in both a civil union and a marriage, and an ACT civil union will always give way to a commonwealth marriage. Specifically, clause 9 (2) (a) (ii) clearly states that a person who is married may not enter a civil union, and clause 12 (1) (b) provides that a civil union is automatically terminated on the marriage of either party.

The commonwealth Attorney-General has indicated that he has some concerns with particular provisions of the bill. The government does not accept that those provisions have the effect that the commonwealth Attorney-General claims they have. I will be addressing those particular provisions in more detail during the detail stage of the debate this evening. I will also be moving some government amendments to the bill. While the government does not necessarily agree with all of the commonwealth's concerns, I think it is important, and the government is happy, to make some amendments to address these concerns. This is essentially a belt-and-braces approach and is something that we think clarifies beyond all doubt the government's intention not to trespass on the commonwealth's rights around legislating for marriage.

In particular, I foreshadow that I will be moving amendments to establish a registration scheme for ACT civil union celebrants rather than using marriage celebrants, as currently proposed in the bill. I will also be moving amendments to include an additional step to require people who are 16 and 17 years old to obtain a court authorisation to enter a civil union. This will be in addition to the existing proposed current provisions requiring parental or guardian consent. Finally, I will also be moving a number of clarifying and relatively cosmetic amendments.

Mr Speaker, the ACT is a self-governing territory—no one has made that clearer tonight than Mr Barr in his speech—and the ACT Legislative Assembly is a democratically elected body with the power to make laws for the peace, order and good government of the territory. The Civil Unions Bill affects ACT law only and, as such, it is entirely and appropriately a matter for the ACT Legislative Assembly to decide.

In comments both in an interview for ABC radio earlier this year and in recent correspondence, the commonwealth Attorney-General has clearly stated his belief that the power to make laws about civil unions belongs to states and territories, while the commonwealth has the power to make laws about marriage. Further, he has indicated that the commonwealth government would be happy to leave it to the states and territories to decide whether to legislate for civil unions. The ACT government wholeheartedly agrees with Mr Ruddock in this respect.

The government has chosen to introduce legislation to provide for civil unions in the ACT. That legislation, entirely appropriately, provides not only for a system for recording civil unions but also for the way that they will be recognised and dealt with under ACT law. For the commonwealth Attorney-General now to seek to dictate the contents of those provisions establishing civil unions and the way in which the laws of this territory apply to them is inconsistent with his earlier statements. It is also inconsistent with the position of the ACT as a self-governing territory. Mr Speaker, I commend the bill to the Assembly.

MRS DUNNE (Ginninderra) (8.14): I rise in opposition to the government's bill, to the Chief Minister's bill, tonight for a variety of reasons which I hope that I will be able to put forward in the next 15 minutes. I will start by touching briefly on Mr Barr's heartfelt plea for the rule of democracy in the ACT. For the most part, I agree with Mr Barr and the attorney that we have to remember that we are a self-governing polity, but we are at the same time a creature of the commonwealth parliament—there is no denying that—and, while we are in search of democracy here, it has to be done through the prism of the commonwealth constitution.

This is a matter that, as people would expect, has been closely discussed by the Liberal opposition, has been mulled over, and we have come to a very considered position. It is not usual for an opposition to put forward an entirely separate regime as an alternative, but there were many people who thought that there was much that needed to be done symbolically to address some of the issues of discrimination. I will touch on discrimination later. We came to the position in the opposition where it was a matter of making a stand and saying that we are opposed to inappropriate discrimination and that we should make that perfectly clear, which is why we have come up with the relationships registration model which receives considerable support in many other jurisdictions and has been working for some time in Tasmania.

I am concerned about this debate because there has been a lot of talk here tonight about symbolism. I think that we need to be careful that we do not let our desire for symbolic gestures run away with good law making and good policy making generally. I would like to touch on why we should oppose the Civil Unions Bill because it is bad law and then move on to the some of the more in-principle issues.

There are lots of novelties and idiosyncrasies in the bill and they fall into two categories. The first is composed of the differences that flow from the bill's alteration of the state of the law that currently applies in the Marriage Act, where at least one of the spouses must be 18 years of age or older. The second category is made up of effects resulting from the potentially faster or different accrual of rights by certain persons through civil unions.

Mrs Burke dwelt somewhat on the role of minors. It is a matter of considerable concern. I am concerned about it as a parent because of the educative power of the law. For the most part, as parents, we do not encourage our children to engage in sexual acts and to commit themselves to sexual relationships at a very young age. It might have been the case in other times, but we have a better understanding of human psychology and human physiology. You might be sexually mature physically, but not necessarily psychologically. I think that there is a problem in our affording rights to young people through this law which in the normal course of events, as parents, we would not actually advocate for our own children.

But there are two things here. Two minors can contract a civil union, with certain provisos, but they will lack certain rights and capacities that would normally be regarded as incidents of marriage. One of the examples is that part 14A of the Conveyancing Act says that a child can only be a beneficiary under a trust for real property, not its legal owner. Thus the bill allows for a situation in which those in what is supposed to be something legally equivalent to marriage would not, between them, have the capacity to buy or sell real estate.

As I said, some of the anomalies accrue rights that people normally would not have, but, on the other side, two minors in a civil union will accrue certain rights and capacities currently reserved to adults or those married to adults. The bill will erode safeguards present in much of the existing legislation according to which certain rights and capacities are reserved for individuals who have attained the age of majority or who are married to somebody who has attained the age of majority.

For example, if this bill is passed, two minors in a civil union would be immediately entitled to share in an intestate estate through section 46 (1) of the Administration and Probate Act. Under the existing law, a minor could gain such an entitlement only if he were married to someone who had attained the age of majority. It can only be assumed that this would be the effect of the bill's proposed addition of section 168A to the Legislation Act. This section basically states that references to spouse, marriage or married includes references to a civil union partner, civil union and being in a civil union.

In general terms, the current scheme of the law ensures that either an individual or his husband or wife has the capacity to deal with that to which he is entitled, but if this bill were to be passed it would result in various lacunae whereby a minor in a civil union may accrue an entitlement which neither he nor his civil union partner would have the capacity to deal with.

There are other novelties in the bill which I think show that it has not been particularly thought through. Although Mr Barr did speak about doing away with discrimination, in substantive terms this bill does little to increase the rights of two people in a homosexual relationship, and what it does is largely symbolism. This is because there are very few areas of the current ACT law under which a husband or a wife has more rights or capacities than those that used to be known as de facto relationships and are nowadays called domestic partnerships. It is interesting to see the evolution of the law in the ACT. We went through a process of redefining de facto relationships as domestic partnerships and now we are going back and re-redefining them as civil unions.

I think that most of the areas of discrimination that are covered by ACT law have already been addressed by legislation supported by the Liberal opposition in this place. Mr Barr may shake his head, but the moves to remove discrimination in matters of property, in testacy and in things like that have already been addressed in this place.

There are a couple of other interesting things which can only be described as novelties that do make us twist our eyes rather. One of them, I think, is sadly just a little bizarre. That arrives through amendments to division 2.2 of the Parentage Act. Section 7 of the Parentage Act currently provides that a child born to a woman while she is married is presumed to be the child of the woman and her husband. This bill proposes that "husband" should be amended to "spouse", which could include someone in a civil union and "married", of course, would now include a civil union. As such, it should now be presumed, even for two women in a civil union, that one woman is the parent of the child and the other becomes the father of the child. It now means, Mr Speaker, that a natural father of a child born to one of two females in a civil union would have to commence legal proceedings in this absurd position of having to disprove the paternity of the female in the civil union who did not carry the child.

Those are some of the problems, and there are many others that could be touched on, about why this is poor law, and those are some of the problems with the bill. But I think that we also need to look at some of the philosophical issues. When the Chief Minister presented the Civil Unions Bill in this place he asked us for an objective reason for continuing what he labelled discrimination against same-sex couples. He has repeated this request often enough since then. So, before this bill passes, I think it appropriate that at least somebody answers this challenge.

Heterosexual relationships, particularly marriage, are ordered towards reproduction, towards having children. That is to say they have a natural potential for having children and so their benefits are not of necessity confined to the mutual gratification of those involved in a relationship. Heterosexual relationships, particularly marriage, have the potential to produce children and, as such, to produce a material benefit to society in the form of new members, something separate from and external to the relationship.

Homosexual relationships, on the other hand, are simply not like that. The partners might be just as affectionate and they may be just as sincere as those in a heterosexual relationship, but that does not alter the simple fact, and this is not to demean the nature and the quality of the affection and the relationship between two people who enter into the relationship, that the relationship is formed for a different purpose. This difference is the nature of the heterosexual relationship as opposed to a homosexual one and is the rationale for the different treatment of the two in relation to marriage.

The fundamental raison d'etre for society's recognition of heterosexual relationships through the legal institution of marriage is not the recognition of the love and affection, although those are important, of the husband and wife. There are many relationships of love and affection in our world, and most of them are not recognised by law. Love and affection are enormously important qualities, but ultimately they are the ones which are superimposed on the fundamental rationale for the legal institution of marriage, which is reproduction. In other words, marriage is about children for the most part. The legal institution of marriage is, at base, a social mechanism whereby certain rights and privileges, and obligations, are conferred on heterosexual couples by virtue of their inherent potential to reproduce. It is also a device through which the responsibility for the welfare of children is allocated to people, in this case parents.

Why should homosexual relationships receive a form of recognition equivalent to that given to heterosexual relationships through marriage when they lack this fundamental attribute? It might be objected that, nowadays, homosexual couples can have children through artificial means and that there are many people who enter into marriage and who remain childless of their own choice and that there are many single parents. This is a fact of modern life, but it is an objection that misses the real point about laws and it is something that laws must do. Laws must make practical provision and be couched at a level of generality.

Any system designed to prevent those in a heterosexual relationship from marrying because they have an intention not to reproduce would be impractical, and so the legal institution of marriage exists as it does with no such explicit requirements. Traditionally, though, for the most part it has been the case that a man and woman marry for the intention of having kids.

As stated earlier, the Chief Minister has repeatedly asked for an objective reason for the continuation of what he has labelled discrimination. Chief Minister, here it is. Further, there is nothing discriminatory about the current regime of marriage. Any person can marry; you just cannot marry anyone. But this is to say nothing of the fuzzy logic of the Chief Minister's frequent invocation of the word "discrimination". Perhaps no word is quite so misused in the modern political discourse as "discrimination", and its use by the Chief Minister in connection with the Civil Unions Bill is a classic example of that.

In order for the word "discrimination" to refer, in any meaningful sense, to an evil worth eliminating it must refer to a difference in treatment. Mr Speaker, if I were, as a woman MLA, paid less than my male colleague, that would be discrimination, but it is not discrimination to deprive the Chief Minister of a mammogram. We need to have a sensible discussion in this place about discrimination so that we may eliminate discrimination and prejudice from the hearts and minds of people, rather than being bogged down in symbolism, as with this bill. The bill, even with the recent amendments, explicitly seeks to confer all the same rights on homosexual couples as on heterosexual couples. The legal species of a civil union is, in short, substantially the same as that of a marriage and therefore cannot be supported.

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

MR HARGREAVES (Brindabella—Minister for the Territory and Municipal Services, Minister for Housing and Minister for Multicultural Affairs) (8.29): Before I launch into some of the comments I wanted to make on the substantive legislation, I address a couple of comments that have been made earlier by those opposite. The history of support for non-heterosexual people by those opposite is no more starkly demonstrated than by their opposition in the last Assembly to the gay and lesbian reform bill. The vote was 11 to six. Every one of them opposed every move to remove discrimination. Let the record show it.

Mrs Burke talked about the sanctity of marriage. This is an Assembly; this is not a cathedral. We do not require the blessing of the Almighty to pass laws in this territory; we need the blessing of the ACT community. I contend that Mrs Burke has not got a clue about the provision of rights for all people. She said, in relation to the under 18s, where approval must be obtained from the parents or the courts, "Who is the guardian? What about domestic violence?" My comment is that the court is a competent authority, and domestic violence visits heterosexual couples more prevalently than same-sex couples. In any case, we have a crime committed.

The purpose of this legislation is to remove discrimination. It recognises another step in the battle by the Stanhope government against bigotry and vilification. Our government commenced this process when first elected and will continue the fight until all are recognised as equal. Opponents of this particular legislation often hide behind the so-called laws of churches or the so-called word of God. Who elected God to make laws governing my life? I did not elect him. I did not even vote for him. In fact, he was not even on the ballot paper.

Mr Speaker, you may be aware that the Catholic Church does not recognise second marriages conducted in registry offices or in parks by legally appointed marriage

celebrants; it only recognises the first marriage, unless it was annulled by the church. People like me, in a second marriage, are, in the eyes of the church, living in sin, committing adultery and are destined to go straight to hell. This is because the Pope has already abolished purgatory, or so I am told. I cannot wait for him to abolish hell; it will make life, and death for that matter, too, a hell of a lot easier. I do not live in sin with my wife. We are married because we wanted to shout from the rooftops that we were of one heart. And we did just that. Opposition to this government's legislation is denying a certain part of our community that same right.

We are very proud these days of the way in which we embrace equality for women—most of us are. The former Liberal Greg Cornwell may take a different view, which is why the Gregs were named after him. But that is another debate, I suppose. Those of us with consciences are proud of our stance on the indigenous people of this land and our opposition to the discrimination and vilification they suffer. We are proud of our opposition to the discrimination against people with a disability. But discrimination against people that want to share their lives in every respect with someone of the same sex continues. There are those that want to deny them the same basic rights as the rest of us, even the most underprivileged in the community, enjoy.

I am reminded of the plight of Negroes in the American south in the early 1800s. They were enslaved by and before the law. They were enslaved by a concept of being lesser people. This law breaks the shackles of slavery. It removes the notion of slavery of a part of our community. It gives freedom to the non-heterosexual people who are an inherent and valued part of our community.

This legislation is about recognition of the union of two hearts. It is not an attack on anyone. It is not an attack on the institution of marriage, whatever that is. Is it the concept espoused by religions, prime ministers or the courts? Who cares? Not so long ago, anyone seen as being homosexual faced eviction from their home, dismissal from their job and verbal, if not physical, abuse. Thankfully, those days are behind us. But mere tolerance of our gay and lesbian fellow citizens is not enough. And I hate the word "tolerance". It is just not acceptable.

This legislation gives couples the right to celebrate their union publicly with their families and their friends and the wider community. It gives people the right to be regarded as the most significant other half in an established relationship. It brings people that hitherto had no rights into the same status as the rest of us. They can openly celebrate their unions and have legal rights.

We extend rights to people who live in de facto relationships. Why is this so? Because we recognise that this is a couple that do not want the trappings of a religious service or sanction by the state, but they have rights, enshrined at law. These rights are a recognition that they are a couple and that they have rights of inheritance, access to superannuation and to be regarded as next of kin. Is it not odd that a same-sex couple can join a business partnership and purchase assets but are denied the same financial security heterosexual couples enjoy?

We regard de facto relationships as de facto marriages—at least I do. I intend, indeed, Mr Corbell, to regard civil unions as registered de facto marriages. I do not give a damn what John Winston Howard thinks about it either. He wanted to open the 2000

Olympic Games because he thought it was a rerun of the 1956 Games. He is stuck in the past and would have all of our daughters enrolled in the CWA and send all of our sons off to be battle fodder. But as the legendary Gough Whitlam said, "It's time." It is time to give all citizens equal access before the law and to give equal recognition by the law, and it is time we said to our third-class citizens, "You are first-class citizens and you have the same rights as I do."

This is good law. It is contemporary law and it is progressive. It should be a major plank to the removal of the insidious disease of discrimination, and it is. It will be heralded by right-minded people as legitimate recognition for all people. John Howard does not govern for all citizens equally, but Jon Stanhope does.

I very, very briefly commend the Chief Minister for his courage and his insistence on protecting the rights of people who have difficulty protecting their own rights. I acknowledge the courage of my erstwhile former chief of staff, the minister for education, Andrew Barr, for standing up in public and saying to people, "I do not give a bugger what you think. I am Andrew Barr and I am proud of it." I was not, but he was.

I am very, very privileged to walk with people with courage who are prepared to stand up for what they believe in and stand up for their fellows. But I need to give you a little lighter side of the issue. My colleague Andrew Barr showed me an email that recently did the rounds. It talked about somebody being a self-confessed homosexual. "Self-confessed" is a terrible phrase. "Self-confessed" seems to indicate that it is a confession of a wrongdoing. How stupid is that?

Along with some members of the secretariat, I am a self-confessed Collingwood supporter. Have I been vilified? Yes, I have. Have I been discriminated against? Yes, I have. Have I been spat on? Yes, I have, by Carlton supporters. But am I ashamed of being a Collingwood supporter? No, I am not. It is a stupid phrase and it ought to be removed from the lexicon.

This is very serious legislation. On a more serious note: it is really about us saying that we walk with people in our community and we should be walking together. We should remove any barrier that prevents us walking together. This is legislation that recognises a commitment of two people, one to the other. How people do it should be left to them to determine. I am sick to death of the discrimination of the heart that has been perpetrated on these people. I congratulate the Chief Minister for bringing the bill forward.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs and Minister for the Arts) (8.40), in reply: In a speech almost a decade ago, the then Chief Justice of the Family Court of Australia, Alastair Nicholson, said that nothing could be more central to a definition of humanity than respect for the importance each of us places upon enduring relationships. From today in the ACT, it is my hope that respect will be extended to all couples entering into an enduring relationship without regard to their sexuality. From today, I hope our definition of humanity may be enhanced and our regard for fundamental bedrock relationships, the relationships that lie at the heart of strong families, may be strengthened. The step I hope we have the courage to take today will enhance the status of all of our enduring relationships and all of our families.

The equality conferred by this legislation is practical in the sense that it provides equality under the laws of the territory, but it is, of course, also highly symbolic. It does not merely provide evidence of an existing relationship as a registration scheme can; it creates that relationship. The difference may sound semantic to those who will never seek to formalise their relationship through a civil union but is far from semantic for those who will seek this law out and enjoy the protections it offers. It is real; it is profound; and it goes to the heart of the most important relationships some among us will ever have.

It is easy for those of us personally unaffected by this law to either minimise its relevance or to overemphasise its effect. We have seen both approaches taken over the course of the debate. Some have argued that, because gays and lesbians represent only a small proportion of our community, it is a waste of time and effort to accommodate their rights and entitlements in this way. I wonder: would those critics dare make the same argument in relation to other minorities, say, indigenous people or perhaps those with severe disabilities? This community does not confer human rights and social entitlements and recognition on the basis of numerical superiority—not under this government and not under any government that rejects discrimination and upholds equality.

At the other end of the spectrum, over the course of this debate we have seen the argument that this law fundamentally affects the status of marriage between a man and a woman. How can it do so? How can it have any effect whatsoever on my marriage, on the marriage of anyone in this chamber or on the marriage of anyone in this community? Is marriage so fragile an institution? To suggest so is simply insulting.

I celebrated my 34th wedding anniversary this week with my wife Robyn. We married in 1972. We have four children and will shortly welcome our fourth grandchild. My wife and my family are more important to me than anything in my life. Those of us who have enjoyed rich and enduring marriages might ask ourselves how recognising and respecting enduring relationships of others, without regard to their sexuality, diminishes our marriage or the institution of marriage.

Those of us who enjoy rich and enduring marriages might ask ourselves how we would feel if we were to be suddenly and rudely informed that our love was a lesser love, the support we rendered each other was a lesser support, our right for respect and equality under the law was a lesser right, purely and simply on the basis of our sexual preference. How would we feel to be told that our relationships were lesser relationships, that our families are lesser families? That is precisely the message we as a community have been delivering to same-sex couples and their families. Today I hope that message changes. Today we welcome the opportunity to recognise in others what we cherish in our own lives.

This government has worked hard to eliminate from the laws of the territory discrimination against gays and lesbians. The law before the Assembly today fulfils a pledge Labor made before the last election to seek a way to eliminate this final, overt boundary to equality. Our society is built on primary relationships, relationships between committed couples and relationships between parents and children. They are the basis of our households, the foundation of our suburbs and the substance of our community.

I believe that the law we debate today will make our community a stronger one, a more thoughtful one, a more respectful one and certainly a fairer one. I said earlier that it was easy for those of us personally unaffected by this law to either magnify or minimise its significance. In fact, none of us is personally untouched by this law because its absence diminishes us all. To that extent, its absence ought to be felt personally and profoundly by each of us, whatever the status of our own relationships or whatever our sexual preferences. While we discriminate needlessly against the man or the woman beside us, we are all diminished.

Alastair Nicholson was right: nothing is more central to our definition of humanity than the respect each of us places upon enduring relationships. Today I hope that the ACT can put on record that its respect and recognition are not based on something so irrelevant to our essential humanity as sexual preference. I commend the Civil Unions Bill to the Assembly.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

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

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 4, by leave, taken together and agreed to.

Clause 5.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (8.50): I move amendment No 1 circulated in my name *[see schedule 3 at page 1667]*. I table a supplementary explanatory statement to the amendments.

The government is moving a number of amendments in response to concerns raised by the commonwealth. The commonwealth Attorney-General has expressed concerns that the Civil Unions Bill, to use his words, "equates civil unions with marriage and may have the effect of confusing civil unions with marriage". In particular, the commonwealth Attorney-General has expressed concerns with the general statement concerning the effect of civil unions in clause 5 (2) of the Civil Unions Bill, with clause

19 concerning the recognition of foreign same-sex unions and with the interpretative provisions in the Legislation Act 2001.

The first government amendment concerns subclause 5 (2), which is the fundamental essence of what the bill is about. It states:

> A civil union is to be treated for all purposes under territory law in the same way as a marriage.

Subclause 5 (2) does not say that a civil union is a marriage; it simply states that it is to be treated in the same way as a marriage. Providing that civil unions are to be treated by territory law in the same way as marriage is far from equating those two types of relationships. Indeed, many statutes already provide for relationships other than marriage to be treated in the same way as marriage. An excellent example is the commonwealth Social Security Act 1991 where people in marriage-like relationships are to be treated in the same way as people who are legally married. That is commonwealth law.

There are many other examples in all Australian jurisdictions of legislation that treats people in informal domestic relationships, often referred to as de facto relationships or de facto marriages, in the same way as people who have formalised their relationship through marriage. Indeed, the commonwealth Sex Discrimination Act 1984 has for many years made it unlawful to discriminate between couples who are in formal de facto partnerships and couples who are married. Such legal outcomes do not derogate from the special position that marriage has historically in our society. The question has to be asked: if the commonwealth government is prepared to have legislation that treats relationships that are not marriage in the same way as marriage, why is this objectionable in the Civil Unions Bill?

I mentioned earlier that the commonwealth Social Security Act treats people in marriage-like relationships in the same way as people who are married. One critical difference between what the commonwealth Social Security Act does and what is proposed in the Civil Unions Bill is that the non-marriage relationships under the Social Security Act are confined to relationships between opposite-sex couples. Presumably the commonwealth government is comfortable with equating non-marriage relationships with marriage relationships but only if they are opposite-sex couples and not same-sex couples. This is clearly discriminatory. The government does not accept that providing that civil unions are to be treated in the same way as marriage equates civil unions with marriage.

