DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

20 February 1991

Wednesday, 20 February 1991

Wednesday, 20 February 1991

MR SPEAKER (Mr Prowse) took the chair at 10.30 am and read the prayer.

LANDLORD AND TENANT (RENTAL BONDS) BILL 1990

Debate resumed from 12 September 1990, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR MOORE (10.31): Mr Speaker, it gives me great pleasure to continue the debate on this Bill, which I like to think of as the Godot Bill. You may recall that in his introduction to this debate, which you will find on 12 September 1990, Mr Connolly used these words, "Unlike waiting for Bernard to introduce legislation, which is about as fruitful as waiting for Godot" and they appealed to me, probably because I have been teaching English for so long. It is a play that personally I have never enjoyed one iota; nevertheless, I thought it was a quite appropriate introduction, and I enjoyed it.

Difficulties with tenancy, of course, have been a long-running problem throughout Australia - and probably broader than that. In particular, they are divided into two areas: The business or commercial sector, and the domestic or residential sector. I consulted with Mr Connolly on his Bill, and asked him why they had made no attempt to deal with what is clearly a greater problem, and that is the commercial sector. He informed me that they are in the process of doing that, but they felt that because the commercial section is so complicated they would prefer to deal with that in a separate Bill. I shall be looking forward to Mr Connolly's comments on that, or, more importantly, to the Bill that he introduces.

Of course, the concern with a Bill like this, the Landlord and Tenant (Rental Bonds) Bill, is to ensure that the rights of both parties are looked after. Like many of us, I have been both a landlord and a tenant, and I am aware of some of the difficulties faced by both, and how those difficulties should be resolved. The most significant part of it, of course, as is often the case, is the issue of money. The Rental Bond Board Bill deals largely with the deposit of the rental bonds with the Rental Bond Board. Having a third party set aside to look after those bonds is, I think, a very positive and important method of dealing with them; unlike the *Canberra Times*, whose editorial of 8 February started with a note, "ACT Rental-bond board is silly". In fact, I think the levity with which that

headline reads reflects the attitude of the *Canberra Times* editorial of that particular date. I think the silliness applies to the editor in this case, rather than the particular Bill. It is silly because the editorial attempted, at that stage, to say that it is entirely unnecessary to put an extra cog in the bureaucracy as far as this goes.

I believe that, in fact, in the methodology set up by the Labor Party in this particular instance, it is quite appropriate to have a separate Rental Bond Board that is self-funding. It is an entirely appropriate way to do it. In fact, not only is it self-funding, but also, of course, the Bill provides that the interest can be used - this is under "Part 3 - Special Functions of the Board" - to establish more residential accommodation. Throughout Australia, in Sydney in particular, but also in Canberra, we have seen shortages of rental accommodation at various times, and I think using money - which at the moment tends to sit in trust accounts and benefit those who probably least need the benefiting - by putting it into a board where the benefit goes back to the community in general, is a very positive way of dealing with it. I think that on this issue the Labor Party needs to be congratulated on that idea.

The legislation works, as Mr Connolly pointed out in his speech, in line with the New South Wales legislation. I think it is quite appropriate for us, especially being so close to Queanbeyan, to have very similar legislation to New South Wales in this sort of matter, because I am sure there will be situations where people move from Queanbeyan to Canberra and Canberra to Queanbeyan, and having a similar system in this case is of some benefit, although not an overriding benefit.

If I can come back to the *Canberra Times* editorial, what it is suggesting, when it says, "ACT Rental-bond board is silly", is that this would be an unnecessary interference. I think the principle that they are operating on is that we ought to keep legislation to a minimum, and I have made it quite clear in this house that that is a principle that I support; however, I think there is enough evidence to indicate, contrary to what the *Canberra Times* editorial suggests, that we ought to take our responsibility here, as legislators, and be prepared to interfere in the relationship between tenants and the landlord when disputes occur.

In my discussions with Mr Connolly, he tells me that in about one per cent of cases the disputes actually reach a stage where an arbiter is needed. I think perhaps one of the reasons for that is that people are reluctant to go to court. When things can be settled in a Small Claims Court, many of us know that that is a fairly simple and straightforward affair; however, I think people still perceive a court as something that they are reluctant to go before, and for that reason I will support the notion that

this legislation puts forward, that the board itself is the body that in the first instance should set about resolving disputes. Of course, it is only the first step, and they could well wind up in a court as a back-up measure.

I think the fact that we have only one per cent of disputes coming to that point at the moment is actually a cause for concern, not a cause for relaxation, because I doubt whether very many of us here have never been in a position where we have been approached by somebody who has had a problem with the landlord and has looked for some kind of resolution. I think most of us have been approached, or know of somebody. Over the last 10 or 15 years I can think of many examples of people talking about feeling that they had been badly done by because the bond had been ripped off by the landlord, or by the agent who was looking after the landlord's affairs; and I can think of many landlords who have said that their agent had actually paid out when they felt that the damage that had been done by the tenant was well in excess of the bond that they were holding.

The disputes were there and people have, in fact, worn the loss. That is not a fair situation. In the vast majority of cases that I can think of it is, in fact, the tenants who have been most vulnerable, and it is the tenants who have had very little comeback, and have not known what to do. If the bond is held by a Rental Bond Board, then it is quite clear that they have to go back to the Rental Bond Board. It is easier for them to say, "Hey, it is not fair", and for the Rental Bond Board to have a look at it and to set about resolving the dispute, preferably in a manner that is positive and that looks for a compromise between the view of the landlord and the view of the tenant.

I think that this Bill offers quite a number of very positive things. However, there is one area of concern. I draw your attention particularly to clause 13(5). On a number of occasions recently, Mr Connolly, in particular, has made it his business to talk about keeping legislation simple and in simple language. I draw his attention to clause 13(5), which is almost impossible to read:

> If a rental bond -
>
> (a) exempt or excluded from the operation of subsection (1); or
>
> (b) exempt or excluded from the operation of subsection (2);
>
> pursuant to section 26, subsequently ceases to be so exempt or excluded, this section shall, in respect of that rental bond, be deemed to be amended -
>
> (c) where paragraph (a) applies - by omitting from subsection (1) the words "after that commencement"...

I think that, in fact, the actual language there is unnecessarily complicated. To give credit to Mr Connolly, he made it quite clear that he did not perceive it as being perfectly drafted and he asked for comments on it. We have had it since September, and that is not something which I have drawn his attention to, because it was only when re-reading it over the last couple of days that it actually came to my attention, and I apologise for that.

We do have to be careful. Even if we find that we are a bit repetitive in legislation, I do not see that as a problem if, in fact, it simplifies the language. Then, the people who are reading it, understand it. So, instead of using phrases such as "this might be exempt" and "that applies" and "by omitting", we can state exactly what is meant. If it has to be set out in legalese, this means that it will be necessary to clarify it in such a way that it is adequate for people who are reading the legislation, but do not have that ability.

In conclusion, I say that in principle I certainly support this Bill. I do not accept the notions that we have had put forward by the *Canberra Times*, and I think that, in fact, it is out of touch on this particular issue. There is one final thing that I almost neglected to draw attention to, and that is the make-up of the board. There will be five members; the chairman of the board will be from the ACT Commissioner of Housing, and there will be a number of other people. One shall be a person appointed by the Minister who has had, in his opinion, experience in the real estate industry. I wondered whether, in fact, Mr Connolly had Mr Kaine in mind, because I read this advertisement in the *Canberra Times* - it was in the *Canberra Times*, I think, on Sunday, or it might have been Saturday - which was put out by Peter Blackshaw. I see that a picture of Mr Brown - who used to be a Minister for this Territory, and who was, I understand, paid some thousands of dollars for his participation in the opening of the Gleneagles Country Club - and of Mr Kaine is featured there.

Mr Kaine: A good photograph, and I did it for free.

MR MOORE: No doubt, and I am pleased that I do not even have to ask Mr Kaine the question as to whether or not he did it for free. He has interjected that he did. Nevertheless, it is quite a lovely photograph there of Mr Kaine supporting the real estate industry. I wonder whether that fits in with the definition that Mr Connolly has here, "experience in the real estate industry", because that does appear to be the case. It could well be that after the next election, Chief Minister, somebody will be asking you whether you would like a position on the Rental Bond Board, considering your experience in the real estate industry.

MRS GRASSBY (10.44): One of the greatest achievements, among the many achievements of the Follett Labor Government, was the total review of housing policy, which we put into place as soon as we achieved government. There were many important recommendations arising from the review, not the least of which was the decision to establish a rental bond trust. Of course, until quite recently these important measures were not acted upon by the Liberal dominated Government, but what else could you really expect?

A rental bond trust, as laid out in the Labor Party's Bill, would provide protection for both tenant and landlord. Under our proposal, all residential tenancy bonds would be deposited with the rental bond trust, which would act as a custodian of the bonds. It would be compulsory for both private landlords and real estate agents to lodge bond moneys with the trust within a limited time period. Much of the interest earned by the rental bond trust would be used to assist lower income renters and others disadvantaged in the private rental market. Of course, we could not expect a Liberal coalition to show any real concern for the lower income earners, and the Alliance rental bond Bill is yet another example of the Residents Rally caving in to Liberal Party "law of the jungle" economics.

I would just like to add to what Mr Moore said about the photograph of the Chief Minister in the paper. He said that it was a very good photograph. All I would like to say is, "everybody to his own taste", and that is what the old woman said when she kissed the cow behind the tail. I thought it was a pretty terrible photograph; I thought maybe Mr Humphries chose it.

Let us face facts, Mr Speaker. The proposal being put forward by Mr Collaery is nothing but a watered-down version of the Labor Party's Bill; it is a thoroughly compromised version. Under our proposal a five-person statutory rental bond trust board would be created to oversee the operations of the trust; it would have a membership drawn from government, industry and the community. May I add here that most of the real estate agents to whom I have spoken would welcome our bond board, as they say that it would cause a lot less problems for them.

The New South Wales Government under Greiner has demolished any of the good things that the Labor Party put into power there, but I notice that they were very quick to keep the rental bond board, because it brought them in so much money. Of course, after they had quite a bit of money in kitty, they then decided to pay people interest on their bonds. I think this has been the only very good decision they have made since they have been in power.

Bond refunds would be provided in a timely manner, where there was agreement between the tenant and the landlord or agent. Further, an appropriate dispute settling procedure would be established to decide on questions of bond refunds when agreements could not be reached between the parties. This would be an advantage to both parties involved. As I say, landlords, when I have spoken to them, and real estate agents consider this to be a very good idea.

Mr Speaker, as we all know, Liberal Party policy in these instances favours the powerful and the landlord, and provides no protection for the tenant. No wonder the Minister for Housing could not support the purer and more substantial Bill being put up by the Labor Party. As a major player in the Alliance Government, he is naturally bound by the outdated principles and thinking of the Liberal Party.

