



**DEBATES**

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

**HANSARD**

21 November 1989

## Tuesday, 21 November 1989

### Petition:

Royal Canberra Hospital ..... 2703

### Questions without notice:

Donations to political parties .....	2703
Section 19 development .....	2704
Hospitals.....	2705
Parents without Partners.....	2706
Bus service.....	2707
Showjumping.....	2707
Grants to the arts .....	2708
ACT Business Week .....	2709
Paterson's Curse .....	2709
Privacy Act.....	2710
Section 19 development .....	2710
Business regulation review unit .....	2711
Rights of the child .....	2712
ACT Administration Centre .....	2712
Asbestos removal .....	2712
ACT Bush Fire Council .....	2713
Interstate car thefts .....	2713
Court accommodation .....	2714
ACT Milk Authority .....	2715
Telecom vehicles .....	2715
Asbestos removal .....	2716
Estimates Committee - Report - Appropriation Bill 1989-90 .....	2717
Acts Revision (Arrest without Warrant) Bill 1989 .....	2719
Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1989 .....	2725
Business Franchise ("X" Videos) Bill 1989 .....	2734
Taxation (Administration) (Amendment) Bill 1989.....	2734
Chinese students in Canberra .....	2743
Business Franchise ("X" Videos) Bill 1989 .....	2751
Taxation (Administration) (Amendment) Bill 1989 .....	2751
Adjournment.....	2774
Business Franchise ("X" Videos) Bill 1989.....	2774
Taxation (Administration) (Amendment) Bill 1989.....	2774
Adjournment:	
Civil liberties .....	2800
Personal explanation .....	2801
Answers to questions:	
Motor vehicle theft (Question No 21).....	2802
Canberra Tourist Bureau (Question No 33).....	2803
Aged persons units .....	2804
<i>Canberra Times</i> site .....	2805

21 November 1989

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**MR SPEAKER** (Mr Prowse) took the chair at 2.30 pm and read the prayer.

### **PETITION**

**The Clerk:** The following petition has been lodged for presentation, and a copy will be referred to the appropriate Minister:

#### **Royal Canberra Hospital**

To the Speaker and members of the Legislative Assembly of the Australian Capital Territory, the petition of citizens, residents of the Australian Capital Territory wish to draw to the attention of the Assembly the attached petition.

Your petitioners therefore request the Assembly to retain Royal Canberra Hospital as the principal hospital in the Australian Capital Territory.

by **Ms Maher** (from 78 citizens).

Petition received.

### **QUESTIONS WITHOUT NOTICE**

#### **Donations to Political Parties**

**MR COLLAERY:** My question is directed to the Chief Minister. Chief Minister, I refer you to the provision in the ACT (Electoral) Act relating to section 304(1)(a) of the Commonwealth Electoral Act which requires, among other things, a full disclosure of the total amount and value of all gifts and the relevant details of each gift received by a political party or branch ending on polling day. Is it true that the secretary of your party, Mr Wedgwood, received on behalf of the ALP a cheque in the sum of \$8,500 from members of the Adult Video Industry Association? If that cheque was received on polling day, 4 March 1989, is there a reason why that gift was not disclosed?

**MS FOLLETT:** Mr Speaker, I would put it to you that gifts to political parties are a matter for those parties rather than for this Assembly, but I have every confidence that the party would be able to answer that question and would,

21 November 1989

in fact, have complied with the provisions of the electoral Act, and will continue to do so.

### **Section 19 Development**

**MR JENSEN:** Mr Speaker, my question is directed to the Minister for Industry, Employment and Education. I refer the Minister to an article entitled "Canberra Casino - Decision expected by June" in the Weekend Australian of 18 November 1989, in which considerable reference was made to the role of Federal Cabinet in the selection of a developer for the project. Could the Minister clarify for the members of the Assembly the role of the Federal Government in the selection process?

**MR WHALAN:** I have not seen the article and, having had it drawn to my attention, I would appreciate the opportunity to see it at some time. But I can inform the Assembly and Mr Jensen that the Federal Cabinet has no role whatsoever in the selection process. The selection process has already been outlined in a detailed statement, and I think the reading of that will show that there is no role for the Federal Cabinet whatsoever in the selection process. I can only assume that it is an error on the part of the author of the article.

**MR JENSEN:** I ask a supplementary question, Mr Speaker. I presume that the information by the press was gained from a document that is now being handed out in Civic Square, which has been authorised by Canberra Association for Regional Development and a number of other organisations. It says:

The Civic Square proposal will be presented to the Federal Parliament in the near future.

I wonder whether that might help throw some light on it. I am quite happy to pass this across to the Minister.

**MR WHALAN:** Mr Speaker, the Canberra Association for Regional Development is an organisation which reflects the interests of the private sector in the ACT. It is an organisation for which I have a great deal of admiration because I think it contributes positively to the general discussion about the economic development of the ACT. We do consult quite frequently with CARD. However, the Government has no responsibility for any information which is supplied by CARD and for which it claims the authorship. One hopes that it will ensure that whatever information is contained in its pamphlets is correct. But if that is the source of the material and if there is reference there to its being referred to Federal Cabinet, it is patently incorrect.

## Hospitals

**MR KAINE:** Mr Speaker, I would like to direct a question to the Chief Minister and Treasurer. I refer to the Hansard of last Wednesday when we were debating the hospitals and the blow-out of costs. The Chief Minister, in explaining that \$2.5m overrun, said that current expenditure is abnormally inflated by workers compensation payments which will be refunded under new arrangements with COMCARE - and the amount we were talking about was \$2.2m. Chief Minister, was this \$2.2m amount that was actually budgeted for an expected payment that was then made? Secondly, is it not true that this is not a refundable amount but a prepayment and under no circumstances would the money ever be refunded? If that supposition is incorrect, when would you expect it to be refunded and under what conditions?

**MS FOLLETT:** I thank Mr Kaine for that question. I think I made it clear at the time, when I was speaking on that matter in the Assembly last week, that the information that I was providing was of an interim nature, that work was continuing by my Treasury people in looking at the current financial position of the health area, and that what I was offering was very much preliminary advice.

Mr Kaine has asked some specific questions about workers compensation, the timing of arrangements for COMCARE and so on. I do not have that detail available to me at the moment. I expect it would be a matter that would be taken up in the continuing work being done by Treasury, but I undertake to get some further information on that and make it available as soon as I can.

**MR KAINE:** I ask a supplementary question, Mr Speaker. I do not think that answer addresses the question. The Chief Minister less than a week ago was quite positive that this amount was an unusual and an abnormal inflation of the expenditures in the first quarter of the year. There was nothing conditional about that. She either got that from the Treasury team that made an interim report or she made it up. I think that she surely can answer the question that I have asked, and not fob it off as something that is interim and that she may get more information about at some future time. This is an amount of \$2.2m which she referred to specifically.

**MR SPEAKER:** Would you please ask the question.

**MR KAINE:** I have asked the question, and I would like to get a specific answer to it, Mr Speaker, rather than have it again, as so often is the case, simply shrugged off as being unimportant and no answer given to the question.

**MS FOLLETT:** Mr Speaker, the information that I provided last week was information that had been provided to me by the Treasury in its interim reporting on its ongoing work looking at the funding position of the hospitals. I think I have made it clear that I do not have the kind of detail

21 November 1989

that Mr Kaine is requesting and that I will get that detail and make it available.

### **Parents Without Partners**

**MR DUBY:** Mr Speaker, my question is directed to Mr Berry, Minister for Community Services and Health, and it is in relation to the organisation called Parents Without Partners. Given that the Parents Without Partners organisation receives assistance from State governments in every State of Australia but not the ACT and given that during the campaign for election to this place Mr Berry attended a meeting in February at the PWP centre in Dickson where commitments were given by all political parties here present that PWP and the Lone Fathers Association would receive funding from the Government, can he please tell me when that funding will eventuate?

**MR BERRY:** Thank you, Mr Duby, for the question. The Labor team in the lead-up to the election was consistent in its approach to this sort of funding, that it was a competitive funding arrangement where interested parties would make application. From the Labor team's position, we made it clear that these organisations would be provided with funding on the basis of the service that they provide to the community. It is, as I have said, a competitive area of funding, and some announcements have been made in relation to it by the Government. Applications were called for by an advertisement in the Canberra Times on 4, 7, 11 and 14 October. They were to close on 31 October. My department also wrote to all currently funded services advising them of the process. I expect Parents Without Partners would have been contacted in that way, or at least provided with access by virtue of the advertisements in the newspaper.

As announced in the budget, the Government is to introduce recurrent triennial funding for organisations which provide essential or complementary services. This will help them plan services over a much longer period than they have already been able to. As these organisations will not be required to apply for their base funding every year, community reaction to this decision has been favourable.

The current round of applications is for expansion of existing services and annually funded services. Annually funded services may also apply for recurrent funding. The Government regrets the tightness of the application timetable and will help organisations to meet it wherever practicable. We aim to have decisions on this round of applications announced by 31 December. But if Parents Without Partners have made an application, they will be considered amongst all of those applicants and they will be mentioned in the announcements in December.

21 November 1989

Existing funded organisations will receive 6.3 per cent indexation on their current funding levels, backdated to 1 July 1989. Those organisations identified at this stage for receiving recurrent funding will be indexed to 31 June 1990. That summarises the entire funding process and the way that the Government has decided to approach applications from organisations like Parents Without Partners.

### **Bus Service**

**MRS NOLAN:** My question is to Mrs Grassby, Minister for Housing and Urban Services. What is the Government doing to ensure a bus service to the suburb of Greenway on the shores of Lake Tuggeranong to enable residents of that suburb access to the Government's social justice strategy for transport?

**MRS GRASSBY:** I thank Mrs Nolan for the question. I did have some information on Greenway buses, but it has been changed. I will have to get back to you.

### **Showjumping**

**MR WOOD:** I direct a question to the Minister for Housing and Urban Services. Minister, I am sure we all applaud the significant showjumping event that we are to host next year. I am sure we are also aware of the considerable amount of work and cost that has gone into the development of Glebe Park, especially the grassing of that park. Minister, can you assure the Assembly and the community that there will be no cost to them for this event?

**MRS GRASSBY:** I thank Mr Wood for the question. The ACT Showjumping Club is proposing to hold the finals of the World Cup showjumping trials in the grounds of the Parkroyal Hotel on the Australia Day weekend. That is where most of them are to be held. It is not ACT land. The organisers have, however, approached me to establish whether a small section of Glebe Park could be used for marshalling and exercising the horses. ACT Parks and Conservation staff will devise a system for protecting and restoring the park surface. As part of the weekend activities, some horses would be stabled in the grounds of the TAFE College. The proponents will need to guarantee to make good any damage to the park and to minimise disruption to the public. I understand that the showjumping event will be nationally televised and that it has great potential to contribute to the nationally recognised sporting weekend that we hold in Canberra each year as part of the Australia Day celebrations.

When the organisers approached me and I found out that they wanted to use only a certain part of Glebe Park, I stated

21 November 1989

that, if it were to be agreed to, they would have to take full responsibility for restoring the park to exactly as it was before, at no cost to the ACT Government, and for ensuring that there would be no problem to the public in Canberra. They have promised that in writing.

### **Grants to the Arts**

**MR HUMPHRIES:** My question is to the Chief Minister in her role as Minister responsible for the arts. Has her department made a decision on the level of grants to arts organisations for the calendar year 1990? If so, when will she inform those organisations of the decision? Given that applications for grants closed in July and that the grant levels for the coming year are normally announced in October, why has it taken so long to determine the level of grants for next year? Is the Chief Minister aware that arts organisations need to know the level of funding well in advance of the 1990 funding period in order to properly plan their activities and financial programs for the year ahead?

**MS FOLLETT:** I thank Mr Humphries for the question. The Arts Development Board is the body which advises on the allocation of CDF grants to the arts in the ACT. It met on 18 September and again on 2 November to make its assessments and recommendations on the priorities and allocations for the applications that it has received for operational, project and individual artists' grants for 1990. The board's recommendations have been received in my office. It is my intention to study them very carefully and, if I am able to, to discuss them with the chair of the Arts Development Board before I make announcements on the levels of funding. There were a large number of applications made this year, and the effort in assessing them and making recommendations has been very substantial. So I do not believe it is a matter that should be approached lightly.

Another point that members might like to hear is that the allocation for the arts, \$1.681m, has been indexed, and that will allow us to make some small but real enhancements to levels of support. Again, as my colleague Mr Berry pointed out, in the future, from 1991, we will be looking at a three-year funding to major clients, and that will obviate the need for this constant annual assessment of arts funding. I will be looking at the recommendations made to me, assessing them very carefully and informing applicants as soon as I can. It should not be very long now.



21 November 1989

### **ACT Business Week**

**MR JENSEN:** My question is directed to the Minister for Industry, Employment and Education. Once again I refer the Minister to the pamphlet which is, as I indicated, being handed out as part of Business Week activities in Civic Square in a tent which includes a booth manned by officers of the Office of Industry and Development. In fact this particular pamphlet is displayed on a board opposite that office's desk. This pamphlet, produced by CARD and a number of CARD members, refers to the Civic Square entertainment centre having a lyric theatre, a State-like library, two - I repeat two - international standard hotels and limited exclusive shops and offices. I refer the Minister to the development conditions for the section 19 development and ask him to advise the Assembly whether these conditions provide for two international standard hotels, as suggested by the pamphlet.

**MR WHALAN:** The Civic Square redevelopment includes two distinct components, one of which is the area to the east, which is not part of section 19, which has been offered for expressions of interest. The other part is in relation to the section 19 area, for which expressions of interest have been invited. That process is under way at this point of time. Mr Jensen has asked a question based on a document which I have never seen and for which this Government has not the slightest responsibility. So I find it very difficult to answer a question based on a document I have never seen and for which the Government has no responsibility.

### **Paterson's Curse**

**MR MOORE:** My question is to Mrs Grassby, Minister for Housing and Urban Services. Does the Minister regard the sudden proliferation of Paterson's curse in the Canberra area to be of far more concern than the problem of the uncut grass? If so, what does she plan to do to address that problem?

**MRS GRASSBY:** Attitudes to Paterson's curse depend on where you live. Where I was born, it is known as Salvation Jane, because when the sheep have nothing else to eat they can survive on Paterson's curse. So I have never thought of it as Paterson's curse; I always thought of it as Salvation Jane. I rather like it and think it is awfully pretty. Obviously it seems to upset certain people. It will be cut. We have \$3m to spend on cutting grass. We are hoping that we will not be getting any more rain, although they tell me there will be a lot of rain on the weekend. We hope we will be able to get out and cut a lot more of the grass, as we have been doing.

**Mr Jensen:** That is what you said last week, Ellnor.

21 November 1989

**MRS GRASSBY:** Yes, and we had a lot of rain, do you not remember? The other night it poured down. We have had more rain in November than we have had in any previous November. In fact, I can give you the figures on rain if you would like them. The average rainfall for November is normally 626.6 millimetres. In 1989 - - -

**Mr Kaine:** I rise on a point of order, Mr Speaker. The answer that is being given bears no relationship to the question whatsoever and I, along with everybody else in this Assembly, am getting heartily sick of the problem being attributed to the weather. This is ridiculous, and it is about time that Government members answered the question and did not carry on with a lot of rubbish.

**MRS GRASSBY:** Mr Speaker, may I say I did answer the question. I said at the time it will be cut, but then I was asked by Mr Jensen who said that he would like to know about it, so I was answering that as well.

### **Privacy Act**

**MR STEFANIAK:** My question is to the Chief Minister in her capacity as Attorney-General. Does the Government intend doing anything to amend or repeal the new Privacy Act as it applies to the ACT when the ACT gains control over police and courts next year so as to ensure that accident victims' rights are protected?

**MS FOLLETT:** Mr Speaker, I believe it is true that the Commonwealth Privacy Act actually forbids the Australian Federal Police from releasing the names of drivers involved in traffic accidents. As I am sure members are aware, at the moment, neither the Australian Federal Police nor the Commonwealth Privacy Act are the responsibility of the ACT Government. I believe that Mr Stefaniak's question is based upon a newspaper report, which I have seen, but I do not believe it is really appropriate for me to express a view on the basis of that newspaper report to say whether or not the Privacy Act does operate to prevent the release of information to accident victims or to insurance companies. It is not our responsibility. I do know that the Privacy Commissioner has taken this matter up with the police, and I have asked our own ACT Government Law Office to monitor the developments and to advise me of the results.

### **Section 19 Development**

**MR JENSEN:** My question is once again to the Minister for Industry, Employment and Education. I hope I will be able to get an answer this time. It relates to my question on section 19 again. Do the development conditions for section 19 include or suggest that there are to be two - I

21 November 1989

repeat two - international standard hotels on section 19? If this is not the case, does this not suggest that one would have to express some concern about the credibility of the pamphlet that I have passed across to the Minister?

**MR WHALAN:** I have not had a chance to read this pamphlet because, as Mr Jensen well knows, Ministers take very seriously the period of question time and have a commitment to pay attention to questions when they are asked about themselves as individual Ministers and also about other Ministers. I have had a look at the front of the pamphlet and have studied some of the list of organisations that have authorised the pamphlet. After I have had an opportunity to look at it, I will be quite happy to answer any questions from Mr Jensen in relation to the matter. Again, I wish to emphasise that it is quite clear that the Government is not in any way involved in the organisations that authorised it.

### **Business Regulation Review Unit**

**MR KAINE:** I would like to address another question to the Chief Minister. I refer back to an announcement by the Chief Minister on 21 August that she was going to implement Liberal Party policy by the creation of a business regulation review board which, in the Chief Minister's own words, would streamline government procedures, paperwork and reporting requirements as they impact upon business. Can the Chief Minister tell us what steps have been taken so far in the last 12 weeks to achieve these aims and, if nothing has yet been done, when we might see some streamlining in the bureaucratic processes associated with this excellent policy initiative?

**MS FOLLETT:** This is a question that I have answered before, I believe, Mr Speaker. My answer on a previous occasion was that it is a business regulation review unit which has been set up within my own portfolio. At the moment it consists of two public service officers whose task is to review and monitor regulations and to advise where those regulations may be or whether they run the risk of stifling business. So far as I am aware, it is a normal part of the ACT Government Administration and is operating as such.

**MR KAINE:** I ask a supplementary question. Can I assume from the Chief Minister's answer that her own review unit which she so describes has in fact done nothing in the last 12 weeks?

**MS FOLLETT:** I find that an extraordinary question, Mr Speaker. It is the same question again. I have two public service officers working within the ACT Government Administration to monitor regulations and to advise where existing regulations are stifling enterprise or where there is a danger that new regulations may stifle enterprise. Mr

21 November 1989

Kaine asks, "Have they done nothing?". Well, of course, I fully expect that they would have been carrying out those activities throughout the period that he refers to.

### **Rights of the Child**

**MR STEVENSON:** I ask the Chief Minister: when did the Federal Government ask the ACT Government to comment on the convention on the rights of the child?

**MS FOLLETT:** I have a letter from the Federal Government on that matter. I do not have it with me, I cannot advise you of the date of it, but it is certainly a matter that has been referred to me.

**Mr Stevenson:** An approximate date?

**MS FOLLETT:** I do not have a date, no; I am sorry. I am not prepared to guess in question time. I can certainly look up the details on that referral from the Federal Government and advise the Assembly.

### **ACT Administration Centre**

**MR COLLAERY:** My question is directed to the Chief Minister. Would you confirm that this building is still leased by the Commonwealth? If so, would you confirm whether this Territory has any legal obligations under a leasing agreement between the owner of this building and the Commonwealth? Has your Government recently written to the Department of Administrative Services offering to take over the Federal Government's lease obligations for this building?

**MS FOLLETT:** I do not have that detail with me at the moment. It is certainly a matter which I would be more than happy to look into and to advise the Assembly on it.

### **Asbestos Removal**

**MR HUMPHRIES:** My question is to the Minister for Housing and Urban Services. I refer to an article which appeared on the front page of the Chronicle on 7 November in which Mr Mike Crowe of the Housing Industry Association commented on the Government's asbestos removal program. He said in particular that the existing removal procedures were draconian and that asbestos sheeting should not be confused with the more harmful blue asbestos fluff. Describing asbestos sheeting, he said, "There has been absolutely no evidence of any fatalities or health problems because of it". Can the Minister say whether this last statement is true and, if it is not true, will the Government table in

21 November 1989

the Assembly the evidence it has of fatalities or health problems arising out of asbestos sheeting?

**MRS GRASSBY:** Whether it is true or not I cannot say. Unfortunately, problems with asbestos do not show up sometimes for 20 years. I am not prepared to put workers in a situation where in 20 years' time they could be dying from mesothelioma, which is a disease that comes from exposure to asbestos. That is the reason why we are still requiring that when asbestos is being removed a licensed asbestos remover be on hand so that it can be removed with care. This involves keeping the asbestos wet at all times, putting it in bags, and so on.

**MR HUMPHRIES:** I ask a supplementary question. Do I take it from that answer that the Government has no evidence of any harmful effect flowing from asbestos sheeting, as opposed to other forms of asbestos?

**MRS GRASSBY:** As I said, I do not have that information, but even so, for 20 - - -

**Mr Humphries:** Will you get it?

**MRS GRASSBY:** I will get you information, but we probably will still not change the rules as 20 years down the track we could have somebody suffering from the disease because we did not take the precautions. I am not prepared to take that sort of risk with anybody's life.

### **ACT Bush Fire Council**

**MRS NOLAN:** My question also is directed to the Minister for Housing and Urban Services. When does she intend to announce the membership of the ACT Bush Fire Council?

**MRS GRASSBY:** It will be announced in the coming weeks. We have just had the submission in, and it is going before Cabinet. It will be announced after that.

### **Interstate Car Thefts**

**MR JENSEN:** My question is directed to the Chief Minister who, in a reply to my question which I put on notice on 26 July, to which I have only recently received the answer, indicated that the Standing Committee of Attorneys-General has the issue of interstate car thefts on its agenda. As the problem of interstate car thefts is of considerable concern to many interested bodies, including many residents of the ACT, can the Chief Minister advise this Assembly of the time frame in which the issue will be examined and recommendations will be made?

21 November 1989

**MS FOLLETT:** I thank Mr Jensen for that question on an important matter. The Standing Committee of Attorneys-General meets fairly regularly - more regularly than I am able to attend it, needless to say - and I cannot advise you at this moment exactly what stage its consideration of that question of interstate car thefts is at. But I can certainly find that out for you and add that to the answer that I have already given on that matter.

### **Court Accommodation**

**MR STEFANIAK:** My question is addressed to the Chief Minister. Given that the Government will be taking over the ACT courts system at the end of June next year, is the Chief Minister aware that there are some 64 staff members situated in fairly cramped conditions in the courthouse at Knowles Place, 13 further staff members spread out in Murray House, 10 at Childers Street, seven in the AMP building, and 15 monitors who work in each of the four buildings? Is there any proposal to rationalise the accommodation for the ACT courts in one building when the courts are taken over by the ACT Government next year?

**MS FOLLETT:** I thank Mr Stefaniak for the question. The ACT courts are still the responsibility of the Commonwealth Government, and the Commonwealth Attorney-General's Department is responsible for their operation. It is also responsible for the level of resources allocated to the courts, including matters of staffing, numbers of judges and magistrates, and so on.

But, as we all know, under the ACT self-government legislation the transfer of responsibility for the courts to the ACT Government is included and will become a reality. The precise question that Mr Stefaniak has asked was about the staff being accommodated in a number of locations. I am having a great deal of trouble hearing in here, Mr Speaker; I do not know why. They are accommodated in a number of different locations. Do you see that as an inefficient arrangement, Mr Stefaniak?

**Mr Stefaniak:** Yes.

**MS FOLLETT:** As far as I am aware, that has not been addressed. It certainly has not been raised with me in the conversations that I have had in a preliminary way, looking at the possible transfer of the courts and the resources of the courts. I think it is a reasonable question to ask and I think it is something that should be taken up in relation to the general question of the transfer of the courts and the resources that are available to them.

21 November 1989

### **ACT Milk Authority**

**MR KAINE:** I address a question to the Minister for Industry, Employment and Education. Minister, have you recently made appointments to fill two casual vacancies on the ACT Milk Authority? If so, on what date were the appointments made and could we be advised of the names and the qualifications of the people who were appointed to those two vacancies?

**MR WHALAN:** Yes, there were two vacancies on the Milk Authority, and appointments have been made. Before the appointments were made I referred the names to the Leader of the Opposition. He expressed reservations about one of them. Notwithstanding that, the Government proceeded to confirm the appointments. I do not have the exact date of the Cabinet decision that confirmed the appointments.

Basically, on a statutory authority such as this the Government aims to have an officer from the public service to represent the interests of the Government. I think that is the universal practice across statutory authorities. So one of the people appointed is a senior officer of my department who has considerable administrative experience and who occupies a senior and responsible office within the Administration. The other person is a community representative. In identifying the community representative a number of names were considered, and this particular person was finally selected. This person's qualifications are that - if gender is relevant - she is a female; a person who has demonstrated considerable leadership qualities; the chairperson of the school board of Hawker College; and someone who has demonstrated considerable skills in relation to that.