Notwithstanding this, the government is happy to clarify this matter to avoid any possible confusion. The effect of this amendment is to include an explicit statement that a civil union is different to a marriage. The new note 1 states:

> Marriage is defined in the Marriage Act 1961 (Cwlth) to mean the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

The purpose of this amendment is to remove any possible perception that, because a civil union is treated in the same way as a marriage, then it somehow is a marriage by another name. It is not. This amendment explicitly states this and, in doing so, removes any possible confusion over the distinction between a marriage and a civil union. It is not the

intention of the provision to imply in any way that a civil union is the same as a marriage, only that it is to be treated in the same way as a marriage for the purposes of ACT law.

MR STEFANIAK (Ginninderra) (8.55): These amendments will obviously go through. The opposition will speak to some of them. I intend leading on this one. This seems to be, on the face of it, a major attempt to make a differentiation. The opposition has obtained some legal advice.

Mr Stanhope: From whom, Bill?

MR STEFANIAK: I will tell you in a minute, Jon. I must say that we got these amendments basically last night and there has not exactly been a lot of time for any member of this Assembly to go through them in detail. I am a lawyer. I have been through some of them. There may well be some problems I have not seen and there may not be. That is probably not the best way of handling this. If the government is serious about trying to have a bill that is inconsistent with federal law, it should allow a bit more time for scrutiny of its amendments. But it has not. There we go. Who knows what is going to happen as a result of these amendments.

We have received advice from Associate Professor Tom Altobelli, school of law, University of Western Sydney, and Professor Patrick Parkinson, faculty of law, University of Sydney. They have a done a general advice on the bill and a covering note in the short time they have had to see these amendments. In relation to this particular amendment, which says that a civil union is different to marriage but is to be treated for all purposes under the territory law in the same way as marriage, they state:

> This is a transparent and unsuccessful attempt to get around the problems that have been identified about the inconsistencies with the Commonwealth Marriage Act as raised by myself and Professor Patrick Parkinson.

It then refers to the general advice, which I will read because of that proviso. Despite this seeming attempt by the government, there are still problems. It refers back to general problems in the original legislation. On the other amendments, I will certainly be brief, but it is worthy to put this on the record. This is their advice in relation to the Civil Unions Bill:

> 1. This advice considers whether the proposed Civil Unions Bill 2006 … or any part thereof, is inconsistent with the Marriage Act 1961 Commonwealth, such that it, or the relevant provisions thereof, would be rendered inoperative under s109 of the Australian Constitution.
>
> A. The Proposed Civil Unions Bill 2006
>
> 2. The relevant provisions of the proposed … Bill … provide as follows:
>
> Section 5 Civil unions—general
>
> (1) A civil union is a legally recognised relationship that, subject to this Act, may be entered into by any 2 people, regardless of their sex.
> (2) A civil union is to be treated for all purposes under territory law in the same way as a marriage.

I refer back to what I said earlier in relation to their revised opinion. The advice continues:

> Section 19 Civil unions under corresponding laws etc
>
> (1) A marriage solemnised in a foreign country that cannot be recognised as a marriage in Australia because of the Marriage Act (Cwlth), section 88EA is a civil union for the purpose of territory law.
> Note the Marriage Act 1961, s 88EA provides as follows:
> A union solemnised in a foreign country between:
> (a) a man and another man; or
> (b) a woman and another woman;
> must not be recognised as a marriage in Australia.
>
> 3. The Bill sets out in its preamble that it is intended to allow 2 people who choose not to be married, or would not be entitled to be married, to enter into a legally recognised relationship that is to be treated under Territory law in the same way as marriage. It thus applies not only to same-sex relationships but to heterosexual relationships as well. It is very similar to the Marriage Act 1961 in that it establishes a detailed framework of civil unions in a way that parallels the legal regime of marriage. For example, the Bill specifies who may and who may not enter into a civil union (ss7 and 8); it creates notice and consent requirements (ss9 and 10); it establishes a legal regime for termination of civil unions (ss12, 13 and 14); and contains a range of supporting and related provisions that support the institution of civil unions (eg voidness: s15; evidence of identity and age: s17; service of notices: s18; status of civil unions under foreign laws: s19; offences etc: ss20-23). The Bill then also amends the other legislation that is listed in Schedule 1 of the Bill.

The advice then deals with the commonwealth Marriage Act:

> 4. The Marriage Act 1961, as amended, defines marriage in s5(1) in the following terms:
> "Marriage means the union of a man and woman to the exclusion of all others, voluntarily entered into for life".
>
> 5. For present purposes, the other relevant provisions of the Marriage Act are ss88B(4) and 88EA dealing with the recognition of foreign marriages. These provisions state as follows:
>
> - s88B(4) "To avoid doubt, in this Part (including s88E) marriage has the same meaning given by subsection (5)(1)".
>
> - s88E(A) Certain unions are not marriages "A union solemnised in a foreign country between:
> a man and another man; or
> a woman and another woman;
>
> must not be recognised as a marriage in Australia.
>
> C Inconsistency between Civil Unions Bill and Marriage Act?

6. Section 109 of the Australian Constitution provides: "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.

7. While s109 declares that the inconsistent State law is "invalid", the High Court has held that in fact it is "inoperative" (Carter v Egg and Egg Pulp Marketing Board (Vic) (1942) 66 CLR 557 at 573).

8. While s100 refers specifically to an inconsistent State law, it also applies to Territories such as the ACT. Indeed, s109 is largely replicated in s28 of the Australian Capital Territory (Self-Government) Act.

9. There are no issues about the validity of the Marriage Act 1961 in terms of it being enacted by the Federal Parliament pursuant to a relevant constitutional power. Equally, there are no issues about the capacity of the ACT Government to validly enact the Bill under ACT law insofar as it is applicable to residents of the ACT.

10. The real issue is whether inconsistency arises as between ss 5 and 19 of the Bill on the one hand and ss5(1) and 88EA of the Marriage Act on the other hand.

11. The learned authors of *Australian Constitutional Law and Theory* (Blackshield T and Williams G, 3rd edition, Federation Press Sydney 2002 pp371-380) have described what they consider to be the High Court's 3 broad approaches to inconsistency under s109 as follows:

a. If it is impossible to obey both laws, there is an inconsistency.
b. If one law purports to confer a legal point, privilege or entitlement that the other law purports to take away or diminish, there is an inconsistency.
c. If the Commonwealth Law ensures a legislative intention to "cover the field", there may be an inconsistency if the State Law operates in the same field as the Commonwealth Law.

12. The first type of inconsistency arises in relation to s19(1) of the Bill in that it directly conflicts with s88EA of the Marriage Act. The latter says, in effect, that a same sex marriage solemnised in a foreign country must not be recognised as a marriage in Australia. The former states, in effect, that a same sex marriage solemnised in a foreign country is recognised as a marriage for the purpose of Territory law.

This might change that. The advice continues:

The proposed s19(1) is, therefore, inoperative.

13. It should be noted that s19(1) purports to treat the same-sex marriages of people living as far away as the Netherlands or Canada as civil unions in the ACT irrespective of whether the couple are living in the ACT or request the ACT to recognise their relationship. Such a broad provision far exceeds the ACT's territorial legislative competence.

14. The second and/or third type of inconsistency arises in relation to s5(2) of the Bill that thus makes this provision inoperative in the face of the definition of marriage in s5(1) of the Marriage Act (Commonwealth). It is absolutely clear that

> the Federal Government has determined in the Marriage Act how a man and a woman may form a union that gives to them the privileges and responsibilities of marriage and that this is intended to cover the field in Australia on this subject. Insofar as the ACT Bill purports to create another method of attaining the privileges and responsibilities of marriage, it is clearly and obviously unconstitutional. The provisions of the Federal Constitution cannot be circumvented simply by calling something by a different name.
>
> 15. It is also clear that the ACT, like other Territory and State governments, may enact laws governing the relationships of de facto heterosexual couples and same sex couples and such laws already exist throughout Australia. There is no constitutional difficulty, for example, in States and Territories passing laws governing the division of property if relationships break down, or providing for inheritance rights where there is no will. These and other matters are within state and territory jurisdiction. The responsibilities and privileges attached to such relationships may in certain specific respects mirror those associated with marriage if the legislature so desires, (bearing in mind that many such couples will not want the same consequences as marriage to attach to their relationships). There is also no reason why States and Territories should not make laws permitting non-married couples to register their relationships publicly if they so choose.
>
> 16. The constitutional problem in relation to the ACT Bill is in giving the civil union the same effect as marriage under territory law, in all respects, including the common law. The Federal Parliament determined in 2004 that the Marriage Act should explicitly provide that marriage must be the union of a man and a woman. This legislation had bipartisan support in the federal Parliament. A same sex couple cannot under the Marriage Act enter into a relationship that is called "marriage". People may agree or disagree with that decision. The issue is whether that decision may be circumvented by State or Territory laws within the democratic and constitutional framework of the Australian Federation.

I will take my second 10 minutes now. The advice continues:

> In our view, the ACT has no such power to enact that a same sex couple, can enter into a relationship called a civil union that is declared by s5(2) … "to be treated for all purposes under territory law in the same way as marriage". Section 5(2) purports to replicate the substantive status of marriage ("for all purposes … in the same way as marriage") whilst attempting to maintain a different form by calling it a civil union. That is in our view inconsistent with the Federal Parliament's enactment that the privileges and responsibilities of marriage should be confined to a relationship between a man and a woman entered into in accordance with the provisions of the Marriage Act 1961.

They conclude:

> 17. The Marriage Act "covers the field" in that it is clearly intended to be exclusive within its field. The field covered by the Marriage Act is the field of marriage generally. The Act defines marriage to be a heterosexual union. The ACT Bill operates in the field covered by the Marriage Act not because it provides for civil unions, but because it purports to attribute to civil unions the same legal consequences as marriage within ACT law. It is at that point that the Bill enters the field covered by the Marriage Act.

> 18. For these reasons, our opinion is that ss5(2) and 19 of the Bill are rendered inoperative under s109 of the Constitution due to the inconsistencies of these provisions with ss5(1) and 88EA of the Marriage Act.

That is by Professor Patrick Parkinson, faculty of law, University of Sydney, and Associate Professor Tom Altobelli, school of law, University of Western Sydney, solicitor of the Supreme Court of New South Wales and High Court of Australia. Whilst that advice is dated 4 April and is on the substantive bill, the note I have here, which I will read again, is, in relation to this particular clause:

> This is a transparent and unsuccessful attempt to get around the problems that have been identified about the inconsistencies with the Commonwealth Marriage Act as raised by myself and Professor Patrick Parkinson. Please refer to the attached document.

For the benefit of members, I seek leave to table that initial advice, if anyone wants to have a look at it.

Leave granted.

MR STEFANIAK: I table the following document:

> Civil Unions Bill 2006—Advice received from Professor Parkinson, University of Sydney and Associate Professor Tom Altobelli, University of Western Sydney, dated 4 April 2006.

MR STEFANIAK: I table that advice. So, Mr Speaker, it would seem that the proposed amendment does not get around the problem with clause 5 (2) or, I imagine, with a lot of the other clauses that flow from it. The government is hell-bent on getting through this legislation regardless of potential problems, and I suppose we will not know the outcome until someone tests the legislation or until the federal parliament does something different. But I point out that particular advice; I point out some of the problems.

I am not an expert like those learned professors, but to my relatively untrained eye, even though the government seems to be attempting to get around the problems with the federal constitution, we still have a problem. The amendment states:

> (2) A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as marriage.

As the two learned lawyers point out, it is a transparent and unsuccessful attempt to get around the problems. One can see the validity of their opinion. It seems that this amendment will not necessarily help the attorney. Given that we seem to be getting around the problem with the initial bill, we will let this one go through on the voices. I see what the attorney is doing, but I do not think he will succeed. There will be exactly the same problem with the legislation.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (9.09): The advice tabled by the shadow Attorney-General certainly sounds interesting, and the government will look more

closely at that advice now that it has been tabled. But I can offer the Assembly some initial views in response to the issues that the shadow attorney has raised.

On the face of it, and just from hearing the advice as the shadow attorney read it out, it would appear, on the advice I have, that the people advising the Liberal Party on this issue have drawn the issue of inconsistency from section 109 of the constitution, which provides that state law cannot be inconsistent with commonwealth law. Section 109 does not apply in the ACT because it is a provision of the constitution as it relates to state law, not territory law. Indeed, the inconsistency provision that we must have regard to is section 28 of the Self-Government Act, not section 109 of the constitution. So, on the face of it, there would appear to be an issue there that needs to be resolved. I will certainly seek further advice on that once I have seen details of the advice the shadow attorney has tabled.

The more important issue that we need to have regard to is that the commonwealth already, in its own legislation, treats relationships similar to marriages in the same way as marriages. The commonwealth is going to have a problem getting around that. Their own legislation, their own social security legislation, for example, says that people who are in de facto relationships will be treated the same way as people who are in a marriage. Indeed, the only distinction that the commonwealth draw on that issue is that they must be an opposite-sex couple. But they state very clearly that people in a de facto relationship are to be treated under commonwealth law in the same way as people who are in a marriage. That is all the government are attempting to do here, except that we are saying it should not matter what the sexual preference is of the two people who enter into that relationship.

That is the only difference, and I am yet to hear an argument from the Liberal Party that explains to me why it is a bad thing to recognise a relationship between two people of the same sex for the purposes of treating them equally under the law, but it is okay to recognise a relationship between two people of opposite sexes for the purposes of treating them equally under the law. That is the real moral challenge that the Liberal Party has on this issue. How can it be okay to say, "You are in a de facto relationship but because you are of the same sexual preference, sorry, you cannot be recognised as a couple, as a relationship, under the law. But if it is an opposite-sex relationship, that is fine."

That is clearly discriminatory. That is all the territory is seeking to clarify in this legislation. We are not saying that a civil union is marriage. It cannot be, because the definition is quite different. The definition in the commonwealth Marriage Act and the definition of a civil union are quite different. The definition of marriage in the commonwealth Marriage Act is that it is a union between a man and a woman freely entered into for life. That is what a marriage is under law. The commonwealth has made it quite clear in its own legislation that is what a marriage is.

That is not what a civil union is. It is not, and it is made quite clear in the legislation that it is not. A civil union is a union entered into between two people. It is not for life. Either party can dissolve it simply by giving notice. It does not have all the provisions that the Marriage Act does in terms of divorce and so on. It permits people who are of the same sex to enter into such a union, which is clearly prohibited under the Marriage Act. You cannot argue that a civil union is a marriage. The definition is quite different.

That is the ACT government's position and that is why we believe this amendment is a sensible one, to make it very clear that that is our position and that will be the law if this legislation is passed. As I say, we will look more closely at the advice received by Mr Stefaniak, but it would appear on the face of it that it is drawing more on the issue of section 109 of the constitution, inconsistency between state law and the commonwealth, which does not apply to the territory and that, instead, it should be drawing on section 28 of the Self-Government Act, which deals with the interpretation of inconsistency in a quite different manner.

The government does not believe that there is any problem in relation to this amendment. In fact, this amendment makes it very clear to the commonwealth and those who are concerned about the so-called attribution of the civil union with marriage that that is not what this bill intends to achieve.

DR FOSKEY (9.15): It is a shame that amendments need to be made to the Civil Unions Bill. The bill seeks to achieve equality for gay, lesbian, bisexual, transgender and intersex people, and these amendments do appear to diminish that. However, the Greens agree that they must be made and so does the community for whom this bill is intended, for it is better in a situation like this to be pragmatic and take the steps necessary to move forward. The decision was taken after a lot of deep and very thoughtful discussion and consultation with the community.

I concur with Mr Stefaniak's criticism that the amendments, which are quite bulky, were delivered to us just last night. We have had a very busy day and we have not had a chance to really look at them. I am taking on trust the government's assurance that it will retain the intent of the original bill, while avoiding the federal government's righteous bigotry.

It is not surprising that the legal advice that Mr Stefaniak tabled reinforced his party's view of this legislation. It is hardly likely that the Liberals would engage a lawyer that was going to present anything else. Perhaps they did, but we do not get to see that advice. The advice that we have is dated 4 April and it refers to the original bill. I do not think we have seen anything here tonight that will throw into question the bill, as amended.

I am concerned at the lengths to which the Liberal Party and the constituency that it represents on this bill will go to deny a group of people their rights. What is going on? That is the question I want to ask. If the Assembly were to pass the original version of the Civil Unions Bill, there is a real chance that the federal government would seek to overturn it. No doubt it will have its lawyers looking at the amended legislation.

Even worse, the federal government could remove from the ACT the power to make legislation regarding civil unions. We have seen the US administration do just this to fall in with the agenda of the moral right that delivered votes to them. Fortunately, we in Australia have compulsory voting. In the United States the people who turn out to vote are the ones who are prepared to sit down, time after time, and write letters and emails—so concerned that they are doing the will of God. We have seen the increasing power of that lobby in Australia. We know that, apart from gays and lesbians, they object to

women exercising their reproductive right to have a medical or surgical abortion. They seem to object to the Greens, full stop—

Mr Hargreaves: Well, I can understand that bit. We all understand that bit.

DR FOSKEY: as we saw from the Exclusive Brethren's campaign in Tasmania.

MR DEPUTY SPEAKER: Order! Leave the Greens alone.

DR FOSKEY: Thank you, Mr Deputy Speaker. The Liberal Party have an agenda that they are protecting which is about a particular view of sexuality, a particular view of the place of women and a real concern about any group, like the Greens, that is strong enough to stand up and defend those things.

We should not feel beaten—indeed we do not—simply because these amendments have to be made. As we continue to fight the long-term fight for equality for gay, lesbian, bisexual, transgender and intersex people and their right to the relationship that they choose, we should be proud of what we have achieved. This is a fight that will have to continue at the federal level, and I hope that the ACT Labor Party lobbies its state and federal counterparts for such a move. The Greens are already up there proposing these ideas and I am sure that our senators would be happy to work with the Labor Party if they decided to join them.

Amendment agreed to.

Clause 5, as amended, agreed to.

Clauses 6 to 8, by leave, taken together and agreed to.

Clause 9.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (9.22): I seek leave to move amendments Nos 2 to 4 circulated in my name together.

Leave granted.

MR CORBELL: I move amendments Nos 2 to 4 circulated in my name together *[see schedule 3 at page 1667]*.

Amendments Nos 2 and 4 replace references to "authorised celebrant" with the words "civil union celebrant". The amendments are made as a consequence of the inclusion of new part 2A in the bill, which provides a separate ACT registration scheme for civil union celebrants, rather than using authorised celebrants under the commonwealth Marriage Act. This change has been made to address the concerns of the commonwealth regarding the use of marriage celebrants to perform functions under the ACT civil unions legislation.

The commonwealth indicated concerns that this may create confusion over the distinction between marriage and civil unions. This is a level of confusion the

ACT government finds hard to understand, since many marriage celebrants already perform a diverse range of civil ceremonies, such as commitments, reaffirmations and naming ceremonies. So the government does not agree with these concerns that an equality or parity between civil unions and marriage would therefore be implied. However, we recognise that marriage celebrants are registered under commonwealth legislation and we recognise the commonwealth's wish to fully regulate these activities. For this reason, the government is moving these amendments to the bill to remove the provision authorising commonwealth marriage celebrants to officiate at civil unions.

Amendment No 3 is a consequential amendment based on amendment No 5, so I will deal with that when we come to amendment No 5. Finally, amendment No 4 is also consequential in that it simply replaces references to "authorised celebrant" with "civil union celebrant". This is one of those amendments that really is a belt-and-braces approach. It is quite clear that the territory has no intention of trespassing on the capacity of the commonwealth to legislate for marriage, but given the sensitivities around the potential for commonwealth marriage celebrants to undertake civil union ceremonies, the government will instead legislate to provide for civil union celebrants registered in the ACT to conduct such ceremonies.

MR STEFANIAK (Ginninderra) (9.25): I have some comments. The original bill, of course, envisioned federal marriage celebrants performing civil unions, which certainly caused huge problems as far as the commonwealth was concerned. As Mr Corbell says, the legislation creates a new class of ACT civil union celebrants, and that may be enough to get him through.

I am advised, however, that there are some potential problems. We are still dealing with the same process as for a federal marriage, and that includes statutory declarations, public witnesses and a licensed celebrant, albeit an ACT one. The processes are the same, except that we will now have an ACT civil union celebrant presiding, not a federal one. Again it gets back to the question: is it identical to a marriage? So there are those factors. The minister seems to have an issue with creating a new class of ACT civil union celebrants, which on its face would seem to get him over his initial problem with the commonwealth. Again, we will have to wait and see.

Amendments agreed to.

Clause 9, as amended, agreed to.

Clause 10.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (9.27): I move amendment No 5 circulated in my name *[see schedule 3 at page 1668]*.

This amendment replaces clause 10 of the bill. It sets out the extra steps that a person who is 16 or 17 must take in order to enter into a civil union. This has been an issue that has been of particular concern to the commonwealth, and I am going to take a little bit of time just to explain the government's position on this matter and also explain the amendment to members.

In the Civil Unions Bill the government took the approach that if two people were old enough to form a relationship, they were old enough to formalise that relationship. Allowing such a couple access to the law promotes the rights of equal protection of the law in accordance with the Human Rights Act. I am sure all members are aware that the age of sexual consent is 16 and it would appear, and the government's view is, that if you can enter into a consenting sexual relationship at 16, you can enter into a formal relationship under the Civil Unions Bill at the same age. It would appear to be the commonwealth's position, and it would appear to be the Liberal Party's position, that it is quite okay to enter into a meaningless sexual encounter at the age of 16 but not to enter into a meaningful relationship. That is the contradiction that we have from the commonwealth and the Liberal Party on this issue.

Although a sexual relationship is not essential in order for two people to be in a domestic partnership, it is clear that the establishment of a domestic partnership often involves two people who have a sexual relationship. That is just commonsense. Consistent with other jurisdictions, under ACT law the age at which a person is able to consent to engaging into sexual activity is, as I have already indicated, 16. There is, therefore, no bar to two people who are both between the ages of 16 and 18 from forming a domestic partnership if they wish to do so. Like all domestic partnerships, the existence of a domestic partnership between two 16 or 17 year olds will depend on whether the facts of the particular situation show that they are living together as a couple on a genuine domestic basis.

In recognition of the fact that there is a continuing obligation to ensure that the interests of a 16 or 17-year-old person are appropriately protected, the Civil Unions Bill provides that such a person may only enter a civil union with the consent of each person who has responsibility to make long-term decisions for that person—a parent or a guardian. In light of the concerns that have been expressed about allowing young people to enter into a civil union, the government is moving amendments to include additional requirements to ensure that the interests of young people are protected. In addition to obtaining the consent of their parents or guardians, a person who is 16 or 17 will now also require an authorisation of the court. That is the intention of this amendment.

