DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

6 September 2000

Wednesday, 6 September 2000

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MR SPEAKER (Mr Cornwell) 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 Clerk: The following petition has been lodged for presentation:

By **Mr Hargreaves**, from 388 residents, requesting the Assembly to take immediate action to demolish Torrens petrol station and remediate the site.

The terms of the petition will be recorded in *Hansard* and a copy referred to the appropriate minister.

Torrens Petrol Station Site

The petition read as follows:

> To the Speaker and members of the Legislative Assembly for the Australian Capital Territory:
>
> The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly the state of the Torrens Petrol Station and its site.
>
> Your petitioners therefore request the Assembly to take immediate action to demolish Torrens Petrol Station and remediate the site.

Petition received.

INSURANCE AUTHORITY AMENDMENT BILL 2000

Mr Quinlan, pursuant to notice, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR QUINLAN (10.34): I move:

> That this bill be agreed to in principle.

Members will recall that last week this chamber passed a bill to establish an insurance authority. During the course of the debate on the creation of that authority, I moved amendments in relation to informing the Assembly about third-party indemnities. During the course of that debate, it was made clear that these would be a considerable burden, in terms of the amount of paper used, given that these particular indemnities could be quite extensive. Therefore, in the interests of common sense, I withdrew that amendment.

Today's bill merely allows for the intent of my amendment of last week to be enshrined within the legislation, without creating the problem of the voluminous amounts of paper required to fully inform the Assembly, by informing it just at summary level. The bill prescribes and enumerates the particulars that must be presented to the Assembly and these are not particularly onerous, so I commend the bill to the Assembly.

Debate (on motion by **Mr Humphries**) adjourned.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2000 (NO 3)

Mr Berry, pursuant to notice, as amended, by leave, presented the bill.

Title read by Clerk.

MR BERRY (10.36): I move:

> That this bill be agreed to in principle.

Mr Speaker, rather than give two speeches in relation to these matters, because notices number two and three relate to the same or similar issues, I will only make one introductory speech covering them both. Therefore, I will not be speaking in detail in relation to the second notice that is before the house.

I once again rise to introduce a bill to amend the Occupational Health and Safety Act 1989. As I mentioned, a further amendment is being introduced in the Dangerous Goods Amendment Bill 2000, which appears at notice number three. The purpose of the amendments I introduce today is to again extend the period in which a prosecution under either of the pieces of legislation may be brought before the courts.

Member will know that I remain committed to ensuring that the ACT's occupational health and safety laws remain effective. To achieve this they must be applied to incidents such as the hospital implosion, with particular reference to the lengthy and unexpected delays in finalising the coronial inquiry, and now the subsequent criminal charge. I would like to make it absolutely clear at the outset that, in introducing this legislation today, I make no inference as to the outcome of the ongoing criminal action in the courts, nor to the actions of anyone who may, in any way, be associated with the matter.

It is appropriate to look at dramatic incidents elsewhere and compare how they have been handled with the way the incident in the ACT has been handled. I refer, in particular, to the matter of the Maccabiah bridge disaster, which happened on 14 July 1997, the day after the bungled hospital implosion. Since July 1997, there has been an inquiry into the Maccabiah bridge disaster, charges have been laid, the trial has been finalised, the jail sentence has commenced, negotiations on compensation have been carried out, and compensation was paid in 1999. There has also been a subsequent inquiry, so things move much faster in Israel than they do in the ACT.

Our own July 1997 disaster is not even halfway through the process, and we have already had to extend the provisions of the Occupational Health and Safety Act and the Dangerous Goods Act once before. The bungled implosion occurred on 13 July 1997, the coronial inquiry continued until the coroner reported his findings on 4 November 1999, over two years later.

Following from that report charges have now been laid, but they will not progress until March next year. Like many Canberrans, I followed the coronial inquiry with interest, and sought to give the coroner assistance where I could, as members might remember, in assisting to find the missing Walker diaries. I have studied the coroner's recommendations and I am happy to have played a part in the implementation of his recommendations about the establishment of an independent occupational health and safety commissioner.

In the Assembly I have exposed and highlighted the problems of political interference with occupational health and safety inspectors, although it is clear that the full detail of this was not considered by the coroner in his recommendations. The coroner did not consider aspects of political interference that have occurred other than those associated directly with the hospital implosion, and could not have formed a view about those matters without having done so.

I suppose I have to take some responsibility for that, because I did not bring it to his attention, but that is history and there is wisdom in hindsight. There was a great deal of political interference in the occupational health and safety area of government administration.

I am as disappointed today as I was last year, when I first extended this provision, that the ACT's chief law officer, the Attorney-General, has failed to act to ensure that the valid laws of the territory are maintained and can be applied in the way in which they were intended when they were passed by this Assembly. We heard a lot of opposition last year but, in spite of the looming expiry of the extension passed by the Assembly last year, nothing has been proposed by the government in relation to the Occupational Health and Safety Act or the Dangerous Goods Act.

Let me explain what the amendment to the Occupational Health and Safety Act 1989 does. It replaces the amendment inserted last year—and the same applies in relation to the Dangerous Goods Amendment Bill 2000—which extended the period during which charges could be laid under each of the acts to one year after the handing down of a report of a coronial inquiry.

The amendments I introduce today replace these clauses with clauses that extend that period to three years. Wisdom in hindsight would indicate that perhaps this should have been the case last year. We should have thought, "This could last for three years," but nobody imagined that it would take longer than one year for these matters to be dealt with by other courts.

This recognises that the current criminal case will not get under way until next March and allows time for the finalisation of that case and the consideration of any other charges that might arise, one hopes. It has to be remembered that, under section 29 of the Occupational Health and Safety Act, charges may be laid on the person deemed to be in

control of the workplace. Consideration of issues in relation to section 29, so far as I can make out, have not been commenced, but there is no doubt that somebody was in control of the site. Consideration of issues in relation to that section not having commenced, it may be necessary for more work to be done in relation to that matter.

I repeat that I will be introducing an amendment to the Dangerous Goods Act 1975 (New South Wales) at the end of the introductory speech, but I will just go through some of the issues in that act now. Members will be aware that the Dangerous Goods Act 1975 was amended last year along similar lines to the amendments made to the Occupational Health and Safety Act. The Dangerous Goods Amendment Bill 2000 is similar in its application to the proposed amendment to the Occupational Health and Safety Act, that is, it will also prescribe a three-year period, after the report of an inquiry is handed down, in which a relevant prosecution can be launched.

Finally, I would like to thank the staff of the Office of Parliamentary Counsel for their skill, care and attention to this important matter, which has enabled me to present these bills today. I have sought to ensure that the Assembly can consider these bills before the 4 November deadline, the first anniversary of the handing down of the report of the coronial inquiry.

In conclusion I seek the support of members for these bills, the passage of which will leave new opportunities to prosecute, hopefully for the duration of proceedings subsequent to the coronial inquiry.

Debate (on motion by **Mr Smyth**) adjourned.

DANGEROUS GOODS AMENDMENT BILL 2000

Mr Berry, pursuant to notice, as amended, by leave, presented the bill.

Title read by Clerk.

MR BERRY (10.44): I move:

> That this bill be agreed to in principle.

Mr Speaker, I have already referred to this bill in a speech in relation to the earlier bill on the notice paper. I do not intend to repeat the speech.

Debate (on motion by **Mr Smyth**) adjourned.

SUBORDINATE LAWS AMENDMENT BILL 2000

Mr Hargreaves, pursuant to notice, as amended, by leave, presented the bill.

Title read by Clerk.

MR HARGREAVES (10.46): I move:

> That this bill be agreed to in principle.

Mr Speaker, this bill provides for the presentation of regulatory impact statements to accompany subordinate legislation in instances where there is a likelihood of the imposition of appreciable costs on the community, or part of the community.

Regulatory impact statements are provided with subordinate legislation in New South Wales, Queensland, Tasmania and Victoria to allow proper scrutiny of the subordinate legislation. The Commonwealth provides its scrutineers with something approaching such statements, but not in the same form, nor is this information as complete as it is in those states which provide regulatory impact statements.

The meeting of chairs and deputy chairs of scrutiny committees in all jurisdictions has considered the issue, and has agreed that regulatory impact statements are the most appropriate way of providing legislatures with valuable supplementary information about subordinate legislation. I have applied the Queensland model as the basis of this legislation.

Regulatory impact statements are not expected to increase substantially the workload of those who support the government of the day, because the provision of additional information will speed the passage of legislation, and ensure that consultation with stakeholders occurs well before the passage of such legislation. This will probably avoid the extra work involved when, after the passage of subordinate legislation that adversely affects a stakeholder, the issue erupts into the public arena.

It is not envisaged that significant numbers of regulatory impact statements would be developed. The intention is that they be applied only where the subordinate legislation has a significant impact on the community.

Examples of interstate regulatory impact statements are regulations for children's services in 1997 in Victoria, 205 pages; a review of the Egg Industry Act in 1998 in Tasmania, 73 pages; and funeral funds regulations in 1994 in New South Wales, 63 pages. Regulatory impact statements are not always huge volumes. The regulatory impact statement concerning the rural lands protection amendment regulation in Queensland was only 11 pages long.

It should be stressed that this bill only addresses subordinate legislation and not primary legislation. Regulatory impact statements are provided to stimulate and provide background for debate on a piece of significant subordinate legislation. Debate is always available for primary legislation, and all primary legislation is brought to the attention of members through the notice paper.

Only too often subordinate legislation passes unnoticed through the scrutiny process, because of the very volume of administrative matters covered by subordinate legislation, such as the raising of fees and charges, the creation or amendment of building regulations, and so on. One feature of this bill is that it stipulates when a regulatory impact statement is required and when it is not. I recall hearing a comment from

Queensland indicating that clauses showing where regulatory impact statements were not necessary were more often used than those showing where they were necessary.

The bill allows the minister to issue guidelines in deciding whether a proposed law is, or is not, likely to impose appreciable costs to the community, in which instance those guidelines become a disallowable instrument. The minister may exempt the proposed subordinate law from the need for regulatory impact statements, but this instrument is also a disallowable instrument.

There may be an issue with the definition of appreciable cost to the community. The definition of cost talks about burdens and disadvantages, and direct and indirect economic, environmental and social costs. It would not be appropriate merely to consider a dollar value as the determinant.

It is the intention of the bill that, when subordinate laws are being prepared, the drafters give some consideration to the impact of that legislation and determine whether it has a significant impact on a community. If it does, then a regulatory impact statement should be prepared.

One could ask if the changes to the regulations attaching to the Dangerous Goods Act in relation to the sale of fireworks will have a major effect on the fireworks sales industry, and also on the general public. If the answer is yes, then a regulatory impact statement would be needed. It need not be long, but would draw attention to many of the issues facing such an industry.

One could also ask whether the determinations on the application of the GST ought to carry a regulatory impact statement because they have an appreciable affect on the gaming industry. Again, the regulatory impact statement need not be long, but would assist in the process of the legislation's passage through the Assembly by removing much uncertainty. Any regulation that might change the allocation of poker machines to the casino would, I hope, attract a regulatory impact statement.

Finally, this bill is intended to enhance the production of good subordinate legislation, and to involve stakeholders who are significantly affected by the legislation. I commend the bill to the Assembly.

Debate (on motion by **Mr Humphries**) adjourned.

PLANNING AND LAND MANAGEMENT—ADMINISTRATION

MR CORBELL (10.53): I move:

> That this Assembly deplores the record of the Minister for Urban Services in his failure to properly administer planning and land management in the Territory and reasserts planning in the ACT as a public function which recognises every Canberran's right to participate as an equal in shaping the future of our City.

I have taken the opportunity to move this resolution this morning because of the continuing and growing unease in the Canberra community about this government's administration of planning and land management in the ACT. In particular, I am concerned about the growing unease and, indeed, downright dismay of many people in the community about the approach of the current minister for planning when it comes to the administration of the territory's most valuable asset.

The attitude, approach and record of this government with regard to planning started badly. That, Mr Speaker, can be summed up in two words: Hall/Kinlyside.

Mr Moore: That is three words.

MR CORBELL: It is two words, Mr Moore. "Hall/Kinlyside" is two words. From the very beginning this government's approach to land and planning was under a cloud. It started at the very beginning of this minister's tenure as minister for planning.

The Hall/Kinlyside land deal, Mr Speaker, was nothing short of a shonky deal, done behind closed doors, to grant large areas of the ACT's residential land exclusively to an individual developer for a form of development never previously tried in the ACT. It was done secretly, it was done without consultation, and it was done as part of a mate's deal.

Since that time, Mr Speaker, this minister's record has in no way improved. Indeed, over the past 18 months, we have seen no less than six major occasions where the minister's attempt to implement planning issues in this Assembly have been overwhelmingly rejected.

These have included the attempt to introduce dual occupancy development into the heritage-listed old Red Hill area. Dual occupancy development is a contentious matter at the best of times, but he proposed to introduce such a development into a heritage-listed area of the ACT, one which has direct links with the work of Walter Burley Griffin and Sir John Sulman, and which is recognised nationally and internationally as a unique precinct. These were all matters that this minister ignored when he pushed forward his agenda. He pushed it forward regardless of community opinion: he pushed it forward regardless of expert advice.

What had to happen, Mr Speaker? We had to have a resolution in this place requiring the minister to change his policy direction. But the minister's record goes back much further than that. There was, of course, his gung-ho attempt to introduce 50 per cent change of use charge, an attempt that he said was all about creating incentive, but in fact would have involved a massive untargeted subsidy to the development industry, to the detriment of the ACT community. The subsidy would have done nothing to encourage sustainable, high-quality development, and would have been paid whether the development was an appalling design, a basic design that only just scraped through the planning laws, or a top-quality design that actually dealt with issues like energy efficiency.

Regardless of how good the design was, the developers were going to get a subsidy. That means it is untargeted, and that is an inappropriate way to use change of use charge. Despite this fact, Mr Speaker, the minister charged ahead. The minister talks a lot about creating high-quality design, but the reality is that, structurally, his government does very

little to encourage it. For that reason, the Assembly quite rightly rejected moves to reduce betterment charge to 50 per cent.

We now have the spectacle of the minister coming back into this place and saying that he wants to try to change the law again. This is the same minister who talked about the need for certainty when it came to change of use charge, and the same minister who said we should not go around changing the rules every five minutes. And what does he do? Less than three months after this Assembly makes an unequivocal decision about change of use charge and the level at which it should be set, he is back here arguing for a change again—an appalling approach by this minister.

But wait, Mr Speaker, there is still more. Then we had the minister's failed attempt to try to introduce development into the Federal Golf Club. This was despite his predecessor in the last Assembly, from the same government, saying that redevelopment of the Federal Golf Club would never be considered again. Do you remember who said that? Gary Humphries said that and it was so interesting to see Gary Humphries not participating in the debate on the Federal Golf Club. But the minister charged ahead on the Federal Golf Club; he tried to bulldoze his way through and, again, the Assembly rejected his proposal.

But, Mr Speaker, there is still more. This minister's record is just a litany of mistakes, errors and bad judgments when it comes to planning. What is the next one, Mr Speaker? The next one, of course, is rural residential development. The minister decided that rural residential development would be a great idea and he commissioned a report—an independent consultant's report, we call it—to examine all the issues relating to rural residential development.

What did we discover, Mr Speaker? We discovered that, in fact, his department was attempting—to use the consultant's words—to "massage the report". Why would a department and a minister seek to massage an independent consultant's report? There is only one reason why a minister would do that and that is to make sure that the independent report said what he wanted it to say. So, again, this is an inappropriate exercise of power, and an inappropriate way for a minister for planning to behave.

The one I think that has really caused a lot of resentment, if all of those have not, was the issue to do with the protocol for the local area planning advisory committees. Now, the local area planning advisory committees are, of course, important mechanisms for providing communities with the opportunity to comment on development issues. What did the minister propose in a protocol for the local area planning advisory committees? He proposed a protocol that required the LAPACs to inform his office of any media comment they were planning to make before they made it.

I know that the minister likes to call this advice, but I know what the LAPACs think of it. They think it is an attempt to gag them. They think it is that simple—an attempt to gag them. It is my understanding that, without exception, the LAPACs have rejected that requirement and have told the minister this in no uncertain terms. You have to ask the question, Mr Speaker: what has the minister got to hide? What is the minister worried about that makes him think that the LAPACs should not make comments in the media without having to get clearance from his media adviser? Is he afraid of some sort of debate on planning or can't he cope unless he is informed of something in advance?

That is this minister's record when it comes to planning. But, on top of that, we have the issue of this minister's and this government's whole philosophy when it comes to planning. We have only to see that this minister for planning agreed to see the land management function given to the department of treasury to realise this. It is all very well, and it is indeed very important, to have prudent management of the land resource in the ACT. However, to give this function to the department of treasury, an action which has produced some of the situations that have evolved over the past month or so, is quite extraordinary.

I will give you one very good example. As recently as last night, the Manuka LAPAC met to discuss the issue of development in their area and, among other things, the issue of the redevelopment of the old Griffith Primary School site. Now, that is a very important planning issue, isn't it? You might have thought that to be a fairly important urban development issue in the inner south, and you would think that the relevant people from the ACT government would be there managing it. Well 100 people turned up and who was there proposing the planning issues? Who was there talking about the planning issues that needed to be addressed? Was it Planning and Land Management? No. Who was it? It was the Department of Treasury and Infrastructure.

So we have the department of treasury, the Treasurer's department, making decisions about planning and land use, commissioning consultants to handle planning design work, and planning considerations and constraints. The department of treasury is doing the planning and that really underlines this government's whole approach to planning. They see planning purely as a regulatory function.

In no way do they see it as a strategic issue, one that has to be addressed across the city, or one that has to be addressed by a planning authority. No, they see it as simply the best way to get a return on the land asset. We had an extraordinary comment last night from a senior public servant in the Treasurer's department, who said that the Treasury was going to look at open space issues to see whether open space areas of Canberra were being efficiently utilised.

Well, I think most people in Canberra would think that open space is currently being pretty efficiently utilised as open space. They think that is pretty good and they think it is a pretty efficient use of the land. But apparently Treasury thinks otherwise. And why would Treasury think otherwise, Mr Speaker? They think otherwise because they see it as a valuable cash cow from which revenue can be milked for the government.