It may come as a surprise that the person is relatively young - indeed, 17 or 18 years of age. Some people may think that is a qualification which should be discriminated against on the basis of youth. That is not the view of the Government. The Government supports providing the opportunity for youth. I am confident that both of those appointees will well serve the ACT community in their period on the Milk Authority.

In relation to the actual date of the decision and the appointments, I will convey that information to the Assembly this afternoon or tomorrow, Mr Speaker.

### **Telecom Vehicles**

**MRS GRASSBY:** Mr Speaker, on 16 November Mrs Nolan asked me the following question:

What action, if any, Minister, have you taken on requests from Telecom to have their station wagons, complete with rear compartment of

21 November 1989

technical equipment, plus possible roof-rack, categorised as commercial vehicles instead of recreational vehicles?

The answer is as follows: Telecom vehicles have never been categorised as recreational vehicles. Telecom is currently changing its vehicle fleet from vans, which are basically goods carrying vehicles, to station wagons, which are passenger carrying vehicles unless modified and approved by the Motor Vehicle Registry to goods vehicle standards.

From discussions with officers of my department over an extended period, Telecom was aware of the legislative requirements prior to its decision to change types of vehicles. Telecom has written to me asking that the current legislation be changed to accommodate its business decision to use station wagons rather than vans to enable it to use loading zones without the vehicles being required to be authorised as goods vehicles.

I have replied, indicating that Telecom should not experience any difficulties under the current provisions as station wagons can be authorised to use loading zones provided it pays the appropriate fee.

The cost of renewing registration for a station wagon used in the ACT, including third party insurance inspection, is \$297 a year. If it is needed to use loading zones an extra fee of \$200 is applicable. A 15-minute limit on loading zones is applied to authorised station wagons. The total is \$497. The cost of registering the same vehicle as a commercial goods vehicle is \$372. This compares favourably with New South Wales where the cost of registering a station wagon for commercial purposes is between \$614 and \$714, depending on the weight of the vehicle. This allows them to use loading zones for no longer than 15 minutes.

I did not realise, Mr Speaker, that we could get a lot more money out of the Commonwealth. We could probably put that up. Unfortunately, it would affect everybody else in Canberra.

### **Asbestos Removal**

**MRS GRASSBY:** On 16 November Ms Maher asked the following question about the asbestos removal program:

Could the Minister advise as to the number of trial houses and could I receive a break-up of their individual costs?

The answer is as follows: trials of removal procedures have been carried out at two houses. The total cost for the first house was \$42,700. This was made up of equipment and materials, \$9,000; site establishment and restoration, \$5,500; labour and supervision, \$26,600; and insurance,



21 November 1989

\$1,600. The second house cost a total of \$60,900. The component costs were equipment and materials, \$11,800; site establishment and restoration, \$5,000; labour and supervision, \$42,500; and insurance, \$1,600.

The greater cost of labour and supervision at the second house was due to trials of different methods of removal being tested. As part of these tests, some tasks were performed in three different ways to trial the options which were available. The costings do not include air monitoring costs, which were in the order of \$2,000.

### **ESTIMATES COMMITTEE - REPORT - APPROPRIATION BILL 1989-90**

Debate resumed from 2 November 1989, on motion by **Mr Jensen**:

That the recommendations be agreed to.

**MS FOLLETT** (Chief Minister) (3.13): Mr Speaker, I would like to respond to the report by the Estimates Committee on the Appropriation Bill 1989-90. On behalf of the Government I thank the committee for its report. In doing so, the Government acknowledges the hard work and the additional time and effort devoted by members to the scrutiny of expenditure proposals contained in the Appropriation Bill. The work of the committee chairman, Mr Norm Jensen, is worthy of particular mention. The incisive analysis of the committee will contribute to informed debate on the Government's expenditure proposals.

Mr Speaker, members will recall that, in introducing the Appropriation Bill, I detailed my Government's budget strategy for 1989-90. It was founded on the principles of social justice, economic responsibility and the desire to meet the needs and aspirations of the community. Proposed expenditures as reflected in the Appropriation Bill are, of course, only one side of the budget equation. In looking at expenditures, we need to recognise our ability to raise the necessary revenues to support that expenditure.

The Government accepts that the committee's report should not be interpreted as endorsing its budget strategy. However, the Government is of the strong view that the proceedings and report of the committee provide a valuable forum for considering its expenditure proposals and build on the community consultative processes adopted in the lead-up to the introduction of this budget.

In all, the committee has made some 20 recommendations. Three of those recommendations are directly linked to the passage of the Appropriation Bill 1989-90. The majority of the remaining recommendations relate to reporting issues. I do not propose to speak to each of the recommendations individually. Rather, I will seek leave to table the Government's detailed response to each recommendation

21 November 1989

and use this opportunity to address those in relation to which the committee requested further information prior to the passage of the Appropriation Bill for 1989-90.

However, before doing so, Mr Speaker, I take this opportunity to address a number of general issues contained in the report. The committee comments on the need for future budget documentation to be presented in a clearer and more "user friendly" format, along with the need to provide greater detail in support of expenditure proposals. The experience we all have gained in this, the first year of self-government for the ACT, provides a basis on which we can further develop and refine the whole range of budget information.

The Government will be undertaking a review of the format and information provided and welcomes the comments and suggestions made by the committee. These will be taken into consideration as part of the review.

Part of the additional information the committee believes to be necessary to examine fully program expenditures is the availability of performance indicators. The Government accepts the usefulness of these tools in evaluating program performance and agrees these should be available at the time of Estimates Committee hearings.

As agencies are at different stages and levels of development of program management, my department, in conjunction with the Treasury, is actively supporting agency efforts to develop a more systematic approach to program management and performance monitoring. The Government is confident that for the 1990-91 budget the committee will see a significant improvement in this area.

In a number of areas the committee recommends the provision of additional financial reporting to the Assembly. The Government accepts a number of these. As to others, there are legislative and administrative issues that need to be addressed in some detail before the proposals can be fully implemented.

Mr Speaker, the committee requested that details of refund arrangements for contributors to the ACT ambulance service be available prior to the passage of the Appropriation Bill. I am pleased to say that arrangements are in place to ensure that pro rata refunds are issued to people currently contributing to the ACT ambulance scheme. Full details are provided in the response that I will table shortly. I believe that this response satisfies the committee's request.

The committee also sought a notional list of projects within the forward design program. Given the significant capital expenditures we face over the next few years in such areas as land development and the hospital redevelopment strategy and given the Government's commitment to debt containment, an intensive examination of

21 November 1989

proposals to be included in the program must be undertaken to avoid wasted resources. This, combined with the administrative processes presently in place, will unfortunately delay the provision of detailed information.

The committee asked that the Government review the decision to spend \$177,000 for fencing Stage 88 in Commonwealth Park. The Government agrees and will advise the Assembly of the outcome of the review as soon as it is completed.

Mr Speaker, I reiterate the Government's commitment to balance social justice principles and economic responsibility. The expenditure proposals as outlined in the Appropriation Bill and supporting budget documentation achieve that objective. Once again, I commend the Bill to the Assembly. In doing so, Mr Speaker, I seek leave to have the Government's detailed response to the committee's report incorporated in Hansard.

Leave granted.

Document incorporated at appendix 1.

**Mr Jensen:** Mr Speaker, I presume, as I was the presenter of the report, I can move that the debate be now adjourned.

**MR SPEAKER:** I will take advice on this matter. I draw members' attention to standing order 65 which states:

Except for a Member who has spoken to the question, or who has the right of reply, any Member may move the adjournment of the debate ...

So, Mr Jensen, as you have spoken, you are not entitled to move the adjournment. Another member may do so. However, if the debate is not adjourned, we will put the question at this time. Mr Wood?

**Mr Wood:** Do you want me to move the adjournment?

**Ms Follett:** What is the motion, Mr Speaker, may I ask?

**MR SPEAKER:** It is that the recommendations in the report of the Estimates Committee be agreed to.

Question resolved in the affirmative.

### **ACTS REVISION (ARREST WITHOUT WARRANT) BILL 1989**

Debate resumed from 28 September 1989, on motion by **Ms Follett:**

That this Bill be agreed to in principle.

**MR STEFANIAK (3.23):** The Liberal Party will be supporting this Bill, Mr Speaker. It is a commonsense Bill which will

bring into law what effectively has been the situation in practice over the last few years. It consolidates, from various Acts in force in the Territory, the power of arrest into one Act, the Crimes Act 1900, which is the principal Act in relation to giving the power of arrest to a private citizen - such power, of course, is exercised very rarely - but more specifically to a member of the police force. As such, all the people to whom I have spoken in the legal area, including defence lawyers, prosecutors and police, are quite happy with this Bill.

I just draw the Government's attention to one area of concern which was expressed to me by several of my former colleagues in the Office of the Director of Public Prosecutions, and that was in relation to section 352, the power of arrest, and specifically in relation to some of the possible problems regarding the question of summoning a person to appear in court as opposed to arresting him or her.

One of the scenarios put to me - and I mention it because it certainly carried some weight with me as an interesting statement of what the law is at present and something the Government might like to consider amending - is where a person has committed a serious crime, for example, murder, which satisfies the criteria of section 352(2)(b) of the Crimes Act. That section deals with a person suspected of having committed, or of being about to commit, an offence. It states:

A police officer may, without warrant, arrest a person for an offence against a law of the Territory if the police officer believes on reasonable grounds that -

- (a) the person has committed or is committing the offence; and
- (b) proceedings by way of summons against the person in respect of the offence would not achieve one or more of the following purposes:
  - (i) ensuring the appearance of the person before the court in respect of the offence;
  - (ii) preventing the continuation of, or a repetition of, the offence or the commission of some other offence;
  - (iii) preventing the concealment, loss or destruction of evidence of, or relating to, the offence;
  - (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
  - (v) preventing the fabrication of evidence to be given or produced in proceedings in respect of the offence;
  - (vi) preserving the safety or welfare of the person.

21 November 1989

The scenario presented to me by a former colleague was that if he, being a person well known to the police, shot his wife, walked into the police station and said to the fellow at the desk whom he knew, "Listen, Fred, I've just shot my wife. Here is the shotgun. You know where I live. Send me out a summons and it will be sweet", he would satisfy all those six criteria, after having committed what is certainly the most serious offence you can commit in Australia. To be summonsed for a serious offence like that - and that person certainly would fall within that criterion - is a bit of an anomaly.

Perhaps that indicates room for improvement in section 352 and perhaps that is something the Government can look at, especially as we approach June and July of next year when we will be taking over responsibility for the courts and police and the administration of the Crimes Act. But this Bill proposed by the Government is a commonsense Bill, which we support.

**MR DUBY** (3.26): Mr Speaker, my party supports the Acts Revision (Arrest Without Warrant) Bill of 1989. Twelve Acts have been reviewed and, where the power of arrest without warrant applies, will be repealed or amended so that section 352 of the New South Wales Crimes Act 1900 is the only source which will provide a general power of arrest without warrant.

Law has always been a complex subject. Acts and ordinances need to be read carefully and interpreted correctly to avoid wrong decisions being made by authorities. If this Bill is passed by the Assembly I envisage that the law concerning the power of arrest without warrant will be made simpler and more easily understood by all.

On this point, Mr Speaker, I would like to congratulate the Chief Minister on her commitment to simplifying this law so that confusion and misunderstanding can be avoided. I do not intend to comment on each individual amendment to a particular Act because, as I understand it, this Bill merely repeals or amends inoperative or redundant provisions on the statute books. However, I have examined each and every item mentioned in the Bill and have found no flaws with any of the amendments made to the various Acts.

The amendments are, in my opinion, of a technical nature only and, as was mentioned in the Chief Minister's speech, do not alter the substance of the law affecting the power of arrest without warrant. Moreover, these amendments are intended to confine the source of power of arrest without warrant to one section only, and that is section 352 of the New South Wales Crimes Act 1900, which is the Act that applies in the ACT. Mr Speaker, I accordingly commend the Bill to the house.

**MR JENSEN** (3.28): Mr Speaker, my learned leader was to comment on this Bill, but he is otherwise detained at the moment.

21 November 1989

**Mr Duby:** I hope it is without a warrant.

**MR JENSEN:** That is a good question, Mr Duby. I will have to check that one out. I indicate that the Residents Rally is proposing to support the Bill as presented. We have no proposals to amend or change it. We have noted the points made by Mr Duby and my colleague Mr Stefaniak. The Rally will be supporting the Bill as it is printed.

**MR MOORE (3.29):** Mr Speaker, I support the legislation in general terms, but in the detail stage I will draw some attention to a particular matter which is very much along the lines of move-on powers, as I read it. I have an amendment being drawn up at the moment which will resolve that problem. It has to do in particular with clause 9 of the Bill under which a person is required by a police officer to state his or her full name or residential address. There is no qualification there with reference to the Act. It was originally the case in the Motor Traffic Ordinance 1936, the one that we are amending, that it stated "in the execution of his duty under this Ordinance". Whilst we do not accept the sexist wording of that, it is appropriate that we look at that. I will be circulating an amendment when we get to the detail stage. But, with reference to the Bill as a whole, I have no particular problem with it.

**MR COLLAERY (3.30):** Mr Speaker, the Residents Rally supports the Bill in its present form. It provides a useful compilation of a number of scattered provisions dealing with evidence. My colleague Mr Stefaniak has probably spoken about section 352 of the Crimes Act 1900 and the need to produce those amendments and codify the law into one provision.

An essential problem that I have with the Bill is to seek an amendment to section 203 of the Motor Traffic Act. I believe that amendment has been circulated in my name. The amendment I seek is to interpolate the words "in the execution of his or her duty under this Act" after the word "inspector" on the first line of proposed section 203. It was circulated in the chamber, Mr Speaker, during the last sitting; I do not have it with me now.

The reason why I seek that amendment to the Bill is to ensure, Mr Speaker, that those words which have been dropped in the redrafting of section 203 make abundantly clear that the request by a police officer or inspector to a person should be only in the execution of his or her duty under that piece of legislation and not for anything else.

There is a legal argument that that is itself clear and that if an officer were using section 203 that officer should use the provision only in the execution of his or her duty under the Act. But that has not been made definitively clear, to my knowledge, by the courts. If there is any doubt - and it is a question of civil

21 November 1989

liberties - and in the absence of any scrutiny of this matter by the Standing Committee on the Scrutiny of Bills and Subordinate Legislation, because this Bill came forward before the committee was active, it would seem prudent, unless there is any strong objection, to add the words "in the execution of his or her duty under this Act" after the word "inspector" to make perfectly clear that the provision does not empower police officers and inspectors at large to ask anyone in the street to provide his or her full name or residential address. Mr Speaker, the Rally otherwise supports the Bill.

**MS FOLLETT** (Attorney-General) (3.33), in reply: Mr Speaker, to wrap up the debate, I thank the members from all parties, I believe, for their support for this Bill. It is a tidying-up Bill, as everybody is aware. It aims to repeal some inoperative and redundant provisions from the statute books, and it aims to delete inoperative arrest provisions from Acts because they could cause some confusion about the source of power of arrest in particular circumstances. So it is very much a tidying-up Bill, and I think all members have understood that.

Mr Stefaniak put forward what I could count only as a very extreme example. But if we are to look in the longer term at the example that Mr Stefaniak has raised I do not think it need delay us in tidying up the statute books, as we are seeking to do.

An amendment has been foreshadowed by Mr Collaery and a similar one by Mr Moore. I presume they will be argued in the detail stage. Is that correct, Mr Speaker?

**MR SPEAKER:** Yes, that is right.

**MS FOLLETT:** I would like to note that the advice I have is that these types of amendments are not necessary, that as the Bill is currently drafted it does not actually widen the police powers to ask for one's name and address, and that is most certainly not the intention of it, but that if members wish to have this kind of a qualification included in the Act the Government will not object. But the way the Act is drafted, I am informed, is more in keeping with modern drafting practice.

Question resolved in the affirmative.

Bill agreed to in principle.

### **Detail Stage**

Clauses 1 to 8, by leave, taken together, and agreed to.

Clause 9 (Motor Traffic Act)

21 November 1989

**MR SPEAKER:** Mr Collaery is not present, but he has circulated his amendment. Would you like to move that amendment, Mr Jensen?

**MR JENSEN** (3.36): Yes, Mr Speaker. I move:

Page 3, line 5, after "inspector" insert "in the execution of his or her duty under this Act".

I do not think I need to say anything more. I think my colleague Mr Collaery has already commented on that. Whilst I accept the comments by the Chief Minister and reference by Mr Stefaniak, we would prefer at this stage to proceed with the amendment.

**MR STEFANIAK** (3.37): I just want to say in relation to this, Mr Speaker, that we agree with the comments made by the Chief Minister. This particular clause deals with putting a new section 203 into the Motor Traffic Act. It applies to only the Motor Traffic Act, and both proposed amendments are quite unnecessary. I would be delighted if it did something more because I think part of our law and order policy is to enable police to ask people their names and addresses in certain circumstances, but it does not; it relates merely to the Motor Traffic Act. As the Chief Minister says, both these amendments are quite superfluous and contrary to common drafting procedure in this day and age. Accordingly, we would not be supporting them.

**MS FOLLETT** (Attorney-General) (3.38): I reiterate, as Mr Stefaniak says, that it appears that this kind of amendment is not necessary and that under modern drafting conventions it is unnecessary to express the kind of qualification that is in both of the proposed amendments. It is always implied that a power conferred in an Act is limited to the purposes of that Act unless an intention to create a general power is expressly stated, and it is not.

Courts, I am told, always read Acts as whole. They do not read particular provisions in isolation from their context. In addition, courts always interpret penal provisions, such as section 203, if amended as proposed, restrictively, in favour of a defendant. So the amendments, as the Government has proposed in the Bill, do not have the effect of conferring a wider power for the police to demand a person's name and address than is currently existing in subsection 203(1) of the Act.

Nevertheless, if members feel reassured by such a qualification as is proposed in the two proposed amendments, I am advised that the amendment proposed by Mr Collaery is the easier one from a drafting point of view. I will leave it at that.

**MR SPEAKER:** We are debating only Mr Collaery's amendment at this time.



21 November 1989

**MR MOORE** (3.39): I am quite happy to support Mr Collaery's amendment and withdraw my proposed amendment because they achieve the same goal, and that is all I am interested in doing. I really must take the Chief Minister's point; yes, it will reassure members of the Assembly if this is included in the Bill.

It seems to me that a police officer on the job can go to and use this particular Bill and look at that and work from that. When it gets to court it may be that the court throws it out. In the meantime our police officers, competent as they are in all aspects of their duty, are not actually lawyers, even though they are legal professionals. It seems to me that we risk a situation in which a police officer can in effect use this power for asking the name and address and then say, "Oh, well, I got it wrong", after the situation has already happened. I would certainly feel much more secure if this amendment were included. I appreciate the Government's willingness to include it.

Amendment agreed to.

Clause, as amended, agreed to.

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

Bill, as amended, agreed to.

### **MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1989**

Debate resumed from 28 September 1989, on motion by **Ms Follett**:

That this Bill be agreed to in principle.

**MR STEFANIAK** (3.41): This Bill had its genesis, I think, in the Northern Territory, of all places, in 1978 when there was a rather nasty accident caused by some drunk who did have a blood alcohol reading taken and it was about 0.28 - in other words, he was very much affected by alcohol. I think a few people had been injured in the accident.

The case went to court but, because the blood sample had been taken from the driver of the offending vehicle while he was unconscious - I think his sample had been left on his chest in the hospital, which seems a bit strange but at any rate that was one of the peculiarities of that case - it was held that he could not have been able to accede to a demand to give a sample of his blood or refuse the demand, in which case he could have been charged with something. Accordingly, the case was thrown out of court.

Several of these cases have appeared over the last 10 years in the ACT courts. I think I was prosecuting in one or two

21 November 1989

of them in which we were unable to proceed because the defendant had been unconscious when the blood was taken. Accordingly the person got off on a technicality.

The basic thrust of this Bill is to fix up that anomaly in the drink-driving legislation which has been progressively tightened and refined over the last decade or so. Accordingly, the Liberal Party supports the Bill.

We have highlighted, I think, our concerns about clause 9, which introduces a new situation into the law in the ACT in relation to certificates used for insurance purposes. I will speak more on that at the detail stage. As I indicated to the Chief Minister - I think it would be over a month ago now - we will be seeking to have clause 9 deleted, but more on that later. Regarding the rest of the Bill, we do not have any problems at all.

Question resolved in the affirmative.

Bill agreed to in principle.

### **Detail Stage**

Clauses 1 to 8, by leave, taken together, and agreed to.

Clause 9 (Insertion)

**MR STEFANIAK** (3.44): Mr Speaker, I move:

That clause 9 be deleted.

I have been told by the Clerk that I do not need to circulate the amendment, which I think I had prepared about a month ago.

**MR SPEAKER:** You just have to move to oppose the clause, Mr Stefaniak.

**MR STEFANIAK:** Section 41 of the Motor Traffic (Alcohol and Drugs) Act, or Ordinance as it used to be, sets out a number of details in relation to certificates which can be produced in court in relation to drink-driving matters. Clause 9 would insert a proposed new section 41A. Currently when someone who has been convicted of drink-driving seeks to claim under an insurance policy, the certificates can be used as some form of evidence in relation to the proceedings.

The proposed new section 41A would preclude that from happening. I understand that the intent of clause 9 is to ensure that that occurs only in relation to a case in which a person has a sample of blood taken when he or she is unconscious. If that is correct, it is only a fairly small step, perhaps, at this stage. Nevertheless, it is a significant one. I went through all the amendments I could

21 November 1989

find when we looked at this about a month ago, to check that there had not been any amendments to section 41 to preclude any of the certificates from being used in relation to insurance policies, but there have been no such amendments. This is the first of that kind.

Currently, section 41 states, "In any proceedings in a court", and then it goes on in relation to a whole series of certificates. We are concerned that if these certificates cannot be used by a court in relation to insurance proceedings there will be a number of persons who, going back to my Northern Territory example, might have a blood alcohol reading of 0.3 when there is no-one there to witness it, and fall within the prosecution guidelines of the Act, who can be prosecuted and who can be convicted, but when it comes to claiming insurance on their cars they will be able to do so.

Someone might be involved in an accident and hurt another person but, because there is no actual evidence that that person was drunk other than the certificates - and it might be difficult to make observations if the person is unconscious - that person can then be entitled to have the full cost of having his or her car repaired paid by the insurance company. That is not the case with other persons who are picked up under this legislation and who do not fit the same category as persons who are unconscious and who have blood taken from them.

I believe the clause also goes somewhat further than the situation in New South Wales, which basically at this stage precludes one certificate, and that is a certificate giving the breath analysis reading, from being used in evidence. That is, I think, in section 4(g)(xii) and (xiii).

In New South Wales it is only the result of the analysis that cannot be admissible in evidence. Under the following section in New South Wales legislation the provisions of that particular section have effect notwithstanding anything in any contract of insurance or any term or covenant. The proposed ACT amendments go further. As well as precluding any term in an insurance contract or covenant from having effect, they attempt to preclude such covenants being put into ACT insurance contracts and covenants. I think sections 2 and 3 indicate that this amendment goes much further than New South Wales legislation.

I am also told that there is no guarantee that the New South Wales law will not be altered at some time in the not so distant future. That is another reason, I think, not to change the status quo in the ACT regarding insurance contracts and their use and the use of these certificates at this time in relation to this legislation. Perhaps it would be much better if this clause were deleted now. Perhaps it behoves the Government to contact not only the insurance industry but also its State counterparts to come up with something approaching uniform legislation in relation to this issue. By not deleting clause 9 we would

be changing the status quo in relation to the current situation in the ACT.

When some people from the insurance industry saw us, they put forward their case in relation to their problems with clause 9. The representative from NRMA, the largest insurer in Canberra, indicated that it is not the case that because someone is over 0.08 he or she will always not be able to claim on a contract of insurance, because the insurance contract provides for not covering a person who is incapable of driving a motor vehicle because of the amount of alcohol that has been consumed, when a person is so affected by liquor that he or she is incapable of properly driving a motor vehicle.

It is very similar to section 24 of the Act, which is the driving under the influence section. This means that a person may well have a blood alcohol reading of 0.1 but may be only slightly affected. In the circumstances, that person would be covered by the insurance contract because he or she would fall within the criteria. It would be a lot harder, I think, for a person with a reading of 0.2 or 0.3 to fall into that category. If there is no other evidence, the documentary evidence of the certificate of the blood alcohol reading becomes very, very important, and indeed it might be the only evidence that can be used.

It is very important for us, as legislators, to discourage drink-driving. The laws of the other States and the Territory in relation to drink-driving are fairly severe. They are certainly not as severe as in other parts of the world. I think, if you were picked up in Scandinavia with any alcohol at all in your system, you would automatically be sentenced to a gaol term. We have nothing like that here. But drink-driving is certainly frowned upon by legislators Australia-wide, and I think it behoves this Assembly to ensure that we do nothing that might be seen as condoning it or making it any easier on the irresponsible drink-drivers.