In addition to helping meet the housing needs of ACT residents, the surplus income which could be earned by the rental bond trust could be used, firstly, to improve landlord and tenant relations and to provide information on the rights and obligations of both landlord and tenant; secondly, to provide education and assistance to industry on residential real estate; and, thirdly, to meet the costs of dispute settling and administration. Our bona fides as a government were shown by the fact that in our first budget we allocated $250,000 for the establishment of a rental bond trust. In comparison, this Government has done practically nothing on housing in general. The rental bond trust currently being proposed by the Government is a mockery, and an unacceptable alternative to that being proposed by us.

Mr Speaker, I have previously mentioned the reason for the current Government's failure to act. It is because the principles which the Residents Rally claimed to have before entering this Government have been completely subverted by the free market, open slather policies of the Liberal Party. Let us turn for a moment to media comments regarding the compromised alternatives being proposed by the Housing Minister. I cannot help but think of the *Canberra Times* editorial headlines of 18 February this year. In clear, to the point language it announced, "ACT rental-bond board is silly". I repeat that it announced, "ACT rental-bond board is silly".

Mr Speaker, it appears that we have fellow travellers in the *Canberra Times* on this point, and they appear to have gotten to the heart of the matter, when in the opening paragraph of this editorial I read - and I hope that members will all take note of this, if they have not read it:

> The ACT Government's proposed rental-bond board will be a complete waste of time. It will do nothing to settle disputes between landlord and tenants.

Clearly, Mr Speaker, we are not the only people to perceive the problem with Mr Collaery's Bill. However, more cutting in the eyes of Mr Collaery, I am sure, were the recent comments by the ACT Law Society. This is the society that Mr Collaery belongs to, so I hope he takes note of this. Mr Speaker, the ACT Law Society's position is quite a slap in the face for Mr Collaery. They are his own people, his own union. Let us face it, that is what they are. The ACT Law Society is a union; it is there to protect the lawyers. So, let us get that straight right now; it is a union. They may call themselves a society, but they are a union. It is really a slap in the face for Mr Collaery because they want this Bill withdrawn. His union wants the Bill withdrawn.

Mr Collaery: What Bill are we talking about?

MRS GRASSBY: The ACT Law Society, which is a union, wants the Bill withdrawn. More significantly, the society's president - - -

Mr Jensen: On a point of order, Mr Speaker: I do not want to be difficult, but I raise the matter of relevance. I thought we were talking about the Bill put in by Mr Connolly, not the Bill put in by Mr Collaery.

MR SPEAKER: I assumed Mrs Grassby was.

MRS GRASSBY: More significantly, the society's president, Michael Phelps, believes the legislation to be fundamentally flawed in its current form. That is your Bill, and that is what we are discussing.

Mr Jensen: No, we are not.

Mr Kaine: We are discussing your Bill.

MRS GRASSBY: Our Bill is the Bill we want to put into this house, not your Bill, because our Bill does cover the landlord and does cover the tenants and it is seen outside as being a better Bill.

Mr Speaker, he is quite correct when he states that the director of rental bonds has no power other than to receive and refund bonds. The Bill being proposed by those opposite is an insult to the tenants of Canberra, as they are an insult to the people of Canberra. Until the Residents Rally members of the Liberal coalition Government show that they have the guts to stand up against the free market philosophy of their Liberal colleagues, no real action will be taken in this area covered by our Bill.

MR COLLAERY (Attorney-General and Minister for Housing and Community Services) (10.53): I thank members for their comments to date. They have not advanced the debate much. Mr Speaker, let us traverse the history of this Bill. It was introduced by Mr Connolly and, in prefacing his remarks on 12 September 1990, he said, "We in opposition have limited resources". He was referring, of course, to the fact that - and this is from page 3106 of *Hansard:*

> This Bill does not purport to be the greatest Bill ever introduced.

I think we should thank Mr Connolly for his frankness and defensiveness, because I doubt that anyone has ever introduced a Bill on such a defensive note, to my recollection. But, of course, Mr Connolly knows that whole slabs of his Bill are word perfect from the Landlord and Tenant (Rental Bonds) Act 1977 of the New South Wales Parliament. Mr Speaker, it is a Bill that dates from 1977 and, just having a quick perusal of it, in Labor's Bill, clauses 8, 9, 10, 11, 12, 13, 14, 15 - it goes on and on - reflect the New South Wales legislation.

Mr Speaker, there is a good argument for consistency, given our geographical position and the proximity of many of our services; but, if the Labor Party was really interested in protecting tenants and was doing this for reasons other than the stunt which it has put on, Mr Connolly would know that the original New South Wales Bill, which is the one that he seems to have worked off, did not provide for interest to be paid to tenants. Since that time the New South Wales Bill has been amended, and it does so provide. But the Labor Bill before us now does not pick up that amendment.

Mr Connolly: We do not think that is an appropriate amendment. Nor does your proposal.

MR COLLAERY: So, it is even out of date in its mimicry, Mr Speaker. It is even a poor copy.

Mr Connolly: Oh, what a silly point.

MR COLLAERY: Mr Connolly is very sensitive on this issue. It is a very relevant point, because we on this side believe that ultimately interest should flow to those who put the money in the account, and I will come to that in a minute.

Mr Speaker, let me say for the record that the Alliance Cabinet agreed on 3 September last year to put this legislation through. That is when the Government's decision was taken, on 3 September. The principal part of the New South Wales Labor Bill before us is that they will establish a board to undertake joint investments. I will read into the record a section of the Bill proposed from New South Wales Labor and that says, "Joint venture powers" at section 9:

> For the purposes of such a joint venture, the Board may, with the approval of the Minister - join in the formation of any company -

purchase, hold shares, make advances, and do other things.

It can then, under section 10, go onto the property market and become a property investor. It can lease, manage and run residential accommodation unit trusts. I would have thought the Labor Party, given its abysmal financial performance interstate, would start to run a bit shy of setting up statutory bodies to run investments and the rest outside their own Treasury. This is the profound difference, and the core of the reason why we cannot support this myopic, out-of-date, archaic proposal.

As governments retreat from the problems caused throughout this country by statutory bodies that have got themselves into trouble by being given free rein for investments, we do not propose any such bureaucratic apparatus. In the draft exposure Bill that the Government put out for public consultation on 24 January this year, we propose, of course, that we use our own Treasury services for that level of investment that is required. We also propose a much smaller bureaucratic structure. We propose an administrative team to handle the affair, not another statutory entity, a board with all the paraphernalia that goes with it.

Mr Speaker, we are an open, consultative, committed Government and, if you look in the *Canberra Times* day after day, you will see advertisements from this Government setting up advisory mechanisms. We have permeated most of the functions of government now with advisory mechanisms. The Follett Government did next to none of that in seven months of office. Mr Speaker, if you look in today's paper you will see more advisory mechanisms being set up. We propose to set up a similar, grassroots advisory body to look after, on a non-remunerative basis, the functions of this rental bond holding system. That is a better, more pragmatically based, trimmer, leaner, more consultative function than the bureaucracy that Labor is attempting to set up in its Bill today.

Mr Speaker, the Labor New South Wales Bill is pretty complex if you look at the provisions of it. Mr Connolly and his crowd are using a sledgehammer to crack a nut. In support of my submission, I will quote a couple of statistics. On ACTCOSS' own figures, only about 6 per cent of the rental bonds in town - which are variously estimated to be between 13,000 and 14,000 at any one time - go to disputation. That is a point made by the Real Estate Institute in its response, and it is a point that is picked up by the Law Society. Let us not set up a great bureaucratic structure for a serious and important area of disputation.

That leads me to the next issue, and that is the proposal to set up a separate court of disputation - another tribunal in this town - that seems to be permeating some of the respondents in the media. Mr Speaker, our Government is in the midst of doing a court restructuring process. There is, at the moment, a proposal before the community for comment, that at this stage we use the Small Claims Court. Legitimate comment is being made about that proposal. The Government is still in its consultative mode, and we are making no definitive statement today as to which way we are going on that matter. We are waiting for community comment, and I find it strange that Mr Connolly and his crowd should bring their Bill forward today. They know that it is doomed. They know that it cuts off the community consultation and the very useful debate that is going on right now in the media - including the electronic media - on the proposals that have been put forward. I can say this, in generosity, on the "joint" proposals being put forward.

Why pursue your Bill - through you, Mr Speaker, to Labor - when we are in the middle of consultation and the middle of quite interesting community comment on the structures? If the Labor Party was committed to getting the best for the community, it would have sat back and not listed this Bill for discussion today. But what does it want? It wants the cheap political capital of a news release this afternoon saying, "Alliance Government conservatives committed an atrocity today and knocked out Labor's Landlord and Tenant (Rental Bonds) Bill". I put it through you, Mr Speaker, to this Labor Party: If ever it is going to learn to work with the community and the Government, then it must withdraw the Bill for the time being, or adjourn the debate on it so that the proper community consultation process can continue. It is an active community consultation process. It should be allowed to continue.

Mr Speaker, nevertheless, I am prepared to make some other comments. Going back to Mr Connolly's statement, "We in opposition have limited resources", he said the same thing when he introduced his Subordinate Laws (Amendment) Bill last week. He bemoaned the fact that he was "not in a position to be working with the full resources of the Law Office". Mr Speaker, we have set up a process in this Assembly whereby members opposite can avail themselves of the services of the Legislative Counsel's office. That is run by a queen's counsel; it is run in a very ethical manner, and never once have I ever heard any suggestions concerning anything any member opposite has ever proposed to them for drafting by way of a private members' Bill. Mr Connolly well knows the very strong legal and ethical position of that. Nor would I ever seek to know. So, why does not this Opposition give drafting instructions to the Legislative Counsel, as it should, and why is my Law Office time taken up with going through these erroneous, wrongly and poorly drafted documents that are coming out of the Opposition?

I make no personal attack on Mr Connolly, because he is not a legislative draftsman. We do not know who is doing his work. But my message through you, Mr Speaker, to Labor's mystery hand is that they need to get up to date on drafting style; and they need to look at things like consequential amendments. As Mr Connolly knows, I gave him a page of comments on his Bill last week. It is full of problems and errors, and it takes up the time of public servants who are desperately attempting to get through our Bill schedule.

Mr Speaker, now I want to put down something Mrs Grassby said. Mrs Grassby quoted my union, the Law Society, on issues relating to this matter. Mr Speaker, those who were in this town 10 years ago know that I joined a group taking on that union about the right of conveyancers to advertise. So, let us get one thing straight; we all have our little factional issues, and the Law Society, of course, is my society; but certainly, Mr Speaker, it does not necessarily put any binding statements on me as a member of that society.

Mr Speaker, contrary to Mrs Grassby's statement, the Law Society's submission on the matter says very clearly:

> While subject to the reservations expressed in this submission, there is some merit in establishing a rental bond board to cover private tenancy arrangements, in order to protect the bond moneys paid by a tenant to a landlord. There would not appear to be the same need, or indeed any need, to similarly protect bond moneys when they are held in the trust of a licensed real estate agent.

