The Assembly met at 10 a.m., pursuant to adjournment. The Speaker (Mr Rattenbury) took the Chair and asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

2 PETITION—MINISTERIAL RESPONSE
The Clerk announced that the following response to a petition had been lodged by Mr Stanhope (Minister for Transport):

Petition No. 96, lodged by Ms Bresnan on 25 March 2009, concerning wheelchair accessible taxis and the taxi subsidy scheme, dated 16 June 2009.

3 UNPARLIAMENTARY LANGUAGE—STATEMENT BY SPEAKER
The Speaker made a statement concerning unparliamentary language.

4 WATER AND SEWERAGE (ENERGY EFFICIENT HOT-WATER SYSTEMS) LEGISLATION AMENDMENT BILL 2009
Ms Le Couteur, pursuant to notice, presented a Bill for an Act to amend legislation to promote the use of solar and other efficient hot-water systems in the ACT, and for other purposes.

Paper: Ms Le Couteur presented an explanatory statement to the Bill.

Title read by Clerk.

Ms Le Couteur moved—That this Bill be agreed to in principle.

Debate adjourned (Mr Barr—Minister for Planning) and the resumption of the debate made an order of the day for the next sitting.
5 REMONSTRANCE—AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988

Ms Hunter, pursuant to notice, moved—That this Assembly:

(1) recognises the tri-partisan view expressed in the ceremonial sitting for the 20th anniversary of self-government for the Australian Capital Territory that it was time to re-visit the ACT’s Self-Government Act;

(2) is of the one mind that subsection 35(2) of the Australian Capital Territory (Self-Government) Act 1988 is an unwarranted restriction on the democratic rights of ACT citizens;

(3) calls on the:
   (a) Chief Minister of the ACT to write to the Prime Minister of Australia requesting that the Australian Government respect the view of the whole Assembly and initiate action to repeal that provision of the Act; and
   (b) Speaker of the Assembly to present to the President of the Senate and the Speaker of the House of Representatives of the Commonwealth Parliament copies of a Remonstrance objecting to the power of the Executive of the Australian Government to override enactments of this Assembly; and

(4) determines that the Remonstrance will read as follows:

REMONSTRANCE

The Legislative Assembly for the Australian Capital Territory respectfully addresses the President of the Senate, Senators, the Speaker of the House of Representatives and Members of the House of Representatives.

Preamble

The passage, in the Commonwealth Parliament, of the Australian Capital Territory (Self-Government) Act 1988 established, as a body politic under the Crown, the Australian Capital Territory. The Act established a Legislative Assembly for the Australian Capital Territory with a plenary grant of legislative powers to legislate for the peace, order, and good government of the Territory.

The Legislative Assembly for the Australian Capital Territory is constituted of 17 representatives of the people of the Australian Capital Territory; duly and democratically elected pursuant to the Electoral Act 1992.

On 11 May 2006, the Legislative Assembly for the Australian Capital Territory enacted the Civil Unions Act 2006.

On 19 May 2006, the Civil Unions Act was notified on the Australian Capital Territory Legislation Register and became the law of the Territory.

Subsection 35(2) of the Australian Capital Territory (Self-Government) Act 1988 provides that the Governor-General may, by legislative instrument, disallow a Legislative Assembly enactment within six months after it is made.

On 13 June 2006, the Governor-General, pursuant to subsection 35(2) of the ACT Self-Government Act and acting on the advice of the Executive Council, issued an Instrument of Disallowance voiding the Civil Unions Act 2006.
Grievances

The Legislative Assembly for the Australian Capital Territory presents its grievances to the Commonwealth Parliament. These are that:

(1) the exercise of the disallowance powers on 13 June 2006 constituted an anti-democratic interference in the affairs of the Australian Capital Territory, its parliament and its citizens, fundamentally undermining the principles of self-determination and self-government; and

(2) the continuing effect of the disallowance provisions contained in subsection 35(2) of the *Australian Capital Territory (Self-Government) Act 1988* constitutes an arbitrary curtailment of legislative prerogatives of the Legislative Assembly and the democratic rights of the people of the Australian Capital Territory and creates a prevailing uncertainty as to the extent of the democratic remit that applies in the Australian Capital Territory.