Insurance premiums may also rise if we do anything which could be construed as condoning drink-driving. Perhaps one of the most substantial penalties a drink-driver faces, especially if there is a car accident, is the fact that the insurance company will not pay up for the damage to the car. That involves a very severe financial penalty and a very real deterrent. Accordingly, we do not think clause 9, as it is drafted, should be passed by this Assembly. I think the Government needs to do a lot more work in relation to this area in consultation with the insurance companies and its State counterparts.

**MR DUBY (3.53):** Mr Stefaniak seeks to delete clause 9 from this Bill, for various reasons which he has outlined. I, for one, do not agree with him. Clause 9 inserts proposed new section 41A into the Motor Traffic (Alcohol and Drugs) Act of 1977, the principal Act. This proposed new section 41A would have the effect of limiting the use of

21 November 1989

certificate evidence concerning blood tests which are obtained under the principal Act. That evidence may not be used in proceedings concerning an insurance contract for the purpose of proving that a person was under the influence of alcohol or a drug to such an extent that he or she was incapable of exercising effective control over a car. That would be the effect of this proposed new section.

Mr Speaker, the principal Act is intended to promote road safety by prohibiting people from driving with a blood alcohol concentration at or above the fixed limit. To achieve this end, the principal Act creates specific offences and penalties, sets up a mechanism for determining a driver's blood alcohol content, and provides for facts relevant to an offence to be proved initially by means of certificates. Compulsorily taking a blood sample from a person is an extraordinary measure. In the absence of special provisions in the principal Act, it would be a trespass against the person.

The community regards the objectives of the principal Act as being of such great social importance that it warrants the use of the state's coercive powers to override an individual's rights. But as a matter of policy the effect of those powers should not go beyond the strict limits of the principal Act. The procedures set up under the principal Act were not intended to incidentally help insurance companies to enforce liability exclusion clauses in their contracts.

Mr Speaker, I think it is very important to point out that nothing in proposed new section 41A prevents insurance companies from putting exclusion clauses in contracts or from relying on them in the event of some further action as a result. Proposed new subsection 41A(5) expressly saves that right for the insurance companies. So, although Mr Stefaniak said that the insurance companies cannot cover themselves, it is simply not the case.

But insurance companies should not have the benefit of evidence compulsorily obtained through the state's coercive powers for the legislatively defined and limited purposes of the state. Private litigants should rely on their own resources, as they would have to do if the principal Act did not exist. If the use of certificate evidence under the principal Act were not limited in the way proposed, convicted persons would, in effect, suffer consequences in addition to those specified in the Act, as a result of the machinery of the Act.

Proposed section 41A is consistent with legislative provisions in New South Wales, in the Traffic Act of 1909, subsections 4(e)(xiii) and 4(g)(xii); in Victoria, in the Road Safety Act of 1986, subsections 56(vi), 57(ix) and 57(x); in Tasmania, in the Road Safety (Alcohol and Drugs) Act of 1970, section 30; in South Australia, in the Road Traffic Act of 1961, section 47(c); in Western Australia,

21 November 1989

in the Road Traffic Act of 1974, subsection 70(vi); and in the Northern Territory, in the Traffic Act of 1987, paragraph 21(a). Accordingly, this provision in this Bill is perfectly in keeping with those of the rest of the legislatures of Australia, and I can see no reason to have this clause deleted.

**MR MOORE (3.57):** How eloquently put by Mr DUBY! There is no point in my going over the material that he has just presented. My concerns were similar to those of Mr Stefaniak. I spent some time talking to representatives of the Insurance Council of Australia Ltd, the NRMA, Tony De Domenico and a number of other people when this Bill was originally presented, and I shared those concerns. I then went further to speak to the Civil Liberties Council and, through it, the Law Society of the ACT, and I was reassured of the points that Mr DUBY has made. Having been reassured, I will support the retention of this particular clause in the Bill.

**MR COLLAERY (3.58):** Mr Speaker, the Residents Rally endorses Mr DUBY's points and those of Mr Moore. We went through the same traverse as Mr Moore, speaking to the various parties, including representatives of the insurance industry. The difficulties the insurance industry currently has will not, in our view, be in any way substantially changed by this piece of legislation.

Mr Speaker, the Rally is conscious of the privacy issues involved generally, but it is also conscious that the new Federal privacy law has created some anomalous situations. I believe that in this Territory we will be working through those in the next few months. But, in the meantime, it does appear that the remedy lies outside the Motor Traffic Act. Access to information relating to traffic offenders can be provided for by other means and other forms of legislation. It is proper that evidence that is secured under compulsory requirement provisions, particularly where there are unconscious people involved, should not be able to be used as the deciding factor in a civil contractual issue.

I hasten to say that, in my experience, in personal injuries and other motor traffic litigation the vast majority of motor traffic insurance companies are very humane and very reasonable, particularly those based in the Territory. There have been one or two exceptions in my experience over the years, but essentially one does appreciate the problems of proof that insurers have sometimes when there has been a single-vehicle accident on a country road.

But surely the answer to their problems is in the drawing of their civil contracts and ensuring that the contractual relationship they have with drivers and the declarations of prior driving records and the like are fully and adequately traversed in the making of the insurance contract. It has often struck me that in motor traffic insurance very little

21 November 1989

inquiry is made of the insured. That could be one area, particularly the compulsory third-party insurance area, given that the nominal defendant has to pay out substantial sums of money, and this Territory will be doing that after 1 July next year, in which we need to look very carefully at whether we are going to allow some of these people on the roads when they have substantial driving records and are, in effect, going to cost us, not only in terms of the agony of injuries but also in terms of money.

So, Mr Speaker, judged against all those issues, we believe that the answer that Mr Stefaniak nobly sought out of this legislation is being sought in the wrong area; it lies elsewhere with this Assembly in future enactments and in liaison with the insurance industry to give its support in weeding out the constant traffic offenders and other parties who exploit the insurance situation.

**MS FOLLETT** (Attorney-General) (4.01): I very much welcome the expressions of support for this legislation from the Assembly. As members know, its intention is to promote road safety, and that is something that we would most certainly all support. But it is a fact that, whilst the principal Act authorises blood samples to be taken from an unconscious person who is suspected of having driven while under the influence of alcohol, there have been cases in which prosecutions have failed, in which the blood was taken from an unconscious driver even though analysis showed that that person's blood alcohol concentration exceeded the prescribed limit. I think that is a matter that is worthy of being addressed and one to which obviously members in the Assembly have given some very careful thought.

Mr Stefaniak's proposal is again a matter that, I believe, has been the subject of quite a deal of consultation and debate. It has been addressed with great eloquence by my colleague Mr Duby. I could not have put the arguments better myself, Mr Speaker, and I will not because I think he has well and truly traversed them all. The crux of the matter is that insurance companies should not have the benefit of evidence that has been compulsorily obtained through the state's coercive powers for the legislatively defined and limited purposes of the state. As the legislation currently stands, it means that private litigants have to rely on their own resources, as they would have to do if the principal Act did not exist.

As I said, I think Mr Duby has put all of those arguments and, in particular, has drawn attention to the similar provisions which exist in other States - in virtually all States, except Queensland and Western Australia.

So I welcome the support of the Assembly. I think that this is a very positive step that we are taking towards road safety and towards the implementation of our intentions and, indeed, our legislation in respect of road safety.

21 November 1989

**MR STEFANIAK (4.04):** Mr Speaker, Mr DUBY certainly was most eloquent. Unfortunately, he was, I think, wrong in one respect. In New South Wales legislation, as I indicated, the provisions of the subsection have effect notwithstanding anything in any contract of insurance or covenant, term, condition or provision therein, to the extent that the operation of that subsection is excluded, limited, modified or restricted, whereas the proposal in clause 9 of the Bill - subsection (5) of proposed new section 41A - states:

Nothing in this section shall be taken as precluding the inclusion in an insurance contract of a covenant, term, condition or provision that excludes, limits, modifies or restricts the liability of the insurer otherwise than by a covenant, term, condition or provision of a kind referred to in subsection (2) or (3).

So it does extend it further than New South Wales, and I draw that to Mr DUBY's attention. That is quite different.

I conclude simply by quoting a couple of points from, I think, one of the papers given to us by the NRMA during the consultation period. It stated:

In the past, we have used the results of both breath analysis and blood analysis in the ACT to support our case that a person has been under the influence of alcohol at the time of an accident. We do not have written into our policies that they will not operate if the person has a blood alcohol content which is above the legal limit. In other words, we do not refuse claims merely because the individual is above .08. We act far more responsibly.

In all cases where we believe that alcohol may have been a contributing factor in a car accident, we interview in detail, the driver of the insured's car and, if they are different people, we also interview our insured. This is to determine whether the driver was under the influence at the time of the accident. We also take statutory declarations from the insured. This can generally yield enough information to assess whether the person was under the influence. However, the blood analysis reading is used to confirm our belief. This lends objective, factual support to a subjective belief. In the absence of a blood analysis reading we must rely upon the policyholder's word about how much alcohol was consumed prior to driving, the recency of the consumption etc., and whether he or she believed they were affected by alcohol when they got behind the wheel. If we were unable to use analysis results, irresponsible drivers would know that all



21 November 1989

they have to do is lie to us about the amount of alcohol they consumed prior to the accident and that it would then be their word against ours in a court case which we would in all probability lose. Our ability to use the analysis readings prevents this from happening.

It went on to say:

Our overriding concern here is that by reducing insurance companies' ability to take a stand against drink driving, the frequency of it may well increase. Does the government of the day wish to have the dubious distinction of implicitly condoning the behaviour?

Finally, it should be asked that if it is accepted that a blood analysis reading can be used to prove a criminal conviction against an individual, why is that for a civil matter of refusing a claim, where the onus of proof is far less (balance of probabilities vs. beyond all reasonable doubt), can the evidence not be used?

I think those are some very valid concerns which I would commend to the house in relation to considering whether or not to reject clause 9.

Question put:

That clause 9 be agreed to.

A call of the Assembly having concluded -

**Mr Collaery:** Mr Speaker, I draw your attention to standing order 135, which states:

The Speaker shall state whether, in the Chair's opinion, the "Ayes" or the "Noes" have it; and if the opinion is challenged the question shall be decided by vote.

Mr Speaker, let me say that I meant to say yes.

**MR SPEAKER:** Are you sure, Mr Collaery? Unfortunately, I do not believe the standing orders cover this. The vote will have to stand as you presented it.

**Mr Whalan:** On a point of order, Mr Speaker; standing order 165 provides:

In case of confusion or error concerning the numbers reported, unless the same can be otherwise corrected, the Assembly shall proceed to another vote.

There was certainly confusion in the mind of the defendant in this case.

21 November 1989

**Mr Stevenson:** Not concerning the numbers reported.

**MR SPEAKER:** Not concerning the numbers reported, I believe, Deputy Chief Minister.

**Mr Whalan:** You have not reported the numbers yet. I am quite capable of demonstrating a case.

**MR SPEAKER:** I will take the opinion of the Assembly. We will call the vote again.

The Assembly voted -

AYES, 13

NOES, 4

Mr Berry  
Mr Collaery  
Mr Duby  
Ms Follett  
Mrs Grassby  
Mr Jensen  
Dr Kinloch  
Ms Maher  
Mr Moore  
Mr Prowse  
Mr Stevenson  
Mr Whalan  
Mr Wood

Mr Humphries  
Mr Kaine  
Mrs Nolan  
Mr Stefaniak

Question so resolved in the affirmative.

Clause agreed to.

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

Bill agreed to.

### **BUSINESS FRANCHISE ("X" VIDEOS) BILL 1989**

**[COGNATE BILL:**

#### **TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1989]**

Debate resumed from 2 November 1989, on motion by **Ms Follett:**

That this Bill be agreed to in principle.

**MR SPEAKER:** I understand it is the wish of the Assembly to debate this Bill concurrently with the Taxation (Administration) (Amendment) Bill 1989.

**MR KAINE** (Leader of the Opposition) (4.14): Mr Speaker, as will by now be well known, the Liberal Party will oppose this legislation, this tax on titillation - - -

21 November 1989

**Mrs Grassby:** So, now you watch them.

**MR KAINE:** No, I have not seen one in my life. Later in my remarks, Mr Speaker, I will explain why. The setting out of our reasons for opposing the Bill will be in marked contrast to the Chief Minister's justification for introducing it in her presentation speech on 2 November. Ms Follett's comments on that occasion were low-key and dealt with machinery provisions of the legislation. She carefully steered clear of putting forward any reasons, cogent or otherwise, for introducing it, as though she was embarrassed. Ms Follett had good reason for being embarrassed because her reasons for introducing the Business Franchise ("X" Videos) Bill 1989 can be summed up by a simple four-letter word, "loot" - loot from lust, if you like.

**Mr Duby:** Was that "loot", Mr Kaine?

**MR KAINE:** I pronounced it very carefully, Mr Duby. Despite its limitations and restrictions, its safeguards and controls on licensing and distribution, this legislation is in effect a money Bill. It is estimated to raise \$2.5m this financial year and \$5m in a full year. There are those who are well informed on the magnitude of the video porn industry who claim that these estimates considerably understate the potential revenue.

This Bill confirms what we in the Opposition have been saying since July, that the Government's budget strategy is in tatters, that it urgently needs money and that, in its desperate pursuit of revenue, this Government is prepared to sacrifice its principles, its policies and its philosophy.

I submit that the Chief Minister was aware of the hypocrisy to which she was party in putting forward this legislation because in her presentation speech Ms Follett plaintively claimed that "it should be clearly understood that this Bill does not have the effect of legalising or legitimising X-rated videos". Mr Speaker, I beg to differ. The mere fact of taxing these products gives them a status and an acceptability which they have not hitherto enjoyed in the wider context of the ACT and Australian society. It does legitimise them. With this high-profile public endorsement by the ACT Government of X-rated videos, the defence that Ms Follett's legislation will neither legalise nor legitimise them is totally specious.

For a fistful of dollars the Follett Government has prostituted its own social justice policy and has degraded its own policy regarding women. This women's policy, I remind members, was a jewel in the Labor Government's crown, as proudly attested to by the Chief Minister in her first 100 days media release of 18 August, in which she stated that the Government had to reaffirm a fundamental commitment to women through the allocation provided in the

21 November 1989

budget statement. She stated that a separate women's budget statement would be part of the 1989-90 budget papers and would provide a foundation for the progressive development of performance indicators to enable public program managers to properly assess the impact of their programs on women and girls in the community.

Mr Speaker, the impact of X-rated videos on women and girls in the community might be a lot more than the Chief Minister bargained for. Research on battered women and consumption of pornography by their partners, in a study by Canadian psychologist James Check and others, reveals a higher incidence of assault in this group than among non-pornographic users. Mr Speaker, I table a two-page extract of a summary of the findings of those people.

Of course, Chief Minister, you might intend to use the revenue raised to fund more women's refuges. But, if so, you are approaching the existing and potential problem from quite a different direction from that of many of your sisters. As evidence given during the Senate debate of 2 March 1989 on the Regulation of Video Material Bill made clear, significant women's organisations, rather than supporting the taxing of X-rated videos, want them banned altogether. These groups include the Catholic Women's League, the Country Women's Association and the Anglican Church Mothers Union.

Some members, of course, may find opposition to X-rated videos from such bodies very predictable. But how about the Society of Women Writers of Australia, the Australian Federation of Business and Professional Women or the National Association of Community-based Children's Services? How about the Shop, Distributive and Allied Employees Association, whose national secretary-treasurer sent a letter late last year to all Federal parliamentarians on this subject? Mr Speaker, I seek leave to table that letter also.

Such multipartisan support simply cannot be ignored. If the Government believes that such opposition is perhaps a little remote from the local Canberra scene, or a little removed from the topic itself, let me add two more proponents for the banning of X-rated videos. I refer to the National Status of Women Committee and the Women's Electoral Lobby ACT Incorporated. WEL's letter reads, in part:

WEL is totally opposed to any portrayal of women that exploits or degrades them in any way, or any portrayal of women that reinforces the unequal power relationships that exist in society.

WEL ACT endorses the intent of your Bill to ban X-rated videos in the ACT. We believe that it is inappropriate for the ACT to continue to distribute X-rated videos in the face of the contrary decisions of the Attorneys-General in all States.

21 November 1989

These two bodies, Mr Speaker - the National Status of Women Committee, set up in 1975 by a Labor government, and WEL ACT - must be particularly disillusioned at women's degradation for dollars being institutionalised by a Labor government which is led by Australia's first woman Chief Minister.

Ms Follett might quietly blush at her own sell-out of her sisters upon such a fundamental issue of concern to women, but to her credit she has not tried to hide, like some, behind euphemisms such as "non-violent erotica" when referring in her presentation speech to X-rated videos. This is an important admission because, like the smokescreen disclaimer that the taxing of these products would neither legalise nor legitimise the trade, there have been attempts to pass off X-rated videos as non-violent erotica, a misnomer if ever there was one.

By accident or design, however, the Business Franchise ("X" Videos) Bill 1989 does not provide a definition of what it is that the Government proposes to make money from. Members and other interested people must refer to the Classification of Publications Ordinance of 1983 for the definition. The Government, in a lot of legislation that it is bringing down now, never quite tells you in the legislation what it is doing. You have to do a lot of research to find out. The Classification of Publications Ordinance of 1983 states that, when the Commonwealth Censorship Board decides that a film depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person, or is unsuitable for viewing by a minor, the board shall approve the classification of the film as an "R" film or an "X" film.

In the opinion of many people, Mr Speaker, and indeed of the Shop, Distributive and Allied Employees Association, anything that fits the above description should be X-rated; there should not be an R-rated category. Members will appreciate that the definition is much broader in subject content than non-violent erotica.

It also gives considerable scope for videos depicting violence, cruelty or sex to be given a classification of R or X if they are likely to cause offence to a reasonable adult person; that is, if a video is produced depicting violence or cruelty or sex, or all three, in a manner that is likely to cause offence to a reasonable adult person, the video is not banned but it may be given an X rating. Again, such a classification goes well beyond the non-violent erotica qualification.

Thus, in spite of attempts in certain quarters to play down the scope of pornographic videos, the ACT, with the passage of this legislation, is set to profit from the depicting of sex, drug misuse or addiction, crime, cruelty, violence or

21 November 1989

revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person. We are going to profit from that, Mr Speaker. This is from a government, two of whose members believe that trade with and making money from the South African regime is repugnant. I think they need to get their priorities right.

I say to the Chief Minister - and I note she is not here to listen to this - that her mishandling of, or perhaps her failure to handle, this Territory's economy is a matter of concern and regret, but in her desperate attempt to obtain additional revenue she has gone beyond any electoral mandate that she may reasonably claim to raise funds through a franchise on flesh. That she proposes to do so, making a mockery of her party's policy of social justice and her personal commitment to promoting the cause of women, is sad evidence of the lengths to which this financially strapped Labor Government will go to find money and thus, Labor hopes, to stay in power.

Mr Speaker, this community finds it totally unacceptable to legalise video pornography. I believe it finds it equally unacceptable and repugnant to legitimise it by institutionalising it as a legitimate source of tax revenues. No State has done so; we cannot either. The Liberal Party opposes the Bill and will vote accordingly.

**MR SPEAKER:** Mr Kaine, you sought leave to incorporate two documents. Would you identify them.

**MR KAINE:** I also seek leave to incorporate in Hansard a two-page summary of research done on this question by researchers in Canada.

Leave granted.

Document incorporated at appendix 2.

**MR KAINE:** I seek leave to incorporate a letter to all parliamentarians from the Shop, Distributive and Allied Employees Association, dated 3 November 1988.

Leave granted.

Document incorporated at appendix 3.

**MR MOORE (4.25):** I intend to argue that members of this Assembly, whether they are opposed to X-rated videos or take a laissez-faire attitude, have good reason to combine forces and support this Bill. Let us be clear about one thing: this Bill is about tax and nothing more than tax. It is not about morality. It is not about the role of erotica in our society or about suspicions or fears some people have that the material subject to this proposed tax is corrupting, dangerous or degrading.

21 November 1989

It is not about legitimising the X-rated video industry either. That industry has been legitimised by the Federal Government, and any pressure that has been brought to bear on members of the Assembly is sorely misplaced. We have no power to guarantee or change the existence of the industry and we certainly have no power to begin talking about banning it. The industry is a fact of life in Canberra, and the Government's Bill recognises that fact. It is a money Bill; nothing more.

Of course, it is easy for people to think that money, inanimate though it is, acquires the moral standing of the activity it comes from. But if we wish to impose values and judgments on public revenue according to the moral status of its source we are, all of us, already the pimps that some people have suggested we will become if this Bill is passed. We are already living on immoral earnings. We are living on the fruits of distasteful or illegal business.

The Federal Government has no scruples about this; nor do the States, even though on the subject of X-rated videos they would like to appear "cleaner than thou" by banning them while their residents go on using Canberra as a mail order source. The fact is that Federal and State courts have the power to confiscate the profits of illegal activities. Indeed, New South Wales has recently announced that it will be beefing up its confiscation laws.

I wonder what people imagine happens to that money? It is not like radioactive material. It cannot be locked away in a lead box and left until it becomes clean enough to use. It does not have a moral half-life. All that money which comes out of illegal dealings goes straight into public revenue. The commissioner of taxation does not ask about the moral condition of a potential taxpayer either. He does not forgo sources of revenue which he can identify in the hands of prostitutes, SP bookies, drug dealers and other criminals. If he can catch them earning income, however they earn it, he is prepared to collect tax from them.

It is not always easy. While some prostitutes are apparently happy to conduct their business on a financially accountable basis, nowadays with bankcard facilities and all the other trappings of modern commerce, much of the tainted money out there is often untraceable. Usually the Taxation Office can only estimate someone's financial dealings on the basis of whatever details might happen to come up after an arrest and trial. The point is that taxes can still be raised, even if the tax system does no more than scratch the surface of all the income generated on the fringes of, or outside, the law. It does not change the moral status of the money which is added to public revenue. It is, if we want to be squeamish, "dirty money".

Taxes on ill-gotten gains, like taxes on everything else, help pay for our hospitals; they contribute to our social

21 November 1989

welfare system; some of the dollars probably even trickle down through Commonwealth grants to find a home - a very temporary home, in my case - in the pockets of members of this Assembly.

The process seems so distant and detached from us that we are inclined not to think of tracing where the money came from in the first place. It is a convenient and comfortable illusion that everything in government coffers comes from an unsullied source. For some, it might be even more comforting to think that the stream flowing from illicit earnings is overwhelmed by the river of taxes on such irreproachable products as alcohol, cigarettes, gaming and betting, military hardware, uranium and so forth.

There may be people who are happy to draw a distinction. There may be people who are willing to say, "Let us go on living off the morally problematic revenue that comes from a high range of morally dubious or outrageous activities. A tax on X-rated videos? No, that is where I draw the line".

This to me is Jesuitical nonsense. What it does avoid is the central question about the nature of a society which is prepared to fund morally acceptable activities with revenue derived from morally unacceptable activities. We are not going to come to terms with that question in a day. We are certainly not going to come to terms with it by singling out one activity like X-rated videos and refusing to collect tax on it.

That may be a salve to a few consciences, but it achieves nothing. Besides, we already collect revenue, or at least have it collected for us, from the erotic video industry. All the same taxes that apply to other industries apply here: company tax, payroll tax, income tax paid by employees, import duties, sales tax, postage rates. There are no exemptions for moral standing.

Do opponents of this tax want us to sign a waiver on their behalf for the funds that usually flow through to the ACT from the industry's existing taxes? Do they want us to demand that the Commonwealth stops collecting tax from all morally dubious sources or that the States stop confiscating income from drugs, illegal gambling, and corruption? I suspect not, but the reality they should be facing is that the luxury of their right to speak out exists because of a society and a political system which is in part paid for by the very thing that troubles them. It is, in a much larger part, also paid for by many other things that would trouble them much more if they were prepared to recognise the link. It is a dilemma, I know, but we should not be looking to reconcile it by opposing one kind of local tax on one aspect of the erotica industry and leaving everything else alone.

Opponents of the legislation, while expecting the Government to go on funding schools and hospitals, to go on



21 November 1989

cutting all the long grass and so on, can be legitimately asked: where is the money supposed to come from? This is, as I have said, a money Bill. It is one that faces a few facts of life, and no matter how sincere its opponents are - and I fully acknowledge their sincerity - they need to do the same.

These videos are legally recognised. The Federal Government has seen to that. Despite a claim made by the Prime Minister in a letter to the member for Adelaide, Mr Pratt, on 29 May this year, responsibility for the standing of X-rated material has not passed to this Assembly. Not only are they recognised, but also their de facto economic status is affirmed and exploited in the tax system as it is.

The Government's Bill is therefore hardly bold. It is hardly the first step ever taken into a new and morally dubious terrain. It acknowledges a fully legitimate source of revenue and exploits that source just like any other tax. So there is little point in thinking, "An erotic video tax? Now, that is new and strange and different". The only difference is that we can all see it. We can all be reminded of it by this specific piece of legislation. It is not obscured by or mixed up with all the other sources of revenue and disguised from us, made distant, remote, impersonal. It is, if anything, an honest tax, and it has been attacked more because of its honesty than for any change it introduces to our moral climate.