Mr Speaker, clearly Mrs Grassby is not aware of the position of the Law Society. The Law Society, in fact, does not agree either with Mr Connolly's proposition, because Mr Connolly's proposition, of course, embraces all bond moneys, as does ours in this Territory, including those moneys held by real estate agents. But, we are taking the comments of the Law Society, REI, ACTCOSS, the tenants union, and the many interested parties to note, and we are working through them in government, and we can work through them consultatively in this chamber. But, if the Opposition this afternoon issues a press release saying, "We have knocked out a rental bond structure", well shame on it. It will only be misleading the public again, as it constantly does.

Mr Speaker, the other issue that the Government is looking at in this consultative phase is the question as to whether alternative dispute resolution machinery cannot be employed by way of some of the other structures in this town. I think my colleague, Mr Stefaniak, will make some comments on the growing use by business people, and ordinary people, of bodies such as the Conflict Resolution Service and others, to settle fairly complex semi-commercial and neighbourhood disputes.

That is an issue that I think we need, if we are committed to alternative dispute resolution, to explore jointly before we set up another disputation resolution tribunal in this Territory. I stress that our proposal in our exposure Bill was to suggest the use of the Small Claims Court; and we note comment about that, and the potential delays that are being alleged to occur there. No doubt, we will seek the comment of the Chief Magistrate.

Mr Speaker, to summarise, the Labor New South Wales Bill introduces an inefficient 1977 structure. It proposes an alternative investment body to compete with our own Treasury. This is a city-state. We do not need this level of bureaucracy. We certainly do not need that board, and we would have to pay those people - they would be a cost to us - and it is not clear what the advantages would be; they have not been argued very clearly.

Mr Speaker, this Government has a very large legislative drafting program, and the fact that Cabinet agreed to this legislation on 3 September and I did not, as Minister responsible, produce a draft exposure Bill until 24 January is, as the Opposition well knows, normal in the context of the very great challenges facing our government legal drafting service, post-self-government. I wish to stress that the working draft issued by my office on 24 January 1991 has not gone to the Alliance Cabinet yet. It is not a Cabinet approved document; it is a working draft, sent out for community consultation so that we can take on board all of the comments, including any of those made opposite, and then both Bills can, in fact, be dealt with together. I saw Mr Moore smiling; there is no inference in that. *(Extension of time granted)*

Mr Moore: Mr Speaker, I apologise to the house for smiling.

MR COLLAERY: I thank Mr Moore for his generous gesture.

Mr Speaker, the concluding remarks I wanted to make were that this town has a tradition of consultation; the community grants and the community advisory structure are well embedded in our national psyche in this city, and it is appropriate that the Government should continue this consultation period for a few more weeks before drafting a final Bill for the Cabinet to decide on.

The first step you need to know as an opposition - through you, Mr Speaker - is that this Government is committed to this form of legislation. The machinery - how it works - is the matter before the public. We are not going to be dissuaded from establishing an independent stakeholding of these funds. We are not going to be dissuaded from ensuring that the interest earned on this fund goes back, in one form or another, to those who hold it. There may be an interim period when we recover the seed funding, which we estimate will be a quarter of a million dollars. There

may be a short period when that money is diverted there; there may not be, subject to consultation. The Government remains committed to this form of legislation. It cannot support the mimicry of the New South Wales Labor Bill in this house.

MR STEFANIAK (11.10): It seems that no-one else in the Opposition wants to speak on this, Mr Speaker.

Mr Kaine: They are a bit half-hearted about their own Bill; quite apologetic, actually.

MR STEFANIAK: I think so, yes. In fact, I am amazed to see some of the hypocrisy coming out of the Opposition today. Its members constantly bash this Government, or attempt to bash this Government, about the question of consultation. As Mr Collaery has indicated, his working draft has gone out for the express purpose of community consultation. You might have tabled your Bill in September, but there is a working draft of the Government's document which went out for community consultation - something that you say that we do not engage in enough. Well, here we are engaging in community consultation. You do this blatantly, I think, just to achieve a political stunt by trying to get your Bill - which, as Mr Collaery has indicated, is based largely on a 1977 New South Wales Bill - passed, and to accuse us of not being concerned about this issue.

There are a lot of groups involved in landlord and tenant relationships, and we would hope that all of those groups would want input into any rental bond scheme. I am sure that they will. I know that a number of them already have contacted the Minister for Housing's office in relation to the working draft. It has been a topic on which the community has expressed a lot of concern over the years, and I think that tired, hackneyed, old phrases such as Mrs Grassby came out with which state, "The Liberal Party favours its powerful friends, the landlords, who want to screw the tenants" are just palpable rubbish. We want to get input from all the relevant sections of the community and, indeed, a lot of input has been put in in relation to this question over the years.

I was interested to hear Mrs Grassby's comments, and interested to see Mr Connolly's Bill, because the Liberal Party, itself, put up what I thought was a very good proposal in the very early days of the Follett Government. It was something, in fact, that would not have cost any money and not only was revenue neutral but would, in fact, have earnt some money for the Government and kept people happy.

I was pleased to see Mr Collaery's working draft, which takes into account the large number of concerns that have been mentioned to me over the last couple of years in relation to this question. I would wholeheartedly support the comments made by the Attorney-General in relation to

"just another part of the bureaucracy". We have here the constitution of a Rental Bond Board, which states how many people it will consist of. I think Mr Collaery's comments, in relation to the failures of so many statutory bodies in a number of the Labor States, are particularly pertinent here. We do not want a plethora of statutory bodies. We do not want to needlessly expand the bureaucracy. We are only a small city-state. We have limited resources. That is something that we must constantly bear in mind. Here is just another attempt to cause a more bloated bureaucracy, and I think that that is something that all governments, of whatever political persuasion, have to avoid. Even the ideological Labor Party, despite so many recent instances of failure in the other Labor States, seems not to have learnt the lesson that the trend is towards smaller bureaucracies rather than larger bureaucracies. So, I think there is a problem there with Mr Connolly's Bill, especially in relation to his Rental Bond Board and its composition.

A further complication, of course, is in clause 6, subclause (5):

> The members of the Board shall be paid such remuneration and allowances as are prescribed.

This is a further cost to the community, and a further needless cost, given what the Attorney-General and Minister for Housing is proposing, and that is that anyone sitting on his proposed committee will not be drawing remuneration. He is not proposing an increase in the bureaucracy, and I do not really think an increase in the bureaucracy is at all necessary; that is really something you people should try to avoid.

You really should learn the lessons your colleagues and comrades in Victoria, in South Australia and in Western Australia have found to their detriment. Indeed, your colleague and comrade Mr Wran, in New South Wales, left Mr Greiner virtually a bankrupt State, and Mr Greiner is making very noble progress in trying to overcome that. Interestingly, Mr Goss, who inherited a Government in Queensland from the much maligned Bjelke-Petersen National Party, did not inherit a bankrupt State.

Mr Connolly: Oh, but you back him; a good bloke, don't you worry about that.

MR STEFANIAK: And "Don't you worry about that", Mr Connolly. So, really, I think you people have a lot to learn still in the matter of finances and just how to financially run a government. I think unfortunately your naivety is shown here. I think the most sensible thing you can do with this Bill, Mr Connolly, is withdraw it, or perhaps simply adjourn the debate until such time as the community consultation has been finished.

I note that even ACTCOSS, an organisation I have sometimes had a few tiffs with over other matters unrelated to this, is calling for consultation in relation to the Rental Bond Board. In a letter to the Minister for Housing, Mr Collaery, received on 20 December, Dr John Tomlinson from ACTCOSS states:

> We are pleased there will be a process of community consultation following the release of the draft legislation to enable a wide based response to the legislation. We understand that there will be extensive educational and promotional material produced, including material in community languages.
>
> We also support the establishment of an Implementation Advisory Committee of community and industry representatives. We recommend that this proposal go ahead and look forward to receiving further information on the formation of this Committee.

ACTCOSS was pleased that there was going to be a process of community consultation. The Housing Industry Association was pleased that there was going to be a period of community consultation, and no doubt interested individual landlords and tenants would be pleased that there will be a period of consultation. One point that was mentioned, I think by Mr Moore, and I do tend to agree with him, was that, for all intents and purposes, one per cent of landlords and tenants being involved in disputes might appear to be a fairly insignificant portion initially. However, it is not, and that is something that really has to be considered. We have to work out what is the best way of solving disputes, and of solving them satisfactorily and, indeed, cheaply to all concerned, including the ACT taxpayer and the ACT Government. I want to deal with that now.

There are a number of institutions in Canberra where such disputes can be resolved. I appreciate to an extent comments made by Mrs Grassby that people are somewhat reluctant to go to court, even something like the Small Claims Court. But let us just briefly look at some of the current avenues available to people who have a dispute. Why do we have to reinvent the wheel, especially when the reinvention costs a lot of needless money, when we actually have some perfectly good institutions available at present. The Small Claims Court was set up a number of years ago specifically to get lawyers out of the picture, because lawyers do not get costs if they represent a client down there. It enables people to go to court and have their matters resolved in an inexpensive way, without the need for lawyers. That was why the ceiling figure initially was very low; but now it has gone up, I believe, to $10,000. So a large number of disputes can be handled quite easily.

And what occurs down there? I do not know whether any of the members of the Opposition know - even Mr Connolly, because Mr Connolly, although I respect his legal ability, was working in the central office of Attorney-General's and was not really a practising solicitor. So, for their edification, when one puts in an application to be heard in the Small Claims Court, it is initially heard by a registrar who gets the parties together and sees whether that problem, that dispute, can be solved. It is heard by a magistrate only as a last resort. So, there is a resolution structure in place within the Small Claims Court where, hopefully, a person does not even have to get to the stage of appearing in front of a magistrate. There is that procedure there. That may well be one entirely appropriate means by which disputes, such as would come before the board as envisaged by Mr Connolly, could be easily settled. It was, indeed, one of the tenets of the setting up of the Small Claims Court that disputes of that type or nature could be settled easily, without recourse to complex legal action.

I am a little bit concerned, too, to see the Labor Party pooh-poohing the idea of what is a very useful and, I think, increasingly important body in Canberra, and that is the Conflict Resolution Service. I recall speaking with people from that service very soon after this Assembly started. By the very nature of it, and where it was and, I think, some rather unfounded comments someone else might have made to me, I thought, "Hello, this is probably just some weird little trendy lefty group". Far from it. I was very pleasantly surprised to see what a useful, although at that stage, very underfunded body, the Conflict Resolution Service was, what dedicated individuals were there, working on a shoestring budget, and what a very real and very effective service they provided to the citizens of Canberra.

Mr Connolly: They got good funding from the Follett Labor Government.

MR STEFANIAK: I am not too sure, Mr Connolly. I think when I first talked to them they were getting only about $50,000 - - -

Mr Connolly: Which you kept up.

MR STEFANIAK: Thank you for saying that; yes, we kept that up, and, I think, in fact, we increased it. As Mr Connolly indicated, yes, they funded it and he says that to our credit we kept that up, and - through you, Mr Temporary Deputy Speaker - in fact, I think we substantially increased that funding to, I understand, $124,000 and an extra $50,000 as well in the current budget.