Under this minister we have had continued cuts to PALM and continued reductions in staffing in PALM. We had an extraordinary situation, during the lead-up to the appointment of the current executive director of PALM, when the two most senior planners in PALM were not even interviewed for the position of executive director. What does it say about this minister's approach to planning and land management when the two most senior planners in PALM are not even interviewed for the position of executive director of the organisation, effectively for the position of ACT planning authority? What an extraordinary approach! But I must say, it is an approach that is not out of character for this minister, not out of character at all.

My motion calls for this Assembly to recognise these failings; to recognise that we have a minister who is incapable of properly and effectively administering planning in the ACT. But my motion asks for more than that: it asks for this Assembly to recognise that every Canberran has a right to participate as an equal in the development and planning debate in our city. Can every Canberran participate as an equal in planning debates in this city at the moment? No, they cannot, because of the way development and planning works, and because of the structures this government puts in place.

Let me give you a very good example. Again, I come back to the Federal Golf Club decision in this place. This government responded to community pressure before the last election and said, "No, we are not going to proceed with this because of community opposition," and of course there were only six months to go before an election. But they said no. The community were happy, they voted on that basis. And what happened straight after the election? This government and this minister came straight back into this place and said, "We are going to build it now." You can imagine the community's concern.

The problem we have with planning and development in this city at the moment is that it is influenced by whoever has the minister's ear, whoever is able to get in the minister's door. They say, "Brendan, I think this is a really good project. I think it should go ahead. I just need you to change the Territory Plan to make sure it happens." And then, once the minister says, "Yes, that looks like a good idea," the government and PALM go and talk to the community and say, "We are proposing this and we are going to consult with you, but really the decision has already been made because the minister has given it the tick."

That is not the way to encourage a democratic and open process when it comes to the planning debate in this city, and it is not the way to ensure that every Canberran can participate as an equal. In fact, it is the way to play favourites; it is the way that powerful and privileged individuals can have the minister's ear, but not for the everyday person in the street to have an equal say. So minister and members, what we need is a better process. What we need is a fairer process. What we need is a more democratic process.

This minister's record on planning is appalling. It is littered with mistakes, errors and rejected proposals. This minister attempts to gag LAPACs. This minister attempts to reduce betterment tax to give away $3 million a year in revenue, which would otherwise go to the ACT community. This minister tries to introduce inappropriate development into heritage areas. This minister attempts to influence independent consultants' reports.

This is not the approach we want from the minister for planning. This is why we need to say, "This minister's approach cannot be accepted any more by this Assembly." We need to reassert every Canberran's right to engage as an equal in the planning debate. I urge members to support the motion.

MR MOORE (Minister for Health and Community Care) (11.09): On many occasions I have risen in this place to support Mr Corbell on planning issues. On many occasions I have stood here and lambasted Mr Smyth on my right and Mr Humphries on my left about the way they deal with planning, and it has been great fun. Let me say though, through you, Mr Speaker, to Mr Corbell that there is something missing in this debate, and I think it is historical understanding.

We are talking about the administration of planning under Mr Smyth, and I have to say that, if you were to go back and have a look at the administration of planning under Mr Humphries, you would see that it was a step down—it was really much worse. Or you could go back further, Mr Corbell, before you were here—I am pleased he is coming in because I would hate to lambaste Mr Wood while he is not here—to the time when Mr Wood administered planning and you would realise that that was a step down as well. You could instead take it right down to the pits, when Mr Kaine was administering the planning system—and it is a pity he is not here, but I hope he is listening—and realise just how awful it can get.

I think it is important for us to recognise that there has been significant improvement in the administration of planning. I want to distinguish between administration on the one hand and policy issues on the other hand, because on many occasions I have stood in this very spot and lambasted Mr Smyth for his policies. The change of use charge, the betterment charge, to which you have referred, is one of those issues.

So there are philosophical differences, and I think we have to recognise the difference between philosophy on one hand and administration of the planning system on the other hand. Sometimes, of course, these overlap. I think that Mr Corbell, in building his case, has deliberately made them overlap even further than would normally be the case. Mr Corbell talks about a litany: I think his language was a litany of mistakes, of bad planning and of poor developments. He used language to that effect, if those were not the exact words. I have to say, Mr Speaker, that the evidence then provided by Mr Corbell was about issues on which he had a difference of opinion with Mr Smyth. I think that is a critical issue.

Kinlyside is one of those examples and Griffith is yet another example that he cited. I will go through these. The federal golf course is yet another example that he cited. In fact these were not decisions made by Mr Smyth. These were decisions of the Assembly, and the Assembly made it very clear that it has a different philosophical position from the Liberal Party and from Mr Smyth on some of these issues, at least. I will separate Griffith from that, but it certainly applies to the federal golf course, and we have yet to complete the exploration of rural/residential land. I suspect that, judging by the way Mr Corbell speaks about it, I will have a different view from him on rural residential land, because I think it has an important place within our community, provided it is done properly. That will be the challenge.

Now, we have systems of monitoring this process. The standing committee on urban services has done 54 reports at last count—unless it has done another one or two during the week when I was not watching—and each of those reports considers these issues and deals with them. They do this because issues such as the one at Griffith—and I will take that as an example–require a variation of the Territory Plan. Whether Treasury does it or not is not the issue. Yes, we have an approach from the department about planning, but planning cannot be excluded from the approach in Griffith.

In fact, Mr Corbell, I would like to give a very positive example of how our public servants right across the system work together. You would be aware of the work that goes on with healthy cities. The healthy cities concept ties a whole range of departments together to get the best possible outcome, and this happens already on environmental

issues, on planning issues and on health issues. A whole range of people are involved in working together and that is one of ways in which we are working to try to build social capital.

Let me comment further on Griffith. The process that has to be carried out to consider the Griffith site has begun. The area is not being used in a way that is positive for the community at the moment. I was very keen, and I raised the issue of Griffith not so long ago. I rate it as a possible hospice site. I went to a meeting—and I think Mr Smyth was there—with the residents of Griffith and they said, "We think that this would be a very good hospice site." Why would it be a good hospice site? It was very close to facilities and it had a range of very positive aspects. I have to tell you that quite a number of people there said, "No, no, we certainly do not want a hospice site. We do not object to hospices. Of course we should have a hospice, just not here on this particular site."

I suspect that, no matter where we have a community meeting about the change of use of an area, we would have a group of people responding in that way. Nevertheless, they have a participatory role in the process. Those people had more than an equal right to participate in the process that went on at Griffith to make it very clear from the first that they would reject a hospice on that site.

Now there may have been a broader community interest. It so happens that we found a much better site for the hospice, a very beautiful site and I invite people to come down and have a look at how it is going. It is beautiful, and beautifully planned through a cooperative process that involved a range of people in a range of departments. So, this cross-portfolio process does work.

With regard to Griffith, these people have had many opportunities to express their opinion, as will others, because the change requires a variation of the Territory Plan. Variations to the Territory Plan have to be prepared in Mr Smyth's department, and those variations then have to go through the committee that Mr Hird chairs, and of which Mr Rugendyke and Mr Corbell are members. Those people's contributions will be considered.

I am moving on to the second part of the motion now. If I was developing my own house—a similar case to the Griffith situation—somebody in Gungahlin or Tuggeranong should not have an equal right to object to that redevelopment to the person who lives next door to me, who is going to be affected in a much more significant way. In the case of Griffith, the people around that area obviously have a far greater interest in the development.

When you talk about an equal right to participate in the planning process, I think you have to be very careful about how you present it and what you mean by it. Similarly, there is not one citizen here who has an equal right—nor should they have an equal right—to participate in the planning of the national capital parts of our city.

Annabelle Pegrum and the people on the board of the National Capital Authority clearly participate more and have a much greater right to participate in some things that have an impact on our city. This is the case because we recognise our city as the national capital, and we recognise that there is a national interest in what goes on in the planning of this

city. I think that a simple overarching system that recognises every Canberran's right to participate as an equal in shaping the future of our city is limited.

I do not disagree with Mr Corbell's intention in making that comment. Of course we should be trying to make sure that all citizens have opportunities to participate in planning decisions that affect them. We have a huge number of processes in place to achieve that, not the least of which is the committee on which you sit, Mr Corbell.

This is not a failure to administer properly. There is a failure, on Mr Smyth's part, to do what I believe ought to be done, because I disagree with him about a philosophical point. I would say that this is a failure to deliver what I believe in. When I look at the reintroduced piece of legislation on betterment, I think it fails terribly to do what I want and what I believe is right. On the other hand, I suspect that the majority of members of the Assembly will see my view and Mr Corbell's view—we are at one on this—as a failure in the way we approach that particular issue. That will be sorted out on the floor of the Assembly.

There was one other thing that actually worried me greatly, particularly when the Labor Party has been pushing so strongly about, and looking forward to, the Auditor-General's report on Bruce Stadium. The matter that worried me was the issue of the appointment of public servants raised by Mr Corbell. We are not talking about CEOs of departments, who are treated in a slightly different way, but other senior public servants, who are not part of a political process. We never interfere with those appointments, nor should we interfere with those appointments.

When Mr Corbell says that Mr Smyth was, in some way, responsible because two people did not get a final interview, I am sure that Mr Smyth did not say, "Sorry, you are not going to get an interview" or "Let's make sure these do not get an interview." The process goes on at arms length, away from government, and so it should. Something relevant happened just recently when Mr Humphries announced that we will have a probity process, to make sure that whatever is going on in government can be cleared. No doubt that grew out of criticism in the draft comments from the Auditor-General on Bruce Stadium about some of the things that have gone wrong.

The government is responding already to issues that we know must be dealt with, and getting solutions in place, and probity is one of those important issues. I am a bit concerned about that comment. No doubt Mr Corbell will clarify what he meant by that comment, and by his comments on some of the other issues that I have raised, particularly the one about every Canberran having an equal right to participate in planning. I am not sure what he meant by that.

I think the motion is too loose. It being so loose and it being a matter of administration as opposed to difference of opinion, I feel very comfortable about opposing this motion.

MR RUGENDYKE (11.21): Mr Speaker, we have heard two excellent speeches here at the opening of this debate this morning, two speeches that have outlined two opposing views.

Running through my mind as I listen to the debate, and as I think about this motion, are the things that I have asked the minister to do on behalf of constituents of mine and others. I think of Mrs Gordon of North Lyneham, who had to walk through puddles to her retirement village unit. Apparently that is being addressed, and she is very happy.

I think of some people in Latham who, for three years or more, have been battling the process, doing the right thing. The problem for them is that they are up against the top end of town, the developer who will pull out all stops to build his monstrosity looking over their fence and into their bedroom. I have yet to hear how the minister will address their concerns, concerns about persistent problems that have been identified by these ordinary punters. These are problems that have been flick-passed to the Commissioner for Land and Planning, who simply says, "Rewrite the plans to make if fit."

We are yet to see the results of the review of that process, which may enable Mr Smyth, the minister, to take action under section 253 of the act to withdraw the developer's right to build a monstrosity because a misrepresentation has occurred in the report. I look forward to the outcome of that review. I suspect that, somehow, the top end of town will win.

It may well be that some deplorable things have happened within this portfolio to do with planning. Section 41 may well be deplorable. Kinlyside may well have been deplorable. Rural development in the ACT may well be deplorable. But this motion calls on the Assembly to deplore the entire record of the Minister for Urban Services in his failure to properly administer planning and land management in the territory.

On that score I will listen intently to the rest of the debate. In this era of benchmarking, we should benchmark the first two speeches in this place this morning as top quality, a benchmark that ought to be taken into consideration. I will listen carefully, cautiously and judiciously to the rest of the debate on that score.

The second part of the motion suggests that the usual suspects, who pop their heads up whenever they do not like seeing something appear on the other side of town, should be able to keep butting in to the extensions on Mr Moore's home, or other things. I do think that Canberrans have a right to participate in shaping the future of our city, and there are processes to allow that to happen. It does concern me, though, that some of the usual suspects—and we all know who they are—can delay, stall or stop a project simply because they have $130, a computer and too much time on their hands.

I will listen carefully to the rest of the debate and decide whether or not this Assembly ought to deplore the record of the minister.

MS TUCKER (11.27): The Greens obviously support the substance of this motion, because we have been very critical of the government's handling of planning issues ever since we entered this place in 1995.

Last week in question time, Mr Humphries made a remark that implied that the Greens were hypocritical in supporting urban consolidation in their urban planning policy, but opposing all the developments that the government had put up in recent years. I did make the point, then, that this government's approach to planning is so haphazard and ill-considered that proposals we are asked to support are unfortunately found to be

unworthy of support when they are assessed against good planning and urban development principles. Examples include the proposal for rural residential development in the ACT, the Gungahlin drive extension through Bruce and O'Connor ridges, and the housing development at the federal golf course.

We have probably objected just as strongly to a number of planning processes, not with the desire to stop development, but in the hope of improving the quality of development. We have opposed reductions in change of use charges from 100 per cent, reductions in third-party appeal rights, the watering down of the ACT leasehold system by allowing 999 year leases, and the minister's call-in powers.

I note a comment from Mr Rugendyke, and from Mr Moore, to which I would like to respond. Mr Rugendyke said, "There are a few people"—and we all know who they are—"who have too much time and a computer." I think it would be fair for Mr Rugendyke to be a little more explicit when he makes those sorts of comments, not necessarily naming the people, but actually giving this Assembly an analysis. If he has followed this so carefully—and he tells us that he knows particular individuals who do this—then he should tell the Assembly on what grounds these people, whom we are all supposed to know, are actually raising objections.

My experience of people who have raised objections to planning processes is that they have an interest in urban development in this city, and the welfare of the ACT community, and broader concern about the common good in planning. If Mr Rugendyke knows that there are other people who have not actually responded on the basis of those broad issues of common good, then I would be interested to hear him go into the detail.

I did not quite catch what Mr Moore was referring to, but he seemed to be saying that he objected to this idea that someone in Tuggeranong would have the same rights to talk about a development, a refurbishment or a redevelopment as did a someone who lived near the development. I do not think Mr Moore would be misrepresenting the fact that people do not have to prove that they will suffer substantial and adverse impact in order to have the right to express a view. I hope he would not misrepresent that matter by saying that this is just about someone in Tuggeranong who, as Mr Rugendyke says, does not have enough to do and has a computer, and would actually make an objection on that basis.

Clearly, that is about organisations who are working for the common good in the ACT, who have a commitment to Canberra as the bush capital and as a place that has so far provided a high quality of life for people who live there. Groups who are working to keep that under public scrutiny have a right to have their voices heard in these sorts of appeals and planning processes, so that we do have this broader perspective brought into the discussion. This is obviously a really important part of democratic processes. I do hope that Mr Moore was not saying that. I assume he was not, and that he does recognise that this issue of not having to prove substantial impact directly is about allowing that democratic process to occur.

In terms of what the issues are—and it is not just Mr Smyth, it is really an issue to do with the whole of government and Mr Humphries as well—in most cases when we have objected to proposals it was more a question of "it is not what you do, but the way that you do it". I have regularly raised concerns about the government's back-to-front

planning processes, in which decisions seem to be made that a particular development will go ahead because a particular developer wants it, regardless of whether sufficient assessment has been undertaken or of the desirability of this development.

There have also been cutbacks to Planning and Land Management that have reduced the level of assessment of particular development applications in the guise of streamlining the approval process. The whole planning process has been tilted in favour of the developer and against the interests of residents.

I can think of a number of examples where the Greens objected to the detail of development, rather than the developer itself: Manuka Plaza—I don't think anyone just wanted to save the car park. It was always about the scale of development relative to the rest of Manuka and the tender process' bias towards including a large supermarket.

In relation to the B11 and B12 zones in north Canberra, the original B1 zone, which I recall was actually a Labor Party initiative, encouraged piecemeal and monolithic development. There should have been local area planning to determine more precisely the most appropriate scale of development in particular parts of north Canberra. The B11 and B12 zones and the section master plans were an improvement on the B1 zoning, but could have been done better.

The problems regarding Woden Plaza and the Canberra Centre included the scale of development, and the insufficient account taken of economic impacts on surrounding traders.

We are happy to support development on Kingston foreshores, if it actually fulfils its stated objective of being an ecologically sustainable development. Indications so far have been that market considerations will prevail. I have given credit to the government on the Kingston foreshore development consultation process. There was a community brief provided, which actually came out very strongly in support of the principles of ecologically sustainable development becoming the underlying principles for this development. That was great. Unfortunately, we are just watching the process move sideways.

The McKellar soccer stadium site definitely needed to be cleaned up, but whether we needed a major soccer stadium there was questionable. In fact, we are still waiting for this oval to be constructed.

It is good to consolidate development in Civic, but we are still concerned about the openness of the tender process on section 56. It was certainly less open than it was regarding Manuka. The government produced press releases, when they were developing the Manuka site, about the process and why the preferred option was chosen, but chose not to do that with section 56 for no good reason. They did not give any good reason for that.

The mix of uses on the site, and the need to maintain community facilities, have not been adequately addressed, and there has not been adequate consultation on those matters. I have questioned the government about its processes here.

It is a ridiculous waste of effort and money to employ a cultural planner to undertake a social and cultural facilities audit in the city and inner north while, at the same time, and before she has reported, deciding on the amount and configuration of community space in the most significant development in the city.

The issues around section 56 are interesting. Mr Humphries was interjecting when I was addressing some of these issues last week, and explaining the Greens position on urban consolidation and the principles that would guide our approval of urban consolidation. Mr Humphries was saying delightedly that we did not want to see the car park developed in section 56 and that our policy actually says that we do think this is a good idea. Once again, that is a totally silly response, because what we have said quite clearly about section 56 is that this is a unique opportunity.

The government is having this audit done. It is probably one of the most significant opportunities for actually integrating community support facilities, because the government has a much greater say in this than it will have in other areas that may well be redeveloped later on. There was a classic example of lack of foresight when, midstream in this process, the decision was made to put a supervised injecting place in the QEII building, which meant that the Junction Youth Centre there, had to move. So suddenly there had to be a place found for Junction.

If this community social and cultural facilities audit had actually been allowed to run its course, then we probably would have seen an acknowledgment that you do not just decide what will be in a major redevelopment, and what the configuration will be, by considering what is there now. You actually take a long-term look at this first, and then you make a proposal to the developer.