Members will be aware that standing order 58 prevents us from speaking on matters which are irrelevant to the matter under debate. Under section 23 of the self-government Act, this Assembly has no power to make laws with respect to the classification of materials for the purposes of censorship.

It would be entirely appropriate to call to order any speaker who attempts to misuse this debate, which is about taxation, not about moral issues. But I suppose that whatever is said about this tax being, in effect, morally neutral, the debate is not going to be left there. The Bill has already provided the ground for much lobbying and comment directed at the nature of erotic videos, and some members of this Assembly may be keen to use the opportunity to establish their moral credentials. If they are, I would ask them to remember that the issues here are complex. They are certainly too complex to be unravelled and resolved in the time available for this debate.

A joint select committee of the Federal Parliament spent many months and several hundred pages reporting on erotic videos. They followed in the footsteps of numerous studies and parliamentary committees elsewhere in the world. Even so, the results were punctuated with dissenting reports and recommendations. Despite the majority recommendation for a new category - non-violent erotica - there was no final path to reconciling different perspectives. We are not about to succeed in the course of a debate on a revenue

21 November 1989

measure, when the Klugman committee failed after long and direct scrutiny.

So, while I have my own approaches to resolving the moral and philosophical questions about non-violent erotica, they are out of place here. I want to raise only one issue which, in view of what I have been saying about the revenue implications of existing illegal or morally questionable business, is entirely relevant. That is the issue of prohibition. Prohibition seems in general to be the ultimate goal of many opponents of this tax, even if they use the term "banning". Prohibition, as history ought to have taught us by now, does not work. It does not work with alcohol; it does not work with gambling; it does not work with drugs, as the proliferation of heroin over the last 20 years - - -

**Mr Kaine:** I take a point of order, Mr Speaker. I would remind the current speaker that he himself said only a few minutes ago that introduction of irrelevant matters like prohibition would be going outside the bounds of this debate. I would suggest that he keeps to his own rules in debating the matter.

**MR SPEAKER:** Thank you, Mr Kaine. Please proceed, Mr Moore. Stick close to the point.

**MR MOORE:** Prohibition does not work with sexual practices, but it is relevant in this particular case, Mr Speaker, and I shall illustrate that as I move on. We are not encouraging a better moral climate by entertaining thoughts of a ban; instead we are opening up the possibility of a far worse climate, a climate in which black markets and organised crime and corruption will undoubtedly flourish.

Now, as we are all aware, the leader of the Residents Rally has taken it on himself to sniff out corruption in every quarter, and we heard him earlier today hot on the trail of links between the ALP and the X-rated video industry. I do not know how he will vote on this Bill, but here we have a man who is concerned about corruption. He, in fact, lies awake at night tormented by a recurring vision. It is a vision of a dark hand drawing slowly and malevolently across a page - a receipt book, perhaps - and as he follows the hand he sees it write, "To Paul Whalan, for services rendered".

**MR SPEAKER:** Order! That is quite inappropriate. Please proceed.

**MR MOORE:** Thank you, Mr Speaker. That sort of thing pales into insignificance beside the reality of crime and corruption. We will no doubt win this if non-violent erotica joins all other items on the failing prohibition list. That reality will generate money, illicit money, out of all proportion to the value of the industry as it now is. Most of the money will go unnoticed in the rest of society, but occasionally an arrest here, a confiscation of

21 November 1989

funds there, a tax bill somewhere else, will channel money from the pockets of newly created criminals into the public revenue.

We will not need to expect an excessive standard of diligence and efficiency from the police, the courts and the tax officers to recoup something equivalent to what is now being collected from the non-violent erotica industry. There may be cause for moral satisfaction that an unacceptable activity is banned, but the contribution to the revenue from that activity will go on. Society will remain a "pimp", since that is the word some have chosen for the industry.

The fact that the link to public revenue will be just as obscure as it is now, with various illegal or fringe activities, will do nothing to improve the moral climate in which we live. It is not just a matter then of having little faith in prohibition. It will leave us no better off than we are now, and in the balance of things we will be a lot worse off. What we need is other approaches, approaches which recognise that the only realistic approach to controlling an activity which we have qualms about is to bring it within the law. That way we can hedge it in, limit it, defuse its force.

Let me give you one possibility. The best weapon against a practice we do not like is to impose financial disincentives on its practitioners and consumers. This Bill, in fact, puts in place a mechanism which can be used to impose precisely those disincentives. By increasing the tax at any time, any government can make it more and more difficult for non-violent erotica to find a market. The more expensive the product, the more tax it is possible to raise.

People opposed to non-violent erotica ought to see in this tax not an affirmation of that material but a vehicle for restricting it. It is a more rational and controllable method of imposing limits. If it is more gradual, and thereby requires a little more patience than does banning, it will be far more successful. I believe that members of this Assembly, whether they are opposed to the videos or not, have good reason to combine forces and to support this Bill.

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

**Sitting suspended from 4.40 to 8.00 pm**

### **CHINESE STUDENTS IN CANBERRA**

**MR COLLAERY** (8.00): I am grateful for the indulgence of the house in scheduling this matter for 8 o'clock. I have heard that some of our audience have gone to another parliament. Be that as it may, that is a communication

21 November 1989

problem. Members, I wished in the adjournment debate that was to occur to address, as I called it, the failure of the Australian Government to respond positively and humanely to the situation of overseas Chinese students in Australia.

**MR SPEAKER:** Mr Collaery, you need to seek leave to make your statement.

**MR COLLAERY:** I seek leave to make a statement on that subject.

Leave granted.

**MR COLLAERY:** Members will recall an article in the Canberra Times last Sunday suggesting that this Assembly was somehow wrong in its priorities in addressing, in the adjournment debate, the question of human rights, foreign policy concerns, the Holocaust and the Berlin Wall. We should not be deterred, in my view, by the pressures that this one daily newspaper town places upon us as elected representatives of a people with conscience. Canberra is the seat of government; the source of our national aspiration; and the home of the Australian National University, the future University of Canberra, the TAFE system and the many community groups which work towards student exchange and cultural interchange.

Recently in this house we reached a bipartisan agreement that Canberra should become a centre of excellence in, amongst other things, education, and in other fields of endeavour. Excellence and a place in the international order do not come without their price, and that price is an unyielding acceptance of fundamental values, an adherence to basic civilised values and the recognition of fundamental human rights. We would do well to recall these words spoken by Bill Hayden, the then Leader of the Federal Opposition, on 29 September 1977. He said:

If Australia is to play a useful role in international affairs, then we must have a balanced view of our place in the world. It will be necessary for us to resist the temptation either to overplay our importance or to underrate it. We should see the real world clearly and not settle for some blurred perspective, distorted by rigid ideological preconceptions. In doing these things, it is important not only that we be morally inspired, but also that we distinguish between moral inspiration and the unhelpful self-righteousness of moralising.

He went on to say:

Underlying the Labor Party's approach to international relations is a firm commitment to moral values. It was because of this commitment to moral purpose in international relations that the general thrust of the American Carter

21 November 1989

administration's foreign policy, based upon a fundamental respect for a defence of basic human rights, was welcomed by the Labor Party.

President Carter put that issue squarely to the United Nations when he said, amongst other things:

... no member of the United Nations can claim that mistreatment of its citizens is solely its own business. Equally, no member can avoid its responsibilities to review and to speak when torture or unwarranted deprivation occurs in any part of the world.

What did our Government do after the massacre at Tiananmen Square? Well, I went to the Great Hall on that commemorative day and I sat in a near front row and I saw our Prime Minister shed tears for the situation as he saw it. But I thought, "Here is the same man who, in pursuit of his own agenda on China, did what no other Prime Minister in this country has done since Scullin; he agreed to the handing over of a Chinese official guest who had sought to remain in Australia". That handover was to uniformed officers of the PRC Embassy. The handover took place at Brisbane Airport and was described to me by an experienced and hardened veteran as one of the cruellest and most callous things he had ever seen.

The history of that handover is chilling in its detail - the personal notes, the telegrams, the very narrow clique who handled the affair. The Prime Minister's instruction was that the intelligence services were to have no contact whatsoever with this defector, the irony being that the defector himself really wanted to pursue his professional career, and the fact that he sought to remain in Australia at a time when there had been a high-level vice-premier delegation to Australia did not reflect well on the decision of the Australian Prime Minister. I could relate other matters, but convention and good taste dictate otherwise.

The Hawke Government's later handling of the first of the Irian Jayan refugees is another dreadful indictment of its lack of perspective. The then Immigration Minister described the first five refugees as "canoe-paddling job seekers". The respected Asia Watchgroup is well known for its detailed reporting on human rights in Asia, as is Amnesty International. Torture, killing and widespread physical abuse of prisoners are part of the Indonesian secret war in our near north.

As with China, we go to extensive lengths to find the Indonesians acceptable. If you had seen the bayonet wounds on some of those five, you would have known that the minor cultural disruption, as the then Foreign Minister, Mr Hayden, described events in Irian Jaya at that time, must rate, along with Neville Chamberlain's statements, as one of the classic understatements. Issues of territorial

21 November 1989

sovereignty in the Torres Strait are now giving rise to prospects of a local militia - a self-policing role. I predict that these militia forces, given the strength of the secession movement in the Torres Strait, could really backfire on us and provide an armed secessionist government that may not necessarily have its formation determined at the ballot-box but rather by the magazine of a rifle.

Sitting in our public gallery tonight is someone who wrote the following graphic account of his involvement in Tiananmen Square on the days before and after the massacre on 4 June:

The true climax came during the day of the 3rd. Before dawn, four people were run down by a police car, three of them died. In addition, a number of military vehicles had been taken over. I saw one of them being taken over ... It was a small minibus with 6 or 7 soldiers. Beijing was very calm, there was no violence or looting ... These vehicles all had local numberplates rather than military plates. If they had had military plates, it would have been impossible for them to get through. The soldiers were all in civilian clothes, they all had white shirts on so, at first glance, you wouldn't notice them but when you looked carefully, they all had the same military haircut. In a vehicle at Liu Bukau, there were rifles, machine guns and assault rifles. The weapons and ammunition were all put on display on the roof of the vehicle ... after the people took over the vehicle, the soldiers just left their weapons and fled. They probably intended that the people should take the guns away. We all suspected that this was a trick perpetrated by the government. The Independent Students Union told everyone to look after the weapons and not to let anyone take them away so as to prevent the government from using this incident as a pretext ... Everyone's feelings were running very high ... We took the things we had written to be printed, three sets of them on different topics. We got some water and some clothes ready and we set out from "X" -

I will call these places X and Y, for obvious reasons -

We went past the "X", "Y" and "Z". All the way we were handing out our leaflets ... When we reached "X", we discovered that there were actually two people following us when we rode fast.

It goes on to say:

At sunrise on the 4th, the 28th army came into the city and promptly about 80 vehicles were set on fire. The crowd was very heroic that day. The troops watched the vehicles burn and then moved

21 November 1989

away. Soldiers took off their uniforms. My friends' unit took in several soldiers, took them home, gave them food and shelter. Everyone chipped in ... We are of the view that the 27th army was not really trying to move their APCs forward ... Soon there were 32 burnt APCs at the front and about 40 trucks and 5 or 6 jeeps behind. The troops left immediately. They did not fire on the crowd. Although some said that the bolts were taken out of light anti-aircraft machine guns, all of the guns ... [were] demounted by the persons in the crowd.

Members will be aware, of course, of reports of isolated shootings and other events in Beijing since the massacre. It is clear from the reactions of the 28th army, which did not join in the firing, the ordinary troops of the 27th army, who unlike their officer regiments did not join in, and the large amount of ammunition and stores procured from a full armoured brigade of the 28th army, that there is now an armed dissident movement elsewhere in Beijing. It does exist; and the Australian Government is denying that existence. There have been extensive desertions, and punishments are severe. I refer to Amnesty's 1984 report on violations of human rights in the Peoples Republic of China and to Amnesty's various other reports. Despite this, the Hawke Government has continued to give assistance to China through AIDAB schemes and other bilateral support schemes.

I see a better parallel between the Prime Minister and Joseph Lyons than between the Prime Minister and Mr Curtin. I see a parallel with statements in the Federal Parliament in 1939 when the late Sir Henry Gullett took over External Affairs from Billy Hughes and spoke of Mussolini's "genius, his patriotism and almost superhuman capacity", and Hitler's "shining record of service to his people". If you doubt that that was said in our Parliament, I invite you to look at the Commonwealth Parliamentary Debates, volume 159, page 197. Compare those words with those of our Prime Minister in recent years. Compare them with Mr Hawke's fulsome praise for the Chinese leaders. Compare them with the actions of those leaders in recent times.

Is this a Prime Minister who should be in charge of the Government which is in charge of the future of many thousands of PRC citizens in Australia, some of whom are in this gallery? I refer to the Immigration circular which goes on to say that neither refugee applications nor applications for permanent residence will be processed for the time being because it is not - the Government circular says ominously - in the interests of PRC citizens to make an application for refugee status.

Judged against the circumstances of Australia's quite proper reception and welcome to people arriving on Vietnamese boats, would you believe that the narrator of that quite graphic story I gave, who is present in the

21 November 1989

house tonight, is not justified in seeking refugee status? Could it be proposed that that person will ever be safe from retribution? Why is the Australian Government refusing to process refugee applications from high-profile PRC citizens currently in Australia? I stress that the example given is far from being the highest-profile example here at the moment.

I call upon the Australian Government to acknowledge the number of PRC students who have applied for refugee status and who are seeking a determination of their present situation so they can get on with their studies or their future lives or seek refugee entry to other countries. It will be a great shame to this country if they now commence applying for refugee entry to other Western democracies.

I ask the Prime Minister, consistent with intelligence objectives, to proceed very firmly with identified Chinese intelligence activity in Australia. In particular, as soon as the full structures and identities of the purification units, as they are known, and their correspondents, who are also known, are identified, I ask that they be rounded up and removed from this country and from the campuses and the halls of residence of our places of study.

The Government of the People's Republic of China is using video films of demonstrators in Canberra in political re-education classes in some purification institutes in Beijing. That is a great shame. If that claim is correct, then I ask the commercial film media to be careful in the distribution of duplicate film tapes and the security of their archival material. Much of what the channels have not shown may have been procured and is being shown in Beijing at the present time.

Finally, Mr Speaker, I seek leave to table a chronology of what is perceived by the Chinese students in Canberra to be a history of harassment by their embassy against themselves and their current democratic movement at the present time.

Leave granted.

**MR HUMPHRIES** (8.14): I wish to briefly add the support of my party to the thrust of Mr Collaery's comments. Certainly it is a matter of pride to me that our country has been a place of hospitality to people who are refugees from, in particular - - -

**MR SPEAKER:** Order! Mr Humphries, I would request that you seek leave to speak. I have overlooked the point that there is no motion before the house.

**MR HUMPHRIES:** I seek leave to make a short statement in the same vein as Mr Collaery.

Leave granted.



21 November 1989

**MR HUMPHRIES:** It is a matter of pride to me that my country has been a source of refuge for people who have faced political oppression in overseas countries. It is also a matter of concern to me and to my party that at the present time there is uncertainty and doubt in the minds of many Chinese students in this country as to what their future will be; in particular, whether they will be able to stay for any length of time in this country and avoid having to return to China.

I can understand that uncertainty. I can well understand the impact that the events of 4 June this year must have had on those students. I know that there has been considerable uncertainty amongst those students since that time and I think the unwillingness of the Federal Government to set out in clear and unambiguous terms at a very early stage what the status of those students would be, and in particular what its intentions as a government would be towards the processing of applications by such students for permanent residence or longer stays, must have been extremely unsettling.

I believe there are already a number of students who have been led to do foolish things in order to avoid having to return to their country. I hope that we can clear up that problem as soon as possible. I know that Dr Stephen FitzGerald in recent days has commented on the fact that Australia historically has had some infatuation with China, certainly since 1972, when relations were normalised with that country.

It is certainly true that recent events have taught us that we had some infatuation with the extent to which China had become liberalised as a result of the changes wrought since the cultural revolution. We cannot underestimate the extent to which people different from our own might treat problems differently from the way in which we might treat them.

Certainly the reaction of the Chinese Government came as a great shock to many of us in this country. Rather than merely pontificating on the world stage about the best way of dealing with those sorts of problems or condemning the Chinese Government, I hope that we can offer a real alternative to people who might be caught in the middle and can ensure that we provide, to the greatest extent possible within our own resources, a refuge for those who truly deserve sanctuary from what has occurred in their own country.

**MR MOORE (8.16):** I also seek leave to make a brief statement on this matter.

Leave granted.

**MR MOORE:** I would like to support the comments made by Mr Collaery, who I know has a genuine and sincere concern for human rights throughout the world and has demonstrated this

21 November 1989

in my dealings with him for a number of years. I would particularly like to support the comments he has made and to support any emphasis of this Assembly in providing refuge for people who are in any way under threat.

**MR DUBY** (8.17): I seek leave to make a brief statement as well.

Leave granted.

**MR DUBY:** There is no doubt that we are living in momentous times on the world stage. We are seeing in Europe, for example, the collapse of totalitarian states. I would like to support entirely the comments made by Mr Collaery and other speakers to the effect that every effort should be made to ensure that the safety and integrity of people who are currently living and residing in Canberra, especially those from the People's Republic of China, are guaranteed.

There is no question that, as we are watching the collapse of, as I said, these totalitarian communist states throughout the world, it is only a matter of time before true democracy takes place and takes root in the largest country on earth, China. I feel that nothing will be gained from insisting that these persons who are currently enjoying life and liberty here in our democratic society should be sent back, against their wishes and against the wishes of their family members, to the People's Republic.

Accordingly, I support entirely the suggestions that at this stage every assistance should be given to extending the stay of folk, from whatever country in the world, who are in fear of their life and political liberties in their homeland.

**MS FOLLETT** (Chief Minister) (8.19): I seek leave to make a short statement.

Leave granted.

**MS FOLLETT:** I am very pleased to have this opportunity to repeat, on the Government's behalf, our very great sympathy for the people of the People's Republic of China and particularly those, of course, who are with us here in Australia. It is no secret, I think, that the links between Australia and China go back very, very many years to our very earliest periods of migration to Australia. In fact, in many ways our two nations have developed in parallel and recently have enjoyed very close relations. So the events of early June in China have been extremely distressing to a great many of us Australians.

Indeed, the Deputy Chief Minister met with a deputation of Chinese students in Canberra early in June and extended our sympathy to them at that time. In fact, he took them across to the Federal Parliament House, where they were able to speak to the staff of the Federal Minister for Immigration and make some useful points to them.

21 November 1989

I would just like to comment on a couple of the actions that the Federal Government has taken in an effort to ease the situation of Chinese students, in particular, in Australia because I think it is a pity that a lot of the comment tonight has been purely critical when, in fact, some action has been taken. For example, the Federal Government did decide to extend all temporary entry permits for a further 12 months until 31 July 1990 on application from all People's Republic of China nationals who were legally in Australia on 4 June this year. That extension, Mr Speaker, was added to a further provision for those students to allow them to work for up to 20 hours a week so that they would actually have some financial support during that period.

The Federal Government has also expressed some concern with Chinese nationals in Australia who do not have access to social security or to Medicare, and has been looking at ways in which those people's needs might be assisted by access to the special benefit provisions which are administered by the Minister for Social Security.

Added to that should be the fact that the Federal Government has actually made some cash available for relief in China. It has given \$100,000 for a grant for humanitarian assistance. That is added, I think, to the \$200,000 to the Red Cross appeal.

So, Mr Speaker, just to reiterate, the Chinese people have our very greatest sympathy. If there is anything whatsoever that we can do as a local Assembly to assist them in this very, very difficult time - I am sure I speak for everybody here - we would be only too delighted to do so. But I think we should, in the interests of balance in the debate this evening, just draw to attention those things that the Federal Government, whose responsibility this whole matter is, has actually done.

**MR SPEAKER:** Members, with the balance of the PA system and the air-conditioning, it is very difficult for members to be heard in the gallery. So I ask people just to bear with it and speak up until we can rectify the fault tomorrow.

## **BUSINESS FRANCHISE ("X" VIDEOS) BILL 1989**

**[COGNATE BILL:**

### **TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1989]**

Debate resumed.

**DR KINLOCH (8.23):** Mr Speaker, I rise to comment as a professional reviewer of films over two decades, both for the print and electronic media, TV and radio. I have also made many documentary video films over 30 years. In the

21 November 1989

course of that part of a long career, I have often discussed censorship ratings. Specifically, on several occasions I have reviewed X-rated videos. I recall, in particular, two programs I did as a guest of Wendy Wicks, then with 2CN. Accompanying me on one of those programs was a member of the staff of the Women's Study Unit of the ANU, Dr Jill Matthews. We watched three X-rated videos of several kinds - a great variety - in the company of a professional woman social worker whose work included case studies at a rape crisis centre and case studies of incest.

Also, at the request of the ABC, I attended the formal opening of an X-rated video facility in Fyshwick last year. I went out with an ABC crew, looked at the premises, interviewed two members of the pornography industry - one of whom is in the gallery - and reported on radio and television to the ABC. The fact that I did that has been misused by a member of the adult video industry.

My conclusions then and now are obviously that such a facility under the laws of the Commonwealth of Australia is, at the moment, legal in the ACT. There is no gainsaying that. I saw then no technical reason why, at that time, such a facility should be closed. Provided that I am not quoted out of context, I again say that such a facility has, under our present laws, a right to exist in the ACT until such time as the Commonwealth of Australia alters those laws or until this Assembly legislates on the matter in the manner of Western Australia, Victoria, Tasmania, New South Wales, South Australia and Queensland. That Fyshwick cinema and other outlets for pornography do not function under any laws we have promulgated in this Assembly nor under any inherited laws from New South Wales.

I have also reviewed films such as Hail Mary and The Last Temptation of Christ, which are abhorred by some segments of our community but which may be said, as indeed I have said in one theological journal, St Mark's Review, to have redeeming values which should allow them to be seen anywhere in Australia under restricted ratings. They are not pornography. I am not, therefore, an advocate of the kind of censorship which would hamper contentious, even in some people's minds, supposedly blasphemous films, if the banning of those films would halt what I call legitimate expressions of opinion or if such films may be said to have artistic, aesthetic or intellectual values of worth.

I now turn, however, to consider what is being dealt with here tonight. X-rated videos of several kinds are not only shown in the ACT, not only sold and hired out in the ACT, but are provided by mail to a clientele elsewhere in Australia, including those six States already named which ban the sale, distribution and public showing of such films. That is the crucial issue for me.

The issue for me, then, is very clear and it is the reason for refusing to build that industry into our revenue collection system in the ACT and the reason why I will be

21 November 1989

voting against this Bill. By giving status to the mailing of X-rated video films across our borders, first into New South Wales and in due course to the other States with the exception of the Northern Territory, we are, at the very least, violating the spirit of the laws of six States.

Yet we are the national city. We are, like it or not, the exemplar city of the nation. At the moment, it is under inherited Commonwealth laws that these things are done. The moment such a law as is proposed tonight is passed we would be, as a Legislative Assembly, saying to six other State governments, "We don't care what your legislation is, what your values are, what your standards are, what your public behaviour aims are; we are supporting an industry which, in essence, flouts or avoids or undermines your laws".

So I say to the Chief Minister that, in this first year of our Assembly, it is particularly unfortunate that we would ever contemplate giving this credence and status to this peculiar industry which is so much detested by our fellow legislatures throughout Australia. You will note that I have stressed the flouting of the spirit of the laws of our neighbours. I leave it to lawyers to debate whether or not those laws are being technically broken. In the case of Western Australia, in particular, a case can certainly be made that we are actually bringing about the breaking of the law. We do so by way of Australia Post - a Commonwealth, not an ACT, facility. I draw your attention to the Western Australian Act, No. 73 of 1987. Mr Speaker, I will not ask to have this Act tabled as it is very considerable, but I would ask that the chief law officer and his staff give advice to the Chief Minister and the ALP Government on whether or not the spirit of that Western Australian law has been undermined by what is happening here in the ACT.

I now turn, not to morality, not to an analysis of sexual mores, but to another aspect of the workings of other parliaments and legislatures. One could quote at great length from the final report of the United States Attorney-General's commission on pornography, 1986, which deals, in part, not with sexual morality as such but with the effect of hard-core pornography of many kinds on adults and children. I suspect that that is a discussion for another time. I ask that we obtain a copy of that report for our own library.

Much more important for us are the two volumes published in April 1988 of the report of the Commonwealth Parliament's Joint Select Committee on Video Material. There is no unanimity amongst the members of that committee but there is a majority report which raises disturbing, shocking questions about the likely effects of video material. Chapter 13 - pages 185-230 - is the most pertinent section for our purposes. These volumes are in our library.

21 November 1989

I ask all members to note that reference: chapter 13. Having read that chapter, I believe that those who believe this Bill is merely a money Bill, a tax Bill, will think again. Look especially at the segment on the three main categories of video pornography of which so-called, improperly called, "non-violent erotica" is described in categories (II) and (III) on page 200. May I just pause for a moment on the question of non-violent erotica. That is really a euphemism for hard-core pornography. In any case, the accuracy of the term may be questioned because non-violent erotica could be works of art; it could be photographs; it could be prose or poetry. To take that term and misuse it in connection with what is hard-core pornography I think is quite improper and is an example of a propaganda industry rather than of an industry which is rightly describing what the case is.