Mr Moore: That is because there is so much more conflict under you.

MR STEFANIAK: Very funny, Mr Moore. They are very professional. It is an impressive organisation, albeit it a small one, set up ideally to counsel people and to try to resolve disputes. I think that that body, if it is properly used for disputes such as might arise between landlords and tenants, would be even quicker and more effective in solving disputes at that stage than even something like the Small Claims Court, because there is obviously some timeframe involved with the Small Claims Court. You file your action, and then there is a time set down to talk to the registrar or the clerks to try to resolve the problems there. But that does involve time.

The Conflict Resolution Service is indeed a lot quicker, and has a very good track record in terms of getting people together and actually solving disputes, and solving disputes very effectively. I think that that organisation should not be denigrated, and, indeed, it could play a real role here. That is something which I think should be considered in this community consultation period, because this would be an ideal situation in which that body could play a further useful role and enhance its already excellent reputation within the Canberra community.

Mr Temporary Deputy Speaker, I will conclude by stating that, whilst being supportive of many of the motives no doubt underlying Mr Connolly's concern and introduction of this Bill and whilst being a little bit disappointed, too, at some of Mrs Grassby's churlish and rather stupid comments in relation to the Liberal Party, I think there are a number of problems in this Bill. I would like to see, and I am heartened to see, the community consultation engaged in by the Attorney-General. I look forward to seeing the results of that consultation and to seeing effective legislation brought in. I really think that this Bill should be adjourned so that we can discuss and vote on both Bills, if Mr Connolly wants to persist with this one, after the relevant community consultation has taken place.

MR CONNOLLY (11.23), in reply: I heard two speakers from the Government say that debate on this Bill should be adjourned; but no-one from the Government sought to adjourn it. So I take it that they do not really want it adjourned; they want to dismiss the Bill out of hand. At least in Mr Stefaniak's comments there was an attempt to look at the detail of this Bill and to make some criticisms and some suggestions as to how the Bill might be improved. The Attorney-General's speech, however, was disappointing in the extreme. It was merely a high-handed dismissal of this Bill. Most disappointing of all was his concession that he had merely had a quick perusal of the Bill.

When this Bill was introduced in September, I did make the comment that we did not purport that this was perfect legislation. I think the phrase was, "This Bill does not purport to be the greatest Bill ever introduced". Mr Collaery sought to make some cheap political points about that, saying that that was an extraordinary concession. I

do not think that should ever be an extraordinary concession when the Opposition is introducing private members' business. What we had hoped was that the Government would look at this proposal and come back with some detailed criticisms or suggestions for amendments which we would have been happy to look at in a constructive manner. But, not a bit of it; there was just a high-handed dismissal, and a description of this Bill as a political stunt. Then there were some fairly superior suggestions that it was full of flaws; it was full of technical faults. The Scrutiny of Bills and Subordinate Legislation Committee did not seem to think so. He was not able to tell us where those technical faults were, but the Assembly is presumably expected to take the Attorney's word for that. If they were pointed out to me, I would be happy to accept them; but I think it was a mere puff without any substance.

Mr Speaker, of most concern to me in the Attorney's criticism was his suggestion that we had merely copied the New South Wales Bill. We said at the outset that this Bill was based on the New South Wales legislation, but that it made a fairly fundamental departure from it by way of a greatly simplified dispute resolution process. The Attorney's speech was replete with references to separate courts of disputation and complex dispute resolution methods.

That may be a description of the New South Wales Bill, which does set up tribunals and fairly complex appellate mechanisms; it is certainly not the case for the dispute resolution method contained in our Bill in clause 17(11), where we have given the Rental Bond Board power to hear an application to resolve a dispute "in such manner as the Board considers best suited to that purpose". And we have given it power to "proceed to hear and determine the application in the absence of any or both parties thereto". So it has, in effect, a range of powers ranging from mediation and arbitration to, if it sees fit, conducting a hearing. It can conduct a hearing in the presence of the parties; it may choose not to.

Mr Speaker, that is an extremely simple process of dispute resolution which we thought was superior to sending the matter before the magistrates. We think it would be cheaper; we think it was a positive contribution. But there was no attempt to address that - merely, as I say, this high-handed dismissal. Of course, that was one of the points of criticism from the Law Society in its description of the Alliance working draft, which finally emerged in January, as "fundamentally flawed". It said that it was "fundamentally flawed" because the Alliance model did not provide any process of dispute resolution or any powers for the director to settle disputes. Our Bill does provide that power to settle disputes. The Law Society also made the criticism that there was no provision in the Alliance Bill that the interest generated on bonds held by the Government would be put back to the community by way of community education and consumer education services.

Mr Stefaniak quoted from a letter from Mr Tomlinson from ACTCOSS, where he said that he was pleased that there had been assurances given that the money would be so used for education processes. The problem is that it is merely an assurance in law. Under this Bill, should it proceed into law, the interest generated simply goes into Consolidated Revenue with any other interest generated on money held by the Government, and what goes back to the community, by way of consumer education services, tenant advisory services and the like, would depend on the success of the Minister in the budget negotiations, as the amount of money available to any government services depends on that. Our Bill quite clearly isolates the interest generated on the rental bonds for community purposes, for tenant education advisory services and the like, and at the end of the day it provides that, if a pot develops, some capital money may be invested in public housing.

I heard some extraordinary political diatribe from Mr Stefaniak. I take the implication that he thinks this is an attempt by Labor to set up some form of major state investment corporation, with a bit of political rhetoric about state banks. That can be dismissed in a line as simply irrelevant political puff. A more significant point about interest, which causes me some concern, is that the Attorney was trying to make the cheap political point that we had looked at the early draft of the New South Wales Bill, and we were not aware that there had been amendments to the Bill to provide that interest should go to landlords and tenants. The Attorney knows that that is not so.

We had a lot of puff earlier this year from the Attorney about more cooperation between Government and Opposition and, on a number of matters, that cooperation has worked quite satisfactorily and the Attorney does consult on Bills. It is appropriate that what occurs in those consultations does not get agitated in this house; but the Attorney knows full well, because I have discussed the matter with him, that we have looked at the question of interest and have made the decision that we would not want, at this stage, to pay interest to tenants on the bond moneys, for much the reasons that he referred to in his speech.

That is, at the early stage when you are developing a Rental Bond Board proposal, it is important that the interest generated by the bond money held goes into the community to establish and pay for those education funds, until such time as you develop a pot of money which makes it self-funding in perpetuity. Then you can introduce a proposal to pay the interest back to the person who holds the bond. That is the process around Australia, where New South Wales has had this - - -

Mr Collaery: We agree.

MR CONNOLLY: We agree. But being at one on that, I think it was disappointing that a cheap political point was made in debate, suggesting that Labor had neglected or overlooked the New South Wales amendment, that we were ignorant of that and that there was some slip in our Bill in relation to interest being paid to tenants on the bond money. He was well aware of the Opposition's point on that, and I think it ill behoved him to make those cheap political points.

Mr Speaker, we introduced this Bill in a positive spirit. We introduced it in September because we were concerned that, although there had been some assertions by the Government that it would do something about a Rental Bond Board, nothing had happened. When we introduced it, there was vigorous argument from the Government to prevent debate on the Bill. After some months we have a Law Office advice which says that the Bill can go ahead. I had hoped that there would be a positive debate on the Bill and a constructive debate on the Bill and that this would be a good basis for progress. Instead, the Government's nose is out of joint. We have beaten them in producing this legislation and we have produced better legislation. Their nose is out of joint, so they are going to reject it out of hand, and I expect that what will happen is that we will vote on the in-principle stage in this Bill and we will get the flick. I think that reflects poorly on the Government.

I want to respond to some comments the Attorney made about the Law Office and the Legislative Counsel. I took from his remarks there some sort of attempt to create the inference that Labor distrusts the Legislative Counsel, or does not want to deal with the Legislative Counsel, or in some way is impugning the professionalism of the Legislative Counsel's office. Of course, that is not so. He suggested that we were reluctant to deal with the Legislative Counsel's office. That is not so.

The simple answer is, as he said in explaining why it takes a long time to get government legislation out, that there is a great challenge facing the Legislative Counsel's office. They are clearly overworked; they have an enormous backlog of legislation. It is the case, quite properly, that executive government business tends to take priority over private members' business. I also understand that that is particularly the case where there are government drafting instructions on a similar matter.

So, our process of preparing legislation with our resources and introducing it is one that we will continue, and we think it is a positive contribution to debate at this stage. Mr Speaker, the Government seems to be concerned that it would be better for the process of debate in this Assembly if this Bill were to be adjourned, and, as I say, we are not playing politics on this. We are happy to accept that proposal and keep this on the table. I seek leave to continue my remarks at a later stage**.**

Leave granted.

Mr Kaine: You cannot speak and then also seek to have it adjourned.

Mr Moore: Yes, you can. It is by leave; if we give him leave to do it, he can do it.

Mr Collaery: No, he has not adjourned the Bill. He is continuing his remarks.

Mr Kaine: But they are the concluding remarks to the debate. When you have finished speaking, that is the end of it. We are not going to open a new debate on it.

MR SPEAKER: Order!

Ms Follett: I think it is up to the Speaker.

Mr Kaine: You are closing the debate on your Bill.

Mr Moore: That is the in-principle stage.

Mr Connolly: It is still on the table; we are taking up your offer.

MR SPEAKER: I take it that it is the wish of the Assembly that debate on this issue be adjourned at this stage?

Mr Berry: No, we sought leave.

Ms Follett: For the moment, yes.

MR SPEAKER: At this stage, Mr Berry, I have to conclude the debate.

Mr Collaery: Mr Connolly sought leave to continue his remarks at a later date.

MR SPEAKER: That is right; but I now see that nobody else wishes to speak - that is the situation that we are in - unless the debate is adjourned.

Mr Collaery: Let the record show, Mr Speaker, that the initiative has come from the Opposition.

Debate adjourned.

PUBLIC ACCOUNTS - STANDING COMMITTEE
Proposed Reference

MR MOORE (11.35): I move:

That the following matter be referred to the Standing Committee on Public Accounts to inquire and report on -

(1) the practice in the ACT Government of over-estimating when preparing estimates for the budget;

(2) to quantify the amount set aside in the budget as estimates and the money spent both program by program and across the ACT budget;

(3) to assess how the surplus which has been generated is spent;

(4) to make recommendations on how future surplus between estimates and expenditure should be handled; and

(5) any related matters which the Committee deems appropriate.

In the Estimates Committee last year we were told, after some digging, that one of the projects that would be handled under the capital works program for the Department of Education was the re-roofing of the Aranda Primary School and that the cost would be $650,375. At the time it seemed to me that that was a very large sum of money for that job. Having had some experience as an owner/builder in re-roofing my own house, I did a quick calculation on the size of my house and the size of the Aranda Primary School. I thought, "That does seem a lot; perhaps they are going to re-roof it in bronze or something and have a good reason". I thought it was something I should check.