Harcourt Hill is another example. We accept that part of this site is suitable for housing, but the government has allowed residential subdivision to destroy a huge swathe of trees there.

We have been concerned that the government is taking a very rigid approach to the assessment of the ecological value of Conder grasslands and the north Watson woodlands. They may not fit exactly into the definitions of endangered ecological communities, but they have environmental value nevertheless. *(Extension of time granted.)* They have environmental value, nevertheless, that the government has not adequately accounted for in its planning. Here we once again see the government telling the community that they cannot have this space conserved unless it is paid for by some development.

Last night I was also at the meeting at Griffith. It was a very interesting meeting. Not only was it interesting to hear what such a large number of residents concerns were, but it was also very interesting to hear some of the answers to questions asked from the floor. At one point a person from the floor did ask a question of an official there, who had assured the community that there was an option of no development and things staying as they are. The question asked was: “If the decision was to have no development, would there be repercussions for the Griffith community?”

Basically, the answer from the official was that it would be a sad thing. I do not want to say that I am directly quoting her, but her response was that it would be unfortunate if a "no development" option was picked, because there are issues of revenue and of paying for these sorts of facilities. There has been a lot of concern already about rates increases in the area.

I am happy for this to be clarified if it was not what was intended, but the implication was one that I have heard before from this government, that is, these less easily quantifiable benefits to a community, such as open space or Gold Creek homestead, are a cost to government and the community has to understand that. If the community is to come up with a response that is acceptable to government, it will have to acknowledge the cost to government. The community's response to any development proposal has to bring in an element of revenue raising from that site.

This is a very significant shift from what most people believe to be the role of government. Open space and certain types of community facilities obviously cannot pay for themselves in dollar terms, but they do have value and pay for themselves by providing the community of Canberra with a quality of life which enhances wellbeing. A lot of people in the community still believe that to be a fundamental responsibility of government. A very unfortunate manipulation occurs when this government presents its role to the community by saying, "Well you have to realise that, if you want this to stay here like this, you have to work out a way to make sure it pays."

On the question of infill, first the government said it was considering developing unused ovals and now it says it is not. However, the fine print of the government's latest land release program indicates that the government is undertaking a review of all unleased land in the ACT, including community land and open space, to identify infill opportunities. The government says that it will maintain appropriate levels of recreation and open space, but who is going to decide what is appropriate and how does it fit with the government's current emphasis on the costs? How is this review going to be undertaken? Will this be a case where the decisions have already been made and the reviews will be merely about justifying the decisions?

On the process side, we have also indicated a number of areas where the government could do better, for example, the LAPAC process, which has great potential to involve the community, but has been under-resourced and skewed towards business interests.

For all these reasons the Greens do deplore the government's failure to properly administer planning and land management in the territory. However, I do want to say that I question the purpose of Mr Corbell's motion today, apart from its obvious purpose of allowing him to make certain points. It is easy to deplore the government, but Mr Corbell's motion suggests no action that would improve the situation. If Mr Corbell just wanted to have a go at the government, then maybe it would have been more appropriate to have this debate as a matter of public importance.

I will support the motion.

MR SMYTH (Minister for Urban Services) (11.41): We must always look closely at things, because what might be seen as a negative can always be turned into a positive. What starts as clearly an attack on me—and I think the final words from Ms Tucker were curious: what is Mr Corbell's purpose?—is an excellent opportunity for me to outline what the government has been doing, and will continue to do, to make sure that planning works for the benefit of all Canberrans.

Mr Corbell raises six dot points in his press release, but this is from the man who tinkers with planning. That is all we get from Labor, and particularly Mr Corbell, as their spokesperson for planning—tinkering. We have absolutely no idea where they would take the city. We have absolutely no idea what process they would use to get us there. We have absolutely no idea where Labor stands on planning policies, because the only thing we have seen from Mr Corbell is tinkering.

This is an acknowledgment that he is not up to it, and that Labor is not up to planning. Why? Because they will have an independent planning commissioner. They will make planning the responsibility of a statutory authority, to which it will all be just given away, because it is to hard. Well it is not too hard, Mr Speaker, and this issue is too important to take Labor's approach. So, what we have is Mr Corbell tinkering at the edges, while we are getting on with making sure we build up a city where people can live. And we are doing that.

The motion purports to say that Canberrans cannot participate in shaping the future of their city. Well, was Mr Corbell at the public meetings in August and April of this year to talk about high-quality design and the sustainable future for this city? I do not believe he was there. What have we heard Labor say on the whole issue of sustainability: "Why didn't they raise this before?" Well why didn't you raise it before, Mr Corbell? Why don't you outline what it is that your party would do?

Mr Corbell made some interesting allegations in his speech. He stood up and said, and I may paraphrase him here, "There is a done deal. Brendan will just change the Territory Plan for us and off we will go with our development at the Federal Golf Club." You have either misrepresented very, very badly or you show your ignorance of the planning system, because I cannot vary the Territory Plan. If you do not understand that process, or you are just deliberately misrepresenting it, then you should withdraw and apologise.

Mr Corbell said that, because two senior public servants did not get interview for a job they were applying for, I have somehow interfered. Well, I have no right to interfere. There is no way in which I can direct the employment process. It is all done independent of government. And that is how it should be done. There is a clearly defined process there. What this does tell us is how Labor would do it. It would not be tinkering when Simon Corbell was planning minister. He would hive it off to an independent authority, and then we would see the old Labor traits of interfering, manipulation and failure to follow process.

Mr Corbell: This is from the man who uses the call-in power every day of the week.

MR SMYTH: Mr Corbell interjects, "This is the man who uses the call-in power." The call-in power was put there for the minister to use. It was put there by this Assembly. I spoke to Mr Moore, because he was here when that call-in power was put into the

legislation, and it was put there so the minister could exercise that power. Now, somehow the call-in power has become something that must only be used in extraordinary circumstances. My understanding of it is that that is not the case.

Now Mr Corbell talks about cuts to PALM and how badly PALM is doing. Well, if you read some of the customer satisfaction surveys, we are getting a tremendous response from the people who use PALM—the ordinary Canberrans who come in with their applications—particularly to the way that we have changed how we are dealing with their applications. What we are doing is giving better service for less.

Now, I want to hear the Labor Party justify being against better service for less cost, because, after all, we are spending taxpayers' money, and the taxpayers, I can assure you, are certainly interested in a change that helps them and brings better service for less. There has been a significant improvement in processing time over the period since the Ernst and Young review, with 91 per cent of single-building DAs, and 69 per cent of other DAs being processed within the statutory time frames. That compares with 82 and 59 per cent for the previous 12 months. So what we are seeing is improvement, and we are making the system work better for everyone involved.

Mr Corbell ought to reflect back on some of the things that were done in planning under Labor: the adoption of AMCORD standards, which have seen a reduction in standards and a deliberate move away from the bush capital. It happened under Labor. What would they do, Mr Speaker? There are the joint ventures that Labor signed up, which, in the main, all failed. We were responsible for getting them back on track and making sure that they returned to the people of the ACT the things that they should.

In his press release, Mr Corbell makes six points, one of which refers to "the failed attempt to introduce dual occupancy into the Heritage listed Old Red Hill area". Well, I am not sure it is a failed attempt, Mr Speaker. That draft variation has actually been gazetted, but it is under review. Why is it under review? Because the Assembly asked me to review it. Mr Corbell actually pre-empts the review with an assumption that it will find—

Mr Corbell: The Assembly has made its view quite clear.

MR SMYTH: No, Mr Corbell, the Assembly asked me to "review with a view to".

Mr Corbell: No, to ensure that, not "a view to".

MR SMYTH: This is a clear example of how planning would occur under Labor. Mr Corbell would just do what he wanted, and he makes it quite clear. He talks about independent reviews and yet he says the independent review should find what he wants. This is the difference. This is the whole point of this motion. Mr Corbell does not get what he wants. He talks about betterment. He says in his press release, "A failed attempt to reduce betterment tax to 50 per cent". Mr Speaker, it was not passed by the Assembly, but at no time did the Assembly say it would go to 100 per cent and that is what Mr Corbell does not like.

Now, Professor Nicholls, in the review, said 50 per cent. The majority of the members of the committee said 50 per cent, but it did not get up. That is the process. Mr Corbell then goes on to list the "Rejected attempt to allow development at the Federal Golf Club". Mr Speaker, there was enormous consultation on this, and everyone knew that on the day it would come down to a point in time—

Mr Corbell: And you ignored it at every step of the way.

MR SMYTH: Mr Speaker, the whole purpose of the consultation is to lead to a point in time where the Assembly, as elected representatives, get to make the decision. They got to make that decision. Again, when the process suits him, Mr Corbell is agreeable to it but, when the process does not do what he wants, he thinks the process is somehow flawed.

He goes on to talk about "Rejected attempt to introduce rural residential development". I actually thought that rural residential land was an issue before the urban services committee and that, although one proposal certainly has not gone ahead, we are all still awaiting the report of that committee about the future of rural residential in the ACT. So again, we are just spinning webs here. There is work being done. I will await the outcome of the review by the committee.

His next dot point is "Exposed attempts to influence independent consultants report on rural residential development". This gets irksome, because this is the old Labor Party tactic. If you say it enough, some day somebody will actually believe it is true. "We have said it so often, we actually believe it ourselves." It just shows how quickly and easily one can fool oneself just by simply repeating the mantra. If you say it over and over and over again, it has to be true. I will read the letter from Mr Trevor Budge who did the report. It is something that Mr Corbell chooses to ignore all the time. It is addressed to Mr Hawkins, the executive director of PALM, and it reads:

> Dear Lincoln,
> Re Rural Residential Study
> I understand that an issue has arisen about the "independence" of the report. I write to confirm that at the conclusion of the project I willingly "signed off" the report on behalf of the consulting team.
>
> As you are aware it is common and accepted practice that where a report is prepared for a private or public body, particularly where there is a lengthy time period, the topic is broad ranging, and the issues are complex that the consultant will prepare a draft for review by the client, in order to ensure that the ground has been covered and the brief satisfied. This was done, I received continuing assistance by your staff. As you know the consultancy brief was extended in the light of the Legislative Assembly's resolution of 28 May, 1998. The additional work was undertaken and the report further developed.
>
> At no stage was I directed to take a particular line on any matter or the topic as a whole. Accordingly the final report, as delivered to you, represents the consultant team's work under my leadership and I am happy to have our name on the report.

Mr Speaker, again, all we get from Labor is "if you say it often enough, it will make it true somehow".

The final point on the press release was "Failed attempt to 'gag' LAPACs making comment to the media". What Mr Corbell fails to acknowledge here is that the government has set up the LAPACs and expanded the whole process, and they were set up to advise the minister. They are the minister's advisory body. Isn't it appropriate that, out of courtesy, the advisory body might tell the minister what they are going to say or advise before they say it in public. There is no attempt to gag here. *(Extension of time granted.)*

If I could read from the LAPAC protocol:

> If commenting to the media as a LAPAC spokesperson—

that is, the minister's LAPAC spokesperson—

> members should confine their comments to issues related to their LAPAC role—

what we do not want is the role of LAPAC used for other purposes—

> Those making comments to the media should advise either the PALM Communications Officer or the Minister's Media Adviser of their comments as soon as possible, as a courtesy to the minister.

I would have thought good manners was appropriate for all of us, but again you twist things. We all know about the politics we play here—we are politicians, but what we do not get from Labor is vision. What we do not get from Labor is a statement as to where they would go, and what we also do not get from Labor is an acknowledgment of the work that we do, and of the consultation that we do undertake.

In 1996, the Stein review, which really was a review of the planning and development process left in ruins by the Labor Party, came up with suggestions. That work was further continued with the Ernst and Young review of PALM in 1998, which made other suggestions. What we are doing is making sure that planning meets the needs of Canberrans, and we are doing that in consultation with Canberrans, so they can have their say.

You only have to look at some of the planning initiatives that we have undertaken. The section master plans are in the consultation process at present. Planning and Land Management officers are personally knocking on doors and talking to the residents, letterboxing, and making sure we receive their comments. You can see the outcomes. You can see the effectiveness, because some of those sections have said, "No development," and these sections are zoned that way in the master plan, because that is what the residents wanted.

In other areas there is a mix of views. Some residents have said, "Leave our end of the section alone," and at the other end they want to redevelop. That is fine by us. Some areas have said, "Go for your life if you want to redevelop the whole section." We are working honestly, because we are reflecting what the people want. Now, Ms Tucker made the point about getting the process right. Again, it seems to be that, if the process delivers what the Greens or the Labor Party want, then it is a good process, but if it does not give them what they want then the process is flawed.

Now, the process, for instance, to conserve the yellow box/red gum woodlands concluded that 100 hectares of high-quality yellow box/red gum should be put aside, and they were put aside. It also said that other areas did not meet that need, and one of those areas was north Watson. I would refer to the former planning minister, Mr Wood, who started this process. He did the PA back in 1992 and the Labor Party's own process came to the same conclusions as the Liberal government's process came to: that north Watson, for instance, should not be saved. Are there significant trees there? Yes, there are, but is it a significant yellow box/red gum site or temperate grassy woodland site? No, it is not.

Their process came to the same conclusion as ours did but now, for political gains, they say, "Just so that we can have something to kick the government about, we will ignore all the processes, because it is convenient at the time." If the process decided that 100 hectares of the best land was worthy of inclusion in the reserve system, it will be. Because other sites did not make it, the process has not met the needs of others, and therefore is somehow flawed.

We can go on with the improvements that the government has made. We have streamlined planning approval processes by reducing processing times, application forms and fees; introduced pre-application meetings and case management for development applications and building applications; appointed technical officers in the Planning and Land Management shopfronts, to give better advice upfront; established the Commissioner for Land and Planning separate from PALM; and ensured that Canberrans now have the ability to renew residential and commercial leases at any time upon payment of the charge.

Mr Speaker, on 4 May I stated that high-quality design and sustainability are the overriding criteria that will now be used to assess development. We are reviewing part A of the Territory Plan in light of this so that, over the next 10 to 15 years, we will be applying the broad principles that will deliver the city that we all want—the livable city—not just for us, but for our grandkids. The revision of part A was well received by the community. Why? How do we know that? Because we spoke to them about it and the feedback has been very, very positive, as was the response to the reviews of the part B land use policies.

We are currently reviewing ACTCode and the new code will be released shortly. It will guarantee the future of the bush capital, something that the lack of policy from the Labor Party, and its acceptance of AMCORD in the early 90s, had damaged. Is that inaction on the part of a planning minister? I do not think so. The strategies and the consultation with the public go on, Mr Speaker: the Our City revitalisation of Civic, the Tuggeranong master plan and the Gungahlin lake foreshore master plan. We are currently planning the Belconnen town centre master plan. *(Further extension of time granted.)* We have done the Gungahlin structure plan as well. It does go on and on: the section master plan; 17 plans are now approved, 12 are in development, and 12 more are to come. This is a far cry from the disasters of the B1 with which the Labor Party left us.

It is not just development, it is development in the context of a city. Under the government's social capital policies, what we are seeing is cultural planning as well. Both Gungahlin and Belconnen now have developed cultural plans, and we are doing more work in Tuggeranong. We have an innovative project with the University

of Canberra, and we are developing an ACT cultural map on the Internet—access for everybody, so that they can have this knowledge, so they can have their say.

We do work across all of the portfolios, and the classic example is housing for young people, where the minister for youth, the minister for health and the minister for planning got together and said, "How do we address the needs of young people and make sure that we provide appropriate housing?" We work together. With the Attorney-General I will be releasing the crime prevention and urban design manual.

The point on which I will close is that there is the DAF process—the development assessment forum—which we are working to harmonise across the nation, so that people know, wherever they go, that we all work in a similar manner, with local conditions taken into account. We will also make sure that we do provide some level of certainty to the industry, which is important, so that it can get on with its work.

It is interesting, because the Carr government in New South Wales is taking a similar approach. The planning minister there is Andrew Refshauge. The planning ministers, who have not met for some five years, met in May, I think it was, and are meeting again in November. Two issues are on the agenda. First is quality design and sustainability. The second item is regional planning issues. We can even work with the New South Wales Labor government. It just seems that the ACT Labor Party is out of touch with everyone.

We have done a great deal of work. There is significant improvement in terms of servicing all sectors of the community, as seen in PALM's annual customer survey, and in feedback forms collected by the customer service unit. We have done surveys of the specific units to find out what they are doing, and have received informal feedback, through the development liaison service, to make sure that we are getting it right.

As I have said before, we have had a number of seminars this year to make sure the public has its say. I think PALM is meeting the expectations placed on it by the community. It does do some customer surveys to determine the satisfaction levels, and the levels are going up and up. The staff are doing a good job, because we are giving them the tools to do their job effectively.

Some quotes from some of the surveys include comments such as: "The service we received during a recent dual occupancy submission was excellent, thank you." Then there was: "I found the service with PALM extremely courteous, diligent and helpful at all times." Another one was: "My DA experience was very positive. Good job, PALM." So, to the staff, congratulations. They have embraced the changes to make sure they deliver, and they have embraced them very, very well. They are to be congratulated as well.

We have a vision for the future of a sustainable city, a city that has high-quality design. We have gone outside the envelope—not just outside into the rest of Australia, but outside to the world—to ask others to mentor us, to give us commentary on where we are going, and to make sure that we are getting it right.

The planning process, I believe, is going very well. My administration has focused the process to make sure that it is delivering for all the people of Canberra. They can all have their say in this. What we have to achieve, not just for us now, but for our children and their children, is a city that can survive into the future, and we have made that a priority. We have had a lot of discussion about the whole concept, and shortly we will release information about how we will make that happen. I think it is an exciting time for planning in the city.

What we are seeing is the city coming to life again. What we are seeing is an opportunity to make up for the mistakes that Labor made when they were in office. Our alternative planning minister is somebody who would be tinkering at the edges, without any clear articulation of a vision, or how his party would take us there.

This motion should be rejected by the Assembly.

MR CORBELL (12.01), in reply: Where was the strategic vision for planning in Canberra in what we have just heard from the minister for planning? Where was the systemic whole-of-city approach that we need when it comes to strategic planning? We heard the minister talk about customer satisfaction, as though the planning agency was like a bank where, if you got a good service over the counter, everything must be all right.