Women in particular are seen in all these categories - I, II and III - as commodity victims of this material from the taxing of which this Bill would derive income. I would not wish to shock members or the staff of Hansard by quoting what is said in full; I commend the volumes to you. But I can quote from chapter 13, section 48, page 201.

The Committee ... also refers to this material as degrading in that it frequently 'depicts people, usually women, as existing solely for the sexual satisfaction of others, usually men, or that depicts people, usually women, in decidedly subordinate roles in their sexual relations with others, or that depicts people engaged in sexual practices that would to most people be considered humiliating'.

May I say, sir, that that particular paragraph is mild compared to the paragraphs in the report from the US Attorney-General or from other sections of that report. So I do not accept that we are here debating a money Bill. We are tonight reminding ourselves, as with the debate on the ACT as a national centre for a gambling casino, that we are a city on a hill, a city with a vision, a city that does not offer itself to anyone or to any industry merely to make money.

There is, therefore, certainly an ethical dimension in what we decide this evening. It may also be a precursor to a further debate about the possible restriction of this degrading industry to a few outlets in a hopefully remote industrial area of the city; such legislation lies ahead. I would add here parenthetically that I can see a case for some parts of category III pornography being available possibly through Christian bookshops. There are some areas of clinical pornography - if that is what you want to call it - which may fit under a reasonable category but most of it does not.

For the moment, then, we are refusing to accept Mr Hawke's reluctance to bite this nasty bullet. I refer to a letter

21 November 1989

of 29 May 1989 written to Mr N.P. Pratt, MP, member for Adelaide. It is in material which all members have received. In this letter, in effect, the Commonwealth Government gives up its responsibility and hands it over to the ACT. We throw the industry back to the ALP Federal Government which first gave it birth.

Finally, may I proffer a quotation from a book which I highly commend, one of the authors of which is C. Everett Koop, who was surgeon-general of the USA. This is *Pornography: A Human Tragedy*, 1986. As we think about pornography and think about social values, human values, perceptions of reality, I leave you with this quotation by David Scott:

If people who embrace Marxist works learn Marxist values, and people who embrace religious works learn religious values, should not one assume that people who embrace pornography learn pornographic values.

**Mr Whalan:** We are used to your insulting remarks, silly old fool.

**Mr Stevenson:** I take a point of order on that, Mr Speaker. There is absolutely no call for such remarks from the Deputy Chief Minister.

**MR SPEAKER:** Thank you, Mr Stevenson. Please refrain.

**Dr Kinloch:** Mr Speaker, I did not hear the remark and I do not take umbrage from it.

**MR BERRY** (Minister for Community Services and Health) (8.35): Mr Speaker, in the Leader of the Opposition's opening remarks he talked about loot and lust and seized upon emotions to try to undermine this important tax which, of course, will impact rather heavily on the Government's budget. It has been said that the budget will achieve taxes of \$2.5m this year and \$5m in a full year and that is an important part of a budget strategy which is not in tatters, Mr Leader of the Opposition. But I must say that with the saboteurs at work - - -

**Mr Kaine:** Are we not allowed to criticise you?

**MR BERRY:** With the saboteurs at work it might well be in tatters if you have your way.

**Mr Kaine:** Very sensitive; very sensitive.

**MR BERRY:** And this is from a person who walked away from the budget consultative process.

**MR SPEAKER:** Order! Minister, please stick to the debate.

**Mr Kaine:** The budget consultative sham.

21 November 1989

**MR BERRY:** Mr Speaker, with the greatest respect, I think this is an important part of the debate. The respective positions of the players in this debate need to be exposed in relation to their forthrightness in terms of their approach to the budget strategy which was adopted by the Government. It was clear from the outset that an important part of the Government's budget strategy was this particular Bill, and it was clear from the outset that the Government's budget depended on achieving these taxes. Why is it that we are allowed to go some four months down the track with barely a whimper from the saboteurs - - -

**Mr Kaine:** You have got to be joking. We have been criticising your budget since day one. Don't you listen?

**MR BERRY:** Barely a whimper.

**Mr Kaine:** This is ridiculous. Just speak the truth.

**MR BERRY:** Mr Speaker, I refer to the initial statement. Of course, this was mentioned in this document in July 1989. It set out clearly the taxes which the Government would achieve from this initiative. Now, of course, the saboteurs would seek to create another frenzy on emotive terms - loot, lust and all those sorts of things - all terms which seem to worry our conservative brothers and sisters opposite.

**Mr Kaine:** Not as much as they worry you, obviously.

**Mr Humphries:** We are not the losers; you are the loser.

**MR BERRY:** Well, you seem quite content with driving it underground and creating - - -

**Mr Kaine:** On a point of order, Mr Speaker; this debate, if I can remind the Minister, has got nothing to do with banning this material; it has to do with a budgetary provision to tax it. Nobody has talked about driving it underground. Presumably, the Minister is a bit worried.

**Mr Duby:** On a point of order, Mr Speaker; the thrust of Dr Kinloch's speech was about pornographic material.

**MR SPEAKER:** Order! Mr Duby, please resume your seat. I can only take one point of order at a time. Read your standing orders. Mr Kaine, please get to your point.

**Mr Kaine:** I would suggest, Mr Speaker, that if the Minister wants to object to what is being said then he should address it to the person by whom it was said and not attribute it to me.

**MR SPEAKER:** Please direct your attention to that point, Minister Berry. Please proceed.

**MR BERRY:** There is another point of order.



21 November 1989

**Mr DUBY:** The point of order was, of course, that the Leader of the Opposition is incorrect in his statement, Mr Speaker. The thrust of Dr Kinloch's speech was the banning of X-rated material.

**MR SPEAKER:** Members, please recognise that points of order are, as per the standing orders, not debates on the issue.

**MR BERRY:** The introduction of a business franchise in relation to the X-rated video industry should be seen in the light of taxing a significant industry. I think the tax outcomes demonstrate the significance of the industry and it will be a tax on a legal industry, a very legal industry. The emotional line which has been taken by the Leader of the Opposition in some way suggests that it is not legal, but of course we know it is. It is a lead-in to the expected debate we might have in the future. I am quite confident that we can expect the Liberals to move to ban it, and we know the results of those sorts of prohibition tactics.

**Mr Jensen:** Your crystal ball has fogged up, Wayne.

**MR BERRY:** You will get your turn, Norman.

There was, of course, some criticism from the Leader of the Opposition about Labor's commitment to women. I do not need to, if you like, labour on our commitment. It is very clear. The mumbles I heard during the course of the budget process from the conservative benches when women's initiatives were taken by the Government were clearly from the conservative benches and, of course, they were critical that the Government did have a commitment to women. Our record is clear. But this is about a legitimate tax, as I have said, on a significant and legal industry, and it is important that we are able to deliver that tax.

Now, I know that the effects of a reduction in the budget will impact on my portfolio and I am very sensitive about that. Of course, the people from the conservative benches opposite have been keen to try to find flaws in the management of my portfolio but they have been in some difficulty.

**Mr Kaine:** You have not heard the end of it yet, either, mate.

**MR BERRY:** Well, it will be the same old tune on an old fiddle.

**Mr Kaine:** No, it will not; we will surprise you.

**MR BERRY:** Not another 70 questions!

As mentioned by the Chief Minister in her introductory speech, legislation is already in place in the form of the ACT Publications Control Act which protects Canberra

21 November 1989

residents and their children from unlawful attention to the industry.

This debate is not about the moral question. I think that speakers so far have tended to highlight that, and there has been an attempt to draw attention away from the real issue of a genuine tax on moral grounds. I think it is important that members, when they vote on this issue, have regard to the fact that a lot of water has passed under the bridge in relation to development of the budget strategy by the Government and there has been a lot of inactivity from members opposite in terms of assisting and participating in the consultative process. Of course, one understands that from an inadequate position they might not wish to participate in it. We have seen very little responsibility demonstrated from the other side of the house and I suppose, on that basis, we should have expected that they would not assist in a positive way in the development of the budget by the Government.

This legislation, Mr Speaker, will continue to be enforced and will be further supported by obligations and restrictions placed on the industry by the Bill. The Bill prescribes heavy penalties for trading without a licence. I note that failure to apply for a licence and pay the required fee will entitle the commissioner to both prosecute and seize an offender's X-rated videos. Under the Bill, the commissioner, prior to granting a licence, must have no reason to believe that the applicant has contravened or been convicted under the Publications Control Act or has been punished or convicted of a serious offence under any other law.

The commissioner, in granting a licence, must also be satisfied on reasonable grounds that the applicants are fit and proper persons. I expect that the appropriate legal conventions would apply in interpreting "fit and proper". This will require him to investigate an applicant's background and, in the case of a company, the background of the ultimate natural owners of the company and the directors, secretaries and officers of the company.

Once granted a licence, Mr Speaker, licensees are required at all times to keep the commissioner informed of the location of the premises from which they are trading. Where a corporation is a licensee, the names of all directors, secretaries and other statutory officers must be given. Failure to advise the commissioner of changes in premises and personnel could result in heavy fines or the possible loss of a licence.

So it is clear that the Government has taken a highly regulatory approach to the industry and at the same time it has sought to achieve important tax revenues for the delivery of other services in the Territory. X-rated video sales in the ACT will continue to be made from restricted premises, and the access to such videos for hire from video shops, et cetera, will continue to be restricted to

21 November 1989

suitably enclosed areas or kept under the direct control of staff, with the imposition of appropriate penalties under the Publications Control Act if breaches are detected.

It is worth restating, Mr Speaker, that there have been no recorded complaints to the Federal Police from the public about alleged breaches of the law in relation to minors obtaining access to restricted areas or X-rated videotapes. The police are satisfied - and Mr Stefaniak will appreciate this - that the laws applying to X-rated materials are adequate and they are being complied with.

The passage of this Bill cannot be seen as direct support for the adult video industry in the ACT in the same way as the taxing of cigarettes under the Business Franchise (Tobacco and Petroleum Products) Act cannot be regarded as support for the tobacco industry. I think that all of the members in this place accept that the tobacco tax is an appropriate measure, and I am sure that members opposite will agree that the increased tobacco levy is an appropriate measure for the development of a health promotion fund in the Territory. That in some way parallels the taxes which will be achieved if members opposite support the Government. If these taxes are achieved, they can be applied in a useful way in the Territory's economy.

Now, if the people opposite seek to continue with their sabotage, or attempted sabotage, of the budget, then of course there will be reductions in services. That is not something that the Liberals have ever backed away from, because they have made it clear in the past that public sector services should be cut back in favour of reduced taxes. I see that their actions in this case are the actions of saboteurs and they are keen to undermine the Government's budget.

Most importantly, this will put pressure on very important services in my portfolio and others, but in particular in relation to my portfolio, where I am certain that with the withdrawal of these funds from the budget significant pressure will be put onto the Government to reduce services to those most in need. Of course, these will not be the rich friends of the Liberals. These will be the people most in need in the Territory. Pressure will be put on the services normally provided through the progressive policies of the Labor Government.

Mr Speaker, I urge all members in this Assembly to support this legislation. It is a key part of the budget strategy. It is a significant piece of legislation in terms of delivery of the Government's budget and the Government's policies, and I think it would be a most irresponsible act - the act of a saboteur - if the legislation were to be opposed.

**MR STEFANIAK (8.50):** Mr Speaker, I want to thank Mrs Grassby for the photocopy; it is great. I commence by

21 November 1989

stating the Liberal Party policy, because that really explains our position on this particular tax. Our policy, as ratified in October last year by a convention, states in relation to this subject:

The ACT Liberal Party believes that the sale, distribution and exhibition of X-rated and excessively violent material in the ACT is undesirable.

Consequently, a future ACT Liberal administration will bring the ACT into line with all States by banning the sale, distribution and exhibition of X-rated video and film material in the ACT, and will review the film and video classifications so that excessively violent material is banned. Accordingly, Mr Speaker, it would be hypocritical for the Liberal Party to do anything else but oppose this tax, and I concur fully with the comments made by my leader, Mr Kaine, and also those made by Dr Kinloch in relation to this.

It is useful, when talking about this tax, to go to some of the documents that have been flooding the Assembly and flooding members of the Assembly over the last few weeks. Firstly, I will quote from a document supplied by the Government on 14 November called An Information Kit: Debate on X-rated Videos. I quote from this document in relation to X classifications, referring to the meeting in Darwin on 30 June 1988 and the decisions taken by the standing committee of Ministers concerned with censorship matters. The document states:

All States expressed opposition to the introduction of the new 'Non Violent Erotica' category as discussed by the Joint Select Committee in its recommendations. They also indicated that the present 'X' classification would not be reintroduced to the States. The Federal Attorney-General indicated that he would take the matter back to the Government for consideration and the future of 'X' rated material in the Australian Capital Territory would depend upon what the Government decides.

The Northern Territory Attorney-General indicated that the Northern Territory Government would follow the Commonwealth Government.

I think the important part there is that all States expressed opposition, as indeed I think a couple of speakers to date have indicated.

Also in some of the material provided was this recent piece of material provided under the heading, "Pornographic Video Material; ACT Legislative Assembly Brief". Mr Kaine, in fact, has tabled this document. I will read it out. I think it is particularly relevant to Mr Berry, being such a strong unionist, because it is from the Shop, Distributive

21 November 1989

and Allied Employees Association, from J. De Bruyn, national secretary-treasurer. It is dated 3 November 1988. It states:

Dear Parliamentarian,

#### Video Materials

Please find attached the decision of the National Council of the SDA - the largest union in Australia.

You will note that, contrary to impressions you may have gained from the press, the Union is fully aware of the nature and content of videos which bear the "X" classification.

Although physically not violent or coercive, this material, according to evidence cited by the Joint Select Committee on Video Materials, engenders in the habitual viewer "a sexually calloused and manipulative orientation towards women" depicting women in general as being highly promiscuous and available.

We agree with the observations made by Dr. J. Zubrzycki, Emeritus Professor (Sociology) at the ANU, that pornography functions quite similarly to anti-semitic or racist propaganda: it serves as a tool of anti-female propaganda. The intent of all three is to distort the image of a group or class of people, to deny the fullness of their humanity and to depict them as objects for exploitation.

Most of our Members are women. This is union business. We ask that urgent action be taken to ensure that "X"-rated videos and their "R" equivalents be made prohibited imports and be placed in the refused category. The Labor Council of New South Wales has expressed its support for this action.

The argument that these videos have been now available for some four years and that a ban will create a black market will not wash. This argument is being advanced by those who refused to accept the recommendation of the Senate Select Committee four years ago requesting the Federal Government to place a moratorium on the sale and hire of these videos. It should also be recalled that most of these come from the United States where pornographic video production companies are substantially in the hands of organised crime.

Yours faithfully,

J. De Bruyn  
National Secretary-Treasurer.

21 November 1989

That has been tabled by Mr Kaine. Mr Speaker, I will not go into any great detail in relation to the other document tabled by Mr Kaine which indicates the estimated frequency of consumption of pornography by partners of battered women and a comparison group, partners of non-battered women. It indicates, in summary, that battered women certainly seem to have partners who watch pornography more than others. That is there for all members of the Assembly to see.

What I will do though, Mr Speaker, is read two other quotations from some of the material provided. They are relevant to this debate. One is a report in the Courier-Mail on 9 June 1989; again, as indicated in the ACT Legislative Assembly brief on pornographic video material. It says:

Man Gaoled for Rape of Girl, 11.

A man who showed a pornographic video to his step-daughter, 11, before raping her was sentenced to 10 years jail yesterday.

A Supreme Court jury in Brisbane found him guilty on four counts of having raped his de facto step-daughter.

Mr Justice de Jersey sentenced the man, 38, to 10 years' jail on each count, to be served concurrently.

He recommended the man, who had pleaded not guilty, be considered for parole after four years.

The judge said the man's shocking conduct was a misuse of his position of authority.

It is interesting when we talk about polls and what the people of the ACT want. No doubt members have been inundated over the last few weeks by members of the public in relation to whether they wish their legislators here to support or oppose this tax. A number of polls have taken place and have been publicised in the media. I also quote from an extract from Channel 10 News, 6 pm, Capital Television, on 5 January 1989. The reporter was Shamus Gonella. The transcript states:

As for X-rated videos the results were almost exactly opposite with only 37 per cent saying against. And 12 per cent undecided. While Labor voters were almost evenly divided on the issue, Liberal voters were strongly opposed.

But the big revelation of the poll was the division between men and women. While half of the men polled said they were in favour only one in four women agreed, 39 per cent of men did not favour the sale and hire of X-rated videos, but 63 per cent of women expressed their opposition.

21 November 1989

Those undecided were evenly distributed. Our ANOP researchers say they've never had such a huge gender difference on any subject in any poll conducted around Australia.

Here is the information supplied by Ken Begg, chief of staff, Capital 7, 6 January 1989. This is taken from the ANOP CAP 7 opinion poll and 1,200 voters were polled - quite a significant proportion in the ACT. The question was: are you in favour of the sale or hire of X-rated videos in the ACT?

The result read as follows:

37% in favour  
51% against  
12% undecided

ALP  
47% in favour  
41% against

Liberal  
28% in favour  
62% against

Men  
50% in favour  
39% against

Women  
25% in favour  
63% against

That is a very startling revelation there - quite a significant poll.

Perhaps one of the interesting things that has come up in this debate on this particular Bill is the opposition within the industry itself. I think that is perhaps worth bringing to members' attention. I briefly quote from the Canberra Times on Sunday, 12 November 1989. A report by Philip Hobbs says:

The ACT Government's Bill to tax the sale and distribution of X-rated videos, already in danger of defeat, has received another setback - from the industry itself.

The industry says that the Bill is hopelessly inadequate and will open the floodgates to anyone who pays the \$50 licensing fee proposed in the legislation.

The Australian Video Industry Association, which met in Canberra on Friday, says it expects at least 300 distributors of X-rated videos will try to set up in the ACT unless the legislation is amended.

It goes on to say, about halfway through the report:

The manager of Leisuremail, Gerry Hercus, said, "The Bill literally encourages illegal operators interstate to relocate in the ACT.

21 November 1989

"In its present form it would lead to an onslaught of operators in the ACT and it means that anyone could sell X-rated material from their garages or lounge rooms - provided they paid the \$50 fee.

"The legislation was put together very quickly and without an understanding of the industry.

"The licensing provisions need tightening to eliminate those which permit unclassified titles to be distributed.

"All our material is classified by the Australian Censor and we pay \$280 to have each title classified plus copyright fees and sales tax of 20 per cent.

"We're looking at some further definition of what the Bill describes as a fit and proper person to run an X-rated video distribution business and of what premises are suitable to run the business and in what circumstances the business can and cannot be operated.

"The description of a fit and proper person is at the discretion of the Commissioner of ACT Revenue and we want the Bill to define who and what a fit and proper person is.

"The imposition of the tax is just weeks away and we want to know who is going to get a licence - those of us already in the industry or a flood of new operators from interstate?"

Mike McGregor, of the Mature Media Group, said there were too many gaping holes in the legislation.

"It leaves the gates open for anyone to walk in and set up.

"There is no provision for police checks and the industry knows there will be a flood of underground operators from Sydney into the ACT if the legislation is adopted in its present form.

"People will also be able to operate from garages and the like.

"There has to be controls on the industry and some of the ways of obtaining that is to impose high licence fees, impose strict police controls and to register wholesalers".

Ken Hill, of the Club X chain, said he was not opposed to the levy as long as there was some form of policing.



21 November 1989

"It could be partially funded by the tax to stop piracy and the distribution of unclassified material".

It is interesting, Mr Speaker, that even people in the industry are concerned about this particular Bill and have pointed out problems with it from their side of the fence.

I think the Government indicated that it intended to raise about \$2m from this Bill; we have heard figures up to \$5m. The Government, I think, should be more properly concerned with raising revenue from other areas. For example, there could be a \$2m refund from COMCARE. In relation to hospitals, we have heard proposals recently in relation to how the board can save about \$10m. I am sure, if Mr Berry speaks to Mr Humphries, Mr Humphries can probably tell him how to save a hell of a lot more in the hospital system.

I recently gave some indication of a fidelity trust guarantee fund scheme which would bring in \$2.5m. I think the Government has done something different there, but the one I proposed was self-funding and would raise \$2.5m. There are many ways of raising money other than by a tax such as this. If one looks at how the ACT is run, one can look at cutting waste, duplication and redundancy rather than a tax of this sort. Incidentally, I noted Robbie Swan was in the audience. I do not think I have had a chance to watch Night Shift Nurses yet.

**MR HUMPHRIES** (9.02): Mr Speaker, I think Mr Kaine and Mr Stefaniak have already given a very clear indication that the Opposition intends to oppose this Bill and it may well be that, if my reading of the numbers is any indication, this will be the first Bill of this Government rejected by this Assembly. I might say it is not a matter on which I feel any sense of shame or disappointment that this is the first Bill to be rejected. I think it is a good indication, Mr Berry, of the fact that the population of the ACT does not support the course of action which this Government takes. The opinion polls that have been quoted already by Mr Stefaniak indicate quite clearly that people in the ACT do not want this kind of industry to be flourishing and I think that, in the light of that fact, the rejection of this Bill by the Assembly tonight will be very much in accord with the spirit of the Assembly's population.

I want to amplify a few points made by my colleagues. I am not sure that this has occurred during this debate or at other times, but certainly it has been suggested to me that, as Liberals, we ought to be allowing people to have a fairly free rein. They ought to be able to express their views and to view whatever they want in the privacy of their own homes. I know that this kind of view has been expressed as a feature of small "l" liberalism. I think it was Oliver Wendell Holmes, the US jurist, who said that "the right to swing my arm in the air ends at the tip of another man's nose". The question, of course, is whether

21 November 1989

that classic statement of small "l" liberalism encompasses the situation here where persons see X-rated videos in their own homes or whether this is something which has a wider impact and affects other people besides those who see videos in their own homes. In my view, Mr Speaker, it clearly is a wider case.

**Mr Duby:** On a point of order, Mr Speaker; we have earlier tonight heard the Leader of the Opposition - - -

**MR SPEAKER:** Mr Duby, please resume your seat. If you are going to make a point of order, look at your standing orders and pick the correct terminology to do so. You are wishing to debate the issue again. Please proceed, Mr Humphries.

**MR HUMPHRIES:** Mr Speaker, as I was about to say, the Liberal Party is concerned with the impact of X-rated videos, in particular, on adult viewers. The evidence of behavioural changes in those that view pornography is very strong.

**Mr Duby:** Are you talking about taxing or banning it?

**MR HUMPHRIES:** No, Mr Duby, we are not talking about a tax. We are talking about the issue of whether this Territory should have X-rated videos. The two issues are inextricably bound up.

**Mr Moore:** On a point of order, Mr Speaker; standing order 58 provides that a member shall not digress from the subject matter of any question under discussion. Mr Humphries has, himself, just pointed out that that is exactly what he is doing.

**MR SPEAKER:** Please stick closer to the point, Mr Humphries.

**MR HUMPHRIES:** Mr Speaker, on the point of order, I know that Mr Moore has already drawn to the attention of the Assembly his view that it is not in order for this place to be discussing censorship or the issue of the morality of X-rated videos. I would like to quote from the self-government Act, particularly the clause which I understand Mr Moore relies upon, to indicate that there is no problem with that and that, in fact, we are perfectly at liberty to discuss any issue, particularly the moral implications of this legislation tonight. The Act says, "Subject to this section, the Assembly has no power to make laws with respect to the classification of materials for the purposes of censorship".

Mr Speaker, I would submit to the Assembly that if that clause read, "The Assembly has power with respect to censorship", Mr Moore would have a point, but we are talking here about the classification of materials. Now, this Bill does not seek to classify materials. Opposition to this Bill does not in any way affect the classification

21 November 1989

of materials. If the Opposition or some other party in this Assembly were to move a Bill which took an existing classification already determined by the Commonwealth and said, "This classification will be banned in the ACT", that would also not be a Bill dealing with the classification of materials for the purposes of censorship. With respect, Mr Speaker, we are perfectly at liberty in this debate to engage in every aspect of it, including the moral questions arising out of censorship and X-rated videos.

**Mr Duby:** We are clearly not; we are talking about taxing something.

**MR HUMPHRIES:** I am sorry, Mr Duby; your view is clearly wrong. I suggest that, if you were to get proper advice, you would find - - -

**MR SPEAKER:** Order! Mr Humphries, please do not debate across the floor.

**MR HUMPHRIES:** Mr Speaker, as I said, it is quite clear that the evidence in this field shows that there are behavioural changes that occur as a result of the exhibiting of pornography, even to mature adults. I think my leader quoted earlier today from a study conducted by Canadian psychologists, Check and Sommers. It was into the impact of pornography on men, in particular. I want to quote a few paragraphs from that study. The study consisted of the analysis of the responses of a group of 44 women who had suffered severe battering by their partners and a comparison with a group of women who had not been battered. This showed a very clear difference between the two groups.