The enactment of the *Australian Capital Territory (Self-Government) Act 1988* by the Commonwealth Parliament was predicated on the fundamental democratic principle that citizens within a polity have the right to govern themselves. The second reading speech on the Self-Government Bill made by the Minister for the Territories underscored, in plain language, the intention of the bill “It will allow 270,000 people the same democratic rights and social responsibilities as their fellow Australians… In proposing self-government for the Territory, the Government has once again demonstrated its commitment to democracy for all.”.

This high ideal—the promise of democracy—has not been fully realised.

Following the passage of the *Civil Unions Act 2006* by the Legislative Assembly for the Australian Capital Territory, a claim was put by the Commonwealth that the Civil Unions Act was inconsistent with the *Marriage Act 1961* (Cwlth) and that it would, through the Governor-General, exercise the disallowance provisions established in subsection 35(2) of the *Australian Capital Territory (Self-Government) Act 1988* to void the civil unions law.

On 13 June 2006, the Commonwealth Executive, through legal force and without political mandate, overrode an enactment of the Legislative Assembly for the Australian Capital Territory and, by extension, overrode the will of people of the Australian Capital Territory. The disallowance of the Civil Unions Act was the first and only time such a power has been used against an Australian Territory in the history of the Commonwealth Parliament.

In passing the Territory’s self-government legislation over two decades ago, the Minister for the Territories emphasised in his second reading speech that the subsection 35(2) disallowance provisions were “instruments of last resort and it is the Government’s intention to resolve any potential conflict with the ACT by consultation and negotiation.”.

The Australian Capital Territory and its legislature having seen the exercise of these powers in the arbitrary manner that occurred on 13 June 2006, without genuine consultation and negotiation as envisaged by the Minister for the Territories, has no confidence that a similar incursion into the affairs of the Australian Capital Territory will not happen again at some time in the future. The disallowance and the continuing effect of subsection 35(2) creates a high degree of uncertainty as to the status of existing and future enactments of the Legislative Assembly for the Australian Capital Territory and the scope of the Assembly’s law making powers.
The ongoing operation of the disallowance provisions within the Self-Government Act also provides for a lower standard of democracy for the citizens of the Australian Capital Territory when compared to Australians living in one of the six States.

The disallowance power is not available to the Commonwealth with respect to the States and, had a State legislature passed an analogous law to that of the ACT in this matter, the mere assertion by the Commonwealth that the law was inconsistent with Commonwealth statute would have been insufficient for voiding the enactment. Pursuant to section 109 of the Australian Constitution, the High Court, not the Federal Executive, would be required to determine that, at law, there was an inconsistency between the State and Commonwealth laws.

This is as it should be with respect to the Australian Capital Territory, a city-state of 340,000 people whose democratic rights should be recognised in the same way as those Australians living in the States.

Petition
The Legislative Assembly for the Australian Capital Territory and its democratically elected Members respectfully request that the Commonwealth Parliament affirm the rights of the people of the Australian Capital Territory to self-government by removing the relevant provisions of section 35 of the Australian Capital Territory (Self-Government) Act 1988 which permit disallowance of enactments of the Legislative Assembly for the Australian Capital Territory, and so enhance the democratic character of the Australian Capital Territory.

Debate adjourned (Mr Corbell—Attorney-General) and the resumption of the debate made an order of the day for a later hour this day.