I find it a morally difficult position to argue that you can enter into a consenting sexual relationship at 16, but you cannot enter into a formal union of that relationship at 16. The commonwealth Marriage Act, which provides that one party must be 18 but the other can be less than the age of 18 and between the ages of 16 and 18, would appear to be inconsistent. It would appear to be a hangover from a time when you had to marry off the child bride, if you like, the teenager who had got pregnant and needed to get into a marriage to be seen to be legitimate in the face of society. Maybe that is the reason why that clause is there. But there does not appear to be any sound, logical reason for the requirement that, to enter into a marriage, only one of the two parties has to be 18. Of course, under the commonwealth Marriage Act, one of the two parties has to be 18 and there must be a court order, as well as the consent of the parent or guardian. So the only difference between what is in the commonwealth Marriage Act and what is being proposed under the Civil Unions Bill is that both parties can be between the ages of 16 and 18, rather than one party needing to be over the age of 18.

The government thinks this is a sensible way forward. We have sought to respond to the concerns of the commonwealth on this matter, but we do not agree that one party must be 18. There is simply no logical argument for it. If you can enter into a consenting sexual relationship at the age of 16, why can you not enter into a formal domestic relationship at the same age? That is the purpose of the government's amendment, and that is why we are pursuing the matter in the way that is outlined in the bill.

MR STEFANIAK (Ginninderra) (9.33): I am not sure if this amendment is better than what is in the bill. We in the opposition, I think it is true to say, have a significant problem with minors entering into something as significant as a civil union. You yourselves have equated civil union with marriage; you are not trying to say it is any less important. You state that a civil union is different to a marriage but is to be treated, for all purposes under territory law, in the same way as a marriage. So I assume, Mr Corbell, that you are saying that civil union is right up there, absolutely equal with marriage. My understanding of a civil union, a registration, a marriage, is that it is the recognition of a longstanding commitment by two people who love each other to the exclusion of all else. It does not matter if they are of the same sex or opposite sexes. You are being complete hypocrites. In the same day we see—

Mr Corbell: Where is the time limit?

Mr Hargreaves: On a point of order: Mr Stefaniak indicated we are all hypocrites, I think that is unparliamentary language. I got pulled up for it before.

MR SPEAKER: Mr Stefaniak, it is a personal imputation. You should withdraw that comment.

MR STEFANIAK: I was talking about you all.

MR SPEAKER: It does not matter. An imputation against all of them is an imputation against each one of them.

Mrs Dunne interjecting—

MR SPEAKER: Thank you for your assistance, Mrs Dunne.

MR STEFANIAK: I am not going to waste time on this, Mr Speaker. The government is being completely inconsistent. We have dealt with two pieces of legislation today. Sixteen and 17-year-olds cannot be detained under the government's anti-terrorist legislation because they are children. To be classified as an adult you have to be 18 or over. What is the difference? An 18-year-old can vote. The federal Marriage Act provides for one party being 18 and one being 16. We are talking about a longstanding commitment. I do not think that anyone who wants to enter into a civil union wants to do so lightly. We are talking about people who are legally children. The government has tightened the bill a little. The amendment states:

> (4) If a consent required under subsection (1) (b)—

that is, the consent of both parents—

> is not given, the Childrens Court may, by order, waive the requirement for the consent.

That is a problem. There are still concerns over reduced age eligibility in relation to marriage. Whilst there appears to be a strengthening process, the court can actually override the parents' refusal. I think that is new. So there is a problem. You are being very, very inconsistent.

I think there is good logic for the federal Marriage Act. One party can be 16 or 17; one has to be over 18, with parental consent given for the 16 or 17-year-old. We are talking about the benefits of longstanding, loving relationships, and I think we all support that. We might have a few differences in terms of how we go about it, but we all support that. I am sure we would like to see some chance of these relationships continuing. People might be physically mature, but they might not be emotionally mature enough. How many of us were mature enough at 16 or 17 to go into a marriage or a longstanding relationship that lasts indefinitely? Ask yourselves that.

There is good reason for restrictions. Even you have got some restrictions, but you are making the age less than the federal act requires. Both parties can be under 18, but you are quite happy for people to vote at 18-plus and quite happy to have 16 or 17-year-olds exempt from detention under your anti-terrorist legislation. There is a significant inconsistency in this amendment. I do not think it is an improvement on what was in the original bill.

The opposition has some significant problems with the legislation—and little wonder. A lot of people in our community, whatever they think of same-sex unions, marriages or whatever, accept that marriage, or a civil union, is meant to be a loving, long-term commitment by two people. I think there is good reason why there is that distinction in federal law. It is a sensible one.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (9.38): There are a lot of furphies being thrown around in this debate. We have just heard one of them from Mr Stefaniak—that you have to be in a long-term relationship to enter into a marriage. What an absurd furphy. Last time I looked at the Marriage Act there was no time limit. It is not as if there is some eligibility where you must have been in a relationship for six or 12 months before you get married. It is just not true; the assertion is simply wrong. There is no requirement under the Marriage Act that you have to have been in the same relationship for a set period of time before you are eligible to be married. So to use that as an argument that young people who are old enough to have a consenting sexual relationship should not, according to Mr Stefaniak, be able to enter into a civil union is just wrong. That is just one of a number of absurd propositions we have heard from the opposition on this issue tonight.

There was another from Mrs Dunne. She said, "It is a real problem having people aged 16 or 17 entering into civil unions because they will not be able to deal in property." Last time I looked, there was no automatic requirement that when you enter into a civil union

or a marriage you have to go out and buy a house. It is neither a requirement of entering into a marriage nor a requirement of entering into a civil union. What an absurd argument. Mrs Dunne raised several furphies around property law, transactions and entering into agreements around property because there might be problems with that. It is an absurd assertion that that therefore negates the ability of two people to enter into a meaningful relationship and have it recognised by society. That is all this provision does.

The same arguments were made by Mrs Dunne around inheritance. She said, "This raises all sorts of questions. If two people under the age of 18 have entered into a civil union and one of them inherits, what is going to happen?" Nothing different is going to happen from what happens when someone under the age of 18 who is not in a civil union inherits. It is exactly the same; there is no difference. I do not see how that in any way creates the so-called problems Mrs Dunne asserts in relation to the provision for people who are 16 or 17 to enter into a civil union.

Mrs Dunne also raised the issue of the other parent: who is the other parent in a civil union where one party has given birth to a child and their partner is not the genetic father, for example. That is no different from a heterosexual relationship where a child from another relationship is brought into a relationship between two heterosexual people. There is no difference whatsoever.

Mrs Dunne: No; that is not true. That is not the point I made.

MR CORBELL: It is exactly the point you made, Mrs Dunne.

Mrs Dunne: Nor is it pertinent to this section. It is about the amendments to the Parentage Act in the schedule at the end. Relevance, Mr Speaker.

MR CORBELL: These furphies have all been thrown up. I have to say that, unfortunately, this is the sort of moral majority position that we hear from the Liberal Party. These are exactly the same sorts of arguments that we heard from the Liberal Party when they opposed every single one of the bills in the last Assembly that granted equality between people who were in same-sex relationships compared to heterosexual relationships. They are furphies—absolute and complete furphies.

I think the Liberal Party need to stand up and explain why they think it is all right to enter into a consenting sexual relationship at the age of 16 but not all right to enter into a meaningful relationship at the same age. The provisions in the bill make it quite clear that in those circumstances there must be both parental consent and a court order. Those are appropriate safeguards. It is pretty difficult for the Liberal Party to argue that the age of consent for sexual relationships is okay but that the age at which you can enter into a meaningful relationship and have it recognised by society should not be the same. It is a weak position on the part of the Liberal Party.

MRS DUNNE (Ginninderra) (9.43): The attorney raises a fair point in that there is an inconsistency between the Marriage Act and the position, to some extent, the Liberal Party takes about the age of consent versus the provisions in the Marriage Act and the issues in relation to majority. That sits uncomfortably with me. The point I made in the in-principle stage is that, for the most part, we do not encourage our children to engage in sexual activity when they are 16. Mr Stefaniak addressed issues about emotional and

psychological maturity to do so. As many members have said here tonight, sexual relationships are very important and they cement relationships.

The problem members of the opposition have is twofold. For the most part, there are issues of people whom the Chief Minister on occasions chooses to call children—and they are children because the matters dealt with here are dealt with in the Children's Court—entering into the sort of contractual arrangement which is generally reserved for those who have reached their majority.

There is an inconsistency. I freely confess that I do not know a clear and coherent way through this but I think that what is being proposed in the original bill and in these amendments, which are worse because of the issues raised by Mr Stefaniak because there are now provisions that the Children's Court can override withdrawal of consent or withholding of consent, is a significant departure from and a significant abrogation of the rights and responsibilities of parents or guardians. These amendments arrived at six o'clock last night and we are in the process of making a substantial change to the rights and responsibilities of parents and guardians here with the mere stroke of a pen.

I also want to go back and dwell on the issue of dealing with property, which was raised by the attorney. The point I made was that two minors who have entered into an essentially contractual arrangement do not have the capacity to enter into any other contractual arrangement. They do not have the capacity to inherit. That could be dealt with by a trust for two years or so. If they enter into an arrangement like this, they do not have the capacity to inherit and dispense with the property in the way they would if they were in a marriage, because in a marriage one of the partners has reached their majority.

There is another issue. Mr Corbell said, "Look, just because they are in a civil relationship does not mean they want to go out and buy a house." If people are in a meaningful relationship there is a usual presumption of some form of cohabitation. They may not want to buy a house. They may want to rent a property but will not be able to take out a lease. Children are not able to take out a lease, whereas a young couple—one aged 16 and the other aged 18—who are married are able to take out a lease because there is one person who is legally competent, according to the provisions of the Age of Majority Act, to take out a lease.

This is not the case. The attorney says it is a furphy because he has not thought of it. It is a problem in this legislation we are creating and it needs to be addressed. We are creating a subclass of people who may enter into a meaningful and significant relationship but do not have the legal autonomy to act upon that. They do not have the capacity to dispense with property that they may inherit; they do not have the capacity to buy or sell property; they do not have the capacity to provide for a roof over their own heads by taking out a lease. These are in many ways fundamental, everyday things. We are creating a situation where we are giving people a certain set of rights but then depriving them of others. This is a symptom of what has not been clearly thought through.

This piece of legislation is going to pass tonight and it is incumbent upon the attorney to come back and fix this anomaly. There are people who have the capacity to enter into a civil union, to cast off the shackles of guardianship by their parents or guardian and live independent lives, but will not have the wherewithal to do it. It is incumbent upon the attorney, if this legislation passes tonight—and it will—to come back and fix it. It is all

right for him to say, "It is a furphy." But in the cold light of day he will realise that the points being made here are about the exercise of property rights—and these are important things about sustaining a relationship.

The other reason why the opposition cannot possibly support these amendments is the taking away of rights in subclause (4), which reads:

> If a consent required under subsection (1) (b) is not given, the Childrens Court may, by order, waive the requirement for the consent.

That is not in the original legislation. It is a significant departure from the rights of people whom yesterday in debate the Chief Minister was referring to as children—and clearly they are legally children because they have not reached the age of majority—making decisions. This piece of legislation proposes to take away the normal rights and responsibilities of parents and guardians and cannot be supported in its present form.

MR CORBELL (Molonglo—Attorney-General Minister for Police and Emergency Services and Minister for Planning) (9.50): The property issue is a furphy. Mrs Dunne asserts that, in a marriage, if one person is 18 and one person is 16 and the 16-year-old inherits, the 18-year-old can act on their behalf. It is not automatic—only if the 16-year-old lets them do so and indicates to them that they want them to act on their behalf. To assert that you need that to deal with property is simply wrong.

Mrs Dunne: What about the capacity to find housing?

MR CORBELL: In relation to the capacity to find housing, the situation is no different from two young people in a heterosexual de facto relationship or in a heterosexual marriage needing to find housing.

Mrs Dunne: Two 16-year-olds cannot marry. You cannot take a lease when you are 16.

MR CORBELL: Let me finish this point. For example, if you want to enter into any contractual arrangement and both people are under the age of 18 you need the consent of your parent or guardian.

Mr Stefaniak: You could probably get a parent to do it.

MR CORBELL: That is entirely consistent with the approach we are adopting in this legislation. You need the consent of your parent or guardian to enter into a civil union. If your parent or guardian or, in some rare circumstances, the court agrees that you can enter into a civil union then surely the same follows—that your parent or guardian will give approval to enter into other contractual arrangements.

Let us remember that these people do not stay under the age of 18 forever. They stay under the age of 18 for no more than two years. If two young people want to enter into a civil union and they have the consent of their parents to do so and the court agrees, they can surely get the consent of their parents or guardian to also enter into contractual arrangements, say, to rent a house through their parents. They are not going to be 16 or 17 forever; in fact, they are going to be 16 or 17 for a very short period of time. So it is an absolute furphy argument. The most telling reason why it is a furphy argument is the

assumption Mrs Dunne makes that the 18-year-old in a marriage will automatically have the right to act for the 16-year-old. That is not the case. That is why the government does not agree with the arguments being made by the opposition on this point.

MR STANHOPE (Ginninderra—Chief Minister Treasurer Minister for Business and Economic Development Minister for Indigenous Affairs and Minister for the Arts) (9.53): I do not wish to draw out the debate on this but I am aware that this is one of the issues which has formed a certain status of significance in the minds of many of those who oppose the legislation. I think it is important to reiterate and confirm the position the government has taken in relation to this. It has been most certainly outlined by the Attorney-General but I would like to reiterate and endorse everything he said.

As has been discussed and commented on during this debate, although a sexual relationship is not essential in order for two people to be in a domestic partnership, it is clear that the establishment of a domestic partnership often involves two people who have a sexual relationship. Consistent with other jurisdictions—and this goes to the heart of the discussion we are having—under ACT law as it exists, the age at which a person is able to consent to engaging in sexual activity is 16. That is the law. There is no bar to two people who are between the ages of 16 and 18 forming a domestic relationship if they wish to do so.

Like all domestic partnerships, the existence of a domestic partnership between two 16-year-olds or two 17-year-olds will depend on the facts of each particular situation or case that show that they are living together as a couple on a genuine or bona fide domestic basis. As has been indicated earlier, if there are two people in a domestic partnership they will be treated—whether they are 16, 17, 30 or 40—for many purposes in the same way as two people who are married.

Under the Parentage Act of the ACT, if a woman has a baby while in a domestic partnership her partner will be presumed to be the parent of that child. Under the Domestic Violence and Protection Orders Act, family connections are determined in the same way for domestic partners who are not married as they are for domestic partners who are married. Under the Transplantation and Anatomy Act, a person who is under 18 but in a domestic partnership is treated as if that person were an adult for the purpose of making tissue donations.

In the context of this particular legislation, where the government has taken the decision to legislate the capacity of 16 and 17-year-olds to enter into a civil union, it was not considered necessary that one of the parties to the relationship be at least 18, as is the case if a person who is 16 but not yet 18 wishes to marry. If a person has a right to enter a civil union, that right should attach to the person and not be dependent on the characteristics of the other party to the relationship. I think that is the essential nonsense of the position that has been put.

It is illogical to say that a person who is 16 is old enough to enter a civil union if their partner is 18, or it is all right for a person who is 16 to enter into a marriage if their partner is 18, but not old enough to enter into a civil union if their partner is, say, 17½ and they are 16 or 17. It is simply illogical to suggest that a 17½-year-old may marry an 18-year-old but that two 17½-year-olds may not enter into a civil union. It is simply

illogical to characterise in that case that the right to enter into a civil union attaches to the persons and not to the nature or characteristics of their relationship.

In recognition of the fact that there is a continuing obligation to ensure that the interests of a 16 or 17-year-old person are appropriately protected, the Civil Unions Bill provides, as the attorney has repeated, that such a person may only enter a civil union on the consent of each person who has responsibility to make long-term decisions for that person, whether it be a parent or a guardian, and as long as the Children's Court agrees.

The government has responded to some concerns that have been expressed in relation to the issue of 16 and 17-year-olds being able to enter into a civil union. But at the end of the day a decision that a 16 or 17-year-old couple may enter into a civil union will be taken and subjected to the decision of the Children's Court. As always, in making a decision the Children's Court will take into account the paramount interests of those persons. That is the basis on which the law operates.

I cannot help but think that, because the objection is so essentially and obviously illogical, the basis of objection is that those of you who object to this are simply confronted and cannot accept or face the fact that 16 and 17-year-olds have sex; and that you are more confronted by the sex which, in your imaginations, you imagine that 16 and 17-year-old same-sex couples have. I think you need to be challenged on that. At the end of the day that is an issue for you. You are just confronted and will not face up to the reality of the relationships which exist within our society. Your position is so inherently illogical that it cannot be explained away as a pitch or bid to protect the best interests of 16 and 17-year-olds.

MR STEFANIAK (Ginninderra) (9.59): At the risk of prolonging—and I will not prolong it for long—a very illogical debate from the government, I think Mrs Dunne has encapsulated the law very succinctly in relation to the property rights and the fact that an 18-year-old can, on behalf of their 16 or 17-year-old partner, take out a contract and get a lease on a house.

It might surprise the government, but people have sex at ages probably younger than 16. In fact, I think I recall that Labor Party policy was to reduce the age of consent to 13. It is a fact of life. You need only to look at statistics to see how many 16 and 17-year-olds in our community are having sex—and probably some of them do so on a regular basis. That does not necessarily mean, though, that that makes for a really good grounding for a longstanding, loving relationship. Sex is one part but there is a lot more to it than that.

Here we are talking about a very significant relationship. I would not think you, of all people, would want to downplay that. You are equating it to marriage. We have a bill on the table in relation to a registration. We all recognise that we are talking about recognising and giving due regard to a loving relationship between two people of whatever sex.

Mr Stanhope: No. You are not, Bill. You are discriminating, mate; you are differentiating.

MR STEFANIAK: That is exactly what we are doing, Jon—a longstanding relationship.

Mr Stanhope: In differentiating, you are discriminating.

MR SPEAKER: Order! Mr Stanhope.

MR STEFANIAK: It is a fact of life that a lot of 25-year-olds are not terribly mature. There are some people of 16 or 17 who are emotionally mature but there are a hell of a lot who are not. As well as the very valid reasons Mrs Dunne has put in relation to this—there are very sensible safeguards in the commonwealth Marriage Act in relation to that—they are just contractual for indicating that one has to be 18.

Mr Barr: There are very sensible safeguards here too, Bill.

MR STEFANIAK: You make a nonsense of what you are arguing against because you recognise that in other areas of the law 16 and 17-year-olds are to be treated as children; that they are not to have the same rights, responsibilities and perhaps penalties as adults do. I go back to your anti-terrorism bill, where 16 and 17-year-olds are exempt. Nowhere else in Australia are they exempt but they are exempt here for that. So that is very inconsistent. I think you fail and completely miss the point of a sexual relationship and the ability to form a very long-term commitment.

I think there are some sensible checks and balances in commonwealth law. What you are doing here with just parental consent and then the ability of the Children's Court to waive that is, I think, problematic. It certainly is if you are talking about longstanding relationships—and I thought that was what we were all about here. There is inherent inconsistency in what you are doing. You have shown that today in relation to another bill. Your argument is not super logical either—let us face it. You are really confusing. A longstanding relationship is not the same as having sex. We all know that people have sex at various ages younger than 16. That is not the issue here. We are talking about a permanent, longstanding relationship and the ability of two people to form it.

Question put:

> That amendment No 5 be agreed to.

The Assembly voted—

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

Question so resolved in the affirmative.

Amendment agreed to.

Clause 10, as amended, agreed to.

Clause 11.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (10.06): I seek leave to move amendments Nos 6 to 8 circulated in my name together.

Leave granted.

MR CORBELL: I move amendments Nos 6 to 8 circulated in my name together *[see schedule 3 at page 1668]*. These amendments all replace references to "authorised celebrant" with the words "civil union celebrant". They are made as a consequence of the inclusion of a new part 2A in the bill which provides a separate ACT registration scheme for civil union celebrants.

Amendments agreed to.

Clause 11, as amended, agreed to.

Clauses 12 to 14, by leave, taken together and agreed to.

Proposed new part 2A.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (10.07): I move amendment No 9 circulated in my name to insert a new part 2A, which includes new clauses 14A to 14E *[see schedule 3 at page 1669]*.

This is the last substantive government amendment. Amendment 9 inserts a new part 2A in the bill to provide a separate scheme for the registration of civil union celebrants. This will replace the current provision of the bill that proposed that authorised celebrants under the commonwealth Marriage Act perform these functions. As I have already indicated earlier in the debate, these amendments are being made in recognition of the commonwealth's stated wish to regulate the activities of marriage celebrants registered under commonwealth law. Registration of ACT civil union celebrants will be a function of the registrar-general, and before registering a person as a civil union celebrant the registrar-general must be satisfied that the person has the necessary knowledge and skills or experience to exercise the functions of a civil union celebrant and that they are a suitable person to be registered.

Proposed new part 2A agreed to.

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

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (10.08): I seek leave to move amendments Nos 10 to 63 circulated in my name together.

Leave granted.

MR CORBELL: I move amendments Nos 10 to 63 circulated in my name *[see schedule 3 at page 1671]*.

These amendments, in the bulk, deal with the issue of the proposed interpretation provision from the Legislation Act 2001 and make amendments to schedule 1 as a consequence of this. All members would be aware that the commonwealth has raised some concerns with the proposed Legislation Act provision. The amendments to the Legislation Act 2001 are an interpretation device to support clause 5 of the bill. The proposed Legislation Act definitions provide that in an act or statutory instrument a reference to a spouse includes a reference to a civil union partner, a reference to marriage includes a reference to a civil union, and a reference to being married includes a reference to being in a civil union.

These provisions do not mean that a marriage is the same as a civil union, only that where rights or responsibilities are accorded by an ACT law to a person in a marriage the same rights and responsibilities will be accorded to a person in a civil union as a matter of interpretation. This type of interpretative device is quite common in a wide variety of legislation. It is also quite common for the term "spouse" to include a reference to someone who is not in fact a spouse. For example, section 5 of the Credit Act 1984 in New South Wales provides definitions for the act that include that spouse of a person includes a person with whom the person has a de facto relationship within the meaning of the Property Relations Act 1984. A de facto relationship within the meaning of this act is a relationship between two adult persons who live together as a couple and who are not married to one another or related by family. So, if this issue is of concern to the commonwealth, which they have indicated it is, I look forward to the commonwealth Attorney-General's letter to the New South Wales Attorney-General raising his concern over this equating of non-marriage relationships with marriage relationships in the New South Wales Credit Act.

Another example worth highlighting as well is that section 240 of the commonwealth Workplace Relations Act 1996 sets out definitions for the division of that act that deals with personal leave. Section 240 of that act provides that a spouse includes the following: a former spouse, a de facto spouse and a former de facto spouse. De facto spouse is also defined in section 240 to mean a person of the opposite sex to the employee who lives with the employee as the employee's husband or wife on a genuine domestic basis although not legally married to the employee. Again, there is an equating of non-marriage relationships with marriage relationships through the use of a common interpretative device. The commonwealth is not concerned if its own legislation contains this type of provision, only if the ACT's does, apparently.

While the government does not agree that having an interpretative provision that says a reference to a spouse includes a reference to a civil union means that they are equivalent, the government is happy to amend the legislation to address this so-called perception, and that is what the bulk of these amendments do.

The only other amendment that I would draw members' attention to in this batch of amendments deals with the issue of recognising same-sex marriages solemnised in a foreign country. The purpose of this amendment is to remove the reference to a marriage solemnised in a foreign country. The use of this term was an oversight and it should

correctly refer to a union solemnised in a foreign country, in the same way as these unions are referenced in section 88EA of the Marriage Act. I commend the amendments to the Assembly.