I then drove past the Aranda Primary School and noticed that paint was peeling quite excessively from the roof. If it was going to cost $650,000, one could not help wondering what would be the chances of repainting that roof. Further investigation on my part revealed that the Department decided it wanted to re-roof Aranda Primary School not because of peeling paint but because underneath the paint there was a great deal of rust and in fact the roof had lasted the minimal amount of time the company suggested a roof should last because of the presence of an oil-burning furnace. The oil-burning furnace puts out sulphur, which becomes sulphuric acid. It eats the roof and the roof tends to go rusty, apparently. Therefore the life of the roof is the minimum - roughly 25 years rather than 50 years. I decided that that was the end of that; obviously quite appropriate action was being taken to replace the roof.

It was not until just after Christmas, in early January, that I decided to investigate a little further, on getting some advice on what it should cost. When I pursued the matter I found that the tender for the roof had been let to Hawker Roofing for $146,530 and that the $503,835

discrepancy meant that we had an excess of money from that project, which could easily have been used, for example, to keep open for a year one of the schools the Government had targeted for closure.

I recognise the difference between a capital budget and a recurrent budget and I realised that this was a capital work. However, having had my attention drawn to that, I then talked to a number of public servants in the department and also to people who had retired. I understand that the standard procedure for estimates is to overestimate.

Mr Berry: It is recurrent practice.

MR MOORE: It is recurrent practice, indeed. One of the most significant things about that is that we ought to understand and accept that overestimating is a logical way to go. If the public servants underestimate, they are in the position where they have to go back to the Government, hat in hand, and say, "We need more money for the project". They would have to go through the process again, which would be a great waste of time. So it is quite reasonable for them to overestimate.

In this case, of course, an overestimate of $500,000 is out of all proportion, although I accept that there are some reasons why this particular situation happened. The normal practice of overestimating means that normally there is going to be some surplus as far as the estimates go. That being the case, it is quite possible for us to establish a huge slush fund which could be spent without appropriate scrutiny.

With that knowledge, it seemed to me that the matter ought to be pursued further. Following a question yesterday to Mr Kaine on this matter, he said that the normal procedure would have to be followed, that the money would not just be spent willy-nilly, that there would have to be a new approach to the Government. That is at odds with a report in the *Canberra Times* - and with my information, by the way - on 8 January 1991. Having talked to a spokesman for the Minister for Finance and Urban Services, Hugh Lamberton wrote:

> The money saved was part of the capital-works program and would have to be spent by the Department of Education on a similar capital project. There was a large back-log of maintenance unable to be funded under the Budget.

It seems to me quite clear that, whilst there is always a possibility of spending money on capital projects, when the budget came down the Government had decided that these were the things it was absolutely necessary to spend the money on this year. If there was money left over, that money could well be returned to general revenue. Rather than being spent on the backlog of maintenance, as was indicated

here, it would be far better to return the money to general revenue in order to have a decision made about how it ought to be spent or how it ought to be saved and in order for scrutiny in due time by the Estimates Committee, which I believe has performed a very important function. I think probably all of us would agree that the function performed by the Estimates Committee is a most significant and most important function.

Mr Speaker, I have brought this motion to the Assembly so that the Public Accounts Committee can assess exactly what the detail is, how many projects fit into this category, how much money is overestimated, and the size of the problem.

It may well be that there is a minimal problem and that the Public Accounts Committee decides that the way it is done at the moment is perfectly reasonable. But I think it is important that the community knows that and understands that that is the case. At no stage am I suggesting that in any way the money is spent in an untoward or illegal fashion. There is no question of that; I think we are all aware that that is not in any way the suggestion here. However, I still think it is important from an accountability point of view that the Public Accounts Committee look at this issue closely.

In my second point I seek to quantify the amount set aside in budgeted estimates and money. I have purposely left that open. It is quite appropriate, I think, for the Public Accounts Committee to consider the 1990-91 budget, but I also feel that it would be appropriate for the Public Accounts Committee to have room to move. It may well be the case that in their investigation they decide that they wish to look back at the previous budget. If they look at the 1990-91 budget, then, because the spending has not been completed yet, it is also significant that they would not be able to report until well after July. With that in mind, I have left open the reporting date to allow the committee to look into the issue and decide what is the appropriate reporting date.

I do not believe that this is a matter that is narrowed down to the Alliance Government; it is more a matter to be dealt with by the government of the day. Therefore, if the Public Accounts Committee report were, for example, to come down in December, the information would be available for whoever takes government after February next year. I believe that it is quite appropriate for that to be the case. If the Public Accounts Committee can report earlier and the Government can respond, that is fine; but I think accountability is most important, particularly because of the Auditor-General's report. Some of the criticisms he has made emphasise the importance of accountability of managers, and I think this will assist in that accountability.

The other points follow logically, requiring the Public Accounts Committee to assess how the surplus is currently spent and to make recommendations on how that surplus ought to be used. I believe that it is appropriate for the Public Accounts Committee to make broad recommendations as to whether or not the surplus should be used to ensure that our borrowings are reduced or that the capital works program generally be run in two stages - one stage being what we are hoping to spend in our budget and then, perhaps, a second stage where the surplus can be used for these other items.

There is a series of options there, but I think that in terms of public accountability and public confidence it is important that the Public Accounts Committee of this Assembly look at this issue and take it on as I have suggested.

MR KAINE (Chief Minister and Treasurer) (11.46): I must say that I was quite puzzled as to why Mr Moore put this motion on the notice paper. Having listened to him, I can conclude only that it was so that he could demonstrate his expertise as a maintenance engineer. Perhaps if we were to appoint him managing supervisor for the Aranda school it might solve the whole problem. The rest of the information he provided simply demonstrated that he does not seem to understand the way the Public Accounts Committee and the Estimates Committee work, and I will deal with those in a minute.

The basic premise Mr Moore seems to be working on is that somehow we have a practice of overestimating and creating a slush fund. That is patently absurd and, quite frankly, Mr Speaker, it is not true. So the whole premise of his motion is based on sand. Any treasurer and any government that deliberately set about overestimating to inflate its budget and then set about taxing people to produce money it did not need would be plain stupid. I do not think I am that and I do not think Mr Moore would assert that I am. We go through the taxation problem every year. Every time you raise a tax, even if you raise it by the consumer price index, you get a public outcry. I am not about to impose taxes that I do not need to impose, nor I suggest would Ms Follett if she became Treasurer again. So it is a patent absurdity to argue that.

The ACT Government goes about preparing its budgets in the same way as all other governments. The estimates are produced on the basis of current government policies. They take into account the best available information on economic and demographic factors that prevail at the time, and to assert that they deliberately inflate it is a nonsense. Mr Moore seems to be confusing budgeting with that low-level estimating that is done in works areas for specific works projects. I cannot speak for what they do at that level. They may attempt to pad their budget a little so that they do not get caught out with insufficient funds, but I think that if they do that and surplus money

is provided it would serve them little purpose. It is not open to them to budget for a particular works project, get excess money, and then spend it on something else without public scrutiny, which is the term you use. It is subject to the scrutiny of the government of the day and it is subject to the scrutiny of the estimates committee of the day.

You have every right to inquire about any position, any job, that you think has not been properly managed. But to assert that there is a slush fund and that it is without public scrutiny again is an absurdity. Of course, during any financial year circumstances change and these have an impact on your estimates - and I emphasise that they are estimates. People make their best effort to determine what the cost of a project or a program is going to be and that project or program is then managed within the amount of money made available by the Government. Some of the things that cause changes, of course, are beyond the control of this Government. They are generated by decisions made in the Commonwealth Parliament across the lake.

I submit, Mr Speaker, that there is no practice of overestimating in the ACT budgetary process; neither is there a practice of spending money wastefully simply because there is a budgetary provision based on somebody's best estimate of cost which is not achieved. I refute that entirely. Of course, not all programs underspend. They did not in 1989-90 and they will not in 1990-91 and they will not in any future budget. For every one that underexpends I will guarantee that I could go through the budget and find one or two that overexpend. That is why you have to be very careful, in managing your budget, to make sure that your total budget allocation is not exceeded.

While there may be overs and unders on specific capital works projects or other projects within the totality of the budget, there is not an overestimating right across the board. These things balance themselves out. It can be proved that in last year's budget the Government had to provide supplementary funding over and above that identified in the budget estimate to enable programs to meet additional demands placed upon them. That can be easily demonstrated by looking at the end-of-year result for last year.

I indicated in my budget speech that during 1989-90 there had been a number of positive management and policy decisions initiated by this Government when we took over last year's budget and that, combined with some unexpected circumstances, some windfalls, led to a particular budget surplus last year. That is most unlikely to occur again. On my view, it is most unlikely that a favourable juxtaposition of events such as those will occur again this year or in any future year. Of course, we will be

positively managing our budget, in the same way as we managed Ms Follett's budget, to get the best result and to try to get a better than expected performance in actual expenditure while getting the job done.

I do not quite understand the second point of Mr Moore's motion. Budgets are, in fact, estimates. That is what they are. They are only estimates, and those estimates, on a program by program basis across the whole budget, are set out in the budget papers, particularly papers 4 and 5. The Estimates Committee spent a considerable amount of time examining those estimates last year. I personally spent a good deal of time answering questions of the Estimates Committee and subjecting myself and my officers to the closest of scrutiny. In asserting now that there is something funny in the books, I think Mr Moore does himself an injustice. What he is saying is that he did not do a good job as a member of the Estimates Committee, if that is true. I do not believe that any member of the Estimates Committee failed in his duty, any more than any officer of the ACT Treasury or any member of this Government failed in their duty in putting together a responsible budget.

The examination of estimates as opposed to actual accounts - and we need to make the distinction - does not fall within the terms of reference of the Public Accounts Committee. The estimates are the responsibility of the Estimates Committee. I think what Mr Moore is doing is asking the Public Accounts Committee to do what the Estimates Committee has already done. I do not know whether the Public Accounts Committee ought to be wasting their time and resources on such an exercise, unless there is ample reason to suggest that they should. In any case, I think it is outside their terms of reference.

If the Public Accounts Committee wants to take on such a reference they have all the powers to do so now. They do not need this motion to do it. I remind Mr Moore of the terms of reference of that committee. They are:

Examine -

(a) the accounts of the receipts and expenditure of the Australian Capital Territory Executive;

(b) the financial affairs of authorities of the Australian Capital Territory; and

(c) all reports of the Auditor-General which have been laid before the Assembly.

That is to do with the actual performance of the budget. That is the Public Accounts Committee's role. The Estimates Committee's role is to do what you are suggesting, if it is necessary, having done it once already.

In response to changing circumstances during any year, governments determine policy options that may generate a surplus or deficit in any particular budget or any part of the budget. The budget is not a static thing. It changes from day to day. It requires constant and daily management. Mr Berry asked a question yesterday about the state of the budget for the hospitals. The Treasury will be able to tell us what the state of the budget is for the hospitals - whether at this moment it is a little above or below the expected level and what the expected outcome is - and that is because it is managed daily. It is no surprise, as it was no surprise to Mr Berry last year that he was $7m outside of budget. He knew that. The problem was that he did not do anything about fixing it. So the information is there and it can be properly managed and it is being properly managed.