6 CALVARY PUBLIC HOSPITAL—PROPOSED PURCHASE BY A.C.T. GOVERNMENT
Mr Hanson, pursuant to notice, moved—That this Assembly:

(1) notes with concern that the Stanhope-Gallagher Government:
   (a) has conducted secretive negotiations surrounding the potential purchase of Calvary Public Hospital (Calvary) and potential sale of Clare Holland House (CHH);
   (b) has failed to consult with the community on the potential purchase-sale of Calvary and CHH;
   (c) has not adequately demonstrated the costs and benefits to the public health system of the purchase-sale of Calvary and CHH; and
   (d) has not provided details of the potential appropriation in the 2008-2009 or 2009-2010 ACT Budgets; and

(2) calls on the Stanhope-Gallagher Government to:
   (a) develop a comprehensive business case outlining the long term costs and benefits of such a transaction;
   (b) provide an alternative course of action should the purchase-sale not proceed;
(c) conduct extensive consultation with the Canberra community of the purchase-sale;

(d) provide the business case, alternate course of action and results of community consultation to the Assembly; and

(e) present an appropriation bill to the Assembly concerning the decision to purchase-sell Calvary and CHH.

Paper: Mr Hanson, by leave, presented the following paper:

ACT Labor’s 2001 Campaign Launch—Extract from ALP website.

Debate ensued.

Ms Bresnan moved the following amendment: Omit all words after “That this Assembly”, substitute:

“(1) notes that the ACT Government is currently in negotiations to purchase the Calvary Public Hospital; and

(2) calls on the ACT Government to:

(a) commit to providing as a minimum the current level of services at Calvary, if the purchase goes ahead;

(b) conduct a survey of health consumers who use Calvary Hospital on the level and quality of services provided and their expectations for the future; and

(c) implement recommendations 53 to 55 of the Select Committee on Estimates Report on the Appropriation Bill 2009-2010.”.

Debate continued.

Mrs Dunne moved the following amendment to Ms Bresnan’s proposed amendment: Omit paragraph (2), substitute:

“(2) calls on the Government to:

(a) develop a comprehensive business case outlining the long term costs and benefits of such a transaction;

(b) provide an alternative course of action should the purchase-sale not proceed;

(c) conduct extensive consultation with the Canberra community of the purchase-sale;

(d) provide the business case, alternate course of action and results of community consultation to the Assembly; and

(e) present an appropriation bill to the Assembly concerning the decision to purchase-sell Calvary and CHH.”.

Debate continued.

Question—That Mrs Dunne’s amendment to Ms Bresnan’s proposed amendment be agreed to—put.

The Assembly voted—
AYES, 6
Mr Coe    Mr Smyth
Mr Doszpot
Mrs Dunne
Mr Hanson
Mr Seselja

NOES, 9
Mr Barr    Mr Hargreaves
Ms Bresnan  Ms Le Couteur
Ms Burch   Ms Porter
Mr Corbell  Mr Stanhope
Ms Gallagher

And so it was negatived.

Question—That Ms Bresnan’s amendment be agreed to—put.

The Assembly voted—

AYES, 9
Mr Barr    Mr Hargreaves
Ms Bresnan  Ms Le Couteur
Ms Burch   Ms Porter
Mr Corbell  Mr Stanhope
Ms Gallagher

NOES, 6
Mr Coe    Mr Smyth
Mr Doszpot
Mrs Dunne
Mr Hanson
Mr Seselja

And so it was resolved in the affirmative.

Debate continued.

Question—That the motion, as amended, viz:

“That this Assembly:

(1) notes that the ACT Government is currently in negotiations to purchase the Calvary Public Hospital; and

(2) calls on the ACT Government to:

(a) commit to providing as a minimum the current level of services at Calvary, if the purchase goes ahead;

(b) conduct a survey of health consumers who use Calvary Hospital on the level and quality of services provided and their expectations for the future; and

(c) implement recommendations 53 to 55 of the Select Committee on Estimates Report on the Appropriation Bill 2009-2010.”—

be agreed to—put.

The Assembly voted—

AYES, 9
Mr Barr    Mr Hargreaves
Ms Bresnan  Ms Le Couteur
Ms Burch   Ms Porter
Mr Corbell  Mr Stanhope
Ms Gallagher

NOES, 6
Mr Coe    Mr Smyth
Mr Doszpot
Mrs Dunne
Mr Hanson
Mr Seselja

And so it was resolved in the affirmative.