MR STEFANIAK (Ginninderra) (10.13): Mrs Dunne is going to briefly mention something and I will use this to finish up our part of the debate, noting the ruling in relation to my bill, which I will not get to close because of that.

The last thing the attorney mentioned, and one of the big problems seen by a lot of people in our community with this bill, was that this is not just for people in the ACT—unlike, for example, the Tasmanian registration scheme, which was just for people in Tasmania—but for people right across the world. As Mr Corbell rightly says, it did refer initially to marriage in other countries; he has now changed that to a civil union. But I think the same principle basically does apply. We are saying that, despite what he has done in this bill, he does seem to say that a marriage and a civil union are one and the same. However, regardless of that, it still applies to people outside the territory.

One of the problems seen by some people was that people could come here from all over Australia, enter into a civil union and go back to their respective states, rather than being able to do it in their own jurisdiction—in other words, we are legislating for all of Australia. That might be interesting for tourism, but that did cause a concern for people, because normally our laws—for example, our criminal law and civil laws—tend to relate to things that just happen in the territory, and if someone living in New South Wales did something in New South Wales they would not be affected by ACT law.

This does cause a lot of problems, and I do not see any real change in terms of a civil union being open to other than non-ACT residents. It is a state or territory law; it is not meant to be a national law. That may cause you some problems still with the commonwealth. I hark back to what you said earlier when you introduced this suite of amendments—that in no way is this meant to equate civil unions with marriage. Your amendments, although I have not exactly had a lot of time to look at them, do seem, in terms of the learned opinion I tabled, to still be very problematic.

Mr Stanhope: Learned?

MR STEFANIAK: I am sure she is just as good as young Annabel you got to do an opinion for you in relation to the human rights thing the other day, Jon. From what I have seen of your amendments, I still tend to think that you may have some very significant problems with the federal Marriage Act and the commonwealth law, despite your efforts here tonight with these amendments. I would not necessarily bet my house on it or anything like that, but the fact is we have not had a huge amount of time to see them. To all intents and practical purposes, the bill still equates a civil union with a marriage. You still have a problem, I would think, with the federal Marriage Act and the federal parliament. Indeed, from what you were alluding to about some of these amendments, they still might not have the effect you hope they do.

We are not going to know that tonight. Your bill is going to pass. We just have to wait and see. But you might have a lot of disappointed people as a result of what you are trying to achieve with your bill, which leads me to the opposition's bill. Somebody accused Mrs Dunne of saying that what we are supporting is a lesser relationship. That is

a nonsense. It is a different relationship. It is working in Tasmania. It is something that has the support of, obviously, a significant body of opinion in the ACT. It does not offend the federal definition of marriage, nor indeed in any way could it be said to offend federal law. There is absolutely no doubt about that—

Mr Stanhope: Who did you consult, Bill?

MR STEFANIAK: Quite a few people, Jon—probably a lot more than you did actually. And, as it turns out—

Mr Stanhope: What consultation did you do on your registration bill?

MR SPEAKER: Order, please!

MR STEFANIAK: At any rate I think you will find that there may be some very significant problems still with your bill. You have tried to downgrade what we have put up as a genuine alternative to resolve this issue. I do not know if what you are doing tonight will work, despite your amendments here. I would still commend what we have put forward, despite your opposition to it. It is something that is tried and proven. It does work. It does not in any way indicate a lesser relationship. We are dealing here, surely, with recognising longstanding relationships where people love each and want to make a commitment to each other. That is something that we should give due recognition and due support to. It is a hallmark of our society. If two people—I do not care what sex they are—make a commitment to love each other, take care of each other, look after each other and be good citizens, surely that is what our country wants.

The other benefit of our bill is that we recognise some other longstanding, caring relationships that are not sexual—caring relationships of two people who might be living together; they might be related; there may be no-one else in the world who cares for them. They are not paid as carers, they are not a drain on the state, but, equally, they provide a caring relationship, which benefits all in our community, not only themselves. That is probably the benefit of the legislation we have put forward. But it is going to go down; we can count the numbers. We will watch with interest to see what happens with your amendments—whether they do what you want them to do or whether, as I suspect, they will still be problematic.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (10.19): I wish to clarify this issue of a civil union that has taken place and been recognised in a foreign country. We are not trying to legislate things outside the ACT. What we are saying is something quite humane: if a couple have had a same-sex relationship recognised in a foreign country and they choose to come to live in the ACT, for the purposes of our law they will be recognised as being in a civil union. What is so wrong about that? That is not legislating for what will happen in other states, or what will happen overseas. It is saying that if that couple come here they will be recognised as being in a civil union. That is all it does—nothing more, nothing less.

Mr Stefaniak seems to raise the prospect of some residency requirement. But I do not think there is a residency requirement in order to get married and there is no residency requirement if you enter into a de facto relationship. But there seems to be an assertion

that there must be a residency requirement if you enter into a civil union. The argument is: "We want to limit the scope and ambit of this legislation as much as possible and deny this to people." That is what that argument really is about. I do not know if Mr Stefaniak is aware of how registration works, but if you are born in the ACT you are registered in the ACT. If you die here you are registered here in the ACT. If you are married here you are registered here in the ACT. And if you enter into a civil union here you will be registered in the ACT. There is no difference. It does not matter where you come from; it is the fact that it occurs here in the ACT. It is consistent with births, deaths and marriages—exactly the same. That is what the issue around that particular amendment is all about.

I will close by dealing with the comments Mr Stefaniak raised about his Registration of Relationships Bill. The government does not support that. The reason the government does not support it is very much for the reason Mr Hargreaves highlighted—tolerance. Those opposite are saying: "The relationship is there. We had better recognise it somehow, but we won't let you celebrate it. We won't let you have the opportunity to have a public ceremony recognised under law to celebrate the fact that you are in that relationship, but you can register it. You can register it a bit like you register your pet or your motor vehicle. You can do it the same way." That is why we oppose it—because it does not allow for that relationship to be not only recognised but celebrated. And, surely, if it is a loving, caring, committed relationship under law, that relationship should be not just recognised but celebrated. That is what this legislation is all about.

MRS DUNNE (Ginninderra) (10.23): I am glad that the Chief Minister, by way of interjection, raised the issue of consultation, because it goes to what the Stanhope government thinks it means by open and accountable government. The government, from time to time, have said that they have consulted widely on this bill, in the same way that with previous iterations of legislation this week the government have claimed they have consulted widely. But, for the most part, there is not very much hard information about the results of those consultations.

To that end, on behalf of the opposition I made a request, under the Freedom of Information Act, to the Department of Justice and Community Safety for copies of documents held by the agency relating to the preparation, drafting and tabling of this bill. It may be of interest to members to know that, although this request was made at the time of the tabling of the bill back in April, the statutory time limit has expired and the department has not complied in any way; it has not even provided one page of documentation or given any indication that it would do so.

This is one of the elements of open and accountable government in Jon Stanhope's ACT. Another element is the failure of the minister and the government to get their act together in relation to the amendments to this—there is no denying it—landmark piece of legislation. It is significant legislation. It is important legislation. For the most part, the debate here has been civilised, courteous and thoughtful. But the courtesy and thoughtfulness were not extended by this government when they dropped, I think, 37 pages of amendments after close of business on the day before this bill was to be debated.

Ms MacDonald: Blame Philip Ruddock.

MRS DUNNE: Ms MacDonald interjects, "Blame Philip Ruddock." But the commonwealth expressed concerns when this bill first landed on the table back in April, and at not quite the eleventh hour, but very late in the piece, we get the amendments—and I suspect that the amendments we have seen here tonight do not have the intention that the government really wants them to have.

Mr Corbell: Of course, you have no evidence for that.

MRS DUNNE: Yes, I disagree with them. The amendment in relation to the power of the Children's Court is quite wrong. It is a significant departure for which there was no public consultation or discussion. Parents of 16 and 17-year-olds across the territory—caring, loving, responsible parents and guardians—would be quite horrified to know that this place has just passed a piece of legislation that could possibly take away their rights as the principal decision-maker for a minor. That was not foreshadowed in the original legislation when it was tabled in April, and the community has had no time to discuss it.

This is significant legislation, which has been brought forward for a variety of reasons, some of which are very noble and some of which are less so. But at the last minute there is an urgency that it has to be done, it has to be done now and it will be done at all costs. As a result, I think we will be back to fix up anomalies in this legislation. Again, we have seen the failure of this government to be open about its deliberations, about how it came to the conclusions for the model that it took, who it consulted with in any real sense and what the people that it consulted with really thought about this.

This is a failure of openness and a failure of process. It delivers to a constituency that which they desire—and for that well and good. But it has been done without enough reflection about the needs of the entire community. This is not to say that the majority should win. I take the point made by, I think, the attorney very early in the piece—that we should not shy away from making laws because they apply to only a small number of people, a minority of the people. That is not what democracy is about. I take that point, and I think it was well made by the attorney.

I would never stand here and speak against this bill because it affects only a small number of people, or a minority of people. That would be unjust, unreasonable and uncaring. But we have before us legislation that is flawed and that will have to be revisited so that once that it has passed it can work effectively for the people who enter into these relationships. There are issues about minors; I lay you bets that it will have to come back here for us to address the property matters that the attorney today, in his discomfort, calls a furphy. One day he—or his successor—will have to come back and fix it.

DR FOSKEY (Molonglo) (10.30): I just want to be very brief here. I agree with Mrs Dunne that if there are problems that turn up in groundbreaking new legislation, as there may be, it should come back here. I would like to see us, as an Assembly that is now going to pass this landmark legislation, take a positive approach and make sure that if flaws appear we work to make sure it is as good as possible.

As I said, I have not had time to read every amendment today, and I am taking on trust that the government has the good intent of its original legislation, which was well

thought through, at heart, and the intent to make sure it works. Mrs Dunne, you have said that you have that too. But, Mrs Dunne, if you are so concerned to know who the government has consulted with, I do not understand why you did not support my legislation amendment bill yesterday, which would have required the government to say who it spoke to in devising the legislation.

As you said, we do not have to agree with everyone that we consult; of course, on this matter we could not possibly incorporate the views of everyone that we consult. But the intent of the government is there. My legislation made it clear that I would like, with every bill that comes before this house, to know who it has been discussed with. Mrs Dunne, I think it is hypocritical of you to say you want that from the government when you did not support that legislation.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs and Minister for the Arts) (10.32): I hesitate to delay finalisation of this matter much further, but I do need to respond to the suggestion or allegation that the government did not consult fully and genuinely on this legislation.

The bill that we are debating and will finalise tonight has a long genesis. This is an issue that has been consulted on over a period of more than 18 months. The government prepared a detailed discussion paper, an excellent paper, about the issues and the options it presented. We advertised publicly for submissions. There was a broad-ranging community discussion around the issue. I have done dozens—tens of dozens—of interviews. I have appeared on radio. I have responded to questions. I have been engaged in the debate, as have many of us, with the community for over a year.

We received well over 400 submissions. The government cannot be held responsible for those that do not, or choose not to, engage in a public consultation process. Every opportunity was given. We received essentially an equal number of submissions representing a range of views—some strongly for the recognition of same-sex relationships, some strongly against the proposal. We introduced legislation in March. We are debating it today. It has been a thorough and rigorous period of consultation and discussion around the proposals on the table. I reject absolutely any suggestion that we have not consulted fully, openly and rigorously on this legislation.

I will conclude my remarks this evening by responding to two points that require response. The issue around the availability of a civil union to 16 or 17-year-olds is an issue that has generated some discussion and debate. Significant concerns have been expressed. Members of the opposition have continued to express concern, drawing distinctions between arrangements that would apply to 16 and 17-year-old same-sex couples in a civil union and those for a 16 or 17-year-old person who wishes to marry.

You distinguish again and again between arrangements that will pertain to same-sex 16 and 17-year-olds wishing to enter into an enduring relationship and those for 16 and 17-year-old heterosexuals wishing to enter into a marriage or enduring heterosexual relationship. You draw now on, as you say, this "horrendous prospect" of parents being required to yield to the court. The same process applies to a 16 or 17-year-old person who chooses or wishes to marry and cannot receive their parents' consent. They have the same capacity to seek exactly the same order from exactly the same court. You object to

a 16 or 17-year-old person in a same-sex relationship being able to approach the court for an order that would subvert the will of their parents, that would permit them to enter into an enduring domestic relationship, but you have no quibble with a heterosexual 16 or 17-year-old young person going to the very same court, to the very same magistrate, to seek the very same order.

Mr Stefaniak: This is an 18-year-old in a relationship.

MR STANHOPE: No, we are talking here about a 16 or 17-year-old. An 18-year-old does not have to go to the court, but you differentiate. Even now, at the end of this debate, you use this as your concluding concern: you differentiate, you distinguish, between the rights of a 17-year-old person who wishes to enter into an enduring domestic relationship—on the one hand, a civil union; on the other hand, a marriage. You have no issue with a 17-year-old person going to the Children's Court when they cannot get their parents' permission or approval to marry; yet it is horrendous—the world will end, the sky will fall in—if a 17-year-old in a same-sex relationship seeks exactly the same relief in exactly the same court before exactly the same magistrate. You stand there and think that you can justify this differential position. You simply cannot.

I conclude on this point: Mr Stefaniak and each of you have expressed some shock and horror that we would contemplate, and through this legislation permit, same-sex couples from elsewhere in Australia to celebrate a civil union in the ACT—as if there is something shocking around the fact that we would not reject a same-sex couple who came here, to our home, to our city, to celebrate their civil union here with us.

I will give you one example on this, Mr Stefaniak. I believe you have two children. Say it transpires that one of your children is homosexual and your other child is heterosexual. They each leave home and travel to another city, as many of our children do. They choose or decide, like loyal children, that when they enter into their life partnership they would like to share their joy with their parents and they choose Canberra, their home, to do so. Most of our children do. They go away. They go to university. They meet up with people. It is most frustrating, particularly if they whip off overseas. But many of them do not; they live away.

But children will, for the sake of their parents, come home to celebrate their marriages—and, after today, to celebrate their civil unions. And you, for your homosexual child, will stand at the border and say, "Do not come here to celebrate your civil union," but to your heterosexual child you will say, "Welcome home for your marriage." How do you justify that, Mr Stefaniak? How do you justify the stance that you have just taken, which would exclude your homosexual child from celebrating a civil union in Canberra, your child's home, whilst welcoming with open arms your heterosexual child for their marriage?

I say that, without wishing to be personal, just to illustrate the very difficult position you present in the context of equality, non-discrimination, tolerance, acceptance and expression of love that I hope we all wish to express to those that enter into a relationship of whatever description, whether it be a civil union, a marriage or otherwise. It illustrates absolutely the nonsense of your position and the inherent flaw in your argument or suggestion that you are not discriminating and do not wish to discriminate. On the basis of your own analysis and your own position, you would be prepared to discriminate against a homosexual child of your own.

Amendments agreed to.

Remainder of bill, as a whole, as amended, agreed to.

Question put:

> That this bill, as amended, be agreed to.

The Assembly voted—

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

Question so resolved in the affirmative.

Registration of Relationships Bill 2006

Debate resumed from 3 May 2006, on motion by **Mr Stefaniak**:

> That this bill be agreed to in principle.

Question put.

The Assembly voted—

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

Question so resolved in the negative.

Leave of absence

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

> That leave of absence be given to Ms MacDonald for the period 19 to 26 May 2006.

Standing order 76—suspension

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

> That standing order 76 be suspended for the remainder of this sitting.

Sentencing Legislation Amendment Bill 2006

Debate resumed from 2 May 2006, on motion by Mr **Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (Ginninderra) (10.46): This is a mechanical bill that provides mechanical changes consequent upon the bills passed last year. We had a good old, ding-dong fight over consolidating sentencing laws under a number of statutes. It comes about as a result of the Crime (Sentencing) Act 2005 and the Crime (Sentence Administration) Act 2005 passed last year and due to take effect on 1 June. It is mechanical in nature. It provides consequential amendments for these laws, repeals old laws and updates references in the ACT statute book. To ensure that it starts on 1 June, it needs to be passed today. We do not have a problem with it.

DR FOSKEY (Molonglo) (10.47): I support the Sentencing Legislation Amendment Bill 2006, which is one of the last steps in implementing a consolidated, modernised and flexible legislative approach to sentencing. I understand that the ACT government intends to debate the corrections management bill 2006 in the spring sittings and that this, if passed, will work in conjunction with our new sentencing act. I see no issue with this bill, for it appears to be purely mechanical and will enable existing custodial laws to apply until the corrections management bill has been passed and commenced, assuming that the latter two do occur.

I am pleased to note from the Attorney-General's tabling speech that the ACT government does not need to amend any legislation to ensure that prisoners in the ACT have the right to vote in ACT elections. I agree with this statement. Allowing prisoners to vote in ACT elections contributes to rehabilitation rather than deters it. Despite being locked away, they are still a part of the community and government policies can severely affect their lives. Alienating them further would do little to encourage their rehabilitation and their work towards becoming responsible and contributing citizens.

I recognise that the Sentencing Legislation Amendment Bill does not introduce any new policy. However, my office picked up, during the November debate, some small failings in our sentencing regime that could not be amended until now due to the contents of the bill. The ACT Greens are concerned about the court's ability to convert a fine to imprisonment if the fine is defaulted upon by the convicted person. There appears to be limited or no ability to convert a fine to community service work. I will therefore be moving an amendment in the detail stage to deal with this problem.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (10.49): I thank members for their support. The passage of the Sentencing Legislation Amendment Bill will complete the technical steps needed to enable the government's new sentencing laws to commence. The extent of the technical tasks requires the repeal of 12 existing acts and the amendment of 39 other acts. The number of acts affected shows the important role sentencing plays in the territory's laws.

The government's Crimes (Sentencing) Act 2005 and the Crimes (Sentence Administration) Act 2005 were drafted to work in union with the government's corrections management bill. I intend to introduce this bill later this year. It will be a bill that provides a modern legal framework for the remand centres and for the new ACT prison. To maintain continuity between the existing custodial laws and the foreshadowed corrections management bill, the Sentencing Legislation Amendment Bill provides transitional arrangements to enable the existing custodial laws to apply until the corrections management bill is passed and commenced. These transitional arrangements enable the courts and the chief executive of justice and community safety to make decisions to resolve unforeseen contradictions between the new laws and the old laws. If necessary, regulations can be made to resolve any temporary contradiction.

I note that Dr Foskey has advised the Assembly she intends to propose amendments to the bill to enable people who default on fines to work off the fines via community service rather than by imprisonment. The government agrees with the principle behind Dr Foskey's amendments. However, solving this problem is not as simple as it first appears, and the government is concerned that the amendments proposed by Dr Foskey would create more problems than they solved. If the problem could have been solved in the way proposed by Dr Foskey, it would have already been put in place through the Crimes (Sentence Administration) Act 2005.

The ACT has two systems of imposing fines: court-imposed fines and fines imposed by infringement notice, such as traffic fines. At present, there are at least 131,000 outstanding infringement notices, the bulk of them for traffic and parking offences. Under the court system, there are around 2,100 fines imposed per year. Infringement notices can also lead to court-imposed fines, as the people who are issued infringement notices have a right to challenge the notice in the Magistrates Court, and the government may also initiate prosecutions instead of proceeding with an infringement notice.

In contrast to fines, the kind of community service administered under a sentence in the ACT is designed for offenders who have been liable to serve imprisonment or are serving imprisonment or periodic detention. A comparison between the numbers of fines I have mentioned and the number of community service orders managed by ACT Corrective Services demonstrates the vast difference between these types of penalties. In comparison with the figure of 131,000 infringement notices outstanding and 2,100 court fines issued, in the 2004-05 financial year corrective services managed only 124 community service orders, and this year they will manage 173.

If just half a percent of the people who are fined were to shift to existing community service orders, the increase in workload would be four times the current level. That shift would simply be unsustainable. The ACT has a fine enforcement scheme under the Magistrates Court Act which is administered by the registrar of the court. The scheme enables the registrar to examine a person's financial capacity to pay a fine if the person defaults. The registrar can make arrangements for the person to pay by instalments, to allow extra time, to garnishee the person's wages or to claim some of the person's property to pay for the fine. The court's registrar has advised that there are between 600 and 700 direct debt transactions in place as a consequence of the fine default

provisions. In cases of people who are on low incomes or in debt, I am advised that the payments can be as low as $5 per week.

The government also has the power to remit fines, and I am advised that, in cases of people who are destitute or in severe debt, the court staff provide information about the remission of fines and, in many cases, assist people with applications. The statistical evidence, supported by advice from the court staff, suggests that a large number of fine defaulters can afford to pay but will not engage to make payments until a warrant is issued for imprisonment.

Last financial year, 1,389 warrants of imprisonment were issued for a fine default. This is a shocking figure. The fact that a warrant is issued does not mean that the person ends up in prison. Approximately 95 per cent of all the imprisonment warrants issued result in the fine defaulters paying their outstanding fines. So the fact that the warrant is there is enough to acquire or get the payment. Because the Magistrates Court Act suspends the warrant if a person pays the fine, most people subject to a warrant immediately negotiate with the registrar for instalments or automatic deductions or they just pay the fine.

I am unhappy to say that last financial year 50 people were imprisoned to account for their fines, and this year 48 people will be imprisoned. The government would like to see the figure at zero. The government is aware of this problem and took note of what the community advised during consultation on the 2004 exposure draft of the government's sentencing bill. All stakeholders told us, and the government agreed, that some kind of community service in lieu of imprisonment is a good idea.

However, as I have already indicated, it cannot be at the expense of overwhelming the existing community service system. What is needed is an alternative that is commensurate with a fine, not commensurate with imprisonment. Working out a holistic solution to the problem is a significant exercise and quite complex, as it must take into account the territory's system of infringement notices and court-imposed fines. The government supports an alternative to imprisonment, but there is no quick fix. An alternative must be viable. Being aware of the problem, the government has taken steps to reduce the number of people who may end up in prison to the greatest degree possible.

Section 14 of the government's sentencing act is crafted to reduce the number of people who could not afford to pay fines at the front end of the sentencing process. The sentencing act requires a sentencing court to consider any facts presented by an offender about their financial situation when the court is thinking about imposing a fine. The act also allows payment to be made by instalments.

The government's sentencing act also includes an offender's financial circumstances as part of the sentencing considerations in section 33. Again, the point of these provisions is to reduce the number of people who cannot afford to pay a fine or to minimise the financial impact of a fine. As an extra measure, I have also asked my department to explore the idea of making decisions to remit fines an automatic part of the fine default process if a person is about to be imprisoned. I believe this may also assist to ensure that only those people who can truly afford to pay their fines, but obstinately refuse to do so, would be liable to time in the remand centre.

Let me focus quickly on fine defaulters and why including fine defaulters in the current community service scheme would be detrimental to the criminal justice system overall. As I indicated earlier, the kind of community service administered under a sentence in the ACT is designed for offenders who would have been liable to serve imprisonment. When a court considers making an order for community service, it must request a presentence report and the person must be suitable for community service in terms of any drug or alcohol addictions, any medical problems, their criminal history and other factors.