Of course, customer satisfaction, and the addressing of concerns with individuals who have an interaction with the planning agency is important, but planning is not just about customer satisfaction. Planning is not just about how good your service was over the counter. Planning is so much more than that. That is the problem we have in this city. The minister thinks that planning is just some regulatory function and that, as long as you administer it well, in terms of whether you get the forms out in the right order and all that sort of thing, then everything must be going all right. He is absolutely wrong.

I want to respond to some of the comments made by the minister. First of all, he is wrong to suggest that the government's approach to planning is on the right track. I ask members to think of this: half a suburb a year in Canberra is disappearing through dual occupancy redevelopment. That is around 500 dwellings a year. That has an enormous impact on the built form of our city. It is a trend that Canberrans are increasingly starting to dismiss, but the minister thinks it is all right.

Mr Moore, in his comments, suggested that I was not differentiating well enough between administration and policy. Methinks Mr Moore is, on this occasion, a bit too much of an apologist for the government for my liking. Mr Moore attempted to portray the problems with planning as minor, as being trivial, and as disagreements about policy, but not about administration. Mr Moore, you are wrong: administration and policy are interrelated. In fact, you set up your administrative structures to suit your policy objectives. That is what this government has done.

My argument in this place this morning is that the policy objectives are wrong, and the administrative structures are wrong. The government sets up a planning process that suits the outcomes it wants. The minister sets up planning processes to ensure that consultation only occurs when the decision has really been made—and we all know about that in this place.

Mr Speaker, I would like to quote from a book by two Australian academics about planning. They say, "'Participation' can mask and therefore protect the power of elites, including professional experts." How true, Mr Speaker. Participation can mask and protect the power of elites, protecting the decisions and the wishes of those who have already asked for the decision to be made.

That is what we do in Canberra. The decision is made, the minister's ear is won, and a proposal is made to vary the Territory Plan. We all know that, unless enough people stand up and fight really hard to stop that Territory Plan variation being approved, it is going to get through. The power is in the minister's hands, and if you can influence the minister you are three-quarters of the way there.

The minister also asked, "Where is Labor's approach?" I would like put on the record, Mr Speaker, that Labor has a comprehensive policy platform, adopted at its last annual conference, that deals with planning issues. Labor is engaging with LAPACs, with community and residents' organisations, with professional bodies and with industry associations to talk in detail about what we need to do to fix the problems in planning at the moment. It was interesting that the minister did not want to talk about the LAPACs' response to his attempt to prevent them from making comments, and the fact that every single LAPAC has rejected his attempt.

The minister said that I was wrong to claim that he had failed in his attempt to introduce dual occupancy development into the old Red Hill heritage area. Well minister, the direction of this Assembly was clear—it did not say "review it for the purposes of seeing whether or not dual occupancy should happen in Red Hill". This Assembly asked you to give a direction to the planning authority, which you have done, to ensure that dual occupancy does not occur in the old Red Hill heritage area. Yes, your attempt to introduce dual occupancy was a failed attempt, as was your attempt to introduce 50 per cent change of use charge.

And yet the minister has the temerity to say that this does not mean that the Assembly endorsed 100 per cent. Well, what an absolute nonsense. We all know that the Land (Planning and Environment) Act said that, on 1 October this year, change of use charge becomes 100 per cent. But the minister seems to suggest that the Assembly was in ignorance of that fact when we made the decision. What an absurd argument.

The minister goes on to talk about rural residential development and he says that he did not attempt to massage or change the so-called independent consultant's report. Well, I have to remind the minister of the motion of grave concern passed in him by this place for his attempt to portray that report as independent, when it was not. So minister, you can duck and weave as much as you like, but the bottom line is that your record on planning is absolutely appalling.

I want to respond briefly to Ms Tucker. Ms Tucker made the point that she did not know why I was moving this motion. I am moving this motion, Mr Deputy Speaker, because this debate is more than just a matter of public importance—it is a substantive policy issue. It is an issue that many Canberrans want to have debated more often and more openly.

Asking members to put their arguments on the line in the Assembly today was one way of engaging and encouraging that debate. And it was one way of asking members to decide whether they were happy with planning in this city or not, and whether they were satisfied with the way planning worked in this city or not. A matter of public importance is all very well, but it is about time that we actually started having a substantial debate about policy and about planning in Canberra. That is why it warranted a motion.

Mr Deputy Speaker, I want to conclude with a couple of comments. The first is another quote from Gleeson and Low's book, *Australian Urban Planning: New Challenges, New Agendas*. This is a very good text and I certainly recommend it to all members who have an interest in planning. The quote is about openness and about engaging in democratic debate, and it says:

> A plan is a collection of policies for a city, not made lightly and not to be changed on the whim of a minister or a developer. Planning means sticking to public policy in the face of development pressure. That needs to be clearly registered. It will be difficult, because the culture of planning in Australia is quite the reverse: the first sign of developer pressure often results in capitulation.

That happens too often in Canberra. The Territory Plan is changed far too often on the whim of individual development proponents. And every time we change the Territory Plan to suit the whim of an individual developer, we undermine strategic planning in our city, and we undermine the capacity of Canberrans to have faith in our system of planning.

In conclusion, the capacity for Canberrans to engage as equals in this process is not about equal standing or appeal rights. It is about whether or not everyone has an equal say in influencing planning policy; whether everyone has an equal say about what development occurs and where. The quote that I have just read underlines that fact, and demonstrates that, at the moment, planning is driven by development pressure, not by a genuine attempt to engage individual citizens in the future shape and form of their city. I urge members to support the motion.

Question put:

> That the motion (**Mr Corbell's**) be agreed to.

The Assembly voted—

Ayes, 4	Noes, 5
Mr Corbell	Mr Cornwell
Mr Hargreaves	Mr Kaine
Ms Tucker	Mr Moore
Mr Wood	Mr Smyth
	Mr Rugendyke

Question so resolved in the negative.

Sitting suspended from 12.15 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Department of Health and Community Care—Chief Executive

MR STANHOPE: Mr Speaker, my question is to the Minister for Health and Community Care. Yesterday, in answer to a question from Mr Hargreaves, the minister confirmed that Morgan and Banks had undertaken the search to replace the chief executive officer of his department. Can the minister tell the Assembly what was the process by which Morgan and Banks was appointed? What tasks did the brief to Morgan and Banks require the company to undertake? Did the brief require Morgan and Banks to prepare for instance, the selection criteria, the job profile, ad copy or selection panel questions?

MR MOORE: Mr Speaker, I will take on notice the detailed questions. The choice of Morgan and Banks and the work was done through the head of the Chief Minister's Department, which is the normal process, to the best of my knowledge. I will get information and come back to the member.

MR STANHOPE: I have a supplementary question. Thank you, minister. I will add to that. Minister, could you explain in your answer what role your department played in the search for a new CEO? Did the department, for instance, work on the selection criteria, job profile, ad copy and selection panel questions? Would you be prepared to table the brief to Morgan and Banks and are you confident that the company had sufficient work to do to justify its consultancy fee in relation to this appointment?

MR SPEAKER: They are very detailed questions.

MR MOORE: Mr Speaker, I will take those on notice as well.

Business Development

MR QUINLAN: My question is to the Chief Minister and it relates to business development. Can the Chief Minister shed some light on a situation that was brought to my attention a short time ago? A person who was interested in starting up a new business and wanted some help from government phoned the ACT government switchboard and was given two numbers to call. When this person phoned the first number she got a Telstra recorded message saying the number had been disconnected. The second number she was given was that of the ACT Chamber of Commerce and Industry. I am aware that the government has a close relationship with at least the chief executive of the ACT Chamber of Commerce and Industry, but can she explain why the government is passing out the listed number of the chamber of commerce when it makes such a play of its role in business development in the ACT?

MS CARNELL: I have no idea why we would give a number that was disconnected. I hope that the person involved wrote it down incorrectly. Alternatively, the person who is on the switch gave it incorrectly, which is a very real problem. One of the reasons why the chamber of commerce number may have been given out is that the chamber of commerce does have, or has had in the past, the role of giving business advice on behalf of the ACT government in a range of different areas. I know that we have just been out

to tender again and I do not think they won the tender this time. That is an ongoing scenario. That tender has been out on a number of occasions and different entities have won that tender to give business advice. I seem to remember that the chamber of commerce did not pick up the tender last time. I have to say that I cannot shed any light on that at all.

The ACT government has a whole range of business incentive approaches and business help, not the least of which is Business Gateway, a one-stop shop approach for business advice in the ACT. It is accessible in a number of different ways. Business Gateway gives people who are looking at setting up business a telephone number and an internet address whereby they can access information about all of the business licences and all of the business requirements that they may need for a particular style of business. I seem to remember that Business Gateway recently indicated that they had had something like a quarter of a million hits on that site, so it is going extremely well.

Business Gateway is also going into a new phase with Business Gateway 2, which will allow people to not just access forms and requirements on line and download them but also will allow people to fill them in and submit on line and submit payments on line as well. This will be a whole new step forward which I think will be a great benefit to those people in the business community who cannot access shopfronts between 9 am and 5 pm, or do not want to access during normal business hours and want to get information 24 hours a day, seven days a week, as they can on Business Gateway.

Mr Quinlan: I guess this is one that you will take on notice, Chief Minister.

MS CARNELL: Well, without knowing who the person is—

Mr Humphries: How can she? We don't know who it is.

MR QUINLAN: This is a supplementary question. Do we no longer redirect potential businesses to the chamber of commerce?

MS CARNELL: Mr Speaker, we would give people who are interested information about all of the business support groups in Canberra. The chamber of commerce is the largest. There is a whole range of different entities. I certainly will not say we will not give the chamber of commerce number to people who are looking at starting a business in the ACT.

Mr Quinlan: Well, will you tell them it is the chamber of commerce?

MS CARNELL: It would strike me as quite a normal thing to do. In fact, if somebody was looking at starting up a pharmacy I might even give them the pharmacy guild's number, and if they were looking at becoming a lawyer we might give them the law society phone number. You never know, Mr Speaker. If that is what they want, why wouldn't we give that information? Mr Speaker, I am distressed that the person involved did not get access to Business Gateway.

Mr Hargreaves: What about the TLC?

MS CARNELL: That would be fine too if that is what they wanted. I am distressed that they did not access Business Gateway because it is the one-stop shop approach that the ACT government has in place to ensure that people can get access to a full range of business information.

Griffith Primary School Site

MR CORBELL: My question is to the Treasurer. Treasurer, at a well-attended meeting of the Manuka LAPAC last night the head of asset management in your department informed Griffith residents that no development at all at the old Griffith Primary School was an option. Can you confirm that this is the government's position?

MR HUMPHRIES: Of course it is an option, Mr Speaker. We have a public consultation process under way at the moment about the development of the site and obviously we take account of what that produces in deciding what to do. We have foreshadowed in our land release program that there should be some development of that site, but if the end of the public consultation exercise suggests strongly that there should not be any development on the site, well, the government is prepared to consider that option.

MR CORBELL: Minister, can you explain why the site is on the government's land release program for the next financial year as a residential site of 200 dwellings if no development at all is not an option? How accurate is your land release program if that is the approach you take to it?

MR HUMPHRIES: That question, with respect, is so silly as to almost not be worth asking. To say that no development is an option also implies that some development is also an option, does it not? Some development being an option, it therefore behoves the government to put out an indicative proposal on the table for people to see. We have suggested that there could be development of that site and that concept has been placed in the public arena. Nobody has ever suggested that when you put on the table the option for development of a site you say that therefore exactly what is proposed in the land release program must occur; that no change is possible. No-one has every suggested that. It was not the case under Labor. It has not been the case under the Liberal Party. Why you should suddenly think there is some reason to believe that what is in the land release program is an absolute set-in-concrete type promise of what exactly is going to happen, I do not know. Ask your colleague behind you who used to be a planning minister. See how it was handled in your day.

Business Incentive Scheme

MR BERRY: Mr Speaker, my question is to the Chief Minister, and it will draw attention to another episode in the generosity of the Chief Minister with taxpayers' money. My question relates to a Canberra company, Diskdeed. I have raised issues about this company over a number of years. As the Chief Minister does not read the *Canberra Times*, as of yesterday at least, I might remind her that I think there were reports in the *Canberra Times* of business incentive grants of $60,000 or $70,000 or thereabouts, and there was some government assistance through the Youth 500 scheme, which grew to the Youth 1000 scheme.

At the same time this company was convicted two or three times, from my recollection of it, for occupational health and safety breaches. I have previously raised concerns with the Chief Minister in this place about offering handouts to a company with such a poor record of workplace occupational health and safety. I have to say, Mr Speaker, that my concerns have deepened in recent days—

Mr Humphries: Is there a question here somewhere, Wayne?

MR SPEAKER: It is a very long preamble, Mr Berry.

MR BERRY: Not nearly as long as the answers yesterday, Mr Speaker.

MR SPEAKER: We will see about that.

MR BERRY: I found out, and this is the punchline, that the company has now been sold to a Melbourne business and the newly trained workers are out of work. Of course, the business is going to Melbourne. Chief Minister, how can you justify this generous taxpayer-funded enhancement of the company in preparation for its sale to a Melbourne company and the subsequent loss of jobs in the territory? Don't you ever require a continuing commitment from these companies to the ACT, or do you just hand the money out to them willy-nilly?

MS CARNELL: Mr Speaker, I think Mr Berry may be speaking about a business incentive grant that was given in 1995-96, a very long time ago, and one that we have discussed many times in this place. The contract for Diskdeed expired in September 1997, which was also quite a long time ago. You know, it is interesting. You could not actually require a company not to sell or to stay in Canberra forever. It would be a little tiny bit tough to do that, I would have to say.

Mr Berry has raised the name of this company in this place before, and the questions have been answered before. As I say, to my knowledge no business incentive grant has been given to Diskdeed since 1995-96. My advice here is that the contract expired in September 1997, so that was also a long time ago.

Of course, after that period of time, the ACT government significantly changed the approach that we took to ACTBIS, the business incentives grants. To start with, that was before the last election as well. It was a different Assembly then. We require significantly greater levels of reporting now, as members would know because we have tabled all of that information about reporting requirements for our business incentive scheme recipients. Those reports have been made available before today to estimates committees and others.

This is a report only until January this year, Mr Speaker. I am sorry I do not have one that is more up to date than that but they certainly exist. I just do not have one with me. Until then the actual employment full time from the ACTBIS program was 1,075, and part time it was 196. In full-time equivalents, 1,173 jobs have been created as a result of the business incentive scheme approach. The average cost per job per year was something like $1,800, which we think is money extremely well spent if that gives somebody a job. These jobs traditionally have been long-term jobs.

The business incentive scheme has also involved companies like IBM Global Services, more recently CSC and EDS. Those opposite have been very critical of us giving business incentive grants to those companies. EDS has created 388 full-time jobs and 129 part-time jobs right here in Canberra. IBM Global Services have—

Mr Berry: Mr Speaker, I take a point of order. My question was about Diskdeed.

MR SPEAKER: Thank you.

MS CARNELL: I can understand why you do not want to know about business incentives, Mr Berry. They have created 360 full-time jobs. Mr Speaker, the reason I brought that up was because Mr Berry has continued to criticise our business incentive approach. The fact is that it has created, as I said, over 1,000 jobs. In fact, significantly more than 1,000 jobs.

For those people on this side of the house who will remember, Mr Berry was one of the people who got stuck right into a company called AOFR, a local company that had some very innovative work in the area of fibre-optic splitters. Members who have driven past Symonston of recent days will have seen that AOFR are in the process of expanding and almost doubling the size of their factory. They must be nearly finished.

MR BERRY: Mr Speaker, I have a supplementary question. She might have another go at this if she can get her head around it. Does the government require a continuing commitment to the territory, or is this just another example of sharp business people taking advantage of her generosity with somebody else's money?

MR SPEAKER: I am sorry, a question answered cannot be repeated. You have answered the question, Chief Minister.

MR BERRY: Okay. A supplementary question, Mr Speaker.

MR SPEAKER: No. Sit down. You have used your supplementary question.

Mr Berry: No. Hang on a minute. Wait a minute. Mr Speaker, I take a point of order. Okay, I will accept that you don't require the Chief Minister to answer the question.

MR SPEAKER: The question has been answered.

Mr Berry: Are you going to let me finish my point of order? You don't require the Chief Minister to answer the question, Mr Speaker. You claim that it had already been answered, though rather poorly, in relation to the—

MR SPEAKER: I am no judge of that.

Mr Berry: In relation to the continuing commitment to the territory, but my supplementary is this: is this another example of a sharp business person taking advantage of her generosity with taxpayer's money?

MR SPEAKER: No, I am sorry, you have asked your supplementary question. Sit down.

Mr Berry: She will need more protection than that.

Mr Moore: Name him.

MR SPEAKER: Yes, Mr Berry, you will be named if you are not careful.

DNA Legislation

MR OSBORNE: My question is to the Attorney-General. It relates to the DNA legislation, and in particular to some of the things that were raised on radio this morning—was it by Mr Hargreaves?

Mr Humphries: Mr Stanhope.

MR OSBORNE: Sorry; Mr Stanhope. I did not hear the interview. It was my staff who heard the interview, so I do apologise. The particular issue is the taking of samples from people. My office was somewhat concerned to hear that the legislation has wider ramifications than my and my officers' understanding of what we had agreed to support. Could you clear up this issue for me and give an undertaking that what was alleged this morning was not true?

Mr Corbell: I raise a point of order, Mr Speaker. This is pre-empting a matter which is listed for debate.

MR SPEAKER: Thank you, Mr Corbell. The matter is on the notice paper for debate.

Mr Humphries: Yes, Mr Speaker, but the question seeks an explanation of government legislation. I think members are entitled to ask for clarification of government legislation.

Mr Corbell: No, it is a bill.

Mr Wood: The debate is coming on in an hour or so. Do it then.

MR SPEAKER: Order! I will handle this.

Mr Humphries: The comments of Mr Stanhope this morning related to—

Mr Berry: I take a point of order, Mr Speaker.

MR SPEAKER: Order! Will you just sit down for a moment?

Mr Berry: Would you care to rule on the point?

Mr Humphries: I am in the middle of a point of order, if you don't mind, Wayne.