**Mr Berry:** Talk about the tax.

**Mrs Grassby:** Yes, talk about the tax.

**MR HUMPHRIES:** I am talking about pornography, Mr Speaker, and that is entirely relevant to this debate.

**Mr Berry:** This is not the pornography Bill; this is about tax.

**MR HUMPHRIES:** It is a pornography Bill, Mr Berry. Mr Speaker, the studies showed different responses from those two groups of women in answer to questions relating to the frequency with which their partners viewed pornographic material. The question that was posed to them was: as far as you know, how often does your partner read or view Playboy, Penthouse, Hustler or other magazines of this type? Among battered women, the frequency was that 11 of the battered women - that is, a quarter of the battered women - reported several times a week, compared with none among the comparison group, the non-battered women. Fourteen of the battered women said that their spouses viewed them several times a month, compared with seven in the comparison group. If you go down to the bottom of the table you will see

21 November 1989

that, of the battered women, 17 said their spouses never viewed such material and 59 of the comparison group said that their spouses never viewed that material. I want to quote the conclusion that the researchers drew from that:

A total of 39% of the battered women versus only 3% of the women in the comparison group reported that they had been upset by their partners' asking them to imitate pornography. In addition, the battered women reported much more frequent pornography consumption by their partners than did the women in the comparison group ... 24% of the battered women reported that their partners had used physical force to obtain intercourse, whereas only 15% of this group said that they had been "raped". This apparent under-reporting of rape was not found in the comparison groups.

I think these things are eloquent and highly relevant. The evidence I have just quoted there is not isolated by any means.

**Mr Berry:** On a point of order, Mr Speaker; Mr Humphries has clearly gone off the subject matter. He is talking about pornography, by his own admission. In the explanatory memorandum, under the heading, "Business Franchise ("X" Videos) Bill 1989", it says that this Bill will establish a licensing scheme for wholesalers and retailers of X classified videos; the licence fee - and so on and so forth. This is about licensing and taxation, and I think Mr Humphries ought to stick to the subject.

**MR SPEAKER:** Thank you for that observation, Minister Berry. It is very difficult to separate the issue from the debate as it is proceeding, but please do not get into extensive detail on the matter. Please stick close to the point.

**MR HUMPHRIES:** Henceforth I will avoid extensive detail, Mr Speaker. I think the second reason why the Opposition opposes this legislation and, by implication, supports the removal of X-rated videos from the ACT market is that the impact on children of such videos is much greater than it is on adults. I do not think any person in this chamber would need to be convinced that for children to see such material would be extremely harmful. I think, also, members would be well aware that, with the technological achievements of our age and in particular the accessibility of video machines and the understanding of video machines by very young children, it is not difficult to envisage circumstances where young children - even very young children - could obtain access to such material.

I know that there will be debate in this chamber at some point in the future about tobacco advertising, for example, and the point will be made there, I am sure, by members opposite that young people and people generally are susceptible to advertising and susceptible to images that

21 November 1989

they see in the media. I would submit, Mr Speaker, that it follows very clearly that the X-rated video impact on such minds must be at least as great for those that see them.

The third most important reason, in many ways, Mr Speaker, for our opposition to this legislation is that X-rated videos degrade women. I think Mr Stefaniak has already quoted from the Shop, Distributive and Allied Employees Association press release which makes clear their views on this matter. It speaks very eloquently and I am sorry that the Minister was not present at the time when that was read out. I am sure that a copy can be made available to him.

Mr Speaker, I think that the Chief Minister and her colleagues are very seriously out of step in this legislation. I think that the sorts of organisations that Mr Kaine quoted earlier, indicating the number of women's groups that oppose X-rated videos, indicate very clearly that the women's movement, as a whole, does not support this kind of industry. Mr Stefaniak also quoted the poll results in the ACT which showed that only one in four women were prepared to support this kind of industry. I am very surprised, as I think my colleague said before, that this Government, headed by a woman, should be promoting this kind of legislation.

Particularly galling, I suppose, is the fact that the ACT had a commitment made on its behalf by the Federal Attorney-General last year in June that it would take part in the common decision made across Australia to ban X-rated videos. We have now found, of course, that this banning is not occurring in the ACT and, as a result, the ACT is effectively undercutting the efforts of the States to prevent X-rated material from circulating in those States. That is a matter of some regret. This is not purely a local issue; it is a national issue in that respect.

As Dr Kinloch indicated, we are not talking about censorship. We all agree that there must be censorship.

**Ms Follett:** No, we do not.

**MR HUMPHRIES:** Well, I would hope, Chief Minister, that you would support the banning and the censorship of pornography that included bestiality or child pornography.

**Ms Follett:** It is illegal.

**MR HUMPHRIES:** Well, indeed. We are not talking about whether we censor; we are talking about where we censor and to what extent we censor. That is the question. Mr Moore and Ms Follett both said that they thought there was no question that by passing such legislation as this we would be legitimising the industry. I cannot understand the naivety of that view.

**Mr Berry:** We are talking about the tax and regulation of the industry.

21 November 1989

**MR HUMPHRIES:** Clearly, by passing this tax, Mr Berry, we are legitimising this industry. The proof of that fact, Minister, is that if you go out into the street and you ask 100 different people, "Would you care to have taxation on you increased?", they will of course say, "No". In this case you ask the principals of the pornography industry in this town, "Do you want this tax imposed on you?", and they say, "Yes". Now, why, Minister? Why do they say they want this taxation on them? For one reason only: it legitimises the industry; it legitimises their activities. Clearly, that is the reason why they support this tax and that is the reason why we oppose this tax.

Mr Moore indicated that we had no power to ban X-rated videos. That is clearly not the case, and I suggest you check with reputable legal advice. You will find that is simply not the case.

**Mr DUBY:** There is no such animal.

**MR HUMPHRIES:** Well, the No Self Government Party interjects, and I have a comment to make about the No Self Government Party as well. It is very curious, Mr Speaker, that three taxation measures have come before this Assembly - this is the third - and every one of those taxation measures has been supported by the No Self Government Party, this one included. Yet they went to the last election saying to the people of Canberra, "Support us because we are going to diminish the impact that self-government will have on you and we'll stop you having to pay more through self-government". Well, that is the opposite of what you have done in the course of your votes in this place. It is the opposite of what you have done. You have increased taxation - - -

**Mr Berry:** I think we got pretty close to a legitimate point of order there; I think he got well off the track. I think we were right in the middle of a legitimate point of order.

**MR SPEAKER:** Thank you, Minister Berry. Please proceed, Mr Humphries.

**MR HUMPHRIES:** Mr Speaker, clearly, the reputation of the No Self Government Party when it comes to claiming at the next election that they are reducing the impact of self-government by keeping tax off the backs of the people of Canberra will not hold much water.

**Mr DUBY:** The people in Canberra are not paying this tax, Gary; it is the people in Sydney and Melbourne.

**MR HUMPHRIES:** No, Mr Speaker; taxation levels apply to anybody.

**MR SPEAKER:** Order! Your time is up, Mr Humphries.

21 November 1989

**MR STEVENSON (9.17):** Mr Speaker, this Bill raises the question: is money our paramount concern or do we see a responsibility higher than that? The Chief Minister stated that it should be clearly understood that this Bill does not have the effect of legalising or legitimising X-rated videos. That is not the view of John Lark, and I quote from the Mature Media Group's newsletter 122:

I appreciate that this tax hits our hip pockets but it also indirectly ensures that this industry will be here for many years to come.

No government is going to abolish an industry which raises about \$2m a year in revenue. A number of members have said that this Bill is about tax, and tax only. The same logic could be used on a Bill to build gas chambers. It could be said that the Bill was simply about a capital works matter. It is obviously nonsense. Mr Humphries raised the question on censorship very well. The key is not - - -

**Mr Kaine:** On a point of order, Mr Speaker; there are clearly other discussions going on right in the middle of the floor of this house. There must be some order, surely. Can it not be stopped?

**MR SPEAKER:** Thank you, Mr Kaine. Those caucusing in the Speaker's line of sight, please remove yourselves to the back caucus room if you wish to carry that on. Please proceed, Mr Stevenson.

**MR STEVENSON:** Mr Speaker, the question, of course, is not whether we have censorship. In our society we are not allowed to incite to terrorist acts. In Attila the Hun's camp one could not go around suggesting that Attila be dethroned. There is always - - -

**Mr Whalan:** He knew this from personal experience.

**MR STEVENSON:** Obviously, looking across the chamber, it is very easy to come up with these ideas. Obviously enough, we always have censorship. Mr Humphries also mentioned that child pornography and bestiality are not allowed. With good reason, we have censorship. In any civilised society we have censorship. After all, the Canberra Times practises this fairly frequently. In our society you cannot drive on the wrong side of the road and you cannot drive at 120 miles an hour in a residential street. So there is never a question on whether we have censorship; there is only a question on what we censor and where we draw the line.

We are talking about non-violent erotica videos. Let us have a look at what is included in this area. Some of the things, I might say, I would rather not, but it is important that what is included is known. Drinking urine is portrayed in these videos. In the video, Golden Rain, it suggests that you drink your own urine. There are others that have members of the opposite sex urinating into each

21 November 1989

other's mouths. Defecation on women is still portrayed. It says on the video, "Shit lovers, that shit can give you pleasure". Once again, it is not a nice topic, but it is important to know what is available in videos in this town. That one is distributed by Showtime Distributors, from a post office box in Kingston.

Children are portrayed in the videos. There are various legal videos collected from catalogues today depicting high school titles, schoolgirls and so on. This suggests that the childish innocence is being exploited. Also videos portray incest, brother-and-sister sex.

Let us have a look at whether or not we are talking about non-violent erotica or pornography. Once again, the only way to do this is to look at the definition. Pornography is defined as writings or pictures dealing with sexual matters in a manner intended to incite lust and therefore considered obscene. Once again, whether or not they are intended to, let us have a look at whether they do. We will have a look at the definition of lust, which is a desire for indulgence of sex, especially excessive sexual desire. If anyone suggested to me that those videos do not do that, one would not understand where their ideas were coming from. It also suggests, under pornography, a description or portrayal of any activity regarded as obscene. I consider that those videos that I mentioned a moment ago are obscene.

Mr Humphries mentioned that there has been a clear indication between pornography and battered wives. Pornography also affects children. According to Policewoman Vicki Fraser of the Victorian child exploitation unit, in over 90 per cent of the cases that they have handled in that unit pornography has been shown to, or has fallen into the hands of, children - over 90 per cent. I wonder why there are members in this Assembly who are laughing at this time - a most interesting consideration. Detective Senior Constable Haffner of the juvenile aid bureau in Queensland said, "The connection between pornography and child sexual abuse has been made clear in the courts time and again. Pornography of any type has no socially redeeming factors and can be clearly linked, in my experience, with serious sexual offenders".

In South Australia and in Queensland from 1964 to 1970 the incidence of rape was the same. In 1970 in South Australia - - -

**Mr Moore:** On a point of order, Mr Speaker; standing order 58 says that a member shall not digress from the subject matter of any question under discussion. I believe that is what is happening at the moment.

**MR SPEAKER:** Thank you for your observation, Mr Moore. I have already ruled on that issue. Please proceed, Mr Stevenson, but stay closer to the point.



21 November 1989

**MR STEVENSON:** In 1970 South Australia liberalised pornography. In 1984-85, the incidence of rape in Queensland per 100,000 people was 5.3; in South Australia, 25.4 - five times the increase starting at the same level. New South Wales was higher at 11; Victoria, 12.9; and Western Australia, 14.2 - an average throughout Australia of 12.3, with South Australia, having liberalised pornography, being twice the national average. As we have heard, the sex videos have been rejected by every State in Australia. We should respect those wishes. We all know these videos are being distributed throughout Australia from Canberra.

We talk a lot about environment and about how we should look to our neighbours, to other countries, when it comes to environment. What about the pollution caused by some of these videos. Is that not the same idea? There was such an overwhelming outcry from families in Australia that every Attorney-General, even ALP - - -

**Mr Berry:** On a point of order, Mr Speaker; I might be accused of trying this one again, but clearly the issue is about the Business Franchise ("X" Videos) Bill, and it is not about creating a law which prohibits these sorts of videos. I would really appreciate hearing Mr Stevenson's views on the relevance of the tax and the purposes to which it will be put, rather than listening to him seizing upon highly emotional issues, which is, of course, his tendency.

**MR SPEAKER:** Mr Stevenson, please get to the point of the debate.

**MR STEVENSON:** Indeed, Mr Speaker. Every Attorney-General in Australia, even the ALP ones, in July 1988 heeded the voice of the people. The majority report of the joint select committee made certain recommendations against both X-rated and non-violent erotica - never mind the minority reports. Why has this democratic expression of people in Australia been rejected? Mr Moore mentioned the best weapon we have against things we do not like is to impose financial disincentives. Well, we do not like rape; we do not like child molestation; we do not like battered women; but I suggest that a financial disincentive is not the answer. All these things that we have seen during the debate today are encouraged by pornographic videos. We should not add legitimacy to these videos. We should not pass this Bill.

**MR DUBY (9.29):** Mr Speaker - - -

**Mr Moore:** Are you going to speak on the topic?

**MR DUBY:** I rise to support this particular piece of legislation and I also rise, hopefully, to speak to the topic, as Mr Moore says. I am very, very disappointed with the way this debate has progressed, because, honestly, in the six months we have been here I have not heard so much cant and hypocrisy espoused by members of this house in

21 November 1989

relation to any other issue. This issue is about a tax on a legal product, a product about which we have no powers whatsoever to effect a classification. It is simply a revenue item.

Debate interrupted.

### **ADJOURNMENT**

**MR SPEAKER:** Order! It being 9.30 pm, I propose the question:

That the Assembly do now adjourn.

**Mr Whalan:** I require the question to be put forthwith without debate.

Question resolved in the negative.

### **BUSINESS FRANCHISE ("X" VIDEOS) BILL 1989**

**[COGNATE BILL:**

#### **TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1989]**

Debate resumed.

**MR DUBY:** As I was saying, this debate has been hijacked by opponents - not of this tax, because I am positive that deep down they all realise this is, as taxes go, a pretty fair and equitable tax - but by people who, for whatever reason they have, and I believe there are some peculiar reasons behind their logic, wish to broaden the debate about this taxation measure into one of support or not support of X-rated videos, of pornographic material, about classification and about banning.

As I have said, the hypocrisy that we have heard from various speakers today has absolutely astounded me. I suppose Mr Kaine started it off with his description of pornographic material as being the basis on which we were raising a tax. He tried to maintain that pornographic material, which he went on to describe as predominantly violent material concerning the degradation of women and the degradation of other folk, is what the Government is trying to tax. Mr Kaine, I am sure, knows as well as does every other member in this house, as does every member of this Assembly here today, that X-rated videos, X-rated material, material that has been classified by people who are far better qualified than any of us here to rate this material, has been rated as X simply because it is non-violent erotic material. It involves intimate details - I suppose that is the way to put it - of people engaging in probably what is the most natural activity in the world.

21 November 1989

There is no question of coercion, of violence, of children being involved, or aggression.

**Mr Humphries:** Aggression is involved.

**MR DUBY:** No, it is not. There is no question of aggression.

**Mr Humphries:** I have seen X-rated videos with aggression.

**MR DUBY:** Perhaps you have not seen a video which has been X-rated, Mr Humphries.

**Mr Humphries:** I assure you I have, Mr Duby.

**MR DUBY:** Following Mr Kaine's claims about violent material and about all sorts of degradations that were involved, we then went on and we heard complaints from Dr Kinloch about pornography. Once again, it was painted with a broad brush. "Pornography" was the term that Dr Kinloch chose to use. He went on and explained how pornography was, in his view, the cause of moral decay, et cetera. Once again we had this story of degradation of women, of minors being involved, of violent material. I just cannot understand the motives behind Dr Kinloch's speech because Dr Kinloch is on record, barely 12 months ago, as saying that, properly controlled, the X-rated industry poses no threat to the citizens of the ACT. He is on record as saying that as an expert in the matter of reviewing films. I do not think he maintains that they are extraordinarily artistic, they certainly might not win any Oscars, but there it was, in black-and-white - it was not in black-and-white; it was in colour, I believe - filmed outside an establishment known as Club X here in the ACT. Dr Kinloch was saying, "Properly controlled, the X-rated industry poses no threat to the citizens of the ACT". What has brought about this sudden change?

We then heard Mr Humphries and Mr Stefaniak, of course. I notice that after extolling the dangers of pornography and what is going to happen, the final words of Mr Stefaniak's speech were, "I haven't watched Night Shift Nurses yet". Goodness knows how one could maintain that this stuff is morally dangerous. I know, by the way - - -

**Mr Humphries:** You should see it before you comment on it.

**MR DUBY:** I should put the record straight and say that Mr Stefaniak, unfortunately for him, I imagine, won that particular classic in a raffle, I believe, a week or so ago. Maybe he has no intentions of watching it; I do not know.

Finally then we came to the exposition by Mr Stevenson, who got up and with his usual scare tactics - which as usual were very, very far from the facts of the matter - listed a whole range of what I am sure all of us here would regard as rather deviant behaviour. He has indicated that that

21 November 1989

type of behaviour that he outlined is available on X-rated videos. Such is not the case, and for Mr Stevenson to say that is the case is simply untrue. Those titles and those activities that you outlined, Mr Stevenson, are not available under X ratings. They are illegal classifications. They are just not available. This Bill does not cover those sorts of activities. X-rated videos are non-violent erotic films.

**Mr Humphries:** It does not make them right.

**MR DUBY:** Hold on. It also might bring things back to the truth of the matter in that the arguments that you also put up, Mr Humphries, do not apply to non-violent erotic films. You have listed all sorts of deviant behaviour and tried to imply that that is what the X-rated industry is all about.

**Mr Humphries:** X-rated videos degrade women. They all do. You cannot get away from that.

**MR DUBY:** I find this remarkable because this is the first time in this Assembly that I have ever heard any concern expressed by Mr Humphries about women or their rights. Once again, this is simply not the case. The ladies - the women who take - - -

**Mr Humphries:** They are not ladies.

**MR DUBY:** That may be your opinion, Mr Humphries. The women who take part in these films are very highly paid, willing, professional actresses.

**Mr Humphries:** Do you reckon?

**MR DUBY:** Well, have you any evidence to indicate anything to the contrary?

**Mr Humphries:** I think you are very naive, Mr Duby. You are very naive sometimes.

**MR DUBY:** Have you any evidence to indicate anything to the contrary? No. Once again all you have is smear - - -

**Mr Humphries:** They do it because they have to.

**MR DUBY:** All you have is smear and innuendo.

**MR SPEAKER:** Order! Mr Humphries, address your questions through the Chair.

**MR DUBY:** I am quite capable of handling it, Mr Speaker. All you have is smear and innuendo. The implication is, of course, that these are victims of the white slave traffic, or something along those lines, and that if they want to get home to their family and friends they have to take part in these things. The simple fact is that they are not. They are professional, highly paid, willing actresses and actors.

21 November 1989

To get back to Mr Stevenson, as I said, the horror list that he read out of things that we would all find offensive simply does not apply. They are not X-rated. Where you are getting your information from, Dennis, I do not know, but what you are saying is simply not true. You have listed a whole pile of behaviours. Strangely enough, I think we have got bestiality in there. Was that in your list, Dennis?

**Mr Stevenson:** Not as a video. I am only talking about what we ban.

**MR DUBY:** Only talking about things that are banned?

**Mr Stevenson:** No, we are talking about things that we ban; we do not allow these things.

**MR SPEAKER:** Order! Please address your comments to the Chair, Mr DUBY.

**MR DUBY:** Mr Speaker, in his debate Mr Stevenson definitely said quite categorically that those matters were X-rated and this tax would therefore put the seal of approval on films of that kind. You know, you cannot have it both ways, Dennis. The simple fact is that a lot of the items you mentioned actually would fall within the R-rated category.

This debate essentially revolves around the question: are X-rated videos a moral danger or simply a potential financial bonanza for the ACT? Whether X-rated videos pose a moral danger does not belong in the context of this debate. That is a matter for the Commonwealth censor to determine, and the Commonwealth censor wears the fact that X-rated material should be available to the public.

**Mr Humphries:** No, he does not; he is told to by Federal legislation.

**MR DUBY:** Exactly. So arguments based on suspicions that non-violent - I repeat, non-violent - X-rated videos have the potential to incite sexual violence, distort the perceptions of our children and degrade women are not only unproven but they rightly belong within the realms of a censorship debate.

This proposed business franchise Bill and the accompanying taxation Bill are not about censorship. As members of the Assembly, we do not have the responsibility for classifying video material and therefore we do not have the right to impose censorship. That right belongs to the Commonwealth Government, and that Government only.

Speaking personally, I do not particularly like pornography, I do not condone its existence, but the fact remains that X-rated non-violent videos are legal in the ACT and they constitute a tremendous potential source of

21 November 1989

revenue for the citizens of this Territory. X-rated videos are legal here. This Bill will not alter the fact, and I have no problem at all in supporting the taxing of what is presently sleeping revenue potential.

The financial implications of passing this Act are enormous. The Government geared its first budget to take into account the receipt of some \$2m this financial year and an estimated \$5m to \$7m each full financial year afterwards. These are only conservative estimates. The reality could prove that we will have an even greater source of funds coming into the ACT from this tax for the benefit of its citizens. The budget has been balanced to account for the expenditure of moneys raised through the tax and therefore if this Bill is going to be defeated these funds will have to be drawn from elsewhere. That is another fact that cannot be denied.

I ask this Bill's critics to name the budget program from which \$2m will be extracted this financial year. Will it be health? Will it be education? Will it be tourism? Perhaps we will have broad support from the opponents of this X-rated Bill for an increase in payroll tax. All these are distasteful alternatives, but that is the economic reality. The budget relies on \$2m raised from this tax up to July next year, and I ask all members who oppose this Bill to get off their moral high horses, to reconsider stubborn party policy and face the hard financial facts of this issue. This is a tax that is being raised basically throughout the rest of Australia. The citizens of the ACT are going to pay a very, very little amount of the total revenue raised from this tax. It will be coming from Sydney, Melbourne, Brisbane and Adelaide.

**Mr Kaine:** That is a value judgment. You do not really know, do you?

**MR DUBY:** Well, I have been reliably informed, because I have investigated this issue, that 99 per cent of the revenue - - -

**Mr Humphries:** Yes, by the adult video industry?

**MR DUBY:** No, I am told that by the postmaster at Fyshwick, Mr Humphries. Opponents of the tax who are first and foremost moral crusaders and not economic realists are firm in the belief that the Liberal Party and National Party coalition will form the next Federal Government and that, true to espoused policy, that government will proscribe X-rated videos. I believe that is going to be the case, is not it, Mr Humphries? Can you not wait six months for the realisation of that? The loss of revenue sustained from the application of such a policy could then be fully or partly recompensed through the Grants Commission. When we have this tax raised and your Liberal Government bans it, we will then have a genuine claim for getting \$5m from them.

21 November 1989

**Mr Kaine:** That is a very persuasive argument.

**MR DUBY:** It is a very good argument.

**Mr Humphries:** It is a very good argument, actually; I like that.

**MR DUBY:** Yes. If we do not tax the X-rated video industry now, we cannot stand to benefit either in this financial year or in any other.

**Mr Humphries:** What do you think, Paul?

**Mr Whalan:** About what?

**Mr Humphries:** Wait till the Federal coalition gets in in six months' time and then ban them.

**MR DUBY:** Please, Mr Speaker.

**MR SPEAKER:** Order!

**MR DUBY:** With the tax intact the ACT receives an instant economic boost and one that is sustainable even with a change in government which would destroy the industry and the tax. Apart from the direct economic benefit accruing from the tax revenue, the passing of the business franchise Bill brings flow-on benefits to the ACT.

Now, a number of people have said that respectability and legitimacy will bring these underground operators to the ACT. All I can say is that that means more business, more jobs.

**MR JENSEN (9.44):** Mr Speaker, I think it is important to remind the members once again about the issues we are facing here tonight. The debate is not about whether we should have a pornographic industry in the ACT. However, it could be argued that, if we are to tax an industry, we need to be able to refer to and make some comment on this industry. But I think, Mr Speaker, that it is appropriate that tonight we talk about tax aspects of the Bill. I have no doubt that the aspects of whether we should or should not have a pornographic industry in the ACT will be discussed on another day. The debate is about whether we in the ACT are going to profit from an industry when a large percentage of people - I believe it is close to 53 per cent - have some difficulty with its operating in our national capital.

What these two Bills we are debating tonight will do is entrench an industry within the ACT fiscus. Bills, if passed tonight, will ensure that the Treasury will have some difficulty in removing this tax. We have been advised that a sum of approximately \$2m will be raised for this financial year and \$5m in a full year.

21 November 1989

Mr Moore made some comments this afternoon. Finance being received by governments from the confiscation of ill-gotten gains from the drug trade was an example that he gave. These industries thrive on the weak and the young in our community, and I have no problem whatsoever with these confiscated funds being used to fund the social welfare, health, and law and order problems caused by this terrible industry. I reject any suggestion that we can equate the funds that it is proposed to receive from taxing the pornographic industry in the ACT, which at the moment is legal, with the confiscation of property and moneys from illegal activities. I reject any suggestion of that totally, Mr Speaker.