The decision to impose community service instead of imprisonment is not a light decision. The community service work itself also has to be appropriate and available. It is the government's view that community service should not be work that would normally be provided by a paid employee. It is not free labour for commercial purposes. Ours is a small community and the relationship between available resources and desired outcomes must be carefully balanced. The effect of shifting a further 40 to 50 people a year into community service simply would be too great a burden in one hit. It would overwhelm our system. Once the step was taken to enable the territory to provide community service as an alternative there would also be the unpleasant prospect that it would encourage a further marginal layer of people to default on fines. Again, that would add to the burden.

I am also advised that in other jurisdictions linking existing community service orders to fine defaults the influx of community service orders to pay off fines has resulted in the absurd situation where the cost of managing community service orders exceeds the amount of the outstanding fine. Not only is the community missing out on the fine but also it has to pay more than the fine was worth in the first place. In the meantime, it also burns up resources that would be better placed managing more serious offenders.

Finally, there is the issue of ACT public liability and liability for civil actions. As I explained, the process for a community service order requires the court to request a presentence report to determine an offender's suitability for community service. This assessment process also helps to manage the territory's liability. Dr Foskey's amendments would circumvent that process and reduce the territory's ability to manage the risk. In a community of our size, one bad incident would be enough to affect the whole scheme.

I am also concerned that the use of the existing community service scheme would create new problems. Firstly, the amendments would authorise the registrar to decide if a person had breached their community service order. This could be an allocation of power beyond the registrar's appropriate role. It may also raise the human rights issue of fair trial because there needs to be consideration as to whether the powers are, in fact, judicial or administrative. Secondly, I am concerned about whether in fact it is possible to use the procedures in part 6 (2) of the Crimes (Sentence Administration) Act 2005 in abstract from the rest of the chapter. It raises serious questions about whether any breaches can be reported at all.

Under the sentence administration act, corrections officers can only report breaches to a sentencing court under chapter 6. Would this mean that the registrar is to be taken as a person imposing a sentence? Again, this does raise some human rights issues. If the

registrar is not exercising a sentencing power, then the corrections officers would have no authority to report breaches to the registrar. These points go directly to the issue of Dr Foskey's amendments and indicate that, while the government supports in principle the approach, it is a more complex proposition and requires more time to be worked through. I would also like to note that the proposals put forward by Dr Foskey would allow up to 500 hours of community service over two years. Again, this may be disproportionate to the original offences and raise some human rights considerations.

The ACT's community service process is defined for offenders who have been liable to serve imprisonment. We do need an alternative, but we also need a viable one. Mr Speaker, this bill was not intended to be in focus for policy debate. The bill simply updates the territory's statute book in light of the acts we made last year. The bill clears the way for the new sentencing laws to commence on 2 June 2006.

I thank Assembly members for their cooperation in enabling the bill to be considered and debated at short notice. Mr Speaker, I foreshadow that the government will not be supporting Dr Foskey's amendments, for the reasons I have just outlined. Whilst we welcome the principle behind them, more work needs to be done on making it a workable and viable alternative, and that is work the government is committed to doing.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 6, by leave, taken together and agreed to.

Schedule 1.

DR FOSKEY (Molonglo) (11.02): I seek leave to move together amendments Nos 1 to 6 circulated in my name.

Mr Stefaniak: I take a point of order, Mr Speaker. It would be an interesting debate, but I do think that, because of the nature of the government's bill, moving substantive amendments to such a bill would offend precedent in this Assembly. I recall gaming legislation to which I sought to move some amendments which involved a different clause from the clauses that were being debated in the bill and you, quite rightly, ruled that it was not the subject of the bill as such.

This bill is a consolidation bill; it is a mechanical bill. Dr Foskey's amendments are highly technical and very specific. Although I appreciate the sentiment in what she is doing, it would be better if she did so as a substantive bill in its own right. I refer to that ruling that you made in, I think, 2004.

MR SPEAKER: Mr Stefaniak, the long title of the bill reads:

> An Act to amend Acts because of the enactment of the Crimes (Sentencing) Act 2005 and Crimes (Sentence Administration) Act 2000, and for other purposes.

If you go to the explanatory statement, you will see that the third paragraph on page 2 reads:

> The Crimes (Sentencing) Act 2005 consolidates existing sentencing laws set out in a number of different statutes. The Act also introduces a number of new options for sentencing courts and modernises the law …

Dr Foskey's amendments are about sentencing issues. Amendments have to be relevant to the bill, and they are.

Leave granted.

DR FOSKEY: I move amendments Nos 1 to 6 circulated in my name *[see schedule 4 at page 1690]*.

Mr Speaker, I understand that it is late at night, but I want to thank the government for its considered response to these amendments. I am sorry that Mr Stefaniak did not tell me earlier that he thought that they were inappropriate. Nonetheless, I am glad that we are discussing them tonight.

I am very glad that our amendments appear to have precipitated some action by the government, because they do point out a flaw in our existing arrangements. The ACT's sentencing legislation does not currently provide any ability for the courts to convert a fine to community service work. As the legislation currently stands, if a convicted person defaults upon a fine, the registrar of the court who is responsible for administering that fine can order to have the person sent off to prison to pay off the fine at $100 a day. Although the courts may allow the convicted person more time to pay the fine, to provide security for the fine or to pay the fine in instalments, I am greatly concerned that, if the person is sent to prison, that may not be the best available option for the community or for the individual's needs.

Rather, I would like to see the courts provided with an option to order the individual to pay off the fine by completing community work, as that would provide a greater benefit to the community, the government and the individual involved. There is the opportunity for the individual to gain skills and develop networks and an opportunity for the government to avoid paying $180 a day for that person to be in a New South Wales prison, as well as an opportunity for the community to receive another volunteer who may continue to volunteer past the community service order.

Community service work has been a successful option for many people in various states over the past few decades. It gives extra volunteer staff to often under-resourced workplaces. The individuals are often pleased to be able to do this community work, rather than having to go to jail. Wouldn't you be? Also, being only fine defaulters but otherwise very law-abiding citizens, the ones that the Liberals like so much, these people are not necessarily criminally inclined and may have skills of great value to the organisations involved. Sometimes these individuals discover that they enjoy this community work so much that they continue as volunteers after the orders have finished.

I am also concerned that when fines are ordered, an individual's ability to pay the fine will be greatly impacted upon by their wealth and their ability to access large sums of ready cash. Such provision surely is not fair or equitable. A logical corollary is that low-income people are more likely to default on their fines and therefore to spend time in jail more often than those on higher incomes. This would then increase their already fragile economic viability and increase their exposure to people who are unlikely to offer them positive alternatives to criminal behaviour. Mr Speaker, as you know, a fine can be earned by just racing off into a shop to change a note when you do not have enough change for a parking meter.

Mr Mulcahy: No, that is a defence, if you read the legislation.

DR FOSKEY: We find usually that there is no tractability on that one. I would be very pleased to hear of people who have discovered it.

Amendments Nos 1 to 5 seek to amend the Magistrates Court Act. If passed, they will provide for the registrar of the court to order a fine defaulter to pay off their fine in community service work at a rate of 7.5 hours per $100. We chose this rate because 7.5 hours appear to be the union accepted working hours per day, plus a half-hour break, and currently fine defaulters pay off fines at $100 a day in prison.

We envisage that the order to complete community service work would operate in the same manner as a good behaviour order that is subject to a community service condition, as per the Crimes (Sentence Administration) Act 2005, part 6.2. If the fine defaulter, for some reason, does not complete the community service work, the defaulter could then be sent to prison to pay off the fine at $100 a day.

My sixth amendment relates to the Road Transport (General) Act 1999. Currently, if a person defaults on a fine, their car licence and registration can be withdrawn until the fine is fully paid off. We have amended that so that once the person starts community service work they can have their licence and their registration back, because we believe that this is a significant sign that the fine defaulter is paying off the fine and, due to the manner in which Canberra is set out and the poor availability of public transport in some areas, the fine defaulter may need their car to get to the community service work and to their other work and destinations associated with family needs. We must remember again that these people are not criminals; they are people who were not able to pay their fines. We have not provided for the suspension to be reinstated if the community service work order is cancelled because, presumably, the fine defaulter would be imprisoned.

The amendments I have moved are intended to bring us into line with other states and territories, something that the opposition wanted to do in regard to the laws on terrorism. Such a system already exists in New South Wales. We have heard many stories about people there being unable to pay a fine due to limited finances and waiting until the fine defaults to a community service order.

Western Australia also has this scheme and it is noted on the web page for its Department of Corrective Services that 40 per cent of the community service hours result from fine defaulters being unable to pay and being required to undertake community work as an alternative penalty and that the average cost of keeping an adult offender in

custody in Western Australia is $241 a day. They must get better meals! Compare that with $14 a day for supervising an offender in the community. Queensland also has this scheme and, interestingly, aims community service at the genuinely needy who are experiencing financial difficulties, so there is a bit of finetuning there.

My amendment is not radical in social or economic terms. Rather, it is a logical move that will benefit government financially in the short term and socially in the long term, as well as benefiting individual skills and networks and assisting the community. Mr Speaker, I do have hope that gradually the ACT will move to such a system of community service orders. While understanding that it would be rather difficult to put more than 100,000 currently outstanding fine defaulters on community service orders in the next week or two, it is something that we could move to over time.

MR STEFANIAK (Ginninderra) (11.13): Mr Speaker, it is not often that I agree with the government on sentencing matters but, whilst I have some sympathy for what Dr Foskey is proposing, I see this bill as being completely reasonable. Funnily enough, the union rate of 7½ hours of community service work for every $100 of an outstanding fine probably is not a bad sort of scenario. A fine probably would have to involve a big corporation for 500 hours of community service work to apply and then it would have to be one of the biggest fines ever in the ACT. I think that that is probably quite reasonable.

I accept the attorney's comment that there would be significant difficulties in this regard. I think that it is good that he is looking at this question. Most of us are old enough to remember the case of Jamie Partlic, who was beaten to a pulp by some prisoner while he was in jail over a parking fine default. That was when lots of improvements were made in relation to fine defaults.

When fine defaults were operating in the ACT in the 1980s the rate used to be, I think, $25 a day and for the first four days you would be kept in a police station, but if you had to pay for more than four days you would go Goulburn, which most people did not like. In fact, I can recall a flatmate of mine who owed $325 being picked up at work and I remember paying $250 so that he did not have to go to Goulburn. He was kept here instead. He was due to go to army reserve training that night and I rang his platoon commander, who was a mate of mine, and said, "Johnny is not going to be there." He was let out about six minutes after he should have been and he was rattling a can on his cell at Civic police station to get out. In the end he worked out $75 of it and paid me back the $250 I lent him.

A good scheme has come in concerning the Road Transport Act. I commend to the government extending that one beyond just traffic matters. I remember being in the First Assembly when it first came in back in about 1990. You may too, Mr Speaker. I think I made the point at the time that the three most serious offences in the ACT had just become murder—you can only have manslaughter now; we do not have murder any more—driving whilst your licence was cancelled, for which people used to go to jail, and parking. If you did not pay your parking fine, you would have your licence taken away and you could not register your car until you had paid the fine. I thought that that was a quite severe but not unreasonable punishment. The number of unpaid parking fines, and then it was extended to traffic fines, went through the floor. Most people simply paid up because of the huge inconvenience of not having your licence renewed and having your registration effectively stripped until you actually paid your outstanding traffic fines.

I think that there is scope for something like that to be extended to the more minor criminal matters, because it is a real incentive to the average person to pay their fines. In the ACT—I am sure that the practice now is no different from what it was when I practised, which I have not done for 10 years—courts will always give you reasonable time to pay and they will take your circumstances into account. I have had cases where clients of mine have had up to two years to pay, say, $1,900 at something like $100 a month. The courts will take into account your capacity to pay and they will be most reasonable there.

You really have to be pretty slack most of the time to be in default. Even if you do look like defaulting, you can go to court and get a new order to enable you to pay your fine. The courts basically will bend over backwards to ensure that your circumstances are taken into account. So it is invariably the fine defaulter who is at fault here, not the system. Fines are an important part of sentencing and perhaps we do not use them enough at times. They can certainly bring home to someone more than, say, a recognisance to be of good behaviour that their activity was wrong, that it was antisocial, that society does not approve of it and that they are actually being punished.

Defendants I have known often did not think a bond was anything but a slap over the wrist and have not quite appreciated what it means. If they had to pay $500, the old hip pocket nerve would come into it and that would mean something. For offenders in matters where a fine is appropriate—any offenders, really, but especially the younger ones—it shows that they had engaged in an activity for which they will actually suffer some penalty and they had better watch themselves in future. It is often very good training to ensure that people do not reoffend and it is a very effective tool in terms of sentencing.

Community service is at least one level above a fine. It is, as the attorney quite rightly says, a very real alternative to imprisonment. A court which is teetering on sending someone to jail might think that it will give them such a chance as there is good reason for them to stay in the community—for example, they might have family responsibilities—and their crime is not that heinous that they should do time in jail but they should do so many hours of community service. If they defaulted on that, one would expect perhaps that they go to jail. That may not necessarily be the case in this place, but that is the general theory. It is a very serious penalty in its own right.

There may well be scope for it here, but ours is a small jurisdiction, as the attorney says, and I note the cost involved in terms of community service. I would hate to see a flood of people come into community service as fine defaulters because that may be more than our system could bear. You do have to take into account that the ACT will give people longer to pay a fine than jurisdictions anywhere else. In New South Wales, if the fine is $500, you have 28 days to pay and it is too bad if you cannot pay it, stuff you! Having represented people there, I know that normally they just make a bigger effort to pay. But here there is less reason for people not to pay fines. Basically, it really is socially irresponsible in most instances.

Dr Foskey: Except if you have not got any money.

MR STEFANIAK: The courts usually will not fine someone if they clearly have no ability to pay. They will usually do something else. You will probably find that if someone has done something reasonably serious and the court thinks that a fine of $1,000 would be appropriate but the person could not pay it the court will say that the person can do 50 hours of community service. There is a range of sentencing options now which courts can use short of imprisonment, and invariably do.

I think those factors need to be taken into account, but I would commend to the attorney, the idea which I did consider at one stage of extending to more than just traffic matters that very effective system of taking away people's third party insurance, registration and licences and not renewing them if they do not pay fines because it is such a useful deterrent, it is such a useful way of ensuring that people live up to their responsibilities and pay their fines. People do not get fined for nothing, be it for traffic matters or criminal matters; they have done something wrong.

I am sure that most of us have paid for traffic infringement notices. I do not know how many of us have paid money for criminal offences or misdemeanours other than just traffic matters and I do not care, but at the end of the day you were doing something wrong. If you were doing something wrong in a criminal matter it would be more up the scale, more serious, than speeding, getting a parking ticket or something like that and all the more reason for you to pay your fine. If we can have a system whereby you cannot have your licence renewed and you can have your third party insurance and registration taken away for something as minor as a parking matter, why should it not apply to some of the lesser criminal matters that attract fines in our community? I make those comments in relation to these amendments and I will not be voting for them.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services and Minister for Planning) (11.22): Mr Speaker, the government will not be supporting the amendments. In the interests of brevity, I say that it will not be doing so for the reasons I indicated in my closing speech.

Amendments negatived.

Schedule 1 agreed to.

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

Bill agreed to.

Asbestos Legislation Amendment Bill 2006 (No 2)

Debate resumed.

MR MULCAHY (Molonglo) (11.23): Mr Speaker, the opposition will be pleased to support the bill that has been introduced. We appreciate the courtesy extended by the minister in giving us advance notification and giving us the background to the circumstances that have led to the urgency of this matter and we are pleased to lend our support to the bill as proposed.

MR BARR (Molonglo—Minister for Education and Training, Minister for Tourism, Sport and Recreation and Minister for Industrial Relations) (11.24), in reply: I will be very brief. I thank members for their support for this minor amendment which will remove uncertainty and ensure that stakeholders do have sufficient time to put in place all the necessary arrangements to support the introduction of this asbestos management regime.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Adjournment

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

> That the Assembly do now adjourn.

Taxation

MR MULCAHY (Molonglo) (11.24): Mr Speaker, I want to explain a matter that has become evident through inquiry of mine late today. It relates to data on the levels of taxation per head in each of the states and territories which I have referred to in the Assembly and which obviously caused great excitement to the Treasurer today.

The data provided to me by a normally reliable external economic source showed that the ACT was close to New South Wales in the amount of taxation per head applying. I accepted those data in good faith and presented them to the Assembly similarly in good faith. Today I made inquiries about the detail of the data provided to me and in the event have determined that, whereas the data presented by the Australian Bureau of Statistics included both state and local government taxes, the data which had been provided to me and which was the basis of my remarks referred only to state taxation and did not include local government taxation.

In the ACT, of course, local government and state functions are counted together for statistical purposes, whereas for New South Wales local government taxation was not counted in the data that was provided to me. I want to assure the Assembly that I accepted that data in good faith and regret unintentionally presenting information to the Assembly which I now know was incorrect. I withdraw my earlier comment in relation to that aspect of the tax level as it was based on incorrect data and ask members to accept my apology.

Public Education Day

MR BARR (Molonglo—Minister for Education and Training, Minister for Tourism, Sport and Recreation and Minister for Industrial Relations) (11.26): Briefly, I wish to bring to members' attention that Public Education Day will be held next week. In fact, one of the highlights of the week will be Back to School Day on Tuesday, 16 May. Back

to School Day is a national initiative of the Education Foundation and encourages schools to invite past students to go back to school. This national campaign inspires young people to think about their goals and the many paths that are available to them as they move from school into their adult lives.

Past students from all walks of life—doctors, tradespeople, artists, entrepreneurs and athletes, and coat tuggers, Mr Mulcahy—will all be able to go back to government schools across Australia to acknowledge the importance of their schooling to their success and to provide positive role models for students. I would just like to encourage members of the Assembly to attend some of the public performances and events that will be part of the celebrations next week.

At an event that will be held in and around the Canberra Centre between 10.00 am and 2.30 pm next Thursday, 18 May, public schools from across the ACT will be presenting an exciting and varied program of music and dance, including performances by concert bands, jazz bands, choirs, a string orchestra, and indigenous and modern dance. As well as being a wonderful celebration of Public Education Day, these performances will highlight the wide variety of opportunities that are available in our government schools in addition to the core academic program. Public Education Day is a great opportunity to acknowledge the contribution public schools make to the lives of individual students and to the Canberra community as a whole.

Broadcasting of proceedings

MR SPEAKER: Members, further to a statement I made to the Assembly on 21 June 2005 regarding delayed broadcasts of question time proceedings on Community Radio 2XX FM, I would like to inform the Assembly that the delayed broadcasts also include adjournment debates. Question time will be broadcast at 11.00 am on Wednesdays, Thursdays and Fridays, immediately followed by broadcasts of the adjournment debate.

Members of the Standing Committee on Administration and Procedure were advised of these arrangements at a meeting on Tuesday 7 March 2006 and, as mentioned previously, it is hoped that this initiative will provide improved access for the citizens of the ACT to the work of the Assembly.

Question resolved in the affirmative.

The Assembly adjourned at 11.29 pm until Tuesday, 6 June 2006, at 10.30 am.

Schedules of amendments

Schedule 1

Terrorism (Extraordinary Temporary Powers) Bill 2006

Amendments moved by Mr Stefaniak

9
Clause 17 (1) (h)
Page 17, line 23—

omit

a child

substitute

under 16 years old

10
Clause 17 (1) (h), note
Page 17, line 25—

omit

11
Clause 18 (4) (b), (c) and (d)
Page 22, line 1—

omit clause 18 (4) (b), (c) and (d), substitute

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

(c) that 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.

12
Clause 18 (6) (c)
Page 22, line 17—

omit

13
Clause 21 (3) (a)
Page 25, line 10—

omit

14
Clause 26 (2) (a)
Page 30, line 23—

omit

15
Clause 100
Page 93, line 10—

omit clause 100, substitute

100 Review of Act after 5 years of operation

The Minister must—

(a) review the operation and effectiveness of this Act after it has been in operation for 5 years; and

(b) present a report of the review to the Legislative Assembly before the end of the Act's 6th year of operation.

16
Clause 101 (1)
Page 93, line 17—

omit

5 years

substitute

10 years

Schedule 2

Terrorism (Extraordinary Temporary Powers) Bill 2006

Amendments moved by the Attorney-General

3
Clause 21 (3) (b)
Page 25, line 14—

before

for the same terrorist act

insert

made on the same basis

4
Clause 21 (10)
Page 26, line 18—

omit clause 21 (10), substitute

(10) The preventative detention order may state that the person may have contact under section 50 (4) (Contact with family members etc) with a stated person or stated people (including any child of the person) for the period, and on the days, stated in the order.

5
Clause 52 (12)
Page 59, line 3—

omit clause 52 (12), substitute

(12) Any communication between a person detained under a preventative detention order and the person's lawyer is not admissible in evidence against the person in any court proceeding.

Note The Legislation Act, s 171 deals with the application of client legal privilege.

Schedule 3

Civil Unions Bill 2006

Amendments moved by the Attorney-General

1
Clause 5 (2)
Page 5, line 6

omit clause 5 (2) and notes, substitute

(2) A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage.

Note 1 ***Marriage*** is defined in the *Marriage Act 1961* (Cwlth) to mean the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

Note 2 ***Territory law*** includes the common law (see Legislation Act, dict pt 1, def ***law***).

2
Clause 9 (1)
Page 6, line 16—

omit

an authorised celebrant

substitute

a civil union celebrant

3
Clause 9 (2) (c)
Page 7, line 6

omit clause 9 (2) (c), substitute

(c) if either or both of them are 16 or 17 years old, a copy of—

(i) the authorisation (or each authorisation) required under section 10 (1) (a); and

(ii) each consent required under section 10 (1) (b) or, for any consent not given, the waiver given under section 10 (4); and

4
Clause 9 (3)
Page 7, line 10—

omit

the authorised celebrant

substitute

the civil union celebrant

5
Clause 10
Page 7, line 13

omit clause 10, substitute

10 Authorisation and consents required for 16 or 17-year olds

(1) A person who is 16 or 17 years old may enter into a civil union only if—

(a) the Childrens Court, by order, gives an authorisation for the person to enter into the civil union; and

(b) each person with responsibility to make long-term decisions for the person (for example, a parent or guardian) gives written consent to the person entering into the civil union, or the requirement for the consent is waived under subsection (5).

Note 1 If a form is approved under s 22 for a consent, the form must be used.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) In deciding whether to give an authorisation under subsection (1) (a) in relation to a person, the Childrens Court must regard the best interests of the person as the paramount consideration.

(3) Each consent required under subsection (1) (b) must—

(a) be witnessed by someone before whom a statutory declaration may be made; and

(b) state that the witness is satisfied on reasonable grounds about the identity of the person giving the consent.

(4) If a consent required under subsection (1) (b) is not given, the Childrens Court may, by order, waive the requirement for the consent.

(5) However, the court may act under subsection (4) only if the court considers that exceptional circumstances exist to justify the waiver.

(6) The authorisation and consents or waivers required under this section must be given not earlier than 3 months before the day the notice of intention to enter into the civil union is given.