Mr Berry: Would you care to rule on the point of order?

Mr Humphries: I am in the middle of addressing the point of order, Mr Berry.

Mr Berry: No, you are not. You are speaking to the question.

Mr Humphries: I am speaking to the point of order.

MR SPEAKER: Mr Attorney, I draw your attention to standing order 117 (f):

> Questions may be asked to elicit information regarding business pending on the Notice Paper but discussion must not be anticipated.

Mr Humphries: Sure, Mr Speaker, and I am happy to answer this question without anticipating discussion, but I will address the issue that has been raised.

MR SPEAKER: I am quoting standing orders.

Mr Corbell: On the point of order, Mr Speaker: I find it difficult to believe that the Attorney is going to be capable of not anticipating discussion when Mr Stanhope has already indicated in a public forum that this will be a matter of debate when the bill is debated later this sitting. I find it very difficult to believe that the Attorney is capable of not anticipating debate.

MR SPEAKER: There is no point of order. That is entirely up to the Attorney.

Mr Corbell: It is up to you actually, Mr Speaker.

MR SPEAKER: I have drawn the standing orders to his attention. I suggest that—

Mr Berry: Mr Speaker, it is not entirely up to the Attorney. I take a point of order. It is entirely up to you to make a determination.

MR SPEAKER: And I am saying I have drawn attention—

Mr Berry: So you are giving your responsibility to the Attorney. Okay.

MR SPEAKER: Be careful, Mr Berry. Do it again and you will be warned. Mr Humphries' attention has been drawn to standing order 117 (f). I am quite sure he is capable of not infringing.

MR HUMPHRIES: Mr Speaker, I am very happy to give information regarding business pending on the notice paper, namely, the DNA legislation which is on the notice paper for debate, I think tomorrow. Mr Speaker, I do not have with me the comments made this morning in the media but they suggested that the legislation will allow the police to take into a cell a girl guide who was selling raffle tickets illegally, hold her down, thrust a piece of material in her mouth, a swab, and take a sample from her mouth. Mr Stanhope said that that meant that there was going to be a capacity for people to be able to have all sorts of horrible things done to them in breach of their civil liberties.

Mr Speaker, first of all, I draw Mr Stanhope's attention to proposed section 27 of the legislation. He accused me of not having researched my legislation very well. Mr Stanhope has not done his research very well.

Mr Berry: On a point of order, Mr Speaker: he is referring to a part of the bill which is before the house. Now, if that is not anticipating debate—

MR HUMPHRIES: I am allowed to, Mr Speaker. The standing order says I may give information regarding business pending on the notice paper. I may do that and I am doing that now.

MR SPEAKER: Discussion must not be anticipated. That is the qualification.

MR HUMPHRIES: Mr Speaker, I am answering the accusation or the comment that the legislation allows girl guides to be compulsorily examined.

Mr Stanhope: Only if they are over 18 and they offend.

MR HUMPHRIES: Oh, only if they are over 18? You did not mention that on the radio this morning, Mr Stanhope. You forgot to mention that.

Mr Corbell: Yes he did.

Mr Stanhope: It is irrelevant anyway.

Mr Hargreaves: Yes he did. Chronic deafness.

MR HUMPHRIES: Well, I have the transcript here somewhere. I will get the transcript brought down to me, Mr Hargreaves.

Mr Hargreaves: Go and get it. Table it.

MR HUMPHRIES: He does not refer to anybody being over the age of 18. You are wrong, Mr Hargreaves.

Mr Hargreaves: Table it.

MR HUMPHRIES: I will. Mr Speaker, clause 27(3) is about non-intimate forensic procedures on a suspect by order of a police officer. Subclause (3) says:

> This Part does not authorise the carrying out of a forensic procedure on a suspect who is a child or incapable person.

So the girl guide cannot be tested against her will under this legislation. Mr Speaker, first of all, the legislation does not allow girl guides to be examined. I am advised by my colleague, the minister for health, that girl guides are under 18.

Secondly, Mr Stanhope, as I recall, cited the example of a person selling unauthorised raffle tickets. I think that was the example he gave. He further quoted today an example of a person who committed any offence being capable of being tested under the legislation. He has overlooked clause 29 of the legislation which says this:

> The police officer—

this is the one who is authorised to be able to carry out the examination—

> must be satisfied on the balance of probabilities that—
> (a) the suspect is in custody that is lawful custody; and
> (b) if the forensic procedure is a procedure other than the taking of a handprint, fingerprint, footprint or toeprint—the offence for which the person is a suspect is a serious offence and there are reasonable grounds to believe that the suspect committed—
> (i) that offence—

or other offences et cetera, et cetera, is a serious offence. A serious offence is defined elsewhere in the bill as an indictable offence.

Mr Stanhope: Read out subclause 27(1) to us.

MR SPEAKER: Order, Mr Stanhope!

MR HUMPHRIES: I just did.

Mr Stanhope: Read the definition of suspect.

MR HUMPHRIES: Mr Speaker, I will read it out now:

> A person is authorised to carry out a non-intimate forensic procedure on a suspect in custody by order of a police officer under this Part...
> This Part does not authorise the carrying out of a forensic procedure on a person who is a child…

Mr Stanhope: Read proposed section 8 now, Attorney.

MR SPEAKER: Order! The minister is answering Mr Osborne's question.

MR HUMPHRIES: You can read it yourself. You have to read proposed section 8 in conjunction with proposed section 29, Mr Stanhope.

Mr Stanhope: Read proposed section 8 in conjunction with proposed section 27, Attorney.

MR SPEAKER: Mr Stanhope, I would hate to warn you, the Leader of the Opposition, but I am getting very close to it.

MR HUMPHRIES: Now, Mr Speaker, to answer the interjection of Mr Hargreaves: Mr Stanhope said on the radio this morning:

> A girl guide selling raffle tickets without the necessary authority can be DNA tested under this legislation, and, more than that, one of the other concerns we have about this legislation is the range—

Blah, blah, blah. He goes on to refer to the girl guide selling raffle tickets. There is no reference to her age, Mr Hargreaves. I table the following paper:

Crimes (Forensic procedures) Bill 2000—DNA samples—Copy of transcript of Canberra 2CN radio interview with Mr Stanhope (Leader of the Opposition) on 6 September 2000, prepared by Rehame Australia Monitoring Services.

Mr Stanhope: All right, a girl ranger. Somebody down at the pensioners club conducting a meat raffle.

MR SPEAKER: Order! Settle down, all of you.

MR HUMPHRIES: Oh, it's a pensioner now, is it? First of all, Mr Speaker, let us take the pensioner.

Mr Quinlan: Take anybody.

Mr Stanhope: Take anybody over 18.

MR SPEAKER: Order! Otherwise the members of the opposition may end up with a lone ranger over there after I have dealt with the rest of you. Now just be quiet.

MR HUMPHRIES: Take Mr Stanhope's suggestion of a pensioner who is selling raffle tickets unauthorised. Sorry, Mr Stanhope, it is not an indictable offence to sell raffle tickets without proper authorisation.

Mr Stanhope: Read clause 8.

MR HUMPHRIES: I do not know what sort of lawyer you are, Mr Stanhope, but my advice from my department has been absolutely explicit. There is no way that these provisions apply other than to an indictable offence. If you do not believe—

Mr Corbell: I raise a point of order, Mr Speaker. The Attorney, first of all, is debating the legislation. Secondly, he is not addressing his remarks through the chair. I would ask you to call him to order on both those points.

MR SPEAKER: I am anxious that Mr Humphries answer Mr Osborne's question. I do not want a string of interjections from the Leader of the Opposition arguing legal points.

Mr Corbell: Well, who is provoking it, Mr Speaker? He is.

MR SPEAKER: No, he is answering Mr Osborne.

Mr Wood: So the minister can do it but nobody else can.

MR HUMPHRIES: In answer to Mr Osborne's question about how accurate are Mr Stanhope's comments on the radio this morning: they are totally inaccurate. They are a scare campaign. They are misleading. Mr Stanhope accused me of misleading the community today on radio.

Mr Stanhope: You did.

MR HUMPHRIES: I did not. I did not mislead. What I said, Mr Speaker, was accurate.

Mr Stanhope: What is this two years nonsense you are going on with?

MR SPEAKER: Order! I warn you, Mr Stanhope.

MR HUMPHRIES: The fact is that these do not apply to children; they do not apply to people who commit offences that are not serious. They only apply to indictable offences, and when a suspect is tested and that person is subsequently cleared of an offence, any DNA sample taken from that person has to be destroyed. So there are ample protections in these arrangements. Incidentally, those protections in that respect reflect the model criminal code officers committee recommendations on this issue.

Mr Speaker, there are differences between some states and some territories as to the question of what level of offence is caught on the permanent DNA database record. We have chosen offences that carry a penalty of two years or more. Those people opposite argue obviously that there should be a five-year limit or some other limit. Mr Speaker, the fact is you cannot have it both ways. You cannot say you are concerned about crime in this community and not support comprehensive DNA legislation in this place. You cannot have it both ways, Mr Speaker.

Mr Berry: I take a point of order, Mr Speaker. What you can have both ways was not part of the question.

MR SPEAKER: I think Mr Humphries is finished. Mr Osborne, do you have a supplementary question?

MR OSBORNE: Yes, thank you, Mr Speaker. Are the police set up, minister, to handle DNA sampling immediately should this legislation be passed?

MR HUMPHRIES: Mr Speaker, I understand that they are. The legislation we will pass is reflective of legislation passed in other parts of Australia. Only this week I understand that the federal justice minister opened necessary premises in the ACT that will facilitate the collection of the data. The laboratories of Weston are now, as far as I am aware, fully operational. I visited them a couple of weeks ago and they appear to be fully operational. There is no reason why we cannot proceed immediately.

There is a question of some other work being done at the national level by the AFP to allow the collection of information from different states and territories and placing it on the database, Mr Speaker, but to all intents and purposes the ACT arm of this exercise is ready to go. The only missing ingredient in all of this is the support of legislators for this important legislation. That is what stands between solving a host of crimes in this community and not solving those crimes. Mr Speaker, there are crimes today unsolved in this community which I believe will be solved quickly after the passing of this legislation. There are crimes now waiting to be resolved. It is up to members opposite and those on the crossbenches to decide whether they want those crimes to be solved or they do not.

Bus Services for Disabled Children

MR HARGREAVES: My question is to the Minister for Education. Minister, I understand that Keir's of Canberra Charter Coaches has been successful in tendering for the department of education's disability services bus routes. I have been contacted by parents who are extremely happy with the service that ACTION has provided. Their children have built up rapport and trust with ACTION drivers, and many of these children, as I am sure you will appreciate, do not adapt well to change. Minister, when was the tender called, when was the decision made, and how many companies tendered for the contract?

MR STEFANIAK: In terms of how many companies tendered, Mr Hargreaves, and the exact dates, I would have to get that information for you.

Mr Smyth: It was called in November 1999.

MR STEFANIAK: There you go. I am advised that in November 1999 a request for tender was called for, Mr Hargreaves, and the deal was signed on 28 August. My understanding is that Keir's have been involved before and it is not just Keir's who are involved; it is Keir's and ACTION who have won the tender for these bus routes. I understand that a lot of work was done in relation to these matters.

Mr Hargreaves, I think there has been only one problem brought to my attention involving Keir's in the past. There have been, on occasions, some problems involving ACTION in the past too. They go back some years in both instances in relation to those bus groups. They have taken any problems that have arisen very seriously and taken steps to ensure that they do not occur again.

Both companies, Mr Hargreaves, are fully committed to providing a high-quality service appropriate to the transport of children with special needs. You are quite right about those needs being very different from normal mainstream bus services. Also, the companies will meet all the contract specifications, including the provision of things like seatbelts, punctuality requirements and other standards. Both companies have training courses for drivers. Standards of service are to be strictly maintained. Close liaison will remain between my department and those respective bus companies to follow up all issues that are raised by parents.

MR HARGREAVES: I thank the minister for the answer, Mr Speaker, but I have a supplementary question. Will the minister describe to the Assembly what split between the two companies has occurred? He mentioned that they are both involved in it. I would like to see what arrangements have been put in place where two people are now doing only one. What arrangements have you put in place to allay parents' and children's concern over the change?

MR STEFANIAK: In terms of the split, who is doing what, I would have to get that information to you, Mr Hargreaves. I could provide that, including the routes, but I do not have that immediately to hand. As I indicated, both companies are very much committed to high-quality service. The department will be monitoring how the companies go. Obviously, if there are problems, the department is contacted by parents.

As I indicated, the standards of service are to be strictly maintained. There may be some further information.

The information I do have may go largely towards answering who is doing what. ACTION is continuing to provide its existing SMT services, less five more side runs that service Turner, Hartley Street, and Koomarri Schools. Those, I understand, will be done by Keir's. If there are any other differences, Mr Hargreaves, I will get that information to you. I think I have seen some information which gives details of the bus services. If you wish to have that in detail, I am happy to provide that to you as well.

Gambling and Racing Commission Website

MS TUCKER: My question is to the Treasurer. I happened to be looking for information on the Gambling and Racing Commission's website recently. Members will know how important web pages are in communicating the fundamental values of an organisation. To my great surprise I discovered that the Treasurer's face graces the very first page a visitor comes to when looking up this independent statutory authority. Why is it that this organisation alone, out of the minister's own departments and out of all other independent statutory authorities, shows the minister as a central part of their team, I wondered. Bearing in mind KLA consultant's conclusion in their recent review of the commission's structure, that "the autonomy and independence of the commission is critical to its success", minister, why is your photo on the commission's home page, putting you at the heart of the commission's operation?

MR HUMPHRIES: Mr Speaker, members are aware of my strong personal interest in gambling and racing matters.

Ms Tucker: The question is the perception.

MR SPEAKER: As long as modesty does not forbid you from answering, you may do so.

MR HUMPHRIES: Well, Mr Speaker, I am afraid to say sarcasm is my stronger suit rather than modesty. I do not know. I think Ms Tucker was saying that the page for the Gambling and Racing Commission has a link with me.

Ms Tucker: No, your photo is on the front of it. Would you like me to table it?

MR HUMPHRIES: My photo is on it. I would be very pleased, very pleased. Mr Speaker, I would like Ms Tucker to incorporate my face into *Hansard.* I think that would be a rather nice step. Is it a left profile or a right profile, Ms Tucker?

Ms Tucker: No, you look very happy. This is why I am worried. The Treasury, you know.

MR HUMPHRIES: It obviously was not taken on a sitting day in that case. Mr Speaker, I do not know why my face appears on the gambling commission's web page.

Mr Rugendyke: It's a mug shot. You are barred from the casino.

MR HUMPHRIES: It could be, yes. That also could be possible. Mr Speaker, I do not know. I will find out. I will take that question on notice.

MS TUCKER: Thank you. My supplementary is this: to assure the people of Canberra that their gambling commission is not influenced unduly towards gathering government revenue when they are engaged in their work, will you request that the commission remove your photo from their web page?

Mr Smyth: No, they are independent. You can't do anything.

MR HUMPHRIES: Well, there is a bit of a logical tautology. If they are independent, how am I supposed to tell them to take my picture off their web page? Mr Speaker, I do not know why the commission has done that. I will find out why the commission has put up my picture on their web page and, if it is appropriate, I will ask them to remove it.

Bruce Stadium—Olympic Football

MR WOOD: Mr Speaker, my question is to the Chief Minister. Chief Minister, I raise again a concern from yesterday about the cost of replacing the turf at Bruce Stadium. You said that there are no costings on the new turf at this stage. I expect the new turf is now laid.

Ms Carnell: No, not yet. Today.

MR WOOD: Not yet? It is about to be laid. What, today, tomorrow or something?

Ms Carnell: It started today. I think it is today.

MR WOOD: Starting today. Well, with the turf now being laid, do you or anyone in your administration yet know the cost? If not, when do you expect to find out?

MS CARNELL: I have to answer the same way as I did yesterday. The contract is not with the ACT government, it is with SOCOG. SOCOG have given an undertaking that they will do the best deal possible for the ACT and they will send us a bill at an appropriate time. I said that yesterday and it is the case right now. We still don't know what the final cost will be. I understand that the contractor will not bill SOCOG until they have finished the job, and I have to tell you right now that I might be really negative to pay anyone until they finish the job.

Cross-border Hospital Costs

MR RUGENDYKE: My question is to the health minister, Mr Moore. Minister, I understand that there has been a mediation process to determine the amount the ACT will be paid from disputed cross-border hospital costs. Can the minister please advise the Assembly where this process is up to, how much the ACT will receive, and what portion of the original bill was awarded to the ACT?

MR MOORE: Thank you, Mr Rugendyke. The process is up to a stage where the acting chief executive officer of Health is in New South Wales at the moment seeking to finalise the mediation agreement. We will not know the level of cross-border payments until such time as that is finalised, Mr Rugendyke.

MR RUGENDYKE: I have a supplementary question. I understand that there are some disputes and areas of difference. Could you please provide an overview of the areas of difference and dispute? Could you also obtain detailed figures and costs from your department and table them in this place?

MR MOORE: Mr Speaker, I will make sure the Assembly is informed when the cross-border issue is resolved and how we intend to use that money. Of course, it is about treating patients from New South Wales, so the money will be used to improve our health services.

Very Fast Train

MR HIRD: Mr Speaker, those opposite are very quiet. My question is to the Chief Minister, Mrs Carnell, and it is a simple one. What efforts is this government making to ensure that the decision by the federal government is made as quickly as possible on the next stage of the very high speed train project?

MS CARNELL: Thank you very much, Mr Hird, for an important question. I am pleased that Mr Stanhope understands that it is an important question as well. Mr Speaker, this project is probably the most important project that could possibly get the green light in any of our terms in this Assembly. It is a $4 billion project. It will create something like 13,000 jobs during construction. It will create more than 2,000 jobs when it is up and running and it will fundamentally change Canberra and the region, but it is a very big project, Mr Speaker, and it has taken a huge amount of work over a long period to get it to the stage that it is now.

As members would be aware, New South Wales, the ACT government and the federal government formed a tripartite committee a number of years ago. We went out to expressions of interest and then to a second stage tender project. It was a two-stage process. The third stage of that was the choice of the Speedrail consortium to work up their project. That was done. The report has been on the table. As members would know, we have been part of the whole process all the way through, to the extent of commissioning Macquarie Bank to look at some of the figures, and hopefully to look at them in a very different way.