However, I think that Mr Berry has really identified the Government's problem when the Bill fails tonight, and that is, quite clearly, the loss of revenue. Let me remind the Government of at least one other commitment it gave to the people of the ACT. This was to a tax that would go a long way to providing the shortfall that Mr Berry and the Chief Minister are concerned with and that Mr DUBY has also mentioned. Mr DUBY asked for some new tax or some way in which we could raise this money.

I do not think it will be any revelation to the members of this house if I refer to betterment tax. Let me read into the record, as I have done before, from the minority Labor Government's policy on ACT finance and budget. At the bottom of page 4 it says:

A major revenue initiative is to increase the maximum rate of betterment tax from 50 to up to 100% and to improve the enforcement of the tax. This will provide an extra \$4 million to the ACT community by ensuring that capital gains from lease purpose changes granted by the ACT Government are made available to the community.

You will note, Mr Speaker, that the figure it is proposed to raise is \$4m. Of course, Mr Speaker, as the Rally said during the election campaign, it believed that this figure of \$4m was a rather conservative figure and, in fact, the figure could be more. However, what do we find in the budget papers? A betterment tax which we understand the Government over here finds is too difficult to implement. The Government seems to have some problems with it. It says it is going to implement it, Mr Speaker, but when the members get into government they reckon it is too difficult. They reckon they will introduce something that is a little bit easier.

However, Mr Speaker, I looked very carefully in the ACT Government's budget policy and nowhere did I find any reference to a tax on the X-rated video industry. If we are really going to draw a long bow, it may be possible to refer to the paragraph above the one that I have just quoted from. It says:



21 November 1989

In order to make needed improvements to services provided by the ACT Government and to assist the ACT to become fully self-financing, the ALP has identified some revenue initiatives. The measures are primarily in the form of base broadening -

I assume, Mr Speaker, we are talking there about broadening the existing base, payroll tax, et cetera -

and are designed to make revenue raising both more efficient and more equitable.

I really do not think we can draw any suggestion from that particular policy that an X-rated video tax is a policy of the ACT Government. So what does that leave us with as a reason for this new tax? Maybe Mr Berry has inadvertently hit upon the problem, which is the degree to which the industry will provide large amounts of money to the ACT Treasury. What this ensures is that the industry will be able to argue very strongly for its retention, saying, "Don't hurt us; look at all the money we are providing to you. Look at what we are doing for the ACT". Therefore people in the industry are going to say, "Don't hurt us, don't put us out of business, or you will lose all our \$5m".

It may be, Mr Speaker, that this new policy that seems to have come out of nowhere is to ensure that an industry which is banned in every State except the Northern Territory will have a permanent home in the ACT. One may be so bold as to suggest that this is the real reason behind this tax Bill tonight. My colleague Mr Humphries has already alluded to this reason. I must admit that it finds some favour with me. That is the reason why I am joining with my colleagues on what is a conscience vote for Rally members in voting against these Bills tonight.

**MR PROWSE (9.52):** I have been lobbied by people from Townsville to Tasmania and from Penrith to Perth on this issue. Now is the time to show some leadership for our community. I believe that the raising of income from pornography is inappropriate and unacceptable for the ACT as Australia's capital. This Bill offends the sensitivity and sensibility of not only the people of the ACT but people throughout Australia. Canberra is the Australian capital. We need to stand above the rest.

I will not debate at length the pros and cons of the moral issue of pornography at this time. However, to some members of this Assembly, pornography viewed in one's home by adults is harmless. I advise members that I have been trained and have subsequently practised as a clinical hypnotherapist. I became a member of the ASCH, the Australian Society of Clinical Hypnotherapy, by examination and acceptance into that society. Part of this training and practice includes sex therapy. Pornography in visual, written and verbal form does have long-lasting, serious to devastating effects on the mental well-being of numerous

21 November 1989

members of our community. The question is not only of morals but of mental ill health caused by suppression of extreme desires generated by pornography. This suppression is necessary to conform to the moral, socially acceptable behaviour of this society. The person suppressing unwanted thoughts feels dirty and secretive and thereby loses the joy of life. Members have said that this Bill is only about money and that this tax will not - - -

**Mr Whalan:** I rise on a point of order, Mr Deputy Speaker. I refer to the standing orders, specifically to standing order 58. Quite clearly, what is happening here is an absolute nonsense. We are talking about a piece of tax legislation and we have this man carrying on an hysterical conversation about hypnotherapy or something or other in such a way as to bring this whole Assembly into disrepute. I do urge you, Mr Deputy Speaker, to call the member to order.

**MR DEPUTY SPEAKER:** Mr Prowse, you were coming back to the point, so please stick to the point.

**MR PROWSE:** I will just take up the Deputy Chief Minister's challenge. It is obvious that, when somebody has a little bit of training in something and has some authority to speak on this issue, other than the viewing of the article, you cannot accept it. You are blustering again, Deputy Chief Minister. You always bluster when you know you are wrong.

Members have said - getting back to the point - that this Bill is only about money and this tax will not legitimise pornography. That is absolute rubbish. I ask the question: if this is so, why are the members of the porn industry supporting its introduction? It is to legitimise the Act. The money raised by this tax is sorely needed. I will admit that. We do need money. However, as the Chief Minister has said, money for the hospital refurbishment could be found from within the moneys that we have available. We are talking about \$20m a year, so it is irresponsible for the Chief Minister to claim that we are going to collapse under the pressure of this lack of income. This is absolutely hysterical behaviour on behalf of the Chief Minister.

If we are going to fall because of \$2m we are in a sorry state. The line must be drawn somewhere, and I believe this industry is not socially acceptable within the Australian Capital Territory. I will give an example. I have had a phone call today from Townsville. The person ringing had received in the mail, unsolicited, addressed to the householder at his address, an X-rated video catalogue which described the information that Mr Stevenson alluded to earlier with ladies in various positions of captivation, with bits and pieces hanging out all over the place. This was addressed to the household, unsolicited, and it came from Canberra.

21 November 1989

**Mr Moore:** Mr Deputy Speaker, on a point of order; he is talking about somebody in captivity, and that certainly does not refer to X-rated videos because that is specifically excluded by the censor. So I draw your attention to standing order 58.

**MR DEPUTY SPEAKER:** Continue, Mr Prowse, and I think you had better come back to the point.

**MR PROWSE:** I am fully aware of what the X-rated legal situation is, Mr Moore, but the point is that this is coming out of the Australian Capital Territory. I have the address of the firm in Kingston who are proudly announcing that they are from the ACT and they are supplying this information. I have been told by the members of the AVIA who are here tonight that, in fact, they are an illegal group, so we need to look into this.

The point is that we need a full investigation into the whole of the video industry. It is a must. By placing the issue before the Social Policy Committee, the findings of that committee would then be the basis for either taxing or banning some video material. But, to single out one classification of video material for the raising of income simply because it is easy, is that government? Because it is easy and because large sums of money are involved is just not good enough. So I will leave it with you. In summary, I believe that the raising of income from pornography is unacceptable for our nation's capital.

**MRS NOLAN (9.58):** As we have already heard from my party colleagues, the Liberal Party is opposing this Bill. As Mr Kaine said earlier, it is a money Bill which will enable this Government, desperate in pursuit of revenue, to collect revenue. The Government is prepared to sacrifice its principles and its philosophy to allow its passage.

It is the Government's principles and philosophy in relation to women that I want to speak about briefly tonight. Only yesterday the Labor Government - in fact, the Chief Minister - announced the Women's Consultative Council. I want to quote from a media release dated yesterday. It is headed "Women's Consultative Council Announced". It reads:

"I consider it important to receive the views of women in a wide range of policy areas", said the Chief Minister, Rosemary Follett, today.

"I have therefore decided to form an ACT Women's Consultative Council. It will be a community based body, with an independent chair and will advise me directly on issues concerning women in the ACT.

"The council will have a strong economic focus but will not neglect 'traditional' concerns such as child care and domestic violence.

21 November 1989

"It will develop an overview of women's status in the ACT and identify their needs and aspirations".

The media release goes on, but that is as much of it as I will quote this evening. It is unfortunate that this council was not in place before the introduction of this particular Bill, as I am positive all the advice from all those women on the council to the Chief Minister would have been not to put forward such a piece of legislation.

All those women representing community groups of women - remember that 50 per cent of people in this community are women - should realise that the X-rated video industry denigrates women to such an extent that it is absolutely disgusting. We now see this Government bringing forward legislation to tax the industry, forgetting about the views of women. I believe the only woman speaking in this Assembly in this particular debate has been the Chief Minister, and she, in fact, is supporting such denigration of women.

Mr Deputy Speaker, I recently received a letter - many of us, I am sure, have received many letters - signed by Dawn Casley-Smith and I would just like to quote from a particular paragraph in that letter. It reads:

On 9 March this year, Robbie Swan, Public Relations Officer for the pornographers, conceded in an interview on Radio Station 2CN that 20 to 30 per cent of X-rated videos were degrading women. We would put this figure closer to 70 to 80 per cent. Any normal business that degraded 30 per cent of women through its advertising or other behaviour would be closed down as a result of pressure from women's organisations.

It is amazing that this particular industry has not closed down from that pressure.

This Government, headed by a woman, forgets about degrading of women and chooses to forget about any social costs and says, "Money - dollars - we need them at any cost". I do not believe that that is the right way to be looking at introducing such a piece of legislation. We have heard tonight that there are many other ways in which this amount of money could have been collected and I am greatly disappointed that, in fact, women have to continue to receive such denigration.

**MR WHALAN** (Minister for Industry, Employment and Education) (10.02): Mr Speaker, in view of recent interjections while I was interjecting with you, I assume that I will get a fair hearing.

**MR SPEAKER:** Always, Minister.

21 November 1989

**MR WHALAN:** I have complete confidence in you. Mr Speaker, I am going to quote from an article written by Dr Paul Wilson of the Australian Institute of Criminology. It was a paper which was presented on 19 April 1989 to the Sydney University law school seminar on sex, violence and censorship. I quote from the final paragraph of Dr Wilson's paper, and I would like to quote the words precisely:

As I pointed out in the beginning of this article Queensland politicians, police and public servants attempted to make that State morally pure in the 1960's and 1970's. Some of those who campaigned most strongly for strong censorship policies have been exposed by the Fitzgerald Inquiry as hypocrites and criminals of the most serious kind.

Censorship breeds corruption and crime.

Today's Sydney Morning Herald has an interesting article in it. It is on page 11, under the heading, "Mudslingers take their muck to town". In the opening paragraphs it refers to the fact that the president of the National Party in Queensland, Sir Robert Sparkes, has recently taken to staying in a building described as "The Bunker", which is a self-contained unit in the Queensland National Party's headquarters in the inner Brisbane suburb of Spring Hill. I will quote from just this section of the article:

As the party president, Sir Robert Sparkes, tosses and turns in his sleep over what may or may not be after December 2, hundreds of homosexuals are dancing the night away in Queensland's most popular gay bar, just 80 metres down the road.

That ... State Government is both unwilling and unable to close the bar.

**MR SPEAKER:** Order! Minister, I draw your attention to standing order 58.

**Ms Follett:** Fair go.

**Mrs Grassby:** They all did it.

**MR WHALAN:** In the article that I referred to by Dr Wilson, earlier, there is quite a serious discussion of the background of the relationship between censorship, sex and violence. It is a worthwhile article and I would recommend it to every member of the Assembly, particularly those who, hopefully, will never fall into the category of the Fitzgerald inquiry, hypocrites and criminals of the worst kind.

In this particular article, Dr Wilson acknowledges that he did spend some time in Queensland so that his views about censorship could be conditioned in some way by that particular experience and by his experience with the

21 November 1989

Queensland Literature Board of Review. It described its charter in these words:

"... the object of censorship is not to protect the individual from moral corruption" but rather "to protect and defend the very fabric of society's existence".

Now, what he says is that the Queensland Literature Board of Review, in order to protect the very fabric of society's existence, banned the film *Pretty Baby* and banned the sayings of Chairman Mao collected in *The Little Red School Book*, and indeed, for the same reasons, banned the journal of the Marijuana Party of Australia. They had under - - -

**Mr Jensen:** On a point of order, Mr Speaker; I know you have already ruled on this particular matter but it just seems to me that I have not heard the word "tax" mentioned once in the first five minutes of the Minister's speech.

**MR WHALAN:** At one stage, Mr Speaker, they had under active review - - -

**MR SPEAKER:** Order! Minister, please resume your seat. Mr Jensen, thank you for your point of order. Please proceed and stay close to the point, Minister.

**MR WHALAN:** They had under review a book which had been referred to them, entitled *The Rape of our Land*, and it was not until somebody had got past the third page that they discovered it was about soil erosion. That is typical of the sort of problem we have.

The problem that censorship faces is the determination of the impact. This particular document of Dr Wilson's is a serious attempt to explore the research and the literature on the impact of the portrayal of explicit sex on behaviour. It does that very, very effectively. In the process of that, he reviewed areas of experimental studies, field studies and commissions of inquiry. He said there are studies and studies, one upon the other, that he refers to in his literature. Only one study reviewed reported more aggression by subjects after exposure to pornography.

He went further to review the Kutchinsky study of sex crimes in Denmark between 1959 and 1970. That study demonstrated that large decreases in child molestation were directly attributed to the availability of hard-core pornography during that period. That research was further reviewed by, to quote him, "the most thorough and painstaking inquiry into pornography and its effects conducted by Professor Bernard Williams for the British Government in 1979".

He said that Professor Williams came to the conclusion that there had been a dramatic reduction in reported sexual offences against children and that this decrease coincided with the sudden upsurge in the availability of pornography.

21 November 1989

Kutchinsky studied the same situation in West Germany in 1973. He found that between 1973 and 1980 the total number of sex crimes known to the police in the Federal Republic decreased by 11 per cent during a period when the number of all crimes increased by a massive 50 per cent.

He said further:

... it is interesting to observe that in Queensland where censorship has been ruthlessly imposed on sexual material the rate of rape has always been far higher than in the ACT, the home of "X" rated videos.

So this, Mr Speaker, is the sort of research material undertaken by a very responsible and very highly regarded academic, in the form of Dr Wilson from the Australian Institute of Criminology. It cannot be ignored.

Let me go now to some of the remarks that were made by Dr Kinloch. I think that Dr Kinloch's remarks are particularly important and relevant to this discussion because he is not only an expert on films but he has presented himself on other occasions as an expert on morality as well. Of course, Dr Kinloch is probably well qualified, because I venture to suggest that he has probably seen more X-rated films than the rest of the members put together. I understand that the old rogue has been on the mailing list of all the new releases of the X-rated videos.

**MR SPEAKER:** There is a point of order, Minister.

**Dr Kinloch:** It just seems to me that this is getting unduly personal, Mr Speaker.

**MR WHALAN:** What I was going to say, Mr Speaker, was that, if it is true - and I do not think that Dr Kinloch would deny this - that Dr Kinloch has, in fact, seen many X-rated videos, have they affected him? Any objective observer would have to come to the conclusion that there has been no obvious ill effect on Dr Kinloch. Clearly, he is not a rapist or a child molester, nor does he do whatever other antisocial things people are driven to, or supposedly driven to, as a result of participating in the observation of pornography on film. It clearly has not affected Dr Kinloch in that way. I think that he is a fine, upstanding citizen, and it is of value in this debate to demonstrate that people are not affected, as Dr Wilson clearly demonstrated.

Dr Kinloch did draw attention to the fact that there is a thriving mail-order business here in the ACT. Of course, that is what makes this particular legislation for a tax on X-rated videos so attractive to the Government in the circumstances which we face at the moment in relation to the Commonwealth Government. The Commonwealth Government

21 November 1989

clearly has a different perception of its financial responsibilities to the ACT from that which we have. Quite clearly, when they are the ones who pay out the funds, their view is the one most likely to prevail. We need this sort of tax.

But Dr Kinloch said that, if we were to tax the industry based on a mail-order business, in some way this breaches the spirit, if not the letter, of the State laws of those States which do not permit X-rated videos. Now, that is a funny sort of argument. I am surprised at its coming from an academic of Dr Kinloch's standing, because I do not think it stands up to very close examination.

Where, for example, does that leave the poker machines that proliferate along the northern banks of the Murray River? Every weekend hundreds and thousands of Victorians swarm to New South Wales in order to play the poker machines, which are banned by law in the State of Victoria. Are they breaking the spirit? Is New South Wales breaking the spirit and the letter of the State law in that situation?

What about casinos, Dr Kinloch? Are the States of Tasmania and South Australia - and shortly the ACT - breaching the spirit of the State laws and the letter of the State laws in Victoria which ban casinos because we supply casinos and because people who want to gamble at casinos flock to Tasmania, flock to Adelaide and will flock to the ACT in order to indulge their desire to play poker machines? Quite clearly we do not, and it is an absolute nonsense to suggest that we are in some way violating the laws of those States.

I would like to refer you to the tobacco tax argument and the gambling tax argument. There are people who would put forward very strong cases. I am surprised, Dr Kinloch, that, in view of your stand on gambling, you do not find yourself obliged to object to the very substantial revenues which are collected from gambling here in the ACT.

In conclusion, Mr Speaker, I take you to a very authoritative editorial in the Canberra Times of Tuesday, 14 November. I have been very impressed recently with some of the writing that I have seen in the Canberra Times. It says:

Basically, the Government's Bill should be seen as what it is: a simple revenue-raising exercise. And it should be allowed to succeed or fail in the Assembly on its financial merits, not on its power to perform as a moral prescription.

That is what the risk is. Every speaker from whom we have heard - every sanctimonious speaker who has spoken about pornography - has turned it into a debate on that issue, not about the taxation issue. It appears that the majority of Canberrans are in favour of non-violent erotic videos being available to adults to watch in their own homes. Those opposing them are running against community opinion.



21 November 1989

Petitions, the phone-ins and the clip-out coupons in newspapers might claim otherwise, but the latest reliable evidence from the Roy Morgan Research Centre suggests that most adult Australians feel that the sale and hire of X-rated videos should be allowed, with the biggest nod coming from Canberrans.

Those pushing for a legal ban on non-violent erotica in Canberra, besides going against majority opinion, will probably not achieve what they set out to do. The industry will go underground and will become out of control. At present the vast majority of the trade of the adult video industry is in X-rated videos. This is important. At least the videos have been rated, which means that they contain non-violent erotica and do not contain child pornography, explicit sexual violence or snuff movies. This is a tax Bill.

**MS MAHER** (10.17): Mr Speaker, this is a debate which I was very tempted to slot into the too-hard basket, to be quite honest. I found myself having to dig deeper and deeper, trying to find a balance between my own subjective, personal opinions and a more objective, fully informed opinion. Fighting against my preconceived personal beliefs to strike a well informed, objective balance has been a dilemma for me.

I must admit my experience in viewing X-rated video material is very limited, but from the little I have seen, read and heard I have formed some general opinions on X-rated videos. My initial reaction was one of dismay, knowing I would have to vote on such a controversial issue. As the mother of an 11-year-old son, I am very aware of the potential effects video and television viewing can have on a child, and personally I have taken steps at home to ensure that my son is not exposed to material I deem not suitable for him.

But we are not here today to debate the issue of censorship. We are here to debate the Business Franchise ("X" Videos) Bill and its companion, the Taxation (Administration) (Amendment) Bill.

The cold, hard fact remains, that X-rated videos are legally available through both wholesale and retail networks in the ACT and through the many hire outlets throughout the ACT. This legality has been bestowed by the Federal Government. Moral debates, with the intent of altering censorship provisions, are best directed to the Federal Parliament. X-rated videos are here in Canberra until the Federal Government proscribes them. We do not have the right to effect such a proscription and send X-rated videos underground once and for all.

So let us distance ourselves from the misplaced moral argument and look at the business franchise Bill objectively for what it is: draft legislation which aims to tax the sale of X-rated videos and license the premises of distributors.

21 November 1989

The real issue here is one of revenue. I really believe that this debate is about revenue. The X-rated video industry maintains a huge financial turnover. This has been estimated at some \$25m annually. Here we have the opportunity to take a slice of that sum. Cigarettes and alcohol, both of which many believe pose dangers to the community, are taxed. Cigarettes and alcohol are not going to go away, and I believe that X-rated videos are not going to go away. So why should we hesitate to tax a legitimate industry - and it is legitimate in the ACT - which is currently allowed to bask in a glory of financial success?

My real concern is the fact that driving the industry underground will expose those who seek X-rated videos, even those just looking for non-violent erotica, into a business where anything goes, including sexually violent videos, snuff videos and those which feature bestiality. The legitimate X-rated video industry currently operating in the ACT is, to a great extent, self-regulating, and self-imposes controls to ensure such depravity does not find its way onto shelves and under counters within the ACT.

Another argument often put forward against pornography is the suggestion that X-rated videos are degrading to women. In most cases, I would say they probably are. But, to some women, the acts depicted in X-rated videos are stimulating, just as they are to men. The extent to which X-rated videos are degrading is surely in the eye of the beholder. Many of the videos are actually produced and directed by women for women. Many of the actors and actresses involved, in many cases, are very much in control of how the story line will be delivered in the film. As stated earlier, some of them are very highly paid.

I must admit that my real concern is with R-rated videos rather than with X-rated videos. At least X-rated videos are kept out of sight and therefore largely out of mind. If members of the general public want access to them, they have to ask and go out of their way to get them. Yet R-rated videos can be, and mostly are, violent; they can contain simulated sex and are easily accessible, not only to adults but also to children. Video stores, which are often frequented by children, openly display the most dreadful and hideous video covers and posters. I think it is these videos which should be more strictly censored, rather than X-rated videos, which are already under reasonably strict regulations and which will be further regulated by the institution of legislation rendering distributors accountable under licensing laws and taxation.

**MR COLLAERY (10.24):** Mr Speaker, while Residents Rally MLAs are allowed a conscience vote under our longstanding policy, the fact is that on the core issues the three MLAs are in agreement. In our view, the Bill raises several matters for consideration. Canberra is the seat of national government. It has always been considered that Canberra would symbolise, in its built and landscaped form,

21 November 1989

the Australian self-belief and aspirations of the Australian people or, as the draft national capital plan puts it, the summit of national affairs and achievements.

The other point we have made is that the Bill is more than a taxing instrument. It sets up a franchising structure for the industry. In the absence of uniform legislation, the ACT Act, if it goes into force, will be out of step with the attitude of other States. It may detract from the dignity of the national capital and may damage our family tourist image which we have been working to develop. In that sense, Mr Speaker, I think the ACT will stand alone, like a sort of "phallus in wonderland".

By incorporating the industry into the tax and revenue structure of the Territory the industry is given status. It could, for example, compete for one of Mr Whalan's small business awards and otherwise attract incentives and encouragement from government. This could make us the subject of ridicule and condemnation by a large proportion of the Australian population. I am repeating the issues that have been raised in the MLA party room, on which the three MLAs broadly agree.

In terms of civil liberties, the Rally supports basic freedoms, including freedom of choice. Nevertheless, there are widely spread segments of the community which are genuinely, even passionately, distressed about this industry which of itself contains little merit to require preservation or protection. The films, with rare exceptions, have no intrinsic aesthetic or artistic merit. They do not add a lot to the storehouse of Australian intellectual values and, if anything, they pander, in terms of some of the usage to which my colleague Carmel Maher referred, to lower instincts and they tend to degrade the human condition in its perception of itself.

There is also some evidence, as I am sure Dr Paul Wilson will concede, that for some - I stress, for some - susceptible persons pornography is provocative and can trigger latent antisocial activity. That would not be a decisive factor in my considerations, Mr Speaker, but it is one of the elements in the aggregate picture.

Further, Canberra is a city of vision. It promotes the image of government, including the best possible image of men and women. It is antithetical, in my view, for a government to franchise the promotion of an image of men and women, particularly women, which runs counter to the modern aspirations of a sensitive society.

So that brings us to the question: just what is the X category? Censorship throughout Australia is a function that the Commonwealth has taken on itself, excluding Western Australia, so far as I know, and I have not had the chance to research that fully.

21 November 1989

The ACT Assembly in its early days passed a Bill to accept the Commonwealth censorship structure. Perhaps that is something about which we could have thought twice, and I say that particularly to those members who relied upon the Commonwealth to take the brunt of the attack in this issue. As the Commonwealth has taken this responsibility, it has been argued, so should it take on the concomitant function of reviewing the industry.

There are clear indicators in the report of the joint select committee, referred to by my colleague Dr Kinloch and others, to the incidental responsibility the Commonwealth has of overlooking the impact of such material. The fact is that, if the Commonwealth runs a censorship scheme, it needs to have a constant review process of working out what is the social impact of that material.

A good parallel is the functions of the National Capital Planning Authority, which has responsibility for the general standards and aesthetic principles to be adhered to overall, in general, in the development of the national capital. Clearly, in my view, the Commonwealth has an incidental responsibility to determine whether franchising the regulation of X-rated videos and, in effect, the structuring of the industry in the ACT will result in detracting from the national image perceived by the National Capital Planning Authority. I will come back to why I see that factor as relevant.