6
Clause 11 (1)
Page 8, line 7—

omit

an authorised celebrant

substitute

a civil union celebrant

7
Clause 11 (1)
Page 8, line 10—

omit

the authorised celebrant

substitute

the civil union celebrant

8
Clause 11 (2)
Page 8, line 13—

omit

the authorised celebrant

substitute

the civil union celebrant

9
Proposed new part 2A
Page 11, line 15—

insert

Part 2A Civil union celebrants

14A Registration of civil union celebrants

(1) A person may apply, in writing, to the registrar-general to be registered as a civil union celebrant.

Note 1 If a form is approved under s 22 for this provision, the form must be used.

Note 2 A fee may be determined under s 21 for this provision.

(2) On application by a person under subsection (1), the registrar-general may register the applicant if satisfied that the applicant—

(a) is an individual aged 18 years or older; and

(b) has the knowledge and the skills or experience necessary to exercise the functions of a civil union celebrant under this Act; and

(c) is a suitable person to be registered as a civil union celebrant.

(3) If the registrar-general is not satisfied under subsection (2), the registrar-general must refuse to register the applicant.

(4) In deciding whether a person is a ***suitable person*** to be registered as a civil union celebrant, the registrar-general must have regard to the following:

(a) whether the person has been convicted, or found guilty, in Australia of an offence punishable by imprisonment for 1 year or longer;

(b) whether the person has been convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for 1 year or longer;

(c) whether the person has been convicted, or found guilty, of an offence against, or otherwise contravened, this Act or the *Births,*

Deaths and Marriages Act 1997, part 5A (Registration of civil unions);

(d) whether the person is or has been an undischarged bankrupt or has executed a personal insolvency agreement;

(e) whether the person has a physical or mental incapacity that may affect the exercise of the person's functions as a civil union celebrant.

(5) In deciding whether a person is a ***suitable person*** to be a civil union celebrant, the registrar-general may have regard to anything else the registrar-general considers relevant.

14B Register of civil union celebrants

(1) The registrar-general must keep a register of people registered as civil union celebrants under this Act.

(2) The register may be kept in any form, including electronically, that the registrar-general decides.

(3) The register must include the following information for each person registered as a civil union celebrant:

(a) the person's full name;

(b) the person's address and contact details;

(c) the date the person was registered;

(d) if the person's registration is cancelled or the person otherwise ceases to be registered—the date the registration ceases.

(4) The register may also include any other information the registrar-general considers appropriate.

(5) The register must be available for public inspection at reasonable times.

(6) However, a person's address and contact details and any other information included in the register about the person under subsection (4) must only be available for public inspection if the person consents.

14C Cancellation of registration

The registrar-general may cancel a person's registration as a civil union celebrant if the registrar-general considers that the person does not satisfy, or no longer satisfies, the criteria for registration under section 14A (2).

14D Review of decisions

Application may be made to the administrative appeals tribunal for review of a decision of the registrar-general—

(a) to refuse to register a person as a civil union celebrant under section 14A; or

(b) to cancel a person's registration as a civil union celebrant under section 14C.

14E Notice of reviewable decisions

(1) If the registrar-general makes a decision mentioned in section 14D, the

registrar-general must give a written notice of the decision to each person affected by the decision.

(2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

10
Clause 16 (2)
Page 12, line 18—

omit

an authorised celebrant

substitute

a civil union celebrant

11
Clause 16 (2)
Page 12, line 20—

omit

an authorised celebrant

substitute

a civil union celebrant

12
Clause 19 (1)
Page 15, line 2—

omit

marriage solemnised in a foreign country

substitute

union entered into by any 2 people under the law of a foreign country and

13
Clause 20 (1)
Page 15, line 19—

omit

An authorised celebrant

substitute

A civil union celebrant

14
Clause 20 (2)
Page 16, line 5—

omit

An authorised celebrant

substitute

A civil union celebrant

15
Clause 20 (3) (b)
Page 16, line 17—

omit

an authorised celebrant

substitute

a civil union celebrant

16
Clause 20 (3) (c)
Page 16, line 18—

omit

an authorised celebrant

substitute

a civil union celebrant

17
Clause 20 (3) (d)
Page 16, line 21—

omit

an authorised celebrant

substitute

a civil union celebrant

18
Schedule 1, part 1.1
Page 18, line 3—

omit part 1.1, substitute

Part 1.1 Administration and Probate Act 1929

[1.1] Section 44 (1), definition of *eligible partner*

after

spouse

insert

or civil union partner

[1.2] Section 44 (1), definition of *partner*, paragraph (a)

after

spouse

insert

or civil union partner

[1.3] Section 45A (1)

after

spouse

insert

or civil union partner

[1.4] Section 46 (1)

after

married

insert

or in a civil union

[1.4A] Section 46 (1)

after

marrying

insert

or entering into a civil union

[1.4B] Section 46 (2) and (3)

after

married

insert

or entered into a civil union

[1.5] Section 49BA (4) (c) (i)

after

spouse

insert

or civil union partner

19
Schedule 1, parts 1.2 and 1.3
Page 19, line 1—

omit parts 1.2 and 1.3, substitute

Part 1.2 Adoption Act 1993

[1.6] Section 13 heading

substitute

13 Child married or in civil union

[1.6A] Section 13

after

married

insert

or in a civil union

[1.7] Section 18 (1) (b)

omit

, whether married or not,

substitute

, whether or not married or in a civil union,

[1.8] Section 18 (4) (a)

substitute

(a) married or in a civil union and not living separately and apart from his or her spouse or civil union partner; or

Part 1.3 Adoption Regulation 1993

[1.9] Section 11 (b) (viii) and (ix)

substitute

(viii) if married or in a civil union—date and place of marriage or civil union;

(ix) if not married or in a civil union—whether in another domestic partnership or single;

20
Schedule 1
Proposed new amendments 1.9A and 1.9B
Page 20, line 2—

insert

[1.9A] Long title

after

marriages

insert

, civil unions

[1.9B] Section 4, definition of *adult*, paragraph (b)

after

married

insert

or in a civil union

21
Schedule 1, amendment 1.10
Page 20, line 3—

substitute

[1.10] Section 16 (3) (b)

after

marriage

insert

or civil union

22
Schedule 1, amendment 1.12
Page 20, line 8—

omit

23
Schedule 1, amendment 1.13
Proposed new section 32B (2)
Page 21, line 1—

omit

authorised celebrant

substitute

civil union celebrant

24

Schedule 1, amendment 1.14

Page 22, line 1—

omit amendment 1.14, substitute

[1.14] Dictionary, note 2, new dot point

insert

civil union

25
Schedule 1, amendment 1.16
Page 22, line 12—

omit amendment 1.16, substitute

[1.16] Section 5 (k)

substitute

(k) if the parents of the child are married or in a civil union—the date and place of the marriage or civil union;

26
Schedule 1, amendment 1.18
Page 22, line 18—

omit amendment 1.18, substitute

[1.18] Section 7 (b)

substitute

(b) a spouse or civil union partner, or former spouse or civil union partner, of the transsexual person;

27
Schedule 1, amendment 1.19
Page 22, line 21—

omit amendment 1.19, substitute

[1.19] Section 9 (g) (i)

substitute

(i) if the deceased had been married or in a civil union—the date and place of each marriage and civil union; and

28
Schedule 1, part 1.6
Page 23, line 3—

omit

29
Schedule 1, amendment 1.22
Page 23, line 11—

omit amendment 1.22, substitute

[1.22] Section 23, definition of *member*, paragraph (g)

after

spouse

insert

or civil union partner

30
Schedule 1, amendment 1.23
Page 23, line 15—

omit amendment 1.23, substitute

[1.23] Section 395 (2) (a)

after

marriage

insert

, civil union

31
Schedule 1
Proposed new amendment 1.23A
Page 23, line 17—

insert

[1.23A] Dictionary, note 2, new dot point

insert

civil union

32
Schedule 1, amendment 1.27
Page 24, line 12—

omit amendment 1.27, substitute

[1.27] Dictionary, note 2, new dot point

insert

civil union

33
Schedule 1, amendment 1.28
Page 24, line 16—

omit amendment 1.28, substitute

[1.28] Dictionary, new definition of *affinity*

insert

affinity means affinity derived through marriage, civil union or any other domestic partnership.

34
Schedule 1
Proposed new amendment 1.28A
Page 25, line 6

insert

[1.28A] Dictionary, definition of relationship status, paragraph (c)

after

spouse

insert

or civil union partner

35
Schedule 1, amendment 1.34
Page 26, line 8—

omit

under the *Marriage Act 1961* (Cwlth)

36
Schedule 1, part 1.12
Page 28, line 15—

omit part 1.12, substitute

Part 1.12 Domestic Violence and Protection Orders Act 2001

[1.39] Section 10A (b)

after

spouse

insert

or civil union partner

[1.40] Section 10A (b)

omit

legally married to

substitute

married to or in a civil union with

[1.40A] Section 10A (b), note

substitute

Note For the meaning of ***domestic partner***, see the Legislation Act, s 169.

For ACT law, a person acquires relatives through civil union in the same way as they acquire them through marriage (see the *Civil Unions Act 2006*).

37
Schedule 1, amendment 1.41
Proposed new section 72 (1), note
Page 29, line 5—

omit

Spouse includes civil union partner (see Legislation Act, s 168A).

38
Schedule 1, amendment 1.42
Proposed new section 74B (1), note
Page 29, line 12—

omit

Spouse includes civil union partner (see Legislation Act, s 168A).

39
Schedule 1, amendment 1.44
Proposed new section 115H (1), note
Page 30, line 4—

omit

Spouse includes civil union partner (see Legislation Act, s 168A).

40
Schedule 1, amendment 1.46
Proposed new section 213 (1), note
Page 30, line 21—

omit

Spouse includes civil union partner (see Legislation Act, s 168A).

41
Schedule 1, amendment 1.51
Page 31, line 13—

omit

42
Schedule 1, amendment 1.52
Page 31, line 16—

omit

43
Schedule 1, amendment 1.53
Page 31, line 19—

omit

44
Schedule 1, amendment 1.60
Page 33, line 12—

omit amendment 1.60, substitute

[1.60] Section 7 (9), definition of *partner*, paragraph (b) (i)

after

spouse

insert

or civil union partner

45
Schedule 1, part 1.16
Page 34, line 1—

omit part 1.16, substitute

Part 1.16 First Home Owner Grant Act 2000

[1.63] Section 6 (2)

omit

the person to whom an applicant is legally married

substitute

if the applicant is married or in a civil union, the applicant's spouse or civil union partner

[1.64] Dictionary, note 2, new dot point

insert

- civil union

46
Schedule 1, amendment 1.65
Page 34, line 10—

omit amendment 1.65, substitute

[1.65] Section 7B (d)

after

marriage

insert

or civil union

47
Schedule 1, amendment 1.66
Page 34, line 14—

omit amendment 1.66, substitute

[1.66] Section 8, definition of *bill of sale*

after

marriage

insert

or civil union

48
Schedule 1, amendment 1.68
Page 35, line 9—

omit amendment 1.68, substitute

[1.68] Section 6 (1), definition of *transmission*

omit

or marriage

substitute

, marriage or civil union

49
Schedule 1, amendment 1.70
Page 36, line 2—

omit

50
Schedule 1, amendment 1.71
Page 36, line 11—

omit amendment 1.71, substitute

[1.71] Section 169 (1)

after

spouse

insert

or civil union partner

51
Schedule 1, amendment 1.72
Page 36, line 19—

omit

under the *Marriage Act 1961* (Cwlth)

52
Schedule 1, amendment 1.73
Page 36, line 21—

omit amendment 1.73, substitute

[1.73] Dictionary, part 1, new definition of *civil union*

insert

civil union means a civil union under the *Civil Unions Act 2006.*

53
Schedule 1, part 1.23
Page 37, line 2—

omit part 1.23, substitute

Part 1.23 Married Persons Property Act 1986

[1.74] Title

omit

married persons

substitute

people who are married or in a civil union

[1.75] Section 9 heading

substitute

9 Transfer of property to spouse, civil union partner or child

[1.76] Section 9 (2) (a)

omit

husband and his wife

substitute

person and the person's spouse or civil union partner

[1.77] Section 9 (2)

after

spouse

insert

or civil union partner

[1.78] Section 10 heading

substitute

10 Purchase or transfer of property before marriage or civil union

[1.79] Section 10 (1)

after

marriage to

insert

or civil union with

[1.80] Section 10 (1) (a)

after

marriage

insert

or civil union

[1.81] Section 10 (1) (b)

omit

marriage of the transferor to the transferee

substitute

marriage or civil union

[1.81A] Section 10 (2)

after

marriage to

insert

or civil union with

[1.81B] Section 10 (2) (a)

after

marriage

insert

or civil union

[1.81C] Section 10 (2) (b)

omit

marriage of the transferor to the transferee

insert

marriage or civil union

[1.81D] Section 10 (3) (a)

after

marriage to

insert

or civil union with

[1.81E] Section 10 (3) (c)

after

marriage

insert

or civil union

[1.81F] Section 10 (3) (d)

omit

marriage of those persons

insert

marriage or civil union

[1.81G] Section 11

omit

married person

substitute

person who is married or in a civil union

[1.81H] Section 11

after

spouse

insert

or civil union partner

[1.81I] Section 12 heading

substitute

12 Beneficiaries who are married or in civil union

[1.81J] Section 12

omit

husband and his wife

substitute

person and his or her spouse or civil union partner

[1.81K] Section 13

substitute

13 Applications to decide property disputes

(1) This section applies if any question arises between a person and his or her spouse or civil union partner in relation to the title to, or possession or disposition of, any property (including any question in relation to the investment by one of them of money of the other without the consent of the other).

(2) The person, or a third party on whom conflicting claims are being or are expected to be made by the person and his or her spouse or civil union partner in relation to any property, may apply to the court to hear and decide the question.

[1.81L] Section 15 (5)

substitute

(5) If an application under section 13 relates to money of the spouse or civil union partner of a person that was invested by the person without the consent of the spouse or civil union partner, the court may order that the amount of the money and any interest, dividend or other profit derived from the money be paid to the spouse or civil union partner.

54
Schedule 1, part 1.24
Page 38, line 20—

omit part 1.24, substitute

Part 1.24 Parentage Act 2004

[1.82] Section 7 heading

substitute

7 Presumptions arising from marriage or civil union

[1.83] Section 7 (1)

after

married

insert

or in a civil union

[1.84] Section 7 (1)

omit

husband

substitute

spouse or civil union partner

[1.85] Section 7 (2)

omit

husband

substitute

spouse or civil union partner

[1.86] Section 7 (3)

omit

husband

substitute

spouse

[1.87] Section 7 (4)

omit

dissolution of her marriage

substitute

end of her marriage or civil union

[1.88] Section 7 (4)

omit

husband in that marriage

substitute

spouse or partner in that marriage or civil union

[1.89] Section 38 (2)

after

married to

insert

or in a civil union with

[1.89A] Section 38 (5), definition of *affinity*

after

marriage

insert

, civil union

55
Schedule 1, amendment 1.92
Page 40, line 16—

omit amendment 1.92, substitute

[1.92] Dictionary, new definition of *affinity*

insert

affinity means affinity derived through marriage, civil union or any other domestic partnership.

56
Schedule 1, amendment 1.95
Page 41, line 9—

omit amendment 1.95, substitute

[1.95] Section 45, definition of *partner*

substitute

partner—a person's ***partner*** is either of the following:

(a) the person's spouse or civil union partner;

(b) someone with whom the person has a personal relationship.

[1.95A] Section 45, definition of *pensioner*, note for par (d), (e) and (f)

after

spouses

insert

or civil union partners

57
Schedule 1, part 1.29
Page 42, line 16—

omit

58
Schedule 1, amendment 1.103
Page 43, line 3—

omit amendment 1.103, substitute

[1.103] Section 2 (1), definition of *child*

after

married

insert

or in a civil union

59
Schedule 1, amendment 1.106
Page 44, line 11—

omit amendment 1.106, substitute

[1.106] Section 8 (2)

after

married

insert

or in a civil union

[1.06A] Section 8 (3)

after

marry

insert

or enter into a civil union

[1.06B] Section 8 (3)

after

a marriage

insert

or civil union

[1.06C] Section 8 (3)

omit

solemnisation of the marriage contemplated

substitute

solemnisation of the marriage or entry into the civil union

[1.06D] Section 8 (6)

after

married

insert

or in a civil union

[1.06E] Section 8B (1)

after

married

insert

or in a civil union

[1.06F] Section 15

after

spouse

insert

or civil union partner

[1.06G] Section 18

after

spouse

insert

or civil union partner

60
Schedule 1, amendment 1.111
Page 45, line 9—

omit amendment 1.111, substitute

[1.111] Section 20 heading

substitute

20 Revocation of will by testator's marriage or civil union

[1.111A] Section 20 (1)

after

marries

insert

or enters into a civil union

[1.111B] Section 20 (1)

after

marriage

insert

or civil union

[1.111C] Section 20 (2)

after

marries

insert

or enters into a civil union

[1.111D] Section 20 (2)

after

marriage

insert

or civil union

[1.111E] Section 20 (3)

after

marriage

insert

or civil union

61
Schedule 1, amendments 1.112 to 1.114
Page 45, line 12—

omit amendments 1.112 to 1.114, substitute

[1.112] Section 20A heading

substitute

20A Effect of termination of marriage or civil union

[1.113] Section 20A (1)

after

marriage

insert

or civil union

[1.114] Section 20A (1)

after

former spouse

insert

or civil union partner

[1.114A] Section 20A (2)

after

marriage

insert

or civil union

[1.114B] Section 20A (3)

after

former spouse

insert

or civil union partner

[1.114C] New section 20A (4A)

insert

(4A) For this section, the termination of a civil union happens on the termination of the civil union under the *Civil Unions Act 2006*, division 2.4 (otherwise than on the death of a party to the civil union).

[1.114D] Section 20A (5), definition of *former spouse*

substitute

former spouse or civil union partner, in relation to a testator, means the person who, immediately before the termination of the testator's marriage or civil union, was the testator's spouse or civil union partner, or, for a purported marriage or civil union of the testator that is void, was the other party to the purported marriage or civil union.

62
Schedule 1, amendment 1.115
Page 46, line 2—

omit amendment 1.115, substitute

[1.115] Section 10 (c)

after

marriage

insert

or civil union

63
Dictionary, definition of *authorised celebrant*
Page 47, line 11—

omit the definition, substitute

civil union celebrant means—

(a) the registrar-general; or

(b) a person who is registered under this Act as a civil union celebrant.

Schedule 4

Sentencing Legislation Amendment Bill 2006

Amendments moved by Dr Foskey

1
Schedule 1
Proposed new amendment 1.239A
Page 92, line 14—

insert

[1.239A] Section 146, new definitions of *community service fine enforcement order* and *community service work*

insert

community service fine enforcement order—see section 154A (1).

community service work—see the Crimes *(Sentence Administration) Act 2005*, section 316.

2
Schedule 1, amendment 1.243
Proposed new section 153 (3) (ba)
Page 93, line 14—

insert

(ba) a community service fine enforcement order is made for the person; or

3
Schedule 1
Proposed new amendment 1.243A
Page 93, line 17—

insert

[1.243A] New sections 154A to 154C

insert

154A Community service work—fine defaulters

(1) The registrar may make an order (a ***community service fine enforcement order***) requiring a fine defaulter to perform stated hours of community service work within a stated period.

(2) However, the registrar may make a community service fine enforcement order against a fine defaulter only if—

(a) the registrar is satisfied that all reasonable action has been taken under this division to secure payment and there is no reasonable likelihood of the outstanding fine being paid; and

(b) the outstanding fine has not been remitted by the Executive; and

(c) the registrar believes, on reasonable grounds, that—

(i) community service work is suitable for the fine defaulter; and

(ii) it is appropriate that the defaulter be required to perform community service work instead of an order being made under section 154D (Fine defaulters—imprisonment) for the defaulter.

(3) The registrar may, by written notice, require a fine defaulter to give the registrar any information that the registrar may reasonably require to form a belief for subsection (2) (c).

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

(4) A notice under subsection (3) must state the period within which the information must be given to the registrar.

(5) The *Crimes (Sentence Administration) Act 2005*, part 6.2 (Good behaviour—community service work) applies to a fine defaulter who is subject to a community service fine enforcement order as if the order is a good behaviour order that is subject to a community service condition.

(6) If the registrar is satisfied that a fine defaulter has breached a community service fine enforcement order the registrar must cancel the order.

(7) This section does not apply to a person if the person's liability to pay the fine is derived from a reparation order under the *Crimes (Sentencing) Act 2005*.

Note A reparation order under the *Crimes Act 1900*, s 350 (repealed) is taken to be a reparation order under the *Crimes (Sentencing) Act 2005* (see that Act, s 142).

(8) In this section:

community service condition, of a good behaviour order for an offender—see the *Crimes (Sentencing) Act 2005*, section 85.

good behaviour order—see the *Crimes (Sentencing) Act 2005*, section 13.

154B Community service work—hours to be performed by fine defaulters

(1) The number of hours of community service work that the fine defaulter may be ordered to perform under a community service fine enforcement order is the lesser of—

(a) 7.5 hours of community service work for each $100, or part of $100, of the outstanding fine; or

(b) 500 hours.

(2) The period during which the community service work is required to be completed under the community service fine enforcement order must be at least—

(a) if fewer than 250 hours work is required—12 months; or

(b) if 250 or more hours work is required—24 months.

154C When community service fine enforcement orders end

A community service fine enforcement order for a fine defaulter ends when the earliest of the following happens:

(a) the fine defaulter completes the number of hours of community service work required to be performed under the order;

(b) the order is cancelled under section 154A (6).

4
Schedule 1, amendment 1.244
Proposed new section 154D (1) (b)
Page 93, line 25—

omit proposed new section 154D (1) (b), substitute

(b) the outstanding fine has not been remitted by the Executive; and

(c) a community service fine enforcement order is not in force in relation to the defaulter.

5
Schedule 1, amendment 1.244
Proposed new section 158
Page 95, line 1—

omit proposed new section 158, substitute

158 Outstanding fine satisfied by community service work or imprisonment

(1) A person who is subject to a community service fine enforcement order discharges the person's liability to pay the outstanding fine—

(a) at the rate of 7.5 hours of community service work for each $100, or part of $100, of the outstanding fine; or

(b) if the person is required to perform 500 hours community service work—at the end of the 500 hours of community service work.

(2) A person imprisoned under section 154D (Fine defaulters—imprisonment) discharges the person's liability to pay the outstanding fine—

(a) at the rate of $100 for each day or part of a day for which the person is detained under the warrant; or

(b) if the person is committed for 6 months—at the end of the 6-month period.