Mr Speaker, I personally have also gone to see a large number of members of the federal parliament, coalition members and members of the Democrats as well. That is why I was so pleased to see a press release from Mr Stanhope recently in which Mr Stanhope came out and said Howard should back the fast train. He said it was time that Mr Howard showed leadership and announced a positive decision with regard to the very fast train. Mr Speaker, I think it is really important that I quote some of Mr Stanhope's media release because it was so good. It said:

> Canberra—and the nation—needed a quick, definitive and positive decision on the future of the project…

It then said:

> There's no need for any further delay...How long does it take? How many more studies and consultancies have to be undertaken?

Mr Humphries: Or inquiries.

MS CARNELL: Or inquiries. Mr Speaker, we agree. That is why I was absolutely amazed, Mr Speaker, when last night on my desk I saw this media release headed "Labor initiates VFT probity inquiry". It says:

> Labor has initiated a Senate probity inquiry—

Mr Humphries: Shame.

Mr Stanhope: They have heard that you have something to do with it.

Mr Quinlan: You and John Walker. John Walker's figures. Tell us about them.

Mr Hird: Johnny has done it again.

MR SPEAKER: Order! Order, please, from both sides. I cannot hear the Chief Minister.

MS CARNELL: Mr Speaker, the press release said:

> Labor has initiated a Senate probity inquiry into the proposed Sydney to Canberra Very Fast Train project to establish that:—

this is really important, taking into account the interjections opposite—

> the selection process was fair and equitable; all bids were assessed against the same criteria, including the issue of no net cost to government; and any changes to the scope of the project following the conclusion of the selection process would not have changed the outcome of the process if they had been made originally.

This is nothing to do with the Macquarie report, Mr Speaker. That is not even in the Senate inquiry. Mr Speaker, the press release goes on to say:

> The alternative bidders for the project have expressed some concern about the scope of the original tender and the decision-making process.

Mr Speaker, the decision-making process was made by the New South Wales Labor government, the ACT government and the federal government. If Mr Ferguson and the Labor Party, those opposite, actually believe there was a problem, why didn't they go and speak to Mr Carr? Going back to Mr Stanhope's press release, it is interesting that he said this:

> The NSW Government agrees it should go ahead. Bob Carr has offered an incentive package.

Right, Mr Speaker, absolutely right, because they were part of the process. But what have those opposite done? What has Mr Stanhope done? He has put out silly press releases getting stuck into the federal Liberal government when it is the Labor Party federally that wants to slow this project down. They want to do a probity check on a project that had a full probity ordered as part of it which the New South Wales government know about, Mr Speaker, because they were part of the three-way group. The independent probity ordered was conducted by Deloitte Touche Tohmatsu.

Mr Stanhope: When they saw the Macquarie Bank submission the old antenna went up.

MR SPEAKER: Order, Mr Stanhope! You have been warned already.

MS CARNELL: Mr Speaker, he has already been warned. An independent probity order has already been conducted by Deloitte Touche Tohmatsu in 1998, something that the New South Wales government know all about. Everybody has been quite open that it existed, Mr Speaker. The VHST assessment team, as I said, comprised officers of the New South Wales government, the ACT government and the Commonwealth government. The probity order indicated that the approach had been conducted fairly and equitably with due regard to probity, so what are Mr Ferguson and the Labor Party doing here, Mr Speaker?

They are slowing down a project that Mr Stanhope, only two weeks ago, wanted to play politics with. It just shows how serious that was. Mr Stanhope is not out there today with media releases getting stuck into Martin Ferguson. That is what he should be doing. If I were Mr Stanhope and those opposite I would be just so embarrassed that my federal colleagues had managed to slow up a project. I will finish, Mr Speaker, with a quote from Mr Stanhope's own media release:

> The fast train is highly important to Canberra's future, particularly if the route is going on to continue to Melbourne…A Speedrail presence can only enhance that broadening of our economic base. It would be a great boost to the local economy and another reinforcement of Canberra as the heart of the nation.

Those are Mr Stanhope's words, Mr Speaker, but where is the press release and where is the pressure on the federal Labor Party to stop this nonsense?

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

Bus Services for Disabled Children

MR STEFANIAK: In relation to Mr Hargreaves' question, I mentioned the date, 28 August. That was when the contract with ACTION was signed, Mr Hargreaves. I understand that Keir's contract has not been signed yet.

PUBLIC SECTOR MANAGEMENT ACT—EXECUTIVE CONTRACTS
Papers and Ministerial Statement

MS CARNELL (Chief Minister): For the information of members, I present the following papers:

> Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments—
> Temporary contracts:
> Penny Gregory, dated 24 August 2000.
> Lyn Walsh, dated 24 August 2000 –

Mr Speaker, I ask for leave to make a short statement with regard to the contracts.

Leave granted.

MS CARNELL: Mr Speaker, I ask members to respect the confidentiality of these documents. I thank members for respecting confidentiality in the past.

VICTIMS OF CRIME (FINANCIAL ASSISTANCE) AMENDMENT BILL 2000

Debate resumed from 24 May 2000, on motion by **Ms Tucker**:

> That this bill be agreed to in principle.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (3.24): I will not detain the Assembly for long with my comments about this legislation. I will start by adopting the words that were used by Mr Corbell the other day. When we were discussing the reintroduction of legislation dealing with betterment, Mr Corbell got up and said, "You people are just sore losers. Don't you know when you've lost." I think that comment could just as well apply to this bill.

It is a considerable concern to see this issue raised again in this place after what was, I think, extensive debate on this matter in the Assembly.

Mr Quinlan: And an appalling decision taken.

MR HUMPHRIES: That comment is probably a reflection on the vote of the Assembly and, as such, is against standing orders. I assume that Mr Quinlan did not quite mean what he said—he must have meant to say something slightly different.

Mr Speaker, I think we will have a real problem if we try to unscramble an egg that has been scrambled. We oppose this bill for a number of reasons. The issues have been fully and properly canvassed by the Assembly in the course of the last two years. A package of reforms, particularly in respect of criminal injuries, to the victims of crime legislation was foreshadowed in this place several years ago. These reforms were put out in discussion paper form and heavily discussed in the broader community. A working party, on which many key stakeholders participated, recommended a body of reforms to the legislation.

That, in turn, was followed by the announcement, in the context of the budget presented in June 1998, that there should be some reforms linked to the presentation of the budget for 1998-99 which would dramatically change the way in which the Criminal Injuries Compensation Act operated. Legislation was introduced a couple of months later. That was followed by an inquiry by the Legislative Assembly Standing Committee on Justice and Community Safety, and finally by debate in this place in December of last year.

There has been a process that lasted for at least three years from go to whoa and the legislation was before the Assembly for well over a year. Few pieces of legislation get as much exposure as this legislation was given.

Mr Quinlan: Enshrining inequity.

MR HUMPHRIES: I know you want to say something, Mr Quinlan, and I am sure, if you just hold your horses, you will get a chance to do so in a moment. The fact is that this legislation was desperately needed in this territory. Our criminal injuries compensation scheme was being rorted and rorted big.

Everybody, except perhaps for a few people in the legal fraternity who believed that things were going along very nicely, accepted that changes needed to be made. It is worth noting that it is the legal profession that has most vehemently objected to these changes and has been most concerned. I might give my personal understanding of why that should be. The fact is that a number of lawyers in this town were seriously caught short by the passing of this legislation. Those lawyers apparently—and I say this on the basis of conversations with a number of their clients—failed to warn their clients that there were changes to the legislation on the table in the Legislative Assembly which, if passed, would have the effect of dramatically altering those clients' rights to access criminal injuries compensation payments.

In some case, those lawyers—and I know this from those conversations with their clients—did not warn their clients of that fact. Those lawyers had to make embarrassing explanations to their clients when the legislation did pass in a form not exactly the same as, but similar to, the one that the government had put forward. This left clients who had commenced actions generally after the introduction of the legislation without a course of action or at least without access to a lump sum payment.

We need to remember that the legislation, as well as reforming the system, enlarged access by victims of crime to counselling and other support services. Today the territory has a victims assistance service which is vastly in excess of what was previously on offer in terms of the quality and quantum of publicly funded counselling and assistance to victims in this territory. This is a huge improvement.

Apparently Ms Tucker, who has no objection to the scheme to support people who access it, also wants to reinstate cash payments. The fact is that, as I have said, the old system was being rorted. There were many examples of payments being made in inappropriate circumstances. Obviously, the payments were made in accordance with the legislation—I do not suggest that anyone was paid outside the terms of the legislation.

But I think the community would say those payments were not legitimate. People who went into nightclubs and bars, got seriously intoxicated, got into fights or were preyed upon ended up making claims for injuries which you could only describe as being substantially self-inflicted.

Indeed, only last week in this place we passed legislation, supported by the opposition, which said that we would not allow self-intoxication as an excuse in charges of criminal misconduct. A person could not escape the responsibility for their actions by virtue of the fact that they were intoxicated. And yet, if this legislation passes, we will again have a situation where a person is able to become heavily intoxicated and obtain access to substantial funds at public expense for their pain and suffering. That is not appropriate.

Ms Tucker has not explained to this house why the issues that were on the table when the original legislation was debated last December were not properly considered by this place. She has not explained why people in this place did not consider those issues adequately or with proper consideration. I think an excellent case can be made for considering change when change is required. But in this instance no case whatsoever has been made.

Mr Quinlan: Oh, I see—where it suits you.

MR HUMPHRIES: All we have heard is the bleatings of lawyers, vicariously through their clients, who are seeing thousands of dollars of payments of fees going out the door.

Mr Quinlan: You did a deal at the last moment on this bill.

MR HUMPHRIES: Mr Speaker, I would ask for some protection from you.

MR SPEAKER: Order!

MR HUMPHRIES: Mr Speaker, they see thousands of dollars in payments—

Opposition members interjecting—

MR SPEAKER: Order! You will have your opportunity to speak, gentlemen, providing you behave yourselves.

MR HUMPHRIES: So, Mr Speaker, what we have here is a serious regression from an arrangement which the ACT community is going to be able to sustain. Other states have already moved down the path that we have adopted the ACT and I do not believe any state is going to retain provisions of the kind the were previously on the statute books in the ACT. Nobody is doing that. I have heard it alleged that the Victorian government, which said it was dissatisfied with the victims of crime legislation in that state, was going to wind back its legislation. I have seen no evidence of that whatsoever and I remain to be convinced that that is actually going to be the case.

I believe that we will end up with a very unworkable arrangement if this legislation is reinstated to the form it took before it was substantially repealed last year. Of most concern perhaps are the enormous financial implications of passing the bill today. I ask members to consider very seriously what that would mean. If the Tucker bill were passed

the financial impact would most particularly be felt in the arrangements for special assistance for people who sustain injuries and believe they are entitled to payments for compensation for things like pain and suffering.

Based on current experience, the increase in the cost of the scheme for changes to the special assistance provision would be upwards of $5 million a year. The increasing costs associated with the reinstatement of rights affected by the transitional provisions—that is basically the retrospective element of this legislation—is estimated at around $5.85 million in total, or just under $3 million per year for two years.

If we pass these provision we will, all things being equal, be very unlikely to have a budget surplus for 2000-01. These provisions would substantially wipe out that forecast surplus and they would amount to a very considerable impost on the territory fiscus for which there is no conceivable justification.

Ms Tucker is asking us to help contribute to the expenses of people, in some cases which are quite inappropriate, at the expense of far more important social objectives to which that money could be put. As a general rule, I do not believe we should be spending $5 million on giving people lump sums for pain and suffering. I believe we should be compensating serious and permanent injuries, as we do under the present legislation. We should be compensating people for related expenses, such as medical expenses, in appropriate circumstances. We should be providing that people's ongoing need for counselling and assistance is laid out generously in legislation, as it now is.

The victims assistance scheme, which is now operating on a interim basis, is a substantial step forward in enabling a whole host of people, who are sometimes marginal and sometimes serious victims of crime, to have their concerns, their ongoing needs, addressed. We have paid for that new scheme out of the savings we have made from the reformed criminal injuries compensation scheme. We should not now go back to the bad old days of the past and restore those arrangements, which were so clearly inappropriate for this territory and indeed for most other parts of Australia.

Mr Speaker, I think this legislation is inappropriate. It amounts to an attempt to reopen the debate which was fully had last year. It is true, of course, that the actual debate on the bill occurred in the early hours on the morning because the Assembly had seen fit to debate other matters earlier on the same day. I might say that there is an increasing trend in this place to have debate that goes into the evening and even into the wee small hours. Members seem to feel that we should do other arguably less important things during the day and push important business to those sorts of hours. That is not the government's choosing. If members wish to do that then they can hardly be asking the government to take responsibility when they get decisions out of that process which they do not particularly like.

I see no reason to reopen these issues. I think Ms Tucker is responding to special pleading on behalf of the legal profession in particular. A large number of people have come through my door propelled by indignation and anger at the decision made last December. These people have been not accurately briefed or informed by their lawyers. They have been told that there is no access to payments whatsoever, that they cannot have medical costs or expenses met from the scheme. They have been told that there was no warning of this decision, et cetera. Many of those things simply are not accurate.

We should bear in mind that the people who are really hurting out of these new arrangements are the lawyers who are missing out on the fat fees that used to go with collecting these payments in the courts. Notwithstanding the fact that I am a lawyer, I do not believe that that kind of industry based on criminal injuries compensation was really in the best interests of the community. What is in the best interests of the community is a scheme whereby if you are injured or hurt or psychologically damaged by a criminal act you have a comprehensive assistance scheme available to you to use straightaway. It is not a matter of going to courts and getting lump sum payments and so on to go off and spend on your counselling and so on perhaps months or years after you sustained the injury. You need a service right then and there, and that is what we have today with the victims assistance service. That is that way it should be. There is simply no justification to go back to the previous arrangements.

MR STANHOPE (Leader of the Opposition) (3.40): The Labor Party will be supporting Ms Tucker's bill. The amendments proposed by Ms Tucker are consistent with the position that both the Labor Party and the Greens have previously advocated, particularly in relation to this debate.

The provisions in the draft bill essentially do a number of things. They delete the special provisions for police and emergency service workers, increasing the maximum benefit for all victims to $50,000 for pain and suffering. They amend the definition of extremely serious injury to only serious injury and remove any reference to the permanence or otherwise of the injury. They require all victims to exhaust their workers' compensation rights before applying under the act. They provide an entitlement for assistance to victims engaged in unpaid domestic work or child care. They permit victims to seek assistance from victim support schemes other than the government scheme. They downgrade the discrimination against a victim who is intoxicated by removing the requirement on the court to reduce the amount payable if the victim was intoxicated at the time of the crime. They remove the retrospective operation of the amendments introduced by the government in December 1999.

I must say that I was interested to see the response of the scrutiny of bills committee to this bill, particularly the committee's decision that there were no major rights issues with the bill. I would have thought there clearly are some rights issues, particularly in relation to retrospectivity and the hierarchy of victims that were created as a result of the passage of the bill in December 1999.

The two aspects of the bill, as passed in December last year, that I think have created the most discussion, debate or dissension at least within the community are those that go to the decision to make the legislation retrospective and so deny to significant numbers of Canberra citizens, some hundreds of Canberra citizens, the right to pursue claims that they had or believed they had, or at least were entitled to pursue at the time the legislation was passed.

I think it is to be seriously regretted that we did, at that time, disenfranchise people who had been injured as a result of a crime. Some hundreds of people who had been subjected to criminal activity were denied the opportunity to pursue a lawful action for compensation under the law as it existed under the legislation that was then in place. They were denied the opportunity to pursue a lawful claim which they had at that time.

The Labor Party does not think that is acceptable and we will most certainly support the repealing of the retrospective provision.

I have heard the Attorney's justification for the retrospectivity—that this is an economic justification and we simply need to save some money. People are being denied a lawful existing entitlement to pursue an action because of cost, because of an economic consideration. I believe that the lawful right as it existed at the time should be supported.

There has also been much comment and debate—and to some extent I have a feeling of deja vu in repeating these arguments and debating the issue here—about how simply unfair and unprincipled it is that we have through this scheme created a hierarchy of victims; that we have singled out three groups of people for special attention. I simply cannot accept that it is appropriate, fair or proper to stick at the apex of a compensation scheme a number of groups that it is felt, for one reason or another, deserve special consideration. This is not a principled way for a legislature to legislate in respect of all of its citizens—its entire constituency.

That is not to deride or to decry the particular circumstances of those people. It is simply to suggest that it is just inappropriate to decide that a particular group of people are more worthy, more demanding or more entitled to special consideration than a range of other people who, through no fault of their own, through their work and through a range of other circumstances, find themselves the victims of crime and are injured, traumatised or otherwise seriously affected by criminal activity.

There are plenty of other examples that we can all find of people who are affected in that way. I have no doubt that members have received some representations over the course of this last week from the Transport Workers Union about the difficulties, circumstances and trials that some of their members in different occupations face; the level of criminal behaviour, trauma and injury that those groups of workers suffer as they go about their day-to-day lawful occupations.

Of course, the same can be said of a range of other people. But why the police and not others? I think a very good and apt example in that context is the staff of service stations, particularly those who work a night in Canberra. If you were to look at the relevant crime statistics for last year you would find that there has been a burgeoning increase in armed robberies and that the group of people within this community that have faced armed robbers more often than anybody else and suffered considerable trauma and considerable other injury as a result of criminal activity are those people who staff service stations, particularly those who staff them overnight.

If we were to look at or review the armed robbery statistics in the ACT over the last year we would find that a significant number of service station attendants have had the particularly harrowing experience of facing robbers armed with knives, guns, syringes and a variety of other deadly weapons. I recall a recent case—I think it was in a bank—of a shotgun being put against a person's head and being discharged into the ceiling for the purpose of simply making a point. I cannot imagine a more horrific and frightening experience than having an armed robber's double-barrel shotgun discharge within the vicinity of one's face in order to make a point about the seriousness of the perpetrator's intent. The trauma that that person must have suffered is immeasurable.