7 QUESTIONS

Questions without notice were asked.
8 MINISTER FOR PLANNING—ADMONISHMENT

Mr Seselja (Leader of the Opposition), by leave, moved—That the Assembly censure Minister Andrew Barr for his contempt shown for the Assembly by his refusal to appear before the Estimates Committee when recalled.

Debate ensued.

Ms Le Couteur moved the following amendment: Omit all words after “That the Assembly”, substitute: “admonishes the Minister for Planning for his contempt shown to the Assembly by his refusal to appear before the Estimates Committee, thereby limiting Assembly scrutiny of his decisions in relation to the ACT 2009-2010 Budget.”.

Debate continued.

Ms Le Couteur, who had already spoken, by leave, again addressed the Assembly.

Debate continued.

Question that Ms Le Couteur’s amendment be agreed to—put and passed.

Question—That the motion, as amended, viz:

“That the Assembly admonishes the Minister for Planning for his contempt shown to the Assembly by his refusal to appear before the Estimates Committee, thereby limiting Assembly scrutiny of his decisions in relation to the ACT 2009-2010 Budget.”—

be agreed to—put and passed.

9 NON-PROFIT SECTOR—FEDERAL GOVERNMENT COMPACT

Ms Porter, pursuant to notice, moved—That this Assembly:

(1) supports the Federal Government’s compact with the non-profit sector and acknowledges the proactive participation of the ACT Government in the consultation process; and

(2) acknowledges the ACT Government’s own compact with the non-profit sector in the ACT and recognises the mutual benefits that the Federal compact will have in strengthening partnerships with the non-profit sector.

Debate ensued.

Question—put and passed.

10 REMONSTRANCE—AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988—JOINT A.C.T./COMMONWEALTH REVIEW

The order of the day having been read for the resumption of the debate on the motion of Ms Hunter (see entry 5):

Debate resumed by Mr Corbell (Attorney-General), who moved the following amendment: Omit all words after “That this Assembly”, substitute:

“(1) recognises the tri-partisan view expressed in the ceremonial sitting for the 20th anniversary of self-government that it was time to re-visit the ACT’s Self-Government Act;
(2) resolves that subsection 35(2) of the *Australian Capital Territory (Self-Government) Act 1988* is an unwarranted restriction on the democratic rights of ACT citizens (noting that this power can be presently exercised by the Governor-General on advice from the Prime Minister without prior scrutiny, debate or vote in the Australian Parliament);

(3) notes that in the event that section 35(2) was repealed the Commonwealth Parliament would retain the right to legislate for the ACT under section 122 of the Australian Constitution;

(4) resolves that after 20 successful years of self-government a joint ACT/Commonwealth review of the Self-Government Act and related matters is needed to determine whether it continues to provide the best model for effective and democratic self-government for the ACT;

(5) resolves that such review should include the following matters in its terms of reference:
   (a) the most appropriate way to remove the Governor-General’s disallowance power contained in section 35(2);
   (b) the most appropriate way to lift the restriction on the Legislative Assembly determining its own size;
   (c) the updating of the Act to remove a range of provisions that have become redundant, such as provisions concerned with powers that have subsequently been transferred to the Territory;
   (d) the removal of a range of specific provisions that are concerned with matters that are more properly the subject of Territory law; and
   (e) the appropriateness of a range of existing restrictions on the legislative power of the Legislative Assembly; and

(6) calls on the Chief Minister of the ACT to present these proposed terms of reference to the Prime Minister of Australia and the Minister for Home Affairs and to report back to the Legislative Assembly on progress on these matters.”.