6
Schedule 1
Proposed new part 1.30A
Page 103, line 5—

insert

Part 1.30A Road Transport (General) Act 1999

[1.278A] Section 86 (1), definition of *revocation notice*, new paragraph (b) (iia)

insert

(iia) a community service fine enforcement order has been made for a person; or

Answers to questions

Childcare facilities (Question No 966)

Mr Mulcahy asked the Minister for Planning, upon notice, on 7 March 2006:

(1) What site has been identified for the provision of childcare in Yarralumla;

(2) What is the proposed timeframe for consultation in relation to the site and anticipated sale arrangements for the site;

(3) What are the estimated needs for the provision of childcare places in the greater Woden area for each of the next five years commencing with the 2007 calendar year;

(4) Are further releases of sites for childcare facilities being contemplated in this area in the next five years commencing with the 2007 calendar year;

(5) What is the anticipated shortfall between childcare places available and demand for such in each of the next five years from the 2007 calendar year;

(6) Will the ACT Government consider extending the current lease beyond the current planned expiration of the lease to the Teddybear Childcare Centre;

(7) Will the terms of that lease be varied in relation to rental payments.

Mr Corbell: The answer to the member's question is as follows:

(1) Block 2 Section 77 Yarralumla.

(2) The Yarralumla site is on the 2006 Land Sales Program and is due for release in August 2006. Site investigation reports, lease and development conditions, prescribed conditions and consultation are required prior to release. Consultation is expected to occur in June 2006.

(3) Advice from the Minister for Disability and Community Services (with responsibility for children's services) is that the ACT Government does not hold information about the level of demand for childcare places in the greater Woden area.

(4) Refer to answer (3) above.

(5) Refer to answer (3) above.

(6) The Minister for Urban Services has advised that he is willing to consider options for the continuity of the lease to the Teddybear Childcare Centre on Block 2 Section 99 Curtin, if the need arises in the future.

(7) No.

Forensic Medical Centre
(Question No 999)

Mr Stefaniak asked the Attorney-General, upon notice, on 9 March 2006:

Are there plans to move the Forensic Medical Centre currently situated in the vicinity of Kingston Foreshores; if so, what are the details and how is the move and re-establishment of the centre going to be funded.

Mr Corbell: The answer to the member's question is as follows:

The Government has made no decision to relocate the Forensic Medical Centre. However should such a move be considered in the future, any relocation would be planned to achieve minimal cost to the ACT Taxpayer.

Justice and Community Safety, Department
(Question No 1001)

Mr Stefaniak asked the Attorney-General, upon notice, on 9 March 2006:

Has the Government removed the functions of industrial relations, finance, strategic planning and establishments away from the ACT Law Courts and placed these functions within the Department of Justice and Community Safety; if so, why was this decision made and what are the details of any financial implications arising from this move.

Mr Corbell: The answer to the member's question is as follows:

The government and department are considering the recommendations from the Walter Turnbull report on the ACT Courts and Tribunal – BSU Efficiency Review. The Review recommended a series of structural changes to improve the efficiency of the Business Services Unit's operation. These involved the downgrading and abolition of some positions and the transfer of human resource and finance functions to the Department of Justice and Community Safety Corporate Services.

The department, in consultation with senior courts staff, accepts the thrust of the review with the understanding that the courts will continue to have to strategic human resource and financial expertise.

The above decision has been made following the Auditor General's recommendation 18:

> *"The LC&T Unit should continue to seek efficiencies, either through suggestions in this report or elsewhere, in order to achieve budget targets"*

The changes will result in a saving of $248,000 in salary.

Courts and tribunals—justices of the peace
(Question No 1005)

Mr Mulcahy asked the Attorney-General, upon notice, on 28 March 2006:

(1) How many Justices of the Peace were on the register in the ACT as at (a) 30 June 2000 and (b) 30 June 2005;

(2) Approximately how many hours of community service were provided by Justices of the Peace to the people of the ACT in (a) 1999-2000 and (b) 2004-2005;

(3) What was the estimated cost of administering the Justice of the Peace system in the ACT during (a) 1999-2000 and (b) 2004-2005;

(4) Has any estimate been made as to the value of the benefits of the services provided by Justices of the Peace in the ACT; if so, what is that estimate.

Mr Corbell: The answer to the member's question is as follows:

(1) Due to limitations on the database used to record the details of the Justices of the Peace, there is no way to check past numbers as at a specific date.

(2) The Department of Justice and Community Safety does not require Justices of the Peace to report on the services they provide.

(3) (a) It would be too resources intensive to find the costs for this period.

(b) $35,546. This figure only incorporates the cost of staff that administer the program and the cost of the long service awards held during this period. It doesn't incorporate the cost of police checks as that would involve the manual extraction of data that would be too resource intensive to undertake.

(4) No.

Emergency Services Authority—internal audit (Question No 1017)

Mr Pratt asked the Minister for Police and Emergency Services, upon notice, on 28 March 2006:

(1) Has an internal audit function been established for the Emergency Services Authority (ESA); if so, from what date did this become operational; if not, why not and are there plans for an internal audit function to be established;

(2) How much will the running of this internal audit function cost the Government per financial year;

(3) How many employees constitute the internal audit function;

(4) Where are employees attached to the internal audit function sourced from, and (a) are they internally sourced or (b) was the position(s) filled by an external person(s) not previously associated with the ESA.

Mr Corbell: The answer to the member's question is as follows:

(1) Yes, the internal audit function commenced in September 2005 under the DUS Panel Contract.

(2) Approximately $80,000 in 2005-06.

(3) None.

(4) Acumen Alliance are appointed as ESA's internal auditors. No positions have been created to undertake the internal audit function, although the ESA does have a coordination and implementation role, which is being undertaken under the current structure of the Finance Section.

Motor vehicles—home-garaged (Question No 1019)

Mr Pratt asked the Minister for Police and Emergency Services, upon notice, on 28 March 2006:

(1) How many vehicles supplied by the Emergency Services Authority (ESA) to its employees or volunteers are currently home garaged and how many of these vehicles are home garaged by officers on call;

(2) As at 1 November 2005, (a) how many vehicles supplied by the ESA to its employees or volunteers were home garaged every day, (b) how many of those vehicles were garaged by officers on call and (c) of those vehicles garaged by officers on call, does this number differ from (b); if so, why;

(3) What was the total cost to the ESA pertaining to the use of cab charges for employees for (a) July 2005, (b) August 2005, (c) September 2005, (d) October 2005, (e) November 2005, (f) December 2005, (g) January 2006, (h) February 2006 and (i) March 2006;

(4) Are any 'on call' ESA employees that previously had access to ESA vehicles for home garaging now required to leave those vehicles garaged on ESA premises; if so, why, and what is the saving to the Government.

Mr Corbell: The answer to the member's question is as follows:

Mr Pratt's colleague, Mrs Dunne, has asked numerous questions on notice relating to home-garaging of ACT Government plated vehicles by on call officers, the most recent being questions 855, 630 and 234 which have been answered in full. Given the above, I am not prepared to authorise the use of the very considerable resources that would be involved in providing the detailed information required to answer the Member's question. However, I will provide an answer to question 3.

(3) (a) $726.57; (b) $1,173.31; (c) $2,094.80; (d) $3,172.64; (e) $1,1479.22; (f) $1,345.32; (g) $1,895.03; (h) $1,017.23; (i) $2,340.27

Parking fines (Question No 1020)

Mr Pratt asked the Minister for Urban Services, upon notice, on 29 March 2006:

(1) What is the standard length of time after payment has not been received for a parking fine, that an overdue notice is sent out;

(2) Are overdue notices always mailed out after the length of time as stipulated in part (1) has been reached;

(3) Are records kept of the number of overdue notices that are not sent out on time; if not, why not and does this mean records are not kept on the number of overdue notices that are sent out on time;

(4) How many overdue notices are mailed out in excess of the amount of time as stipulated in part (1);

(5) Is it acceptable that overdue notices be mailed out one year after the initial fine was issued;

(6) What administrative errors may cause the very late mailing of overdue parking fine notices;

(7) Has any action been taken to ensure that overdue parking fine notices are mailed out within a reasonable period of time; if so, what measures have been implemented; if not, why not.

Mr Hargreaves: The answer to the member's question is as follows:

(1) Reminder notices are sent 3 working days after the parking infringement payment due date.

(2) No. The length of time for sending reminder notices after non-payment is extended over the Christmas/New Year period. Also reminder notices cannot be sent to vehicle operators whose identities are unknown.

(3) Reminder notices are generated by the rego.act computer system. The system keeps a record of the date reminder notices are generated for all overdue infringements.

(4) There has been 76,939 parking infringement notices issued between 1 July 2005 and 26 April 2006. For these parking infringement notices there have been 25,831 reminder notices sent. Of these, 1,993 were sent more than 3 days after the non-payment of the parking infringement notice. It is estimated that 1,200 of these notices were held back over the Christmas/New Year period. Approximately 793 parking infringement notices were sent more than 3 days after the non-payment of the original notice in other circumstances.

(5) There are no limitations on when a reminder notice must be served as a follow up to the original infringement notice.

(6) When infringements cannot be matched to a registered vehicle operator, reminder notices are unable to be sent until records are manually checked and adjusted.

(7) Yes.

Emergency Services Authority—dispatch system (Question No 1021)

Mr Pratt asked the Minister for Police and Emergency Services, upon notice, on 29 March 2006:

(1) Is the Computer Aided Dispatch (CAD) system currently operating in all four arms of the Emergency Services Authority (ESA); if not, which arms are not operating CAD;

(2) Why are various arms of the ESA not using the CAD system as outlined in part (1);

(3) Given that it was stated by Mr Wood, the previous Minister for Emergency Services, that the CAD system would be implemented in the four arms of the ESA, why is this now not the case;

(4) If multiple calls are made to Emergency Services for assistance, is it possible that units from multiple arms of the ESA may respond to the same incident without knowledge of other units responding as the CAD system does not operate in all arms of the ESA; if so, why; if not, why not;

(5) Have any Fire Brigade and State Emergency Service units both responded to incidents that could adequately be handled by either unit individually; if so, why has this occurred and why are resources being allocated inefficiently.

Mr Corbell: The answer to the member's question is as follows:

(1) No. The State Emergency Service and the Rural Fire Service are not using the Computer Aided Dispatch (CAD) system.

(2) CAD is designed to provide centralised control from only one communications centre. For the purposes of operations in remote areas, the Rural Fire Service and the State Emergency Service require the capacity for decentralised control. Additionally, the infrastructure required for CAD in remote areas is very costly.

(3) See response to (2).

(4) No. In the event of a response involving multiple services, a joint operations co-ordinator would be appointed and operational procedures, designed to maximise efficiency of response and operations at such incidents, are adopted.

(5) Yes. This has occasionally occurred in the ACT, however, since the introduction of revised operational procedures in June 2005, such occurrences are rare.

Emergency Services Authority—Fairbairn premises (Question No 1023)

Mr Pratt asked the Minister for Police and Emergency Services, upon notice, on 29 March 2006:

(1) What is the cost to the ACT Government of the lease of the new Emergency Services Authority (ESA) premises at Fairbairn;

(2) Has the lease been signed; if so, when;

(3) What payment arrangements are in place for the lease and has the lease been paid to date; if not, when and how will it be paid;

(4) For what length of time has the ESA leased the premises at Fairbairn;

(5) Will all emergency services operations that are currently based at Curtin be transferred to Fairbairn; if so, at what date will all operations be fully transferred; if not, (a) what operations will remain at Curtin and (b) why will they remain there;

(6) What is the nearest telephone exchange to the Fairbairn site and is this the only exchange that the Fairbairn site has access to;

(7) How many telephone exchanges does the ESA Curtin Headquarters currently have access to;

(8) What backup resources are available to be utilised and where will phone and data communications pass through in the event of a failure at the telephone exchange used by the Fairbairn facility.

Mr Corbell: The answer to the member's question is as follows:

(1) As at 4 April 2006 the Territory has only signed a sublease for the Air Support Operations Centre (ASOC) (helicopter hangar) with an annual cost (exclusive of GST) of $268,080. The Territory is still negotiating three subleases – one for another six existing buildings, one for the new ESA Headquarters and one for the Specialist Outdoor Training Centre. Costs and terms will not be finalised until each sublease negotiation is complete.

(2) ASOC building sublease was signed on 15 February 2006.

(3) ASOC building rent and outgoings are paid monthly and payments are up to date.

(4) The Territory, not the ESA, has leased the ASOC building for ten years.

(5) Yes, planning is underway for the relocation of all activities from Curtin to the Fairbairn Precinct. Final timings are not yet confirmed.

(6) The Fairbairn Precinct is connected to two telephone exchanges. Proximity is not a planning factor.

(7) Two.

(8) Business continuity planning will include disruption to fixed telecommunications infrastructure services.

Housing ACT—veterans (Question No 1033)

Mrs Burke asked the Minister for Disability, Housing and Community Services, upon notice, on 29 March 2006:

How many tenants has Housing ACT identified as being accommodated in public housing and in receipt of some form of Veterans' entitlement, as prescribed under the *Veterans' Entitlements Act 1986 (Cwlth)*.

Mr Hargreaves: The answer to the member's question is as follows:

271 Tenants have identified that they are in receipt of either a war widows pension or a veterans affairs pension.

Schools—priority enrolment areas (Question No 1035)

Dr Foskey asked the Minister for Education and Training, upon notice, on 30 March 2006:

(1) What are the (a) within-priority enrolment area and (b) out-of-area enrolments in each government (i) primary school, (ii) high school and (c) college in the ACT;

(2) What are the resident priority enrolment areas (PEA) of the out-of-area enrolments of each government (a) primary school, (b) high school and college and how many students in each school are resident in each of these out-of-area zones;

(3) What is the number of resident NSW students attending each government (a) primary school, (b) high school and (c) college;

(4) What is the number of government (a) primary school, (b) high school and (c) college students resident in each PEA for the relevant sector and which schools do they attend;

(5) What percentage of the total enrolments of each government (a) primary school, (b) high school and (c) college are from outside the priority enrolment areas of each school;

(6) What proportion of the total resident government school students in each PEA for (a) primary schools, (b) high schools and (c) colleges are enrolled in the PEA school;

(7) What is the average retention rate or percentage of government school students residing in a PEA who attend the PEA school, for the (a) primary school, (b) high school and (c) college sectors;

(8) What is the average out-of-area ratio or percentage of government school students who reside in the PEA of another school, for the (a) primary school, (b) high school and (c) college sectors;

(9) What is the total number of all government and non-government (a) primary school, (b) high school and (c) college students resident in each government school PEA and, in each case, how many attend (i) the PEA government school, (ii) a government school in another PEA and (iii) a non-government school.

Mr Barr: The information prepared for Dr Foskey has been extracted from the February 2006 Government and non-government school census.

(1) Attachment 1 details enrolments within and outside the priority enrolment areas (PEA).

(a) Enrolments within the PEA are shown in the column marked "In PEA" for:
(i) primary schools
(ii) high schools
(iii) colleges.

(b) Out-of-area enrolments are shown in the column marked "Out PEA" for:
(i) primary schools
(ii) high schools
(iii) colleges.

(2) Attachment 2 details the resident priority enrolment areas for students in each government school and the number of students resident in each school's priority enrolment area. Priority enrolment area schools are listed as "school attended". Enrolments correspond with "eligible PEA school". The information is presented for each government:
(a) primary school
(b) high school
(c) college.

(3) Attachment 1 details the number of NSW students attending each government:
(a) primary school
(b) high school
(c) college.

(4) Attachment 3 indicates the number of government students resident in ACT Government School priority enrolment areas (total by school) and the schools in which students, resident in the priority enrolment area, are enrolled. The information is presented for each government:
(a) primary school
(b) high school
(c) college.

(5) Information showing the percentage of total enrolments from outside the PEA for each government school is shown in Attachment 1 and is denoted in the column marked "% Out PEA". The information is presented for each government:
(a) primary school
(b) high school
(c) college.

(6) Attachment 4 details the proportion of resident government school students in each PEA that are enrolled in the PEA. This is denoted by the column "% Attend PEA School". The information is presented for each government:
(a) primary school
(b) high school
(c) college.

(7) The average percentage of government school students residing in a PEA who attend the PEA school is:
(a) primary school 64%
(b) high school 62%
(c) college 63%.

(8) The average percentage of government school students who reside in the PEA of another school is:

(a) primary school 36%
(b) high school 38%
(c) college 37%.

(9) The Department of Education and Training is not provided with the residential address for ACT non-government school students. Information is only provided by suburb. Non-government students resident in PEAs for government (a) primary schools and (b) high school priority enrolment areas therefore cannot be accurately determined.

For the numbers of resident students enrolled in government schools both within and outside their priority enrolment area school for the primary and high school sectors please refer to Attachment 4.

Priority enrolment areas for government primary and high schools may not be bound by suburb boundaries. There are a number of instances where geographical boundaries align with priority enrolment areas. There are also instances where schools share a priority enrolment area.

Government college priority enrolment areas are defined by suburb boundaries. The response in relation to college enrolments is provided in Attachment 5. Total numbers at the college level include enrolments in:

i) the PEA government school
ii) Government school in another PEA
iii) a non-government school.

(Copies of the attachments are available at the Chamber Support Office).

Cycling—on-road cycle lanes (Question No 1036)

Mr Pratt asked the Minister for Urban Services, upon notice, on 30 March 2006:

(1) Further to the response to question on notice No 867, how many square metres of green cycle lane pavement have been laid to date in the ACT;

(2) If this figure is multiplied by the $80 per square metre, an amount quoted by the Minister in response to question on notice No 867, is this an accurate amount of how much the laying of this green pavement has cost the Territory to date.

Mr Hargreaves: The answer to the member's question is as follows:

(1) One thousand and forty square metres.

(2) The stated amount covers the initial cost of laying the green lane markings and assumes no remedial works are necessary to the pavement.

Roads—Oaks Estate low level crossing (Question No 1037)

Mr Pratt asked the Minister for Urban Services, upon notice, on 30 March 2006:

Further to the response to question on notice No 868, has the consultant's report on safety of the low level crossing at the Oaks Estate been submitted to Roads ACT as was anticipated to happen before the end of March; if not, why not and when will the report be submitted; if so, what were the findings and recommendations in the report.

Mr Hargreaves: The answer to the member's question is as follows:

(1) The safety assessment on Oaks Estate Road in the vicinity of the low level crossing has now been completed. The recommendations of the report are to:

(a) Erect curve warning signs at the three curves along the road.

(b) Erect guideposts.

(c) Repaint edge lines and replace missing or defective reflective pavement markers.

(d) Install a safety barrier on the outside shoulder of the final right bend onto the low level crossing.

Roads—rule changes (Question No 1038)

Mr Pratt asked the Minister for Urban Services, upon notice, on 30 March 2006:

(1) Further to the response to question on notice No 869, why did it take the Government one month after the National Transport Commission (NTC) posted proposed changes to Australian Road Rules to then relay this information to local key stakeholders and why was this information not relayed sooner;

(2) Why did it take the Department of Urban Services a month and a half before it updated its Road Transport website explaining the background to the proposed Australian Road Rule amendments and provide a link to the NTC website and why was this information not detailed on the website sooner;

(3) Why did it take the Department of Urban Services almost two months to issue a press statement on this issue seeking public comment on changes to National Road Rules, giving those who wished to make comment only three days to submit their comments and why was this information not relayed to the public much sooner to enable the public more time to comment.

Mr Hargreaves: The answer to the member's question is as follows:

(1) The answer to question 869 fully answered this question. In addition, it is open to local stakeholders to monitor the National Transport Commission website.

(2) When the NTC posted the four documents on its website on 9 December 2005, it did not advise jurisdictions by email or by a phone call that the NTC website includes a facility for members of the public to submit on-line comments on the proposed changes to the ARR directly to the NTC, with the option of having their comments displayed on the NTC's website.

On 22 December 2005 an officer within Urban Services discovered this facility on the NTC website. The ACT Public Service Christmas Shutdown period from 24 December 2005 to 2 January 2006 (a 10 day period) prevented officers in Urban Services from responding to this development until early in January 2006. It was not clear to Urban Services staff what mechanism members of the public could use to submit comments on the proposed changes to the ARR to the NTC until 22 December 2005. However, the email sent to local stakeholders on January 2006 for allowed ample time for them to read the four documents about proposed changes to the Australian Road Rules and provide comments to the NTC by 3rd February 2006.

(3) The update of the Road Transport website had to be completed before the media release could be written, as the media release requested members of the public to log onto the Road Transport website to obtain information about the proposed changes the ARR.

Policing—CCTV use (Question No 1040)

Mr Pratt asked the Minister for Police and Emergency Services, upon notice, on 30 March 2006:

(1) How many of the 15 CCTV cameras, known as the Civic Safety Camera System, are currently in operation;

(2) Of the cameras that are not in current operation, (a) what is their location and (b) why are they not in operation;

(3) Of the 15 CCTV cameras, (a) how many have been out of operation at some stage throughout 2005-06 to date, (b) which cameras were affected and (c) why were they out of operation;

(4) Have the two CCTV cameras that were removed been put back into service; if not, why not;

(5) Is the location of the first removed camera on the Bunda Street footpath and what is the location of the second camera that was removed;

(6) Has funding been provided for a dedicated CCTV Control Centre; if so, (a) how much will it cost and (b) where will it be located; if not, why not;

(7) Have dedicated staff been employed to operate the CCTV system; if so, how many will be employed; if not, why not.

Mr Corbell: The answer to the member's question is as follows:

(1) 13 cameras.

(2) Two cameras are not in operation because development works are taking place on the original sites of the cameras. It would not be desirable, for operational and security reasons, to go into detail of the locations of operative and inoperative cameras.

(3) See answer to question (2) above. A third camera was out of commission for a short period until a new electricity source was provided following the loss of supply when the building which provided electricity was demolished.

(4) No, because of redevelopment works that are still taking place.

(5) See answer to question (2) above.

(6) A decision was taken by the previous government not to provide additional resources for monitoring the CCTV system. Any decision by this Government to provide additional resources is subject to budget consideration.

(7) See answer to question (6) above.

Housing—unit titles (Question No 1044)

Mr Seselja asked the Minister for Planning, upon notice, on 30 March 2006:

(1) What is the desired time frame for having unit titles registered for (a) multi unit developments and (b) dual occupancy dwellings;

(2) What was the average time taken for having unit titles registered in (a) 2002-03 and (b) 2005-06 for (i) multi unit developments and (ii) dual occupancy dwellings;

(3) What was the length of time taken for each registration for those applications that exceeded the average time taken in 2005-06 for (a) multi unit developments and (b) dual occupancy dwellings;

(4) What action is being taken to minimise the delays associated with unit title registrations to reduce the registration application time frame.

Mr Corbell: The answer to the member's question is as follows:

(1) Whilst there is no statutory time frame for approvals of unit title applications for multi unit developments or dual occupancy dwellings the ACT Planning and Land Authority endeavours to process all applications received in a timely manner within the resources available.

(2) The average times between the approval of a units plan by the ACT Planning and Land Authority and the registration by the applicant at the Registrar-General's Office for multi unit and dual occupancy developments are as follows:

(i) multi unit developments:

(a) 2002-03 - an average of 10.2 days.
(b) 2005-06 - an average of 13.25 days.

(ii) dual occupancy dwellings:

(a) in 2002-03 - an average of 25.75 days.
(b) in 2005-06 - an average of 10 days.

(3) (a) Applications that exceeded the average time taken – from 6 days to 69 days.
(b) Applications that exceeded the average time taken – from 1 day to14 days.

(4) No action is required by the Authority to minimise delays to associated with the unit title registrations as such registrations are the responsibility of the applicant/lessee.