In causal terms, Mr Speaker, the Commonwealth censorship decision allows the video industry to be established in the ACT. That is a non sequitur probably, but the national significance of the Federal capital gives the States and the Northern Territory the right to comment on this issue. I think they have a right to comment. Even if people are repressed and living in Queensland, they have a right to comment because all of the people of the ACT hold the national capital in custodianship for the nation. I believe that the States have a right, and the phone calls we have had from Townsville to Tasmania and from Penrith to Perth are probably part of the proper democratic process. I am glad that they now are interested in Canberra.

Mr Speaker, the video classifications are Commonwealth responsibility, and we can hope to influence that responsibility. There is a Federal election coming up. Mr Hawke has until that time, depending on the result, the overall function for that system. The question arises: do we dam a river by attacking its tributaries, for those who want to ban pornography; or does the struggle really lie in the Federal arena at a Federal election? In my view, that opportunity can come in the next few months for all those people who have been contacting us.

But in the meantime the ACT Government has decided to proceed to regulate its industry and to put forward a tax Bill. In view of the fact that the Federal Liberal Party

21 November 1989

has an agenda item on this issue, in view of the active work of, I believe, Senator Walters, it is interesting to note that we are bringing a Bill through at this stage. It is interesting in the sense that there is likely to be some Federal interaction with the Territory in the event that a Liberal Federal government is elected in February or March. That may affect our overall relations to some extent, and it is a consideration in the aggregate. I mention that merely in terms of its significance.

Certainly, the video industry would be aware of the potentiality of a Federal Liberal decision at Commonwealth censorship level on the issue, and that may well be, for all I know, a factor in the expedition with which this Bill is received in the ACT Assembly.

Mr Speaker, we do have elsewhere in Australia uniform payroll tax and other government taxing legislation. There is no evidence, as far as I know, that we sought to contact the States to determine whether they are interested in a uniform legislative basis for the taxing of this industry.

Mr Speaker, I will now relate the other issues that I have in mind. Firstly, I join Michael Moore in saying, "Let us not be hypocritical on this issue". To the best of my knowledge, the X-rated video industry is alive and flourishing throughout Australia. It operates in conditions which range from the tacit to the inept. I believe that, across that spectrum, elements of corruption come into the pornography industry, as has been amply illustrated in Queensland in recent times.

I do not simply accept the argument that all States have banned the matter and therefore the ACT should step into line. If all other States and territories were serious, it would not be there, but clearly there is no will or capacity to do that. As an Assembly person and after my years of facing reality in the courts and the criminal justice system, I am not prepared to argue this issue on a fictional basis. The fact is that, were we to ban X videos, Canberra might get its own large-scale illegal industry. This would become a corrupting influence close to the centre of power of our nation. It could lead to a degree of cynicism and hypocrisy, even in this Assembly. I am not personally prepared - and I respect the views offered by my colleague Carmel Maher - to contribute to that state of affairs in this Territory.

Were the Federal Government to change and to introduce a ban and were the criminal justice system capable of proving itself capable of supporting a film classification system that we could police, which would remove some of the violent films and the hard-core pornography from sale and distribution, I would cooperate. But at this stage one must face reality, and that is that the chief censor has created a situation that allows these matters to take their place alongside artistic and, to some extent as I think you, Mr Speaker, indicated, therapeutic erotica. But,

21 November 1989

given this state of affairs, I believe that it would be ineffectual and hypocritical to impose a prohibition and to make the tax Bill here a precursor to that by defeating it.

Nevertheless, I take the view that the Government must immediately see to a tightening of the laws relating to the distribution of R-rated movies, most of which contain excessive displays of violence. It is grotesque that most video shops in this city have quantities of these movies within reach of children, and I share the views of my colleague Carmel Maher on that. Regulations should insist that R-rated movies are displayed in a separate area, to which children have no access.

I believe that this Bill should come back to this Assembly at a later stage, after the States and territories have discussed the matter and determined whether joint action is indicated. This tax is being imposed in the ACT without sufficient consultation with the industry; it is being pushed through to meet with an appropriation Bill, Chief Minister, before the video industry itself has been brought out into the open, as it probably wishes to be. It does not regard itself, to my knowledge, Chief Minister, as an industry that wants to live in the shadows. It wants to debate this issue, and I believe it should have been given better opportunity to debate this issue in a full forum and not have had to rely on the use of consultants and lobbyists to present its view in the manner it has had to do, effective though those consultants and lobbyists have been.

There should be a full review of all aspects, in my view, of the X-rated video industry, including a decision as to whether we should ask the Commonwealth Government to refer the classification power back to us, as occurs in Western Australia. This may require an amendment to the self-government Act to overcome the prohibition in section 23 of the Act, which my colleague Mr Moore mentioned.

The fact is, Mr Speaker, that I had prepared a speech - and I want to say it very honestly - to state that I was prepared to accept the lesser of the two evils in this debate. I was prepared to say that the lesser of the two evils, in my view, is to allow the regulation of this industry so that we do not force it underground and create a criminal propensity to action in this Territory. But events yesterday and today, relating to the funding of the ALP, mean that as a political reality there is no way that I, as the leader of the Residents Rally, can do anything other than make an essentially political decision on this issue. My conscience decision, I make very clear to this Assembly, would have been to support the Bill.

Yesterday evening I was going to support the Bill, but since yesterday evening I have changed my mind. That is a completely politically realistic decision, and I say that in total frankness and honesty. If that upsets members of the Liberal Party, I am sorry about that, but the fact is

21 November 1989

that, in my view, if the ALP left its funding issues off the front page tomorrow, there may well have been a better reception of the decision that this Assembly is going to reach. But the fact is that, if you see the Rally making a casting vote on the same day as another issue that brings the Assembly and the political process of this town into some sort of community question, then it is totally inappropriate to want this debate to go on this evening. Mr Speaker, I will be opposing this Bill for that latter reason. I express regret at the events that have occurred in the last 48 hours.

**MS FOLLETT** (Treasurer) (10.38), in reply: I think we have just about heard it all! Nevertheless, I will try to summarise some of the issues which we have heard about during this debate. I will leave out the more ridiculous. But I would like to reiterate, Mr Speaker, why the Government has put forward this Bill and why we support this business franchise measure. It is a revenue measure. It has nothing whatsoever, Mr Speaker, to do with clinical hypnotherapy. It has nothing whatsoever to do with donations to the Labor Party, or the lack of them. It has nothing whatsoever to do with the Women's Consultative Council. It is a revenue measure.

I know that you have all had tremendous fun this evening scrabbling in an undignified manner for the moral high ground. You have not succeeded. This is a revenue measure. It is put forward, Mr Speaker, in order to raise revenue for the ACT. It is estimated to raise this year some \$2m in revenue and in a full year \$5m.

In addition, the Bill that is put forward provides for additional regulation of the industry which appears to trouble you all so much. It provides for additional regulation of the industry, which should be supported by anybody who is concerned. I am amazed that members opposite, while purporting to have such difficulties with this industry, will not vote to provide additional regulation of the industry. The Bill cannot be seen as legalising or legitimating the industry. As Mr Moore has already said - - -

**Mr Humphries:** That's rubbish!

**MS FOLLETT:** The industry is not illegal.

**Mr Humphries:** You legitimise it by taxing it.

**MS FOLLETT:** Mr Speaker, Mr Humphries continually interjects that I am legitimising the industry. I regard taxing the industry in no way to be legitimising it, in no way to be supporting - - -

**Mr Humphries:** They do. The industry does.

**MR SPEAKER:** Order!

**MS FOLLETT:** Would you protect me from that man?

21 November 1989

**MR SPEAKER:** Order!

**MS FOLLETT:** The taxing of an industry in no way legitimises it any more than does the taxing of the tobacco industry; taxing of gambling, which we are heavily into in the ACT, and I have not heard any of you argue against that; taxing of petrol or any number of industries in our community which many people find distasteful. It no way implies that by taxing them a government supports that industry.

Mr Speaker, the Adult Video Industry Association has been fully consulted on these matters since the announcement of the proposed business franchise in the initial budget statement in July. I strongly object to the comments of Mr Collaery, I think it was, that there had not been adequate consultation. There has been.

The industry has put forward some alternative licensing and taxation proposals, but the Government has maintained its preference for the scheme that we have put forward. I think it is fair to say that the video industry does not wholeheartedly welcome this tax. You would not expect it to do so. I notice Mr Collaery and Mrs Nolan are enjoying a wonderful joke across there. I am addressing the points, Mr Speaker, specifically made by Mr Collaery, and I would be glad if he would do me the courtesy of listening. I think that the video industry does not welcome this tax. Why would it? It has been operating quite legally, quite legitimately, without paying tax.

Mr Speaker, we are supporting the maintenance of the scheme as put forward and we are sticking to that, even after consultation with the industry because, first of all, franchise schemes are a recognised method of taxing industry at the State and territory level. So we are using a method that has been used before. There are already franchising schemes in force in the ACT, in the areas of tobacco and petroleum. They have proved to be effective revenue raisers.

The taxing of the industry, in the fashion that we are putting forward, will ensure compatibility with existing tax legislation and, again, it makes for ease of administration. Imposing the franchise fee at the wholesale level will mean that the tax will be applied at the same level as for sales tax. That has a number of advantages. For instance, it means minimum additional records will be required to be kept by the industry, and the fact that two taxation bodies would be auditing the same records should ensure that there is a good level of compliance.

During the discussions on this Bill, the Government and the commissioner for ACT revenue have continued to stress to the industry the need for proper regulation and control. It should be said, Mr Speaker, that the industry has made some moves recently to improve its own image, and I think



21 November 1989

that is laudable. It has created the Adult Video Industry Association, its own body. It has developed a code of ethics, and it has asked all of its members to follow that code of ethics. I think you should acknowledge that it has made those efforts. I am satisfied that the industry would be keen to comply with the additional regulation and the franchise system that is proposed and that together it and the commissioner for revenue could work out an efficient and effective way of administering the new tax.

But I would also like to point out, Mr Speaker, that the commissioner for ACT revenue has to ensure that a number of conditions are satisfied before granting a licence in this area. The criteria that the commissioner would be looking at include, for instance, the fact that only properly classified material will be sold under the licence. There is no suggestion here that there is any lessening of the classification standards or any opening of the floodgates for unclassified material. We require that properly classified material is sold under the licence, that the material that is sold has, to the applicant's knowledge, not been produced in breach of copyright, and that purchases will be made from licensed wholesalers or suppliers operating within the laws of their place of business.

I have also had a look, Mr Speaker, at the obligations of the commissioner for ACT revenue in determining whether an applicant is a fit person to be licensed under the Act. In determining whether a person is a fit and proper person, the commissioner will be taking into consideration matters such as: whether the applicant has contravened relevant ACT laws, such as the Taxation (Administration) Act, the Publications Control Act, when passed, this "X" video Act, and the Commonwealth Classification of Publications Ordinance; also, whether there have been convictions by the applicant under any law, in particular the nature, seriousness and penalty involved in any such breach; whether the applicant will give undertakings in respect of the proper classification of material sold under the licence; whether the applicant will give undertakings not to deal knowingly in material produced in contravention of the Copyright Act or in breach of the laws of the manufacturer's place of business; and whether the applicant will give undertakings in respect of the observance of industry standards in the pricing of material in dealings with related businesses so as not to avoid paying tax.

Also, Mr Speaker, the commissioner will have regard to whether the applicant is an undischarged bankrupt or, in the case of a body corporate, is being wound up. That is for the simple reason that we need to be fairly sure that the applicant will be in a position to pay the tax. If it is in that sort of financial difficulty, while it may keep trading, it may be able to argue that it cannot actually afford to pay the tax. They are the issues to which the commissioner would be giving consideration. I put it to you that all of that represents a considerable increase in the regulation of this industry.

21 November 1989

I turn now, Mr Speaker, to some of the specific issues that have been raised by various members, although, as I have said before, I will leave the more ludicrous to one side. One piece of information in this debate was quite erroneous, and that was the comment by Mr Kaine that the definition of "non-violent erotica" is somewhat broader. He has said that it also gives considerable scope for videos depicting violence, cruelty or sex to be given the classification of R or X if likely to cause offence to a reasonable adult person. I think it is very important, Mr Speaker, that that remark be put right. It is, of course, a fact that the X classification guidelines specifically prohibit the depiction of sexual violence, coercion or non-consent. That is not what we are talking about here; that is prohibited under the X classification.

As many members have pointed out, the R-rated material can contain depictions of violence, including some sexual violence, and that is, of course, of great concern. Mr Speaker, matters such as child sexual abuse, bestiality and explicit depiction of sexual violence against non-consenting persons are denied classification altogether. They are a totally illegal product within Australia, and they should be treated as such.

It might have been Mr Stefaniak, Mr Speaker, who raised some of the industry's concerns, expressed in the public arena, that the bringing in of this franchise might create an influx of illegal interstate operators setting up in the ACT. I think that comment defies all logic. Why would they not have set up when there was no tax? Why wait until you are being taxed? It seems to me to defy all logic.

Mr Speaker, the Government is satisfied that the legislation controlling the possession, distribution, display and sale of X-rated videos will ensure that current standards of conformance with the law will continue. While the "X" videos Bill is a tax law, as I have constantly said, it does introduce additional regulatory requirements concerning the licensing of wholesale and retail distributors.

However, the essential controls over the industry will continue to be the Publications Control Act 1989 and the Classification of Publications Ordinance 1983. The decision to tax the sale and hire of X-rated videos does not in any way lessen controls over the industry, but rather introduces additional licensing requirements with which the industry has to comply. There is no suggestion of an open door.

Mr Humphries raised the question of the impact of this legislation on children. I think that is also an issue that has to be addressed in this debate. I say again that in the initial budget statement I foreshadowed some discussions with the Australian Federal Police to ensure that laws limiting access to X-rated material are adequate

21 November 1989

and are enforced. The correspondence that the Government Law Office has had from the Australian Federal Police confirms in writing that there are no recorded complaints from the public about minors obtaining access to X-rated videos or restricted areas.

Ms Maher has alluded to the parental responsibilities in these matters. I think it is laudable that she has done so. It is the parents' responsibility within their own home to protect their children from material which quite clearly is not suitable for children. That is a parental responsibility. As I have said, Mr Speaker, it appears from the police experience that there is not an existing problem with minors obtaining access to X-rated videos through the outlets.

Mr Collaery, in his extraordinary remarks, commented that the franchise was more than a taxing instrument. It is not, Mr Speaker. I put it to you that it is a budget measure of significance to the ACT's revenue, that it is a legitimate tax on a well established ACT industry, that the burden falls evenly on the Australia-wide clients of the industry rather than solely on ACT residents and, in addition, it introduces further regulation of the industry, which will be welcomed by concerned ACT residents.

To conclude quickly, Mr Speaker, if the Assembly chooses to deny this revenue to the people of the ACT, I think it has to think very, very carefully about the implications of denying them a legitimate tax such as this, of denying them \$5m in revenue. Further, Mr Speaker, as we have had clear indications from around the Assembly that members will be moving at a later stage to ban the industry altogether, they want to think very carefully about the people who are employed in that industry - employed legally - and where they might find them alternative employment.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 8

Mr Berry  
Mr Duby  
Ms Follett  
Mrs Grassby  
Ms Maher  
Mr Moore  
Mr Whalan  
Mr Wood

NOES, 9

Mr Collaery  
Mr Humphries  
Mr Jensen  
Mr Kaine  
Dr Kinloch  
Mrs Nolan  
Mr Prowse  
Mr Stefaniak  
Mr Stevenson

Question so resolved in the negative.

21 November 1989

## **TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1989**

Consideration resumed from 2 November 1989, on motion by **Ms Follett**:

That this Bill be agreed to in principle.

Question resolved in the negative.

## **ADJOURNMENT**

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

That the Assembly do now adjourn.

## **Civil Liberties**

**MR WHALAN** (Minister for Industry, Employment and Education) (10.56): Mr Speaker, I wish to say a few words about hypocrisy. Earlier tonight, at 8 o'clock, the Assembly gave leave to a particular member to speak about civil liberties. That member spoke at some length and, in the process, launched a vicious attack on the Commonwealth Government, I might add. But he presented himself as the great champion of civil liberties in this city, indeed in this nation - the champion of the underdog, the champion of the oppressed, the champion of those less privileged.

Then in a later debate, in the last debate, I can quote him as having said, "In relation to civil liberties the Rally supports basic freedoms". I just want to draw to the attention of the Assembly that from my personal experience this week Mr Collaery, in association with his lawyer friend Mr Stefaniak, has been responsible for introducing into this Territory the most repressive legislation that runs the risk of creating in real terms a police state in the ACT.

This man, this hypocrite, will stand up here tonight defending the rights, or claiming to defend the rights, of others, yet is party to the introduction of the most repressive legislation possible in the ACT.

**Mr Kaine**: I take a point of order, Mr Speaker. I really must ask how much latitude is going to be given to a member of this Assembly to describe another member or other members of this Assembly in these terms. I believe that this is quite over the top, and I would submit, Mr Speaker, that the Minister should be asked to terminate his remarks or at least tone them down.

**MR SPEAKER**: I agree with that position. Please proceed, Minister.

21 November 1989

**MR WHALAN:** I have finished.

### **Personal Explanation**

**MR COLLAERY:** Mr Speaker, I wish to make a personal explanation in the adjournment period. A few moments ago the Chief Minister mouthed across the chamber to me, "You liar". Mr Speaker, I am not a liar. In my speech I indicated what I told the Chief Minister but other events intervened, and she well knows about those events. I believe, Mr Speaker, that the Deputy Chief Minister's speech aptly indicates what the Labor Party's tactic was this evening, to isolate me on this Bill and to damage again the Residents Rally. It has not succeeded. It has been defeated, and it merited the defeat tonight, for whatever the tactic was that resulted in the events of today.

Question resolved in the affirmative.

**Assembly adjourned at 11.00 pm**

## ANSWERS TO QUESTIONS

The following answers to questions were provided:

### **Motor Vehicle Theft (Question No. 21)**

**Mr Jensen** asked the Attorney-General, upon notice, on 26 July 1989:

- (1) Has the Attorney-General received a submission from the Motor Trades Association of the ACT in relation to steps designed to reduce the risk of motor vehicle theft.
- (2) If so, what response has been given to the Motor Trades Association.
- (3) What steps have been taken towards implementing the motor industry's recommendations on reducing thefts.
- (4) What contact has been made with relevant State Ministers to ensure the adoption of Australia-wide procedures on reducing motor vehicle theft.

**Ms Follett:** The answer to **Mr Jensen's** question is as follows:

- (1) Yes.
- (2) I advised the association on 27 October 1989 that arrangements are in hand to integrate ACT vehicle encumbrance information into the NSW register of encumbered vehicles later this year and that the register has the potential to assist in the recovery of stolen vehicles.
- (3) See answer to preceding point.
- (4) The Standing Committee of Attorneys-General has the issue of interstate car thefts on its agenda. The ACT is now separately represented on that committee. Coordination between jurisdictions is essential for any effective measures to be taken on this matter and the standing committee is an appropriate forum for this to occur.

21 November 1989

**Canberra Tourist Bureau  
(Question No. 33)**

**Mr Whalan:** On 18 October 1989 **Mrs Nolan** asked me the following question:

- (1) What number of bookings including bed nights and revenue for each hotel, motel and motor inn in the ACT came from the Canberra Tourist Bureau at:
- (a) Jolimont Centre;
  - (b) Visitor Information Centre, Northbourne Avenue;
  - (c) Sydney Office; and
  - (d) Melbourne Office

for the months of June, July and August 1989.

- (2) What was the total number of ACT establishments used from each of the four booking offices.
- (3) What number of bookings including bed nights and revenue for each hotel, motel and motor inn in Queanbeyan, NSW, came from the Canberra Tourist Bureau at:
- (a) Jolimont Centre;
  - (b) Visitor Information Centre, Northbourne Avenue;
  - (c) Sydney Office; and
  - (d) Melbourne Office

for the months of June, July and August 1989.

My answer to the member's question is as follows:

- (1) In response to the first question the figures for the total value of accommodation booked through the bureau are as follows:

JUNE	JULY	AUGUST		
\$	\$	\$		
JOLIMONT CENTRE	24,398	19,563	29,686	
VISITOR INFORMATION CENTRE	29,558	35,861	28,297	
SYDNEY OFFICE	24,030	28,585	33,029	
MELBOURNE OFFICE	<u>29,803</u>	<u>9,760</u>	<u>35,103</u>	
	107,789	93,769	126,115	

Booking numbers, including bed nights, are not currently available from the Canberra Tourist Bureau's computer system. This information would have to be obtained manually and analysed using a specially written computer program. This would be a time consuming and costly exercise and would involve an extensive use of staff resources which I am not prepared to authorise.

It would also be inappropriate for me to provide revenue figures for each hotel, motel or motor inn as this information is of a commercial-in-confidence nature.

21 November 1989

- (2) The total number of ACT establishments used from each of the four booking offices are as follows:

JUNE JULY AUGUST

JOLIMONT CENTRE	34	31	30
VISITOR INFORMATION CENTRE	23	25	29
SYDNEY OFFICE	27	25	25
MELBOURNE OFFICE	31	24	35

- (3) As with question (1) provision of information on the number of bookings, including bed nights, and revenue figures for every hotel, motel and motor inn in Queanbeyan, NSW, would require an excessive use of staff resources in the Tourist Bureau which I am not prepared to authorise. However the figures for the total value of accommodation booked for Queanbeyan establishments through the bureau are as follows:

JUNE JULY AUGUST

\$	\$	\$			
JOLIMONT CENTRE	NIL	NIL	438		
VISITOR INFORMATION CENTRE	NIL	260	214		
SYDNEY OFFICE	NIL	112	143		
MELBOURNE OFFICE	<u>NIL</u>	<u>234</u>	<u>391</u>		
	NIL	606	1,186		

### Aged Persons Units

**Mr Whalan:** On 26 October 1989 **Mr Collaery** asked **Mrs Grassby** the following question:

I refer to a recent Gazette notice which shows that a contract was let for the design of eight aged persons units in Ainslie to a Tasmanian firm. Minister, will you inform the Assembly of the selection criteria used to select design agents and will you advise whether there are any additional costs incurred in using non-local agents?

I am responding, as construction issues are part of my portfolio. Consultants are engaged by ACT Public Works (ACTPW) on behalf of their client, in this case the Housing Trust. The general policies for selection of agents includes:

- . Work expertise and experience
- . Office location
- . Particular design skills
- . Management skills
- . Capacity to undertake the work
- . Prior involvement in project or similar projects
- . Workload
- . Performance record



21 November 1989

ACTPW then applies specific selection criteria for each individual project. This project is for eight aged persons units on section 22, Ainslie, and was a project carried through from 1988-89 new works program. The architect concerned was originally engaged by the former NCDC to prepare design studies. As a result of his prior involvement he was considered the most appropriate and was appointed as architectural agent for design and documentation of this project.

The engagement is based on a standard fee arrangement, and the architect will at his own expense be using local consulting resources to carry out the contract administration. It is anticipated that the only additional cost will be a reimbursable return air fare from Hobart for the architect to assist in the presentation of the final designs to the ACT Housing Trust, which is accepted practice in such circumstances, the cost of which is considered justified in view of earlier work done on the project.

### **Canberra Times Site**

**Mr Whalan:** On 14 November 1989 **Mr Moore** asked me the following question:

In the light of the principles of natural justice established in the judgment effected by the full bench of the High Court of Australia in respect of the Minister for Aboriginal Affairs v. Peko Wallsend in July 1986, the court ruled ... that where the Minister has received additional submissions from a party he is required, before acting on them, to afford other interested parties an opportunity to answer them. Have you, as a party to the Canberra Times site case, agreed to an adjournment of the hearing until March next year, and are you considering a surrender and regrant of that lease.

He also asked this supplementary question:

The other point about which I am most concerned, Minister, is the Errington principle, an example of which I have just cited, and obviously you are aware of it. Are you intending to apply it by hearing arguments from the opponents of the case, which was not done by the Standing Committee on Planning, Development and Infrastructure.

My response is as follows: Mr Moore asked the question, without notice, on 14 November 1989. I am now in a position to respond, having sought the advice of the Administration.

The answers to the questions are:

21 November 1989

- (a) The government did not oppose the application for an adjournment made by Concrete Constructions Pty Ltd in its appeal before the Federal Court on 20 November 1989. However, the court did not grant the application, and the appeal hearing is proceeding.
- (b) As to consideration of surrender and regrant of that lease, the Government generally accepts the thrust of the report of the Standing Committee on Planning, Development and Infrastructure, but before considering the question of a surrender and regrant the Government has adopted the second recommendation of the standing committee and is releasing data and assessments on the impact of traffic, parking, public transport and pollution levels for public comment.

In response to Mr Moore's supplementary question, I have been advised by the Law Office that the High Court decision in the case of the Minister for Aboriginal Affairs v. Peko Wallsend, that certain information was required to be taken into account before a particular decision was made, was based upon legislation, the subject matter, scope and purpose of which clearly indicated the requirement to do so. The legislation pursuant to which leases may be granted in the Australian Capital Territory does not either expressly or by implication impose such a requirement.

The above comment applies equally to the Errington case to which you also referred.