Mr Speaker, I totally reject the premise of Mr Moore's proposal. Under part 4 of his proposal he intends that the Public Accounts Committee should take over the role of the Government. The budget is an instrument of government policy, yet he is going to have the Public Accounts Committee come back and tell me how I should spend any surplus on the budget. That is not a matter for the Public Accounts Committee; that is the responsibility of the Government and of the Treasurer in particular.

I do not need the advice of the Public Accounts Committee as to what to do with surpluses, if any, on my budget. Last year we made a very sound decision to use the budget surplus to assist the restructuring of the hospital system. That is a matter for the Government to determine, not the Public Accounts Committee. While the Public Accounts Committee might give me the benefit of their expertise - the present chairman did not do so well when she was Treasurer of the ACT, although I am quite sure she is happy to give me further advice now anyway - I will look at that advice, but I am not going to be bound by it. It would be foolish for any treasurer of this Territory to say that he or she is going to be directed by the Public Accounts Committee as to what they will do with their budget.

Mr Moore: You are talking nonsense. Since when have you been bound by any committee?

MR KAINE: It is an absurdity, Mr Moore. The whole motion is an absurdity; it is unnecessary. I suggest that you let the Estimates Committee and the Public Accounts Committee get on with what they are already empowered to do - not ask another committee to do what your Estimates Committee should have done - and let the Public Accounts Committee get on with their real business. That is not to intrude into the prerogative of the responsibility and rights of the government of the day.

MS FOLLETT (Leader of the Opposition) (11.57): I rise to support Mr Moore's motion to refer this matter to the Standing Committee on Public Accounts. Unlike Mr Kaine, I have the view that the matter does fall within the terms of reference of the Public Accounts Committee. Mr Kaine read out the first term of reference of the Public Accounts Committee; he did not read out the second and third. They state:

(2) Report to the Assembly, with such comments as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them to which the committee is of the opinion that the attention of the Assembly should be directed;

(3) Inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question.

There is no doubt in my mind that the matter Mr Moore has raised comes within those terms of reference, albeit generally. Nevertheless, I have to say that my support for Mr Moore's motion was considerably stronger before he spoke than it is now that he has spoken. I find it regrettable that both Mr Moore and Mr Kaine have sought to debate the merits of this reference. That is quite wrong. The only matter under debate is whether it is a suitable topic for the Public Accounts Committee, not whether there is or is not truth in the assertions.

Mr Moore, unfortunately in my view, in his speech has inferred from one example only that there is a practice of overestimating and, further, that that practice has led to a slush fund. I think those remarks were as irrelevant to this debate as were the majority of Mr Kaine's remarks. Mr Kaine's remarks, delivered in the style of a diatribe, would lead any reasonable person to wonder what on earth he is covering up. Whilst it appears to me that, on the merits of the motion, it does fall within the terms of reference of the Public Accounts Committee, I believe that both protagonists in this debate have drawn their lines and that it would be very difficult indeed for them to retreat from their positions in any objective assessment of the matter Mr Moore has raised.

I repeat that I support the motion because, in my view, it falls within the terms of reference of the Public Accounts Committee. If you want it examined, that is the place to examine it, not in some sort of competing debate across the floor of this chamber, as we have seen from both Mr Moore and Mr Kaine - very regrettably, in my view.

Motion (by **Mr Berry**) negatived.

That the question be now put.

MR JENSEN (12.00): It seems to me that Mr Moore, in bringing forward this motion today, needs to recall his participation in the two estimates committees that have examined the two Appropriation Bills brought down in the Assembly by Ms Follett and the current Chief Minister, Mr Kaine. Before moving on to the reasons why I consider that this matter is really one for an Estimates Committee, let me briefly comment on my own view about whether this proposal of Mr Moore's is appropriate for the Public Accounts Committee. The Public Accounts Committee looks at the accounts after the money has been spent; hence our interest in the Auditor-General's report, which has rightly been referred to that committee. The content of the first report from the Auditor-General will keep us busy for the rest of the year, when we add that reference to the issues currently before us. Very simply, that is my reason for arguing today that Mr Moore has picked the wrong committee to which to refer his concerns.

Mr Moore: The committee does not exist. There is no such thing as an estimates committee at the moment.

MR JENSEN: Let me continue. Mr Moore suggests that we have no such thing as an estimates committee. That is true. The Estimates Committee finishes when the report is finally produced. I suggest that, as in the Senate, a tradition is starting to build up within this Assembly in relation to the consideration of the estimates. The Government last year provided the reference and initiated the motion that formed the Estimates Committee when the Appropriation Bill was brought down. I am not quite sure what Mr Moore is concerned about. I suggest that there is no doubt that an Estimates Committee will be formed in accordance with the practices that have been developed in this Assembly in the past two years. That, I suggest, would put down Mr Moore's concern about there not being a committee to which this can be referred.

Mr Moore may recall a couple of the recommendations from the last Estimates Committee report, which as a member he helped to write. It seems to me that these two recommendations fall into the category we are talking about today. I am referring to the two recommendations on page 18 that flowed from the discussions in paragraphs 4.11 to 4.14 and 4.16 of this year's Estimates Committee report. This was in relation to the suggested approach to be taken by future estimates committees. I will read the two recommendations to refresh Mr Moore's memory:

> future Estimates Committees consider selecting at least two areas service wide for detailed examination each year.
>
> future Estimates Committees consider selecting one sub-program in each portfolio for detailed examination each year.

That seems to me the logical way for Mr Moore, if he is successful in being elected to the Estimates Committee, to undertake his inquiry. If he is not successful in being elected to the Estimates Committee, he has the ability to ask the necessary questions of those officials who will be ranged before him during that process.

What then is the parliamentary practice as it relates to the role and duties of the Estimates Committee? On page 47 of *House of Representatives Practice,* we find the following:

> Estimates committees have been established in the past to examine, more closely than is possible in the committee of the whole, the proposed expenditures contained in the main Appropriation Bill for each year.

This practice commenced in the Senate in 1961, when it looked at the estimates before the main Appropriation Bill was tabled in the House of Representatives. This was extended in 1970, when the Senate appointed a number of Estimates Committees to examine the main Appropriation Bill. In 1980 the House of Representatives established four such committees, which allowed these committees to examine and report on but not vote on or vary the amount of any appropriation. This process in the House of Representatives was continued for only one more year, and the practice was discontinued in 1982.

As we all know, the Senate has operated its estimates committees following a resolution of 28 April 1976, which was part of the rise of the Senate standing committee system. I think we are all very well aware of the role the Senate standing committee system and the estimates committees play in the assessment of the Appropriation Bill. I suggest that it is quite clear from my reading of Mr Moore's motion that that is where this matter should rest.

In the light of these comments, let me now examine in a little more detail the motion from Mr Moore. It seems to me that Mr Moore in his motion is seeking to have the Public Accounts Committee make the sorts of decisions on spending that are clearly the province of the Government in its budget deliberations. The second paragraph of Mr Moore's motion is rather open-ended. I know that he did make some comment about this, but it does not seem very clear as to how far he proposes the Public Accounts Committee should go in this area. If you look at last financial year, this financial year, two or three financial years back - - -

Mr Moore: It is quite specific.

MR JENSEN: It is not very specific, and that is one of the problems. It would also seem that Mr Moore proposes to make this an open-ended inquiry, with no date for reporting. What then does Mr Moore see as the timetable for that inquiry and what is the purpose of such inquiry if there is no timetable? If it is to assist in the process of developing the budget, I would have thought Mr Moore would have put on some sort of timetable. Clearly, Mr Moore has not thought through that aspect of the proposal. My colleague Mr Kaine has already made a number of comments on parts 4 and 5 of Mr Moore's motion.

Let me now turn briefly to some comments and suggestions Mr Moore made in relation to evidence of overestimating. I was pleased to note that the Leader of the Opposition commented in relation to Mr Moore's failure, if you like, to produce any sort of damning evidence of what he was suggesting in his motion:

> the practice in the ACT Government of over-estimating when preparing estimates for the budget;

Clearly, by saying that Mr Moore is making the clear implication that that is a practice that is widespread. I do not think Mr Moore has provided any evidence for that. He has put up a couple of proposals. Even Ms Follett has suggested that Mr Moore is just flying a bit of a kite on this one. My colleague Mr Duby will be addressing the specific issues relating to Mr Moore's comments on those two areas he spoke about.

In closing my remarks, I would like to draw the attention of members to the Planning, Development and Infrastructure Committee's report on, and investigation into, the capital works program. I recall that, during that process and series of questions, the issue was raised of what may happen to the money that was set aside if there were problems associated with a particular project.

In this case the question is related to the forward design program. What would happen if the money that had been allocated to a forward design program for the project was not used because, for whatever reason, the project was put on hold? We were advised, I recall, that there was still a process that reorganised and reconsidered the allocation of those projects within that forward design program. I seem to recall also that some of the recommendations in the planning committee's report on this area referred to the need for continued community consultation, not only at the time the various capital works programs were being established but also at the time they came back for consideration. There was a recommendation of that committee that comment on the extent of community consultation be added to the criteria used in preparing the list of projects for the final works program, and so on.

Those areas were of concern to the planning committee in relation to the new capital works program, and I suggest that it is possibly an option for them to consider in the future. Perhaps some of the concerns Mr Moore has could also be raised in that forum, when the capital works program comes before the committee.

MR DUBY (Minister for Finance and Urban Services) (12.10): At the outset let me congratulate Mr Jensen on the very erudite speech he just gave outlining the reasons why this motion of Mr Moore's should not have the support of the Assembly. A number of issues I was going to raise have been covered adequately, I believe, by both the Chief Minister and Mr Jensen. In particular, I disagree with the statement by the Leader of the Opposition that this issue falls within the purview of the terms of reference of the Public Accounts Committee. I do not believe that it does. I believe that the appropriate place for issues of this nature to be identified and reviewed is within the Estimates Committee. To the reasons Mr Jensen put so expertly, I can only add my support.

The matter seems to have been raised in Mr Moore's imagination. The one example he gave of the supposed practice in the ACT Government of overestimating when preparing estimates for the budget was that of the replacement of the roof at Aranda Primary School. I admit that at first sight, when one compares the original estimate of the cost of replacement of that roof and the final cost, one may well think that something peculiar has happened there. We have gone from an original estimate of some $570,000 to a final figure of $150,000, I think. What was the figure, Mr Moore?

Mr Moore: From $650,000 to $148,000.

MR DUBY: I understand that the original estimate was $570,000, down to $150,000 in round figures.

Mr Moore: The original estimate given to the Estimates Committee was the figure I quoted of $650,375.

MR DUBY: In this example - and this is not all that unusual in terms of large variations between estimates of work required, particularly in the capital works area, and the final cost of the finished product - the Aranda Primary School is around 25 years old. It is the normal expectation that the roof of a building of that type would require replacement after about that time, particularly given the circumstances Mr Moore outlined concerning the boiler and sulphur, et cetera.