Education—university admissions index (Question No 1045)

Mr Seselja asked the Minister for Education and Training, upon notice, on 30 March 2006:

(1) In relation to the ACT Government's use of a University Admissions Index (UAI) level of 97 as a success criterion or key performance indicator, for each (a) calendar year from 1998 through to 2005 and (b) individual ACT college or school (government and non-government alike), how many students (i) received a UAI, (ii) received a notional UAI, noting mention of "notionals" in paragraph 5.4.1 on page 50 of the 2005 Board of Senior Secondary Studies [BSSS] Policy and Procedures Manual, (iii) received a Year 12 certificate, (iv) were enrolled in Year 12 altogether, noting that some may not have received certificates, (v) received a UAI of 90.00 or greater, (vi) received a UAI of 95.00 or greater, (vii) received a UAI of 97.00 or greater, (viii) received a UAI strictly greater than 97.00, (ix) received a UAI of 98.00 or greater, (x) received a UAI of 98.50 or greater and (xi) received a UAI of 99.00 or greater;

(2) For each calendar year from 1998 through to 2005, what were statistics for the ACT senior secondary system as a whole for the (a) ACT Year 10 cohort, (b) ACT Year 12 cohort, (c) total number of ACT Year 12 certificates issued by all ACT colleges and schools, (d) total number of ACT Year 12 certificates issued by all ACT colleges and schools to students resident in the ACT only, (e) total number of UAIs issued by all ACT colleges and schools, (f) total number of UAIs issued by all ACT colleges and schools to students resident in the ACT only and (g) number of notional UAIs, noting the reference to such "notionals" in paragraph 5.4.1 on page 50 of the 2005 BSSS Policy and Procedures Manual;

(3) For each calendar year from 1998 to 2005 inclusive, how has the (a) ACT UAI distribution been established relative to that of NSW and (b) ACT's median UAI been established;

(4) On what publicly available document can students, parents and the general public see precisely how (a) ACT UAIs are determined relative to those of NSW and (b) the ACT's median UAI is established;

(5) How do the "notionals", referred to in paragraph 5.4.1 on page 50 of the 2005 BSSS Policy and Procedures Manual, affect the ACT UAI distribution and the ACT UAI median;

(6) Are notional UAIs established for ACT students who leave school at the end of Year 10 and do not begin Year 11 at any ACT senior secondary college or school;

(7) What role is exercised by the (a) University Admissions Centre (NSW and ACT Pty Ltd) and (b) NSW Technical Committee on Scaling, in the determination of the UAIs of ACT students;

(8) In what publicly available document are full details of the NSW Scaling Committee Table, referred to in paragraphs 5.4.1 and 5.4.3.3 on pages 50 and 51 of the 2005 BSSS Policy and Procedures Manual;

(9) Noting that this NSW Scaling Committee Table has until now been kept from public view, when will it be released for public view and scrutiny;

(10) Who within the ACT, as of this current date, has been allowed to view and examine the NSW Scaling Committee Table as referred to in the 2005 BSSS Policy and Procedures Manual;

(11) What checks, as of this current date, has the (a) ACT Government (b) ACT Board of Senior Secondary Studies and (c) NSW Technical Committee on Scaling conducted to ensure the general accuracy and validity of this NSW Scaling Committee Table in respect of its role in determining ACT UAIs.

Mr Barr: The answer to the member's question is as follows:

(1) (a) & (b)

(i) This information is published in the Year 12 Study available from the Office of the Board of Senior Secondary Studies.

(ii) The BSSS does not calculate notional UAIs.

(iii) This information is published in the Year 12 Study available from the Office of the Board of Senior Secondary Studies.

(iv) This information is published in the annual census documents on the ACT Department of Education and Training's website.

(v)–(xi) See Attachment A.

(2) (a) Senior secondary system statistics for Year 10 cohorts are not available.

(b) This information is published in the Year 12 Study available from the Office of the Board of Senior Secondary Studies.

(c) This information is published in the Year 12 Study available from the Office of the Board of Senior Secondary Studies.

(d)	1998	1999	2000	2001	2002	2003	2004	2005
Yr 12 Cert - ACT residents	3976	3912	3871	3794	3809	3826	3636	3677

(e) This information is published in the Year 12 Study available from the Office of the Board of Senior Secondary Studies.

(f)	1998	1999	2000	2001	2002	2003	2004	2005
UAI ACT - Residents	2670	2658	2558	2505	2511	2537	2281	2291

(g) The BSSS does not calculate notional UAIs.

(3) (a) UAIs in the ACT are determined by calculating the percentile rank of aggregate scores including notional aggregate scores. Eligible students' UAIs are then calculated with reference to a 'Lookup table' provided by the NSW Technical Scaling Committee.

(b) The median score is calculated each year by identifying the middle score from each cohort.

(4) (a) The Board of Senior Secondary Studies provides a detailed pamphlet for students, teachers and the community called "What's the UAI?" This is available on the BSSS website.

(b) See 3 (b).

(5) This information is provided in the pamphlet "What's the UAI?" and the BSSS Policy and Procedures Manual available on the BSSS website. By including the notional scores the median UAI of ACT students will be increased.

(6) No.

(7) (a) All UAIs are submitted to the University Admission Centre, which allocates places to NSW and ACT universities.

(b) The NSW Technical Scaling Committee provides the lookup table referred to above.

(8) The Lookup table is received in digital form by the BSSS and is used in digital form. It is available from the University Admission centre.

(9) The Lookup table is available from the University Admission Centre.

(10) The table is routinely used by officers of the BSSS.

(11) The BSSS considered a detailed evaluation in April 2006.

Attachment A

2005	**>=90**	**>=95**	**>=97**	**>97**	**>=98**	**>=98.5**	**>=99**
Total	**564**	**279**	**170**	**170**	**108**	**85**	**54**
CBRC	35	11	3	3	1	1	1
CGGS	59	39	27	27	17	16	11
CITC	4						
COPC	22	11	6	6	1	1	1
DARC	20	5	1	1			
DCKC	21	5	1	1	1	1	
EDMC	1						
ERNC	23	7	4	4	3	3	1
HWKC	26	9	3	3			
LGNC	17	13	11	11	7	6	5
MARC	43	18	10	10	8	7	5
MERC	10	2					
MKCC	10	3	2	2	2	1	
NARC	125	78	57	57	39	26	20
ORAC	2						
RDFC	71	47	30	30	22	18	9
SFXC	9	3					
STCC	25	14	7	7	4	4	1
TRCC	4	1	1	1	1		
TUGC	37	13	7	7	2	1	

2004	**>=90**	**>=95**	**>=97**	**>97**	**>=98**	**>=98.5**	**>=99**
Total	**572**	**271**	**167**	**167**	**108**	**81**	**55**
CBRC	42	24	13	13	9	9	8
CGGS	63	39	26	26	20	18	12

COPC	23	13	9	9	3	1	
DARC	25	13	7	7	4	2	1
DCKC	23	10	4	4	3	3	1
EDMC	4	2	1	1	1	1	1
ERNC	27	7	4	4	2	1	1
HWKC	32	12	6	6	5	3	1
LGNC	16		2	2			
MARC	41	19	15	15	12	8	5
MERC	16	6	2	2	1	1	1
MKCC	13	4	1	1			
NARC	112	57	38	38	20	17	11
ORAC	1	1					
RDFC	75	45	28	28	23	15	13
SFXC	7	2	2	2			
STCC	27	10	7	7	4	2	
TUGC	25	7	2	2			

2003	**>=90**	**>=95**	**>=97**	**>97**	**>=98**	**>=98.5**	**>=99**
Total	**588**	**295**	**177**	**177**	**116**	**92**	**62**
CBRC	40	17	10	10	5	5	4
CGGS	56	32	20	20	13	12	11
CITC	7	2	1	1	1	1	
COPC	8	3	2	2	1		
DARC	19	10	9	9	5	2	2
DCKC	48	18	16	16	11	10	7
EDMC	6	1					
ERNC	24	11	5	5	3	3	3
HWKC	50	23	12	12	9	6	3
LGNC	16	7			1		
MARC	29	17	11	11	9	8	5
MERC	23	16	5	5	2	1	1
MKCC	21	9	5	5	4	3	1
NARC	136	74	48	48	34	26	16
RDFC	56	30	18	18	10	8	5
SFXC	5	4	2	2	1	1	
STCC	17	8	3	3	3	3	2
TUGC	27	13	7	7	4	3	2

2002	**>=90**	**>=95**	**>=97**	**>97**	**>=98**	**>=98.5**	**>=99**
Total	**563**	**287**	**175**	**167**	**115**	**88**	**58**
CBRC	25	11	2	2			
CGGS	53	29	17	15	14	9	6
CITC	4	1	1	1			
COPC	14	5	4	4	3	3	1
DARC	26	11	8	7	6	5	3
DCKC	24	13	10	10	8	5	2
EDMC	7	4	1	1			
ERNC	23	11	8	8	4	1	1
HWKC	35	12	5	5	3	2	1
LGNC	20	9	5	5	3	2	2
MARC	46	25	18	17	12	11	7
MERC	17	5	1	1	1	1	

MKCC	14	5	2	2			
NARC	128	71	42	39	27	11	7
ORAC	6	6	6	6	2	2	
RDFC	47	27	15	15	12	10	7
SFXC	17	11	8	7	5	4	4
STCC	16	6	4	4	1	1	
TUGC	41	25	18	18	14	11	7

2001	**>=90**	**>=95**	**>=97**	**>97**	**>=98**	**>=98.5**	**>=99**
Total	**578**	**295**	**178**	**178**	**120**	**90**	**61**
CBRC	46	23	14	14	10	7	7
CGGS	37	21	12	12	9	6	4
CITC	2						
COPC	16	7	6	6	4	4	1
DARC	36	17	9	9	8	4	2
DCKC	33	17	12	12	7	5	4
EDMC	16	6	6	6	3	2	
ERNC	38	16	6	6	5	2	1
HWKC	39	22	11	11	8	7	1
LGNC	26	14	9	9	6	6	3
MARC	35	19	16	16	11	8	6
MERC	18	11	5	5	3	3	2
MKCC	9	4	3	3	1	1	
NARC	137	73	44	44	29	23	19
ORAC							
RDFC	42	18	11	11	6	5	4
SFXC							
STCC	18	10	6	6	3	2	2
TUGC	30	17	8	8	7	5	5

2000	**>=90**	**>=95**	**>=97**	**>97**	**>=98**	**>=98.5**	**>=99**
Total	**570**	**292**	**180**	**168**	**116**	**83**	**58**
CBRC	52	19	11	11	5	4	2
CGGS	37	19	8	6	4	2	1
CITC	4	2					
COPC	15	8	4	4	3	1	
DARC	25	12	9	9	6	5	3
DCKC	51	22	10	10	4	3	3
EDMC	17	9	8	8	4	4	2
ERNC	33	16	12	11	4	5	5
HWKC	32	14	6	6	5	4	3
LGNC	32	18	16	15	12	7	7
MARC	33	18	11	11	7	6	4
MERC	13	5	3	3	1	1	
MKCC	11	6	2	2	2	1	
NARC	103	59	43	40	34	25	19
RDFC	53	26	13	10	7	4	1
STCC	20	13	8	8	5	3	2
TUGC	39	26	16	14	9	8	6

1999	**>=90**	**>=95**	**>=97**	**>97**	**>=98**	**>=98.5**	**>=99**
Total	**576**	**289**	**180**	**177**	**118**	**88**	**55**
CBRC	41	17	14	14	9	9	4
CGGS	45	25	14	14	7	5	4
CITC	7	1					
COPC	10	6	5	5	4	4	3
DARC	29	10	6	6	3	2	`
DCKC	39	22	15	14	8	5	3
EDMC	14	4	1	1			
ERNC	22	11	6	6	5	4	3
HWKC	46	28	19	18	12	8	4
LGNC	52	25	17	17	113	12	8
MARC	43	22	10	10	7	5	1
MERC	16	8	3	3	2	1	1
MKCC	13	7	1	1			
NARC	102	64	46	46	29	21	15
RDFC	47	19	12	11	10	6	4
STCC	19	5	1	1	1		
TUGC	31	15	10	10	8	6	4

1998	**>=90**	**>=95**	**>=97**	**>97**	**>=98**	**>=98.5**	**>=99**
Total	**580**	**293**	**183**	**179**	**121**	**87**	**61**
CBRC	47	25	17	17	11	8	6
CGGS	52	24	19	19	12	8	6
CITC	8	1					
COPC	10	6	3	3	2	2	1
DARC	32	10	6	6	5	3	3
DCKC	27	8	6	6	4	2	1
EDMC	7	1	1	1	1	1	1
ERNC	39	16	7	7	7	6	4
HWKC	44	23	12	12	9	6	5
LGNC	58	27	19	18	15	9	8
MARC	35	23	17	17	11	10	7
MERC	20	9	6	6	3	2	1
STPC	8	4	4	4	2	2	
NARC	92	56	41	41	27	22	17
RDFC	50	36	17	16	8	5	3
STCC	19	8	2	2	2		
TUGC	32	16	5	5	2	1	1

CBRC	Canberra College	**EDMC**	St Edmund's College
CGGS	Canberra Girls' Grammar School	**ERNC**	Erindale College
CITC	Canberra Institute of Technology	**HWKC**	Hawker College
COPC	Copland College	**LGNC**	Lake Ginninderra College
DARC	Daramalan College	**MARC**	Marist College Canberra
DCKC	Dickson College	**MERC**	Merici College
MKCC	MacKillop Catholic College	**TUGC**	Lake Tuggeranong College
NARC	Narrabundah College	**ORAC**	Orana School
STCC	St Clare's College	**RDFC**	Radford College
STPC	St Patrick's College (now MacKillop)	**SFXC**	St Francis Xavier College
TRCC	Trinity Christian School		

Gold Creek School—bushwalking incident (Question No 1046)

Mr Seselja asked the Minister for Education and Training, upon notice, on 30 March 2006:

(1) In relation to the incident involving students from Gold Creek School who became lost on a bushwalking excursion on 9 March and the Department of Education and Training review of its outdoor education policy, were procedures properly followed in relation to the 9 March incident;

(2) Were the teachers and students adequately equipped for the excursion they undertook;

(3) Should an EPIRB not have been activated;

(4) What actions could have been taken to avoid the use of helicopters to uplift the teachers and students;

(5) What were the costs associated with rescuing the teachers and students;

(6) Has a review of procedures been undertaken as a result of that incident; if so, what were the findings and/or recommendations of that review;

(7) What recommendations have been made as a result of the ongoing review of the departmental outdoor adventure policy.

Mr Barr: The answer to the member's question is as follows:

(1) Appropriate documentation in relation to this excursion was submitted and approval granted. All Department of Education and Training procedures were followed correctly.

(2) The teachers and students were appropriately equipped for the planned day's excursion.

(3) The group followed correct procedures governing the use of the Emergency Position Indicating Radio Beacon (EPIRB) they were carrying for life threatening situations. As this was not such a situation the group did not use the beacon.

(4) The decision to use a helicopter to uplift the students was made by members of the State Emergency Services.

(5) The total additional funding outlay by the school was $146.55. Rescue costs are a matter for NSW State Emergency Services.

(6) A review of procedures is being undertaken and is ongoing.

(7) See (6).

Attorney-General (Question No 1055)

Mr Smyth asked the Attorney-General, upon notice, on 2 May 2006:

Is it the case that regardless of any formal legal training or qualification upon being appointed Attorney-General the Attorney-General is, by dint of being the First Law Officer of the Territory (a) automatically admitted as a Legal Practitioner of the ACT Supreme Court, (b) automatically admitted to the Bar of the ACT Supreme Court or (c) otherwise is given an entitlement that would allow them to practice as a legal practitioner in the ACT.

Mr Corbell: The answer to the member's question is as follows:

a) No. The Attorney General is not automatically admitted as a Legal Practitioner of the ACT Supreme Court.

b) No. The Attorney General is not automatically admitted to the Bar of the ACT Supreme Court.

c) The Attorney General is not a legal practitioner under the *Legal Practitioners Act 1970*. To the extent that the Attorney General is given functions under the *Law Officers Act 1992*, he has rights to perform functions equivalent to a legal practitioner.

These functions include being the ACT's chief legal representative, the principal legal adviser to the ACT, and to institute and conduct litigation on behalf of the ACT. Section 196 of the *Legislation Act 2001*, provides that "a provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function."

The Attorney General acts only in the name of the Attorney General and not personally. In all such matters, I act through the ACT Government Solicitor.

Public service—positions (Question No 1090)

Dr Foskey asked the Chief Minister, upon notice, on 4 May 2006:

(1) What is the number of permanent (a) appointments, (b) resignations and (c) redundancies that have been made to the ACT Public Service over the past (i) year, (ii) six months and (iii) three months;

(2) At what level were each of those permanent (a) appointments, (b) resignations and (c) redundancies as listed in part (1);

(3) From which departments and agencies were those permanent (a) appointments made or positions lost.

Mr Stanhope: The answer to the member's question is as follows:

(1) On the best information available, for agencies using the Chris 21 Human Resource system, the table below details the number of permanent (a) appointments, (b) resignations and (c) redundancies that have been made to the ACT Public Service over the past (i) year, (ii) six months and (iii) three months:

Period	Appointments	Resignations	Redundancies
Past 3 months (1.2.06 – 30.4.06)	130	205	22
Past 6 months (1.11.05 - 30.4.06)	265	440	67
Financial year to date (1.7.05 – 30.4.06)	463	756	123

Note: The information is provided from 1 July 2005 when the Chris 21 Human Resource System commenced operation. The figures above do not include Executives, who are not permanent officers.

(2) On the best information available, for agencies using the Chris 21 Human Resource system, the table below details the level of each of the permanent (a) appointments, (b) resignations and (c) redundancies as listed in part (1):

Classification	Appointments	Resignations	Redundancies
4th Class Firefighter	13	0	0
4th Class Firefighter Trainee	7	0	0
1st Class Firefighter	0	2	0
Fire Brigade 5	0	1	0
Senior Firefighter	0	2	0
Station Officer A	0	1	0
District Officer	0	0	2
Administrative Service Officer 1	1	2	0
Administrative Service Officer 2	6	18	4
Administrative Service Officer 3	27	36	7
Administrative Service Officer 4	5	49	15
Administrative Service Officer 5	19	53	12
Administrative Service Officer 6	24	73	16
Graduate Administrative Asst	13	1	0
Senior Officer Grade A	5	11	2
Senior Officer Grade B	5	17	11
Senior Officer Grade C	16	63	16
Emergency Services Manager	0	0	1
CMD Manager	0	2	2
Manager	4	5	6
Paralegal 1	2	3	0

Auditor Band 1	6	3	0
Trust Officer 1	0	1	0
Workforce Management Off 2	0	4	0
Workforce Management Off 3	0	1	0
Communications Officer	2	0	0
Patient Transport Officer	0	1	0
Student Paramedic	4	1	0
Custodial Officer 1	0	5	0
Dental Assistant 1/2	0	1	0
Dentist ½	1	1	0
Disability Support Officer 1	32	21	1
General Service Officer 3	1	5	0
General Service Officer 3/4	0	1	0
General Service Officer 4	0	0	1
General Service Officer 5	0	4	4
General Service Officer 6	6	1	3
General Service Officer 7	2	1	0
General Service Officer 8	0	1	3
General Service Officer 9	1	0	0
General Service Officer 10	0	1	0
Building Service Officer	0	1	1
Capital Linen Service 11	0	1	0
Health Professional Officer 2	5	17	1
Health Professional Officer 3	9	24	0
Health Professional Officer 4	3	11	1
Health Professional Officer 5	1	1	0
Health Professional Officer 6	0	1	0
Information Technology Off 1	10	3	0
Information Technology Off 2	5	10	0
Senior Info Tech Officer A	0	1	0
Senior Info Tech Officer B	1	1	0
Senior Info Tech Officer C	4	5	0
Legal 1	3	2	0
Legal 2	1	1	0

Prosecutor Grade 1	3	0	0
Public Affairs Officer 1	1	1	0
Public Affairs Officer 2	0	0	1
Professional Officer 1	2	2	1
Professional Officer 2	0	4	1
Senior Professional Officer A	0	2	1
Senior Professional Officer B	0	2	0
Senior Professional Officer C	0	7	0
Technical Officer 1	1	2	0
Technical Officer 2	0	2	0
Technical Officer 3	1	4	2
Technical Officer 4	0	1	2
Registrar	4	0	0
Resident Medical Officer	1	0	0
Career Medical Officer 2	0	1	0
Specialist	3	5	0
Senior Specialist	5	2	0
Enrolled Nurse 1	14	8	0
Registered Nurse 1	104	54	0
Registered Nurse 2	6	19	0
Registered Nurse 3.1	2	6	1
Registered Nurse 4.2	0	2	0
Registered Nurse 4.3	0	1	0
Registered Nurse 5.2	0	1	0
Ranger 2	0	1	1
Schools Assistant 2	2	14	0
Classroom Teacher	59	107	3
School Leader A	4	5	1
School Leader C	2	18	0
Senior Teaching Post	0	1	0
Teacher Band 1	3	9	0
Teacher Band 2	2	3	0
Teacher Band 3	0	1	0
TOTAL	**463**	**756**	**123**

Note: The figures above do not include Executives, who are not permanent officers.

(3) On the best information available, for agencies using the Chris 21 Human Resource system, the table below details the departments and agencies where permanent appointments have been made or resignations/redundancies have occurred in the financial year to date:

Department/Agency	**Resignations/ Redundancies**	**Appointments**
ACT Health	208	153
ACT Insurance Authority	2	1
ACT Planning & Land Authority	23	8
ACT Workcover	15	0
Auditor-General's Office	3	6
Australian Capital Tourism	5	3
Canberra Institute of Technology	22	17
Chief Minister's Department	70	11
Department of Disability, Housing & Community Services	87	63
Department of Economic Development	13	9
Department of Education & Training	204	78
Department of Justice & Community Safety	51	11
Department of Treasury	20	20
Department of Urban Services	102	17
Emergency Services Authority	26	40
Gambling & Racing Commission	6	0
Independent Pricing & Regulatory Commission	2	0
InTACT	15	25
Land Development Agency	3	0
Stadiums Authority	2	1
TOTAL	**879**	**463**

Note: The figures above do not include Executives, who are not permanent officers.

Budget—functional and strategic review (Question No 1099)

Mr Smyth asked the Chief Minister, upon notice, on 9 May 2006:

(1) Was Mr Costello paid specifically for the work he undertook as head of the Functional Review of the ACT Budget;

(2) Has Mr Costello received an increase in his salary within the past 12 months;

(3) If Mr Costello has received an increase in his salary, who conducted the analysis and provided the recommendations on which this increase was based.

Mr Stanhope: The answer to the member's question is as follows:

(1) No.

(2) I am advised by ACTEW that in July 2005 Mr Costello received an increase of 3% in remuneration. The ACTEW Board made this decision based on an assessment of his performance. Mr Costello's remuneration is reported in ACTEW's Annual Report.

(3) I am advised by the ACTEW Chairman that Mr Costello has received no other increase in his remuneration since July 2005. I am specifically assured that he has not received any compensation from ACTEW for the work he has done on the Strategic and Functional Review.