It is intolerable to suggest through legislation that that person is less entitled to the consideration of this legislature for compensation under the victims of crime scheme. It is a suggestion that simply cannot be sustained. We are talking about a woman staffing a bank being subjected to a terrifying armed robbery. She was faced with a loaded gun which was discharged for the purpose of terrorising her to make a point about the perpetrator's seriousness. Is this legislature to advise that person, "We are sorry, your pain and suffering really is not of as much importance to us as the injury that a policeman might suffer as he does his duty. You know that is a risky occupation and that they are often injured. They can claim compensation if they are injured when dealing with break and enter cases or as they chase a drunken perpetrator through the streets. But you, having suffered that most appalling trauma, can go home and try to work it out of your system as best you can"?

I do not think this distinction is sustainable by any legislature. I do not think we can legislate for a hierarchy that provides that a police officer can claim compensation and be compensated for an injury suffered in circumstances which might not have involved any trauma or any threat to the police officer's wellbeing, and a range of other citizens are simply advised, "Look, we can offer you some counselling but we cannot compensate you in any way because we have made a judgement that your pain and suffering just simply does not feature in terms of the hierarchy of need that we as the legislature have identified." I cannot possibly support that. I think it is unsustainable and unprincipled and it should be repealed. It is simply not acceptable that we should have singled out this group for special treatment.

There are a number of other provisions in the bill that demand support. I think it is appropriate and sensible that we require workers to exhaust their workers compensations rights before they apply under this act. In view of the Attorney's and the Assembly's determination to curtail the costs of this scheme, which we all do admit were spiralling, this is an appropriate initiative to support. It is actually one way of controlling the costs of the scheme.

I think it is only appropriate that we ensure that the scheme is extended to provide assistance to victims engaged in unpaid domestic work or child care. An issue of significant discrimination over the years in a whole range of areas is the extent to which we as a community have rendered women in the unpaid work force in particular invisible. The needs of that group, that particularly vital part of the community, are not measured when we come to determine our policies.

I do not fully understand the need for us to legislate in this area but I support the notion that we should legislate to ensure that victims can access a victims support scheme other than the one that is currently provided by the government. My understanding is that that is how the current scheme operates.

Ms Tucker: It is the first point of contact.

MR STANHOPE : Ms Tuckers says that is the first point of contact. That is fine. But as I understand the amendment, under this legislation the victims support scheme service will act as a monitoring organisation. The other providers will be required to be approved. That is the case as I understand it.

I guess that does beg one question in relation to the operation of the scheme, and that is whether the current provider will, pursuant to the tendering process that I imagine is being undertaken, be a successful tenderer. Perhaps that is an issue that needs to be taken into account in the context of this debate.

As I said, the Labor Party will support these amendments. We think they are appropriate. We regret that the scheme did not at the outset incorporate most of these initiatives. In any event, we think this bill goes some way to addressing what we regard as the completely unacceptable aspects of the law as it developed in relation to this issue last year.

Primarily, we believe that the scheme should not have been retrospective at the outset. Also, we believe that a separate hierarchy of victims should not have developed. We should not have a special group of people within the community entitled to full access to the scheme with the rest of the community basically being told that they do not deserve the same consideration of the legislature or the community for the pain and suffering that has resulted from being a victim of crime.

MR RUGENDYKE (3.54): I think it is accepted by all of us in this place that when we had this debate last time around the government argued its case on the basis of cost. The bill we have before us today proposes to reverse the resolution of last year, but to date there has been no indication of what the price tag will be.

The accompanying explanatory memorandum and presentation speech to the bill did not provide detail of financial implications. One of the organisations supporting Ms Tucker's bill is the Law Society. At my last meeting with the Law Society I requested that they provide and indication of projected costings but these have not been forwarded.

The only costings we have are from government. It certainly appears from what we have heard so far in the debate that this bill not only proposes to reverse last year's decision but would also result in a cost blow-out. Nothing new has emerged in the re-run of this debate except the point that the proposal will make the scheme more expensive than it was in the first place.

As was said at the start, this debate was argued on cost. In short, there has been nothing so far to convince me that I should change my position and I am therefore prepared to give the current scheme more time.

MR KAINE (3.56): I would have to totally disagree with Mr Rugendyke about what this debate is about. This debate is not about cost, it is about equity. The government originally brought down a bill which was a bit parsimonious. But I agreed in principle with that bill because at least it treated people equally. I thought that it was a bit harsh that it denied people certain compensation which they may well need in some circumstances, but by and large it was an equitable bill.

And then along comes Mr Rugendyke. I do not know quite what sway he holds over the government to cause them to change their view on this so drastically, but the next minute we have got the Rugendyke bill. This is the one that went through this place against considerable opposition, including mine. The bill that was introduced and became an act in this place only relatively recently is grossly inequitable.

I do not know how anybody could have voted for that bill. At the time it should have been called the "Some Victims of Crime Financial Assistance Amendment Bill" because it provided for only some people to be equitably treated under the law and for others to be inequitably treated. Surely Mr Rugendyke can see the error in that proposition.

It is not about cost. The government's argument has always been about cost. I think the government would like to repeal the whole act and have no act dealing with compensation for victims of crime. I am quite sure that would be their ideal position. I do not agree with that and nor do I agree with a bill that treats people inequitably and unfairly.

Mr Stanhope made the point that it cannot be said that a police officer carrying out his or her duty and who is injured in the course of that duty is in any way different before the law in respect of entitlement for compensation than somebody working in a service station or at a bank who is held up at the point of a gun and, in the process, perhaps is injured. Even if they are not physically injured, it cannot be argued that they have not suffered trauma and it cannot be argued that the trauma and/or the injury that they suffer is any different to what a police officer incurs in performing his or her duties.

So to argue that the police ought to be treated in a more favourable way than any other citizen in similar circumstances is just something that in my view cannot be sustained. I do not know how Mr Rugendyke can argue that it can be. I notice that to justify the position of the police he threw in the ambos and other people engaged in public safety. That was just a sop; it was just so that it did not look like the police and the police alone were receiving favourable treatment. But, for arguments sake, I have been told that no ambulance officer has ever put in a claim for compensation. None. So you have to ask: why were they put in there? They were put in there to cause a bit of a smoke screen so that policemen did not stand out as receiving uniquely favourable treatment. That was a ploy. Quite frankly, in my view it was a dishonest ploy.

I totally support what Ms Tucker is trying to do. She is at least trying to turn this inequitable bill into one that has some equity and fairness about it. The government might not like that, Mr Rugendyke may not like that, but I think that any fair-minded person in this place ought to accept the proposition that this bill needs to be changed to make it fair and equitable. If anybody intends to vote against that proposition, I think they ought to stand up and justify why they are doing so.

We who believe in equity and fairness should not have to stand up here and justify our position because we are speaking in the public interest. So let us hear from those people who want to persist with an inequitable bill and let us have on the table their substantive arguments as to why this legislation should be maintained in its present form. Cost might be a reason but I do not believe that that is sufficient reason to say that we should maintain the inequities and the unfairness that are in the legislation at the moment. I totally support what Ms Tucker is trying to do.

MR BERRY (4.01): Mr Speaker, I just want to speak briefly. Other colleagues have done the argument justice. Mr Humphries tried to make some sort of comparison between the drunk's defence, which we have now ruled out in other law, and somebody going to a club, getting themselves sozzled and being smacked in the head in the process.

I just think that is unfair. There is no comparison. Drunk or sober, one is entitled to the protection of the law in a fair and equitable way, and that is what this issue is about. It is really about being fair and equitable.

If a person goes into a lawful licensed premises and gets a belting when they are sober, they should be entitled to the protection of the law, whatever it is. Similarly, if they happen to be in a licensed and lawful premises and happen to be sozzled, as they are invited to be, and get a belting they are entitled to the same sort of protection as somebody who is sober. So there is no real—

Mr Humphries: Unless their intoxication contributed to the incident, which it often does.

MR BERRY: Merely being intoxicated does not contribute to being assaulted.

Mr Humphries: But it often does.

MR BERRY: But the point that you tried to make was that there was some relationship between that and the drunk's defence, which has been removed from the criminal law. I do not think that that is a line that you can draw; and I just think it is an unfair one. This is an issue about fairness and equity.

I think the people who might benefit most are probably being treated quite unfairly as well. I think police might feel a little embarrassed about being left as standout beneficiaries as a result of this law because they would know that they are being treated quite differently to other people in the community. I have made that point in previous debates and I need not go over it. It is unfortunate that we end up with laws that have the effect of making them stand out in this way. Because of their duties they have a difficult enough job in respect of their image anyway and I think for them to be treated preferentially just makes it a little bit more difficult for them.

They might be very happy about being in a position to receive compensation pursuant to the law at some time after a criminal offence, but I do not think being placed in a privileged position is very helpful and it certainly does not present them as being part of the community and on an equal footing with anybody else. That is the second of the two points that I wanted to make. The first was the issue of the drunk's defence and what people do when they happen to be inebriated. As I said, I do not think this is a fair argument in this debate.

MR OSBORNE (4.05): Mr Speaker, I have to disagree with Mr Kaine on one issue, and that is I think this whole debate is about cost. I think what this debate is about—and this is the issue that we have to grapple with—is how best to spend money when dealing with victims of crime. I also think it is about how we as a parliament help victims recover from a crime.

I have to say that I have found this to be a very difficult issue. On the one hand there are people who seem to think that a cash payout is the best way to effect closure for the victims of crime. But there are others who seems to think that the money would be better spent helping people get their lives back on track by way of counselling, rehabilitation, et cetera. I have to admit that I do not have a firm view one way or the other.

I do, however, believe that long-term help rather than a cash payout is probably a better way to go. Obviously, the legislation we have has only been in operation for about six or nine months, so I feel that we should allow time to see if the new regime has an impact.

I met today with a person who is still suffering as a result of a crime some 18 months ago and it was clear to me that this person was going to need to be cared for over a certain time. I really felt for this person, but at the end of the day all they wanted was to get their life back on track. I am not an expert but I am not of the opinion that a lump sum payment would help this person with their long-term rehabilitation.

Having spent an hour meeting with this person and their psychologist, I have to admit to being somewhat concerned about the misinformation being supplied by the legal fraternity in particular in this matter. Clearly they can see that the cash cow is gone and they want it back. I am amazed that people are not informed that their costs for counselling and medication and things like that will be reimbursed. Having informed a number of people who contacted my office over the last couple of months that no, they were not completely shut off from help, that there was a new regime in place, many of them have said to me, "My solicitor never told me that. The impression I got was that we were being dumped." I think the legal practitioners who have not fully informed their clients should hang their heads in shame. Sure, the cash lump sums are harder to access but there are many avenues open to victims of crime to assist in getting over their pain.

I have also suggested to Mr Humphries today that it may be sensible for him to inform workers who deal with victims of crime of what is actually now available and how the new scheme works, because it is clear that some of the rubbish out there has really clouded the issue. As I said earlier, I met with a psychologist who was not aware of how the new regime operated.

I have grappled even more with the issue of retrospectively. I have found this very difficult. I have looked at it over the last couple of weeks and I have listened quite intently to what people have had to say in here and also at meetings that I have had. However, the cost and the fact that Mr Humphries has made the point that it was a budget bill has caused me to side with the government. I have only once in my nearly six years in this place supported a motion which forced the government to spend money. That was in respect of the Downer Preschool, and I have said publicly that, on reflection, I made a mistake.

This legislation would require the government to outlay close to $10 million, and I am not prepared to support that. As I said, I found this issue to be very difficult but feel that this is the right way to go.

MS TUCKER (4.10), in reply: This is a disappointing result—I can see how the vote is going to go. I will respond, though, to some of the points that have been made in the debate here this afternoon.

I believe that Mr Humphries is rewriting history when he tells us that the legislation that I am trying to change has been absolutely fully canvassed. He well knows that he failed to acknowledge some of the rather interesting subtleties in the process that he outlined.

For a start, we know that the recommendations of an Assembly committee were not even supported by Mr Osborne, the chair of that committee. We know that the recommendations were not followed. In fact, we saw the government response to the report only two weeks before we had this debate. I would not say that that was a particularly long time. But we have lived with sort of thing before in certain circumstances, so it is not so unusual even though it is not satisfactory.

The issue of Mr Rugendyke's amendments has to be acknowledged as important and I am very surprised Mr Humphries did not do that. As other speakers have highlighted, Mr Rugendyke's amendments clearly and significantly change the focus of the government's intention, creating a piece of legislation which, as we have already heard from other members, is discriminatory and unjust in its nature. Mr Humphries has put it on the record in a letter to me that he did not have time to look at those amendments. So it is quite strange that he is now saying that every issue was fully canvassed and that we should therefore be satisfied with the legislation that this Assembly passed last year, and that I am a sore loser because I have brought it up again.

The truth of the matter is that it was not fully canvassed. The government might have known about Mr Rugendyke's amendments but the Greens certainly did not have time to look at them. They were given to us at very short notice but we could see immediately that there were huge issues with them. I wrote to Mr Humphries inquiring about his position. I pointed out that he had made statements after the debate—they were not made during the debate—to justify his position. He said that this was positive discrimination which is totally appropriate under discrimination law. I asked Mr Humphries for a fuller explanation of his arguments and in his response he said:

> You ask for details of the disadvantage suffered by members of the police force, the fire brigade etc as justification for the amendments moved to the ACT in December. With respect, you should understand that the Government was confronted with these amendments some short while before the Victims of Crime Bill was considered by the Assembly. The Government did not have the opportunity to explore the issues you now raise before the bill came on for a vote. Perhaps the basis for the amendments is best taken up with the person who moved them, Mr Rugendyke.
>
> I'm sure you also understand that the Government's position was dictated by the fact that only Mr Rugendyke and Mr Osborne were willing to address the issue of the burgeoning cost of the Criminal Injuries Compensation Scheme and, as such, the issues they raised carried greater weight than those (rather unhelpful) positions put in the debate by others. With respect, the situation in this Bill is not dissimilar to that confronting the Government in the recent budget debate. It ill behoves other MLAs to take an inflexible position ("We reject your Victims Bill) or ("We reject your budget") and then complain when the compromises the Government is forced to make don't suit those members.

So basically what Mr Humphries has acknowledged or claimed in that letter is that he did not have time to really think it through.

The arguments that were put in respect of positive discrimination are interesting. In my letter to Mr Humphries, which resulted in the response that I have just read, I asked particular questions because I was interested in the argument that it was positive discrimination. As members are no doubt well aware, positive discrimination relates to disadvantage experienced by these groups in comparison to the rest of the community

and the way in which that disadvantage occurs. So, basically you can only discriminate positively if the disadvantage experienced by a particular group in comparison to the rest of the community is very extreme.

I asked Mr Humphries about the necessity of providing such assistance in order to achieve a level of advantage equal to mainstream groups; the intent of the special measures in the legislation to bring these groups to the same level of advantage as mainstream groups; the appropriateness and the effectiveness of these measures in achieving these advances; and the requirement to provide such special measures indefinitely in order to redress the disadvantage.

What this is saying is that to positively discriminate you have to show how that particular positive discrimination will address the issue and change the situation. The key arguments that have been put here are that other people are similarly disadvantaged through their work these days. That includes all sorts of people. It includes people who work in banks and in supermarket and people who drive buses. Unfortunately, it includes lots of people in our society at this point in time.

So the issue quite clearly is that we have not heard any strong arguments from Mr Humphries in respect of this legislation. He told me in his letter to ask Mr Rugendyke. In the debate today Mr Rugendyke talked only about costs and did not address the fundamental issues resulting from his amendments that we want to address in this debate. That is very unsatisfactory.

Mr Humphries and, I think, Mr Rugendyke said it is just the lawyers who are bleating here. Insultingly, Mr Humphries said that lawyers are vicariously complaining through victims of crime who come to see him and who do not understand the issues. It may well be the case that on some occasions some victims of crime do not understand the complexity of legislative change and the new system that exists. I am not saying that that has not occurred in some situations. But I also know that people who have been victims of crime are not the mouths of lawyers. They are intelligent, articulate people who are concerned about this law that we have in the ACT.

A number of groups in the ACT support the legislation that is before us today. These groups include two unions who are in a difficult situation in that unequal entitlements can apply to their members. Members of the Transport Workers Union have different entitlements. This union covers ambulance drivers, who have an entitlement to greater financial compensation for pain and suffering, and it also covers bus drivers, who have a lesser entitlement. Interestingly, apparently 15 per cent of bus drivers are actually victims of physical assault. The Financial Services Union is very concerned because a growing number of their members are being exposed to violent crime in the workplace as a result of hold-ups.

We met with the Australian Federal Police Association last week and they also were supportive of what we are doing. They said, “As long as you are making it equal.” They want to keep the entitlements that Mr Rugendyke has produced through his amendment but they understand that it is unjust and they are supportive of legislation which gives everybody equal entitlements. And why wouldn’t they? It is good PR to have entitlements for police officers but it is hardly good PR for police to be able to say,

"We have the entitlement to pain and suffering payments and we will not have to prove as much hardship as other members of the community because we are policemen."

I was interested in what Mr Osborne just said. In regard to the healing process, he does not know whether a victim of crime should receive a payment for compensation or receive counselling. I do not have a particular position on that either. But is he saying that he knows that the police, emergency servicemen and victims of sexual assault will be more likely to heal better if they are paid compensation for pain and suffering? If that is the case, I would like to see the research on that.

I would also like the research which I understand Mr Osborne or Mr Rugendyke has suggested exists which would support the argument that victims of sexual assault—who also are included in Mr Rugendyke's amendment—are more likely to sustain damage of a kind which requires this special treatment. I have looked for this research and I have talked to professionals but I cannot find it. I would be very interested to hear from Mr Rugendyke on this matter. I am sure we could give him leave to speak again in this debate. Perhaps at the detail stage he could justify his argument and refer us to the research which shows why it is appropriate that victims of sexual assault should have these special entitlements as well.