When Public Works made the estimate for replacement of the roof and the associated works, I am under the impression that the complete roof replacement cost was in the order of $570,000. I am not familiar with the figure Mr Moore mentioned. Nevertheless, the final costing was substantially less. Substantial savings were achieved in

the completion of that project at the Aranda Primary School. Factors which enabled that to occur included retention of the original gutters and downpipes, which were found to be in good condition and not requiring replacement at this stage. I think the major factor in that lower requirement for funds is the current downturn in the building industry, which resulted in highly competitive bidding for that job.

When tenders were called for the Aranda Primary School roof replacement, a wide range of tenders were received. I think it should be noted by Mr Moore, and by the Assembly, that some of those tenders were comparable with the original estimate for the replacement of the roof and the materials associated with it. It is certainly not unusual for market forces to result in exceptionally low tender prices arising from time to time. Fortunately in this case the public purse has been saved some substantial expenditure because of the nature of that work.

The work will be completed by the end of this month and, if Mr Moore would like to examine the accounts that were sent into Public Works for finalisation, I am sure that will be quite okay. Everything there seems to be above board. As I have said, I have not the final figure for the completion of the job, but it should be remembered that some tenders to do that work were around the original quote - around the high $500,000 mark. Many factors affect the highs and lows of estimates and tenders. For example, there is the economic situation - sometimes the national economic situation; and, of course, the political situation can also affect the cost of doing some jobs.

The interesting thing is that Mr Moore concentrates in this motion only on overestimation. What happens when there is underestimation? I notice that Mr Moore's proposal is that the PAC make recommendations on how future surpluses between estimates and expenditure should be handled. What do you do in cases where the amount of money required to do a job is more than that originally tendered? Is the PAC going to make recommendations to the Government on what taxes to raise, what levies should be imposed upon the populace, to make up the shortfall between the money allocated and the final cost? Of course not. Yet you have the foolish notion that the Government is supposed to listen to recommendations from the PAC about what it shall do with excess funds. Nothing could be further from the realms of possibility for the PAC.

There are cases, of course, where additional costs are incurred. One I can think of off the top of my head is a certain refurbishment of the South Curtin school, which has cost the taxpayer more money than was originally budgeted for because of political reasons that we will not go into. Perhaps Mr Moore would like to turn his mind to how we find the money for the additional cost to the taxpayer of that job. Clearly, there are variations. I only wish it were the case that all our public works projects could be

brought in at 30 per cent or 40 per cent, or whatever, of the original estimate. It would mean that we could get a lot more work done in the Territory a lot more quickly.

The remaining funds that were unspent from that allocation are, as the newspaper said, within the Department of Education. They can apply those funds to further capital works that are required to be done. Perhaps some can be brought forward from the 1992 year into the 1991 year, and I think that would be a good thing. All in all, I think it is foolish to suggest that the matter Mr Moore raises in his motion could even be considered by the Public Accounts Committee. I think we have all recognised that, and I certainly am opposed to the motion.

MR MOORE (12.17), in reply: Mr Speaker, it would appear that I am damned if I do and damned if I do not. I come in here and give an example and the Leader of the Opposition says, "You cannot give any examples because that pre-empts what the Public Accounts Committee is going to do". Along with the diatribe and the garbage that came out of the Chief Minister's mouth - that is the best way it can be described, and the *Hansard* will reveal that - members of the Government say that I just did not give enough examples to illustrate that I had a good reason for doing this.

What I did attempt to do was to come somewhere between the two, to take an example that was already a public example and say, "We have one example here. There are others. Let us now recognise the importance of public accountability". Some of the people who spoke today, and I look specifically to Mr Jensen, ought to remember that they have stood on a platform of public accountability. Under Revenue Management in the finance section of the Residents Rally policy it is stated:

> To date Federal control of the ACT has not been characterised by open government and the publication of necessary financial data.

What I am seeking here is public accountability, an open system. But the Government says, "We make the decisions. Who is a committee to tell us what to do?". That is the sort of garbage we had out of the Chief Minister's mouth. That is exactly what committees are here for. That is exactly what committees do. The committees make recommendations to government for government to consider. We have seen a tremendous amount of excellent work by the committees of this Assembly, and great credit goes to them and to all the members, including Mr Jensen, who work so hard on them.

Now that I have got to Mr Jensen, I will refer to the Estimates Committee. There is a notion - more garbage from the Chief Minister and Mr Jensen - that this can be done by the Estimates Committee. The Estimates Committee works under a tremendous amount of pressure over three or four weeks to try to deal with a certain number of estimates.

There are simply not enough hours in the day. Because they have to report at the next sitting, there is simply not enough time for the Estimates Committee to handle a task such as this. It would obviously require some time and effort and would be a very difficult task indeed. In fact, Mr Jensen will remember that the Estimates Committee recommended quite clearly that the committee continue for some time to sort out its role, amongst other things. So I think it would be quite appropriate for this to go to the Estimates Committee if it were sitting at a time other than when it is looking at the specific budget.

As Ms Follett said, it is an appropriate reference for the Public Accounts Committee to take on. "Why not just let the Public Accounts Committee take it on?", said Mr Kaine. Quite simply, I am not a member of that committee. So, this is an appropriate forum, a perfectly normal, perfectly reasonable forum to which I can say, "There is a matter the Assembly's attention ought to be drawn to because it is a matter of public accountability and I think it is quite appropriate for the Public Accounts Committee to take it on". It is a perfectly reasonable way for this to happen.

Mr Duby: It is not a matter of public accountability. I think that has been demonstrated.

MR MOORE: Mr Duby states that it is not a matter of public accountability. It is clearly a matter of public accountability. You have talked about tenders being roughly in the order of, and used that sort of example. You have convinced no-one. The diatribe of the Chief Minister achieved absolutely nothing other than, if I can quote Ms Follett, to make us think that there is something you are trying to cover up. At no stage was I suggesting that that was the case - until that diatribe started. Quite clearly, we have an example, that I have made public, of excess money being available to the Government. It is quite reasonable for us to look at it in difficult times and see how restraint is being exercised and how a committee of the Assembly can recommend in a bipartisan fashion the way that that money ought to be dealt with.

Mr Duby also said that sometimes projects are underestimated, and he gave an example. We know that to be the case. He said, "The Public Accounts Committee cannot look at that". Of course they can. If he had read my suggested terms of reference, No. 5 refers to "any related matters which the Committee deems appropriate". Without pre-empting them, it may be that the committee would decide that the money from overexpenditure should go to an area of underexpenditure. I do not intend to pre-empt it. That is certainly open to the committee and it is perfectly reasonable for the Public Accounts Committee to consider it.

The indications quite clearly are that the Government intends to bump this one on the head because they do not want public scrutiny, public accountability, of what they

do. That being so, I hope that the members of the Public Accounts Committee, who I accept are quite capable of independent thinking, will look at this again and determine whether it is an appropriate task for them to take on. It would be a sad day for public accountability and for the committees if a sensible motion such as this, for a committee to consider something that is of concern to the public, were to be rejected.

Many members of the public spoke to me about this when it was made public. Because the matter is of concern it is quite appropriate for it to be taken care of by a committee, and the diatribe we had from the Chief Minister was quite inappropriate. He seems to think that he is the only one who understands anything about budgets and accountability and that, if he yells down somebody else and says, "You do not know anything", that line will work. If he goes back to the sittings of the Estimates Committee, he might recall that when he attempted to use that line and we had the chance to face him on a one to one basis, it got him absolutely nowhere.

Mr Kaine: You did not do too well either.

MR MOORE: He interjects, "He did not do too well either". He is quite right; he did not do too well, and the public is not convinced that he is doing too well as far as these things are concerned. I ask you to reconsider. You have the opportunity now to allow this to be referred to the Public Accounts Committee. The Estimates Committee is entirely inappropriate. Unless you wish to re-establish the Estimates Committee to run at a different time from normal, then the Public Accounts Committee is the appropriate place for the reference.

Question put:

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

The Assembly voted -

AYES, 7	*NOES, 10*
Mr Berry	Mr Collaery
Mr Connolly	Mr Duby
Ms Follett	Mr Humphries
Mrs Grassby	Mr Jensen
Mr Moore	Mr Kaine
Mr Stevenson	Dr Kinloch
Mr Wood	Ms Maher
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak

Question so resolved in the negative.

Sitting suspended from 12.29 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Commercial Leases

MS FOLLETT: My question is addressed to Mr Kaine as Minister responsible for planning. Mr Kaine, are you aware of the push by the Building Owners and Managers Association, backed by senior Liberal Party officers, to grant virtual freehold title to commercial lessees? Will you assure the Assembly that the Government will not abandon the commercial lease policy and the draft planning package?

MR KAINE: First of all, I am aware from a newspaper report this morning that some dissatisfaction has been expressed by certain people in connection with the draft planning legislation. Since then I have let it be known quite forcefully and bluntly that that legislation is out for public consultation, and if people have a view they can express it; but they should do so to the Government formally and properly so that their views can be taken into account.

The legislation is draft legislation. Any aspect of it is open to public discussion and questioning. We will take into account all of the comment that we get from all quarters when the consultation period ends at the end of this month, and out of that will emerge a package of legislation that will satisfy, as far as we can, all of the people who are most directly affected by it, with our primary consideration being the protection of land, which is the major asset in Canberra - and it is the asset of the people, not of the Government or anybody else - in the interests of the majority of people who reside in the ACT. Beyond that, I will not give any guarantee as to what the final legislation will entail because, until I examine all of the comment made by all of the interested parties, weigh that comment and talk it through with all of the parties concerned, it is a bit early to say just what the outcome of that negotiating process will be.

House Building Approvals

MR STEVENSON: My question is addressed to the Chief Minister and it is in regard to the environment, land and planning. It concerns the building approvals given for three adjoining dwellings at blocks 2, 3 and 4 of section 77, Tuthill Place, Calwell. I have been informed that the developer of these three dwellings works for the public service in a department from which access to confidential planning information would be readily available. I believe that concerns about the possibility of that developer receiving confidential information or favourable treatment were raised by local residents with Mr Norm Jensen. I am

told that Mr Jensen has indicated that an investigation into these possibilities was conducted at the highest level and that the results of such investigations were entirely negative; they showed that there was no conflict of interest or improper conduct involved. So, my questions are: Did such an investigation take place? Who conducted the investigation? What exactly was investigated? What were the findings of that investigation?

MR KAINE: Mr Stevenson's question raises some very interesting issues. I am always suspicious of broad accusations about impropriety on the part of public servants and I think we need to be very careful about accepting them at face value. If Mr Jensen has told you what you allege he has told you, then I would take his word for it; but since you ask a specific question - - -

Mr Stevenson: It was not told to me, or I would; it was told to residents who told me. I am just checking it, that is all.