Mr Seselja (Leader of the Opposition) moved the following amendment to Mr Corbell’s proposed amendment: Omit all words after the end of paragraph (1), substitute:

“(2) notes that the *Australian Capital Territory (Self-Government) Act 1988* carries a number of provisions that now may be redundant or restrictive in terms of their impact on the government for and governance of the Territory;

(3) resolves that the Assembly’s Standing Committee on Justice and Community Safety undertake a review of the *Australian Capital Territory (Self-Government) Act 1988* and related matters to:
   (a) determine whether it continues to provide the best model for effective and democratic self-government for the ACT;
   (b) consider what recommendations might be made and presented to the Commonwealth as a way forward for amendments to the Act; and
   (c) report back to the Assembly by the first sitting in 2010; and

(4) calls on the Chief Minister of the ACT to inform the Prime Minister of Australia and the Minister for Home Affairs of this resolution.”.
Debate continued.

Adjournment negatived: It being 6 p.m.—The question was proposed—That the Assembly do now adjourn.

Mr Corbell (Manager of Government Business) requiring the question to be forthwith without debate—

Question—put and negatived.

Debate continued.

Mr Seselja, who had already spoken, by leave, again addressed the Assembly.

Debate continued.

Question—That Mr Seselja’s amendment to Mr Corbell’s proposed amendment be agreed to—put.

The Assembly voted—

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<td>Mr Coe</td>
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<td>Ms Gallagher</td>
<td>Ms Porter</td>
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And so it was negatived.

Question—That Mr Corbell’s amendment be agreed to—put.

The Assembly voted—

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<td>Mr Barr</td>
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<td>Ms Hunter</td>
<td>Mr Rattenbury</td>
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<td>Mr Coe</td>
<td>Ms Gallagher</td>
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And so it was resolved in the affirmative.

Debate continued.

Question—That the motion, as amended, viz:

“That this Assembly:

(1) recognises the tri-partisan view expressed in the ceremonial sitting for the 20th anniversary of self-government that it was time to re-visit the ACT’s Self-Government Act;

(2) resolves that subsection 35(2) of the *Australian Capital Territory (Self-Government) Act 1988* is an unwarranted restriction on the democratic rights of ACT citizens (noting that this power can be presently exercised by the Governor-General on advice from the Prime Minister without prior scrutiny, debate or vote in the Australian Parliament);
notes that in the event that section 35(2) was repealed the Commonwealth Parliament would retain the right to legislate for the ACT under section 122 of the Australian Constitution;

resolves that after 20 successful years of self-government a joint ACT/Commonwealth review of the Self-Government Act and related matters is needed to determine whether it continues to provide the best model for effective and democratic self-government for the ACT;

resolves that such review should include the following matters in its terms of reference:

(a) the most appropriate way to remove the Governor-General’s disallowance power contained in section 35(2);

(b) the most appropriate way to lift the restriction on the Legislative Assembly determining its own size;

(c) the updating of the Act to remove a range of provisions that have become redundant, such as provisions concerned with powers that have subsequently been transferred to the Territory;

(d) the removal of a range of specific provisions that are concerned with matters that are more properly the subject of Territory law; and

(e) the appropriateness of a range of existing restrictions on the legislative power of the Legislative Assembly; and

calls on the Chief Minister of the ACT to present these proposed terms of reference to the Prime Minister of Australia and the Minister for Home Affairs and to report back to the Legislative Assembly on progress on these matters.”—

11 TERTIARY STUDENTS—ELIGIBILITY FOR STUDENT BUS FARES

Mr Coe, pursuant to notice, moved—That this Assembly:

(1) condemns the Government for changing eligibility for student bus fares to force tertiary students to use concession fares from 1 July 2009;

(2) notes the resulting proposed fare increase of 49 per cent on tertiary students who use Faresaver 10 bus tickets; and

(3) calls on the Government to reinstate student fares for tertiary students from 1 July 2009.

Debate adjourned (Mr Corbell—Manager of Government Business) and the resumption of the debate made an order of the day for the next sitting.
12 ADJOURNMENT

Mr Corbell (Manager of Government Business) moved—That the Assembly do now adjourn.

Debate ensued.

Question—put and passed.

And then the Assembly, at 6.57 p.m., adjourned until tomorrow at 10 a.m.

MEMBERS’ ATTENDANCE: All Members were present at some time during the sitting.

Tom Duncan
Clerk of the Legislative Assembly