The issue of cost, of course, has been raised by the government and by Mr Rugendyke. I guess the question you have to ask is: what price justice? Mr Humphries, who is speaking as the Treasurer here today, is also the Attorney-General. I might just read a statement from a person who is not a practising lawyer making a buck out of this. The Hon Justice Gallop said in this year's Sir Richard Blackburn lecture:

> It is the essentially political character of the office and portfolio of Attorney-General as it has developed in this country which paradoxically makes it necessary to restate and re-emphasise the characteristics of the office which give rise to a distinction in kind between the role within government of the Attorney-General and the roles of other ministers. The distinction essentially is that the Attorney-General as Law Minister has, beyond the political responsibilities of the ministerial portfolio of the same nature as the responsibilities of other ministers, a special responsibility for the rule of law and the integrity of the legal system which transcends and may at times be in conflict with political exigencies.
>
> The Attorney-General has the unique role in government of being the political guardian of the administration of justice. It is the special role of the Attorney-General to be the voice within government and to the public which articulates and insists upon observance of the enduring principles of legal justice and upon respect for the judicial and other legal institutions through which they are applied.

And further on:

> Nevertheless, there remains unimpaired the Attorney-General's function as political guardian of the integrity of the administration of justice, which gives rise to the unique role and responsibility of the Law Minister. The importance of this role is our constitutional system, although not as pervasive as it once was, remains undiminished in importance. The faithful discharge by the Attorney-General of this role of political guardian of the integrity of the administration of justice is an indispensable ingredient of the political and constitutional foundation of our system of independent and impartial justice.

Mr Humphries is speaking in this debate as Treasurer. Maybe in certain situations Mr Humphries should not be Treasurer and Attorney-General. But I am very concerned that he is failing in his role as Attorney-General. Basically, what this legislation reflects is the unethical approach of the ACT government and its crossbench supporters. The self-interest of the individuals involved and their supporters is linked to the inflexible approach of the government, which continually privileges economic outcomes way above social justice and community benefit.

One could argue, of course, that this two-tiered approach to entitlement is simply a function of numbers in the Assembly and of political realities; that the outcome last December simply reflects the fact that the government's commitment to cost containment had to give a little in the face of its need for cross-bench support; and that the cheapest way out in this instance was to merely provide special treatment for a few members of our community. But such an approach demonstrates a disturbing interpretation of the ethics of government and is in absolute contradiction to the generally understood notion of governing for all.

This is a government that has admitted to governing by numbers and it has washed its hands of the responsibility for fairness and equity. It has both demonstrated and acknowledged that unfairness is not an issue. It only looks after those it has to. The programs it puts in place serve only the interests of its friends and supporters and it has no problem with governing for sectarian interests. It is indeed quite consciously undermining the notions of aspirations or ideals. It is working from principles more consistent with those of totalitarian states where political and business partnerships provide the real imperative for all actions and decisions no matter what the impact may be on the disadvantaged, the less powerful and the unsupported—on everyone without friends in high places. How damning this is to all members of the government.

I would also like to challenge the statement by Mr Humphries that so many of these claims were inappropriate and unethical, and that they were rorting the system. (*Extension of time granted*) I was very interested to see in the *Canberra Times* of 19 August a letter from Alan Towill, the Registrar of the Supreme Court of the ACT, which referred to one particular example of what Mr Humphries called a rort. This example, which was used in many press releases, concerned the burning of a doormat. Straightaway I make the comment that there is a human being at the bottom of this story; there is a human being who was traumatised. I do not like the way the government chose to use this issue in the way that it did. The letter of 19 August in the *Canberra Times* read:

> Peter Clack's article 'Tucker fights two-class compo change' refers to the Government issuing details of some of the 'worst cases' of awards made in respect of frivolous claims under the criminal injuries compensation scheme.
>
> One example given is a woman whose front doormat was set on fire being awarded $3,500. As Registrar exercising jurisdiction under the relevant legislation I made that award in December 1993.
>
> The Government was represented at the hearing by the ACT Government Solicitor. Criminal conduct was conceded and was not in issue. The facts briefly are as follows:

> In 1993, the applicant, a woman who had previously suffered depression since 1975 and had been treated for a depressive illness since 1987, smelt smoke in her ground floor flat where she lived by herself. When she investigated the source of the smoke she noticed her front doormat which had been doused with petrol, and the front door were on fire.
>
> Her flat was filled with smoke and fumes. She succeeded in putting the fire out and reported the matter to the police.
>
> Following this incident she became acutely anxious and had trouble sleeping. She had a fear of asphyxiation. She felt insecure in her flat and considered seeking a transfer to a safer area.
>
> Another tenant in the same flats had recently been seriously burnt as a result of a fire in his flat. The applicant's underlying depressive condition flared up as a result of her anxiety about the fire. She was diagnosed as suffering a post traumatic stress reaction following the fire and required counselling and therapy to help her deal with her problems. Her condition was expected to take up to two years to improve.
>
> In these circumstances, the award of $3,500 could be considered to be modest.
>
> Clearly the Government did not at the time consider the award to be incorrect or excessive as its right of appeal was not exercised. If this is the best example of one of the worst cases then decisions of the kind referred to in the article can hardly be criticised as being without merit.
>
> Alan Towill, Registrar, Supreme Court of the ACT.

The point that is made in that letter is that individual circumstances have to be looked at and that there may well be good reason to understand that the trauma is much greater than one might think on the surface. That is why we need to allow for a system which gives discretion to the judiciary to deal with these matters.

One of the other groups that have been offering us support is the Foster Carer Association. They are very concerned because they have children coming into their care who may be victims of sexual, physical or emotional abuse. Most of them are, in fact. The foster carers are concerned that, because of the inequity created by Mr Rugendyke's amendment, those children will have different entitlements. That is obviously not something that you would want to see continuing. I am surprised that Mr Rugendyke has not taken that on board in this debate today and changed his position even just on those grounds. Obviously he is very well aware of the issues for foster parents.

Another irony relates to the fact that the ACT was leading Australia in the field of discrimination law. The ACT is the only jurisdiction that has dealt with discrimination on grounds of profession, trade or calling—this was put in by Michael Moore to protect sex workers. What I find so interesting is that although we have that discrimination legislation, we have created discrimination on those very grounds through our victims of crime legislation. People such as bank tellers and bus drivers are being discriminated against because they are not policemen or whatever.

The other interesting aspect and irony of what can happen in this place is that yesterday we supported the Spent Convictions Bill, which provides that, with some exceptions, you cannot discriminate against people because they have committed a crime. Yet we are still allowing discrimination against victims of crime because it is obvious that members of the Assembly are going to support the inequitable situation that Mr Rugendyke, the government and Mr Osborne have created.

The other issue that we need to look at is retrospectivity. Although this will obviously be dealt with in my amendments, I think it is an important issue that we need to address at this stage. Basically, retrospectivity applies to the legislation. Entitlements under the 1999 act are based on the date of application and on the date of determination.

Victims of crime who lodged an application before June 1998 could be eligible for lump sum compensation whenever the case was determined. Victims injured at the same time but who waited until the injury stabilised, for example, and so lodged the application after 23 June 1998 could only be eligible for lump sum if the case were determined prior to 24 December 1999. Victims of crime who lodged applications after 23 June 1998 would only be eligible for lump sum compensation if the matter were resolved prior to 24 December.

In some cases, those lodging applications since June 1998 have been able to finalise their matters by court award, while many others have not able to do so because of matters entirely beyond their control. I refer to matters such as: the offender has not been dealt with by the court, perhaps because of a plea of not guilty; the failure of their medical condition to stabilise sufficiently for an award to be made; or a delay in the listing of the matter by the court. This disadvantage even extends where the agreement has been reached within the ACT government as to an amount of compensation and where the court had yet to ratify the agreement. Indeed, there have been completely different outcomes for a large number of victims who have suffered the same criminal attack.

Of course, the Attorney-General asserts that we have been on notice since June 1998. That may be. It is disingenuous of him, however, to confuse the intentions of government with the enactment of law. The law is the law, and the legal profession has a duty to its clients to interpret the law as it is. It was also well established at the time that there was considerable community opposition to these retrospective provisions. From the moment such operations were first mooted, voices were raised against it.

The strongest recommendation of the Assembly's Justice and Community Safety Committee report in June 1999 was that government not proceed with the retrospective operation of the changes. At no time did the government seek further consultation concerning the JACS Committee recommendation. At no time did the government advise that it proposed to adhere to the bill in its original form, and so reject the bulk of the committee's recommendations. Given that the government did not table its response to that report until the end of November and that it was not publicly known that the chairman of the JACS Committee would do an about-face on the issue of retrospectivity, there is entirely no basis in the Attorney-General's flip response that the lawyers simply ought to have seen it coming.

The point is that the retrospective operation of these changes has unfairly trapped 419 victims who filed applications on or after 23 June 1998 and were not determined by 24 December 1999. It is ungracious and wrongheaded for the Attorney-General to simply dismiss this inequity as the fault of tardy lawyers and a reflection of greedy applicants.

The government appears to be resolutely set against the very concept of fairness. It is much more equitable and logical to treat people who are injured on the same day under the same law than it is to treat them differently because, through a variety of circumstances which could include difficulties in police investigations, delayed prosecution, offenders failing to appear, they lodged applications for compensation on different dates.

Given the fact that we are talking about the loss of entitlements, the fairest approach would have been to have the new act apply to applications concerning criminal incidents that occurred after the commencement date and have applications regarding incidents that occurred prior to the commencement of the new act heard under the old act. This is what we are trying to do through our amendment.

I know that there are precedents for act of grace payments. I would be interested to know if Mr Humphries has considered this. As I understand it, act of grace payments are given when there is an error or there is some unreasonable impact on members of our community. I would think that there was a place here for such an act of grace. I would be interested to know if Mr Humphries would like to consider that and, as obviously retrospectivity is not going to get up, at least try to acknowledge in some way how unfair this is.

The person that Mr Osborne said he spoke to today may well have not been aware of all the issues. I also spoke to her and she is very upset because someone who was affected by exactly the same crime has been given compensation for pain and suffering. How does she feel as a member of the community who is still severely traumatised by what happened to her? She said it is unfair, and of course it is. There is no justification for this at all.

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

MS TUCKER: I will conclude with that. I will have more to say at the detail stage.

Question put:

> That the bill be agreed to in principle.

Ayes, 8	Noes, 9
Mr Berry	Ms Carnell
Mr Corbell	Mr Cornwell
Mr Hargreaves	Mr Hird
Mr Kaine	Mr Humphries
Mr Quinlan	Mr Moore
Mr Stanhope	Mr Osborne
Ms Tucker	Mr Rugendyke
Mr Wood	Mr Smyth
	Mr Stefaniak

Question so resolved in the negative.

MAGISTRATES COURT AMENDMENT BILL 2000

Detail Stage

Clause 1.

Debate resumed from 30 August 2000.

MR RUGENDYKE (4.40): As I stated during the debate on this bill last week, I support the intention of Mr Berry's legislation. The uncertainty which crept into the debate last week was a result of the government's claim that Mr Berry's bill would not achieve the intended purpose. I have taken the opportunity during the period of adjournment to gain further advice. I have assessed the government's opinion. Yesterday Mr Berry circulated a copy of an explanation from Parliamentary Counsel. I have also obtained my own advice. Point 5 of Mr Berry's letter from Parliamentary Counsel says the following:

> Proposed new subsection 198B(3) provides that an affidavit in which the only matter sworn is the consent of an aggrieved person to the making of an application by the person's employer is not to be served on another party. This provision would … distance the person aggrieved from the application.

MR SPEAKER: Order! Mr Rugendyke I think you are making an in-principle speech. We are on the detail stage at the moment.

MR RUGENDYKE: I am sorry. In that case I support the bill. If it does turn out that it needs amendment at some other stage, I will be happy to amend it.

MR OSBORNE (4.41): I support in principle what Mr Berry is attempting to do, but I must admit to being somewhat—

MR SPEAKER: Excuse me. We are dealing with clause 1. The in-principle debate is over—finito.

Clause 1 agreed to.

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

MR OSBORNE (4.42): As I said earlier, I support in principle what Mr Berry is attempting to do, but I must admit to being somewhat nervous about supporting legislation which we may well have to come back and fix at a later stage. I understand that the legislation will go through. I support it. I support the principle behind it, but I think in the future we should resolve any problems before we allow legislation to pass.

MR RUGENDYKE (4.43): Mr Speaker, apparently I am now able to speak. I have been chipped three times in about a week for giving speeches at the wrong time in the debate. I apologise most humbly for that.

The Attorney-General is right in saying that an aggrieved person is not completely cocooned or insulated by Mr Berry's bill. The court has to be satisfied that a threat has been made and cannot issue an order without sufficient evidence. Witnesses have to be called, and in some cases the only witness could be the aggrieved person.

I note that Mr Purnell of the Bar Association has placed on record the Bar Association's agreement with this legislation. I have spoken further with Mr Purnell, who agreed that that the Attorney was correct on the extent of the privacy the bill would protect. As I said before, if it is found that this bill is not workable, I will be happy to bring amendments to rectify any deficiencies discovered in the future.

This is a step in the right direction. A school, for example, as an entity, can take out a restraining order against hoodlums they do not want hanging around the playground. It is my experience that that is important.

I support the legislation, and we will see how it works out.

MS TUCKER (4.44): The Greens will also be supporting this bill. The issue of the protection of teachers has been in the hands of the government for two years. We were advised in the Assembly last week that they were working on it; that something would happen soon. I am pleased to hear it.

It is true, too, as Mr Humphries pointed out, that an aggrieved person will not be entirely anonymous, despite the provisions of this bill. Evidently there is more that can be done at another time. The true effect of this bill will be to shift the opprobrium associated with taking action in this regard from the individual aggrieved person to the employer and allowing employers to take a more active role in ensuring health and safety in the workplace.

It is for these good reasons that I will be supporting the bill.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (4.45): As I said the other day when we considered this bill, the government has no particular problem with the idea of expanding the class of people who may make applications for a restraining order on behalf of somebody else. At the present time it can be done by a police officer. This bill allows an employer also to do that.

I do not think it is a particularly significant extension, and I am not sure there is a situation where you would not use a policeman but you would use an employer, but I am prepared to concede that I might not be imaginative enough to foresee those circumstances. In the event that that is a matter of some significance to some parties, I think it is appropriate that we have that extension in the legislation.

I remind members of what was said on the previous occasion about the legislation. Mr Berry insisted quite enthusiastically:

> This is specifically aimed at ensuring that the identity of aggrieved persons is protected by this legislation…
>
> That will not make the aggrieved person's identity available…
>
> I emphasise again that the name of the aggrieved person—the employee in this case—is not to be included in any document served on another party to the order.

Members have seen today the opinions from both the Parliamentary Counsel's Office and the Australian Government Solicitor, making it clear that none of those statements are true.

I assume there is not any problem in me quoting from the advice Mr Berry obtained and circulated. Mr Berry, do you have a problem with me quoting from it?

Mr Berry: No.

MR HUMPHRIES: It states:

> The aggrieved person would have to be named in the application, since any restraining order will need to operate in relation to that person, and the aggrieved person may need to give evidence.

The advice I have circulated in the chamber today from the Government Solicitor says:

> The prescribed form—

that is, for taking out a restraining order—

> is found in Schedule 1, Form 1A. This form requires the aggrieved person to be identified. Again, it is difficult to see how this basic procedural step could be avoided, even as a practical, non-legal matter. The respondent whose conduct is to be restrained must be informed about the person and the matters in respect of which that conduct is to be prohibited.

It further states:

> A respondent may appear and oppose the making of an order in Court. Having regard to the significant constraints which may be imposed on the liberty of a respondent as a result of an order, the Court would be bound to afford the respondent a proper opportunity to hear the evidence adverse to him or her, and to present his or her own case. It is very difficult to see how this could be done without disclosing the identity and other relevant details of the aggrieved person.

I table the following paper from Dr Jarvis of the Government Solicitor's Office:

> Magistrates Court Amendment Bill 2000—Advice on operation of Part X of the *Magistrates Court Act 1930* from the Government Solicitor to Mr Gary Humphries MLA, Attorney-General, dated 6 September 2000.

I draw members' attention to that matter, because Mr Berry was quite firm about his view about the reason I was making those points in the chamber. He described as a red herring my point that the identity did need to be disclosed. He said that that was opposition for opposition's sake and that I was grasping at straws. I think it is important to put that on the record and to say to members that the government has a battery of lawyers at its disposal. Members should feel free to seek briefings from those lawyers, through the appropriate minister's office, to be able to understand what is being done in particular legislation.

We had the instance earlier today of Mr Stanhope being on radio making some quite ill-informed statements about the content of the government's DNA legislation. I have no objection to Mr Stanhope, via my office, getting confirmation about what he thinks the legislation might mean. It would save people from saying on the floor of the chamber or on radio things embarrassing to them.

Having confirmed that this bill is not about providing anonymity to people who are protected by restraining orders but about enlarging the class of people who can make application for restraining orders on behalf of other people, I think it is important to concede that there is perhaps some benefit in the approach, and we are happy to welcome it.

We have a review of the effect of restraining orders under way. That review will have significant changes in the wind for the operation of restraining orders. I hope it will identify some of the issues which Mr Berry originally raised in this place and which he believed he was addressing with his original bill.

MR BERRY (4.50): It is correct to say that the only way you could guarantee full anonymity is to treat an aggrieved person as a child in all cases. That is not a step I was prepared to take. It was thought that the best approach would be to widen the range of people who could make application, as has been described in earlier contributions to the debate.

It is also true that form 1 of schedule 1 of the Magistrates Court Act could be served on a respondent in a way that avoids the inclusion of the name of the aggrieved person, if the aggrieved person was not the applicant. In the scenario that I suggest, the applicant would possibly be—it is hard to imagine all of the circumstances—the employer.

It is also true to say that, once an order is issued, form 1A would contain the name of the aggrieved person, for obvious reasons, not the least of which is the legal rights of respondents to be able to argue one way or another in relation to the matter which gave rise to the interim restraining order.

My enthusiastic support for the bill I introduced may have caused Mr Humphries concern, but with the swapping of legal advisings in relation to the matter I think it is now best described as clear that this widens the range of people who can make an application to the court. It does provide an avenue for aggrieved persons to have some of the odium removed in relation to applications for restraining orders and so on. In essence, it will move the matter forward—not by yards but by inches.

I said at the outset that I did not think this legislation would change the face of the territory in a noticeable way but would make it a little easier for some people. I thank members for their support of the bill.

Remainder of bill, as a whole, agreed to.

Bill agreed to.

ADJOURNMENT

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

> That the Assembly do now adjourn.

Assembly adjourned at 4.52 pm