MR KAINE: Mr Jensen is an honourable man, he takes his job very seriously and, if he has done an investigation and given that assurance, then I would take it at face value. But, since you have asked me four questions, I will take them on notice and make sure that you get a comprehensive response to them.

Board of Health Vehicles

MR STEFANIAK: My question is directed to Mr Humphries. Is the Minister aware that the ACT Board of Health vehicles are used outside normal working hours within the community nursing service? I am sure there is an excellent reason for that, Mr Humphries.

MR HUMPHRIES: I thank Mr Stefaniak for that question, and there are good reasons for that. Community nursing provides a limited nursing service to patients in their own homes outside normal work hours, which means that vehicles will be seen in suburbs throughout Canberra on weekends and public holidays. For example, palliative care is part of the total community nursing service whereby nurses provide care to terminally ill patients 24 hours a day, seven days a week. Nurses will visit extremely ill patients at any time over the 24 hours and therefore may be forced to seek the services of, for example, local shopping centres at abnormal times to take meal breaks.

Safety at night for palliative care staff is an issue of concern and necessitates parking in well lit areas. Community nursing could have between six and 10 cars on the road at weekends and public holidays and palliative care could have a minimum of one and a maximum of five on the road at any one time. Obviously, members of the Assembly might receive complaints from time to time about government

cars being used at those times, but I hope that in those circumstances they will understand that there may well be good reasons for that to have occurred.

ACTEW - Solar Energy Research

MR CONNOLLY: My question is directed to Mr Kaine as the Minister responsible for the environment. Minister, what action have you taken to encourage ACTEW to follow the lead of the New South Wales State Electricity Commission by assisting the funding of research into solar electricity generation? Will you be approaching Mr Duby, as the Minister responsible for ACTEW, to ensure that environmental considerations are part of ACTEW's statement of corporate intent?

MR KAINE: I understand that Mr Connolly has addressed this question to me as the Minister responsible for the environment, and I think that is reasonable. I have not done anything specific, Mr Connolly. I think that ACTEW, in common with all ACT Government agencies, is well aware of our comprehensive policy on matters affecting the environment. The management there knows, as other management does, that we expect that policy to be put into effect.

However, having said that, if there are some particular issues of concern that you think should be discussed with the management of ACTEW, I am quite happy to take them up not only with the Minister but also with the management to ensure that our policy is put into effect.

Australian Labor Party Newsletter, *The Schools Issue*

MS MAHER: My question is addressed to the Chief Minister. Has the Chief Minister received any comments from members of the public in response to the Labor Party's education broadsheet which was recently distributed around the city?

MR KAINE: Yes, interestingly enough, Mr Speaker, I have - and I am quite sure that Ms Follett must be thinking twice about the distribution of this magnificent piece of literature, because, if the sorts of responses that I am getting from members of the public in connection with it reflect, as I believe they do, the public opinion, then it is a boomerang.

In fact, I have brought a sample of the kind of responses that have been made. People are mailing their responses not only back to Ms Follett; some of them are mailing their responses to me as well. It makes some interesting reading. I brought down just one response which is quite typical, and in case Ms Follett has not read this one yet - and it is a photocopy of what this particular person wrote - I will quote it. It says:

> All unnecessary schools should be closed so that ratepayers and taxpayers have less to pay for others' mistakes. PS, don't rubbish our letterboxes.

I think that just about says it all. People resent this rubbish that is being put in their letterboxes, and there is a clear opinion out there that they wish you would come and collect them and take them all away and dispose of them.

TAFE Programs

MR WOOD: It is very clear that this newsletter has had a considerable impact on the community and on the Government. They keep raising it in here. They are very unhappy about it. The ALP is delighted with the response.

I direct a question to the Chief Minister, Mr Kaine, as the Minister responsible for TAFE. Chief Minister, in view of the high level of youth unemployment in the ACT, have you discussed with ACT TAFE the need for any expansion of training or retraining programs for unemployed or displaced young people? What extra can TAFE do in this respect?

MR KAINE: No, I have not discussed that issue with the management of TAFE. We have a three-year financial arrangement with the TAFE whereby we provide certain levels of financing and they have the approval of the Government to seek additional funding from wherever they can get it on top of that, with the understanding that if they raise extra money it will not be offset against the funds that we provide.

Those available resources allow them to conduct appropriate courses. I believe that the management of the TAFE is doing a very good job in tailoring the courses that they run to meet the needs of the people that present themselves there for training. To provide additional money is not something that we can do in the short term. We have only just entered into a three-year agreement with them. There is not a lot of money around - I think even Mr Wood would acknowledge that - and I believe that the programs that the Government has implemented already, not only in education but also in other areas, are dealing as well as is possible with the local issues arising from unemployment and homelessness; and there is not much more at this stage that the Government can do, through either the TAFE or other bodies.

Melioidosis

MRS NOLAN: My question is addressed to Mr Humphries in his capacity as Minister for Health. Is the Minister aware of the increase in the incidence this summer in northern Australia of the disease, melioidosis? What precautions should ACT residents travelling in northern Australia take to minimise the possibility of their contracting the disease?

MR HUMPHRIES: Mr Speaker, I thank Mrs Nolan for this question on a matter of importance to people from the ACT who travel to the northern part of Australia. I am aware of the increased incidence this summer of this particular disease.

Ms Follett: What was it again?

MR HUMPHRIES: Melioidosis. The disease is caused by a bacterial agent, pseudomonas pseudomallei, also known as Whitmore's bacillus. It is a disease which is relatively common in Thailand, not all that uncommon in northern Australia, but unheard of in the ACT. The organism lives in contaminated soil and water and our dry conditions are not conducive to its existence, whereas the wet conditions of northern Australian in summer are conducive. The organism is most commonly introduced through abrasions to the skin, but it usually requires some other factor to produce overt disease. These are things like diabetes, alcoholism or any other condition where one's immune system is suppressed. Aboriginals, for example, are more likely to contract the disease.

The disease itself can present in a variety of ways, ranging from simple skin sores to septicaemia, which in turn may be fatal. The incidence this summer in the Northern Territory has been almost equal to that for the whole of the last 10 years and fatalities in northern Australia - approximately 11 - have had these added factors that I have just mentioned. It is advisable that anybody who travels in northern Australia - or any tropical area for that matter - maintain their health in the best way they can, and in this case have any skin abrasions adequately treated and covered and wear shoes or boots.

Equal Employment Opportunity Plans

MR BERRY: My question is directed to Mr Kaine and it is in relation to equal employment opportunity. Mr Kaine, as Minister responsible for the status of women in public administration, have the equal opportunity plans for the entire ACT Government Service now been lodged?

MR KAINE: I am not sure what you are talking about when you talk about an equal opportunity plan for the entire ACT Government.

Mr Berry: Have all agencies lodged their plans?

MR KAINE: Well, if you - - -

Mr Wood: It is a requirement.

MR KAINE: A requirement of whom?

Mr Wood: You - for your agencies to do that.

MR SPEAKER: Order, Mr Wood!

Mr Wood: Well, he asked me.

MR SPEAKER: Please address your comments through the Chair.

MR KAINE: This is open question time, Mr Speaker; they can all ask me one while I am on my feet. I am not sure of the status of that. I will get a comprehensive report on it, but I thought I had answered a fairly comprehensive question on equal opportunity only within the last couple of days. I do not know why you keep asking the same question.

Health Clinics

MR MOORE: My question is directed to Mr Humphries as Minister for Health. Minister, can you tell us simply how many health clinics have been closed during the last six months and why they have been closed? The reason I ask the question is that I have had complaints from various members of the public about the level of service to be found in local suburban health clinics, particularly in baby health centres. I refer to the inordinate amount of time - a number of complaints suggest that several hours is in fact a commonly recorded period - that parents and children have to wait in queues in the clinics before being attended to. Mr Humphries, in case you have never had to wait for one of those visits with a couple of small children on your knees, allow me to assure you that a couple of hours of that is a little like purgatory.

MR HUMPHRIES: There have been changes in the structure of various health services. There has not been the closure of health centres which has been suggested by some, but certainly there have been significant changes to baby health centres in the last few months. There has been a move towards all-day clinics for delivery of child health services. That move began in 1988, long before this Government came to office.

It was obvious at that time that the previous neighbourhood clinic model was inefficient in terms of usage of resources. Neighbourhood clinics have provided child

health services to small catchment areas on a sessional basis, usually three hours each week or less. After community consultation, successful trials of all-day clinics in Kippax and Dickson were undertaken. Client attendance rates increased, indicating that the extended hours of service suited clients more than the shorter operating hours from sessional clinics. As well as being more acceptable to clients, the all-day clinic model offers increased effectiveness in deployment of staff and resources because of time saved in setting up smaller clinics.

Under the new arrangements, services will be transferred out of areas of low demand, where birth rates have dropped. In designing the all-day clinic changes, extensive consultations have taken place between staff and clients in the areas affected. I can indicate, for example, that that consultation has been, to my way of thinking, very effective. In fact I have received, to my recollection, only one letter from a constituent expressing regret or complaining about the new arrangements. The new arrangements allow for increased emphasis on parenting skills groups and other group activities aimed at illness prevention and health promotion of families at risk, particularly those at the lower end of the socioeconomic scale.

As of December last, 40 of the 59 infant health clinics operated for three hours per week or less. In 1991, some 36 all-day clinics will operate in the ACT. Interestingly, the Hornsby area health service in Sydney, with a similar total population to that of the ACT, has only 11 early childhood centres. I think that, all in all, this redirection of resources is in the interests and to the requirements of most clients. There will certainly be some people who will find it inconvenient not to have one as near as it was in the past. I hope, however, that those people will be compensated by the knowledge that there are now services open for much longer hours at some other nearby regional centre.

MR MOORE: I ask a supplementary question, Mr Speaker. My interpretation of that was that there were 59 and there are now 36, so 23 have been closed. My question was: How many health clinics have been closed? I said "in the last six months", but you have referred to a longer period than that. Perhaps you will clarify that for me. But the point that is even more significant is that there is clearly a much greater waiting time. Certainly when I was at home with my children we may have had to wait 15 or 20 minutes, or even up to half an hour; but it would appear that people are waiting an hour and a half to two hours in your new super-duper system. That is clearly a disadvantage to people.

Mr Berry: It is in crisis.

MR HUMPHRIES: "In crisis" is another exaggerated term. What we are doing is providing resources in a fashion which enables people to take the best advantage. I think that it is quite ridiculous to describe that as a crisis. Mr Moore says either that he has had personal experience of increased waiting times or that people have told him that they have had increased waiting times. I certainly would not like that to be the case, but bear in mind that with regional centres it is obviously possible for a lot more people to want to use the services. And this is the point of what I said before: Now that more people are having access to services as a result of those changes it is possible that there would be more demand on those services.

I am prepared to look at the question of waiting times to see whether there has been an explosion in that problem in recent times. It is certainly the case that we want to make sure that those services are accessible, and that means giving people reasonably short waiting times, if possible. Mr Moore might have been mistaken in assuming that the 23 centres were closed because, as I indicated in my answer to his earlier question, 40 of the 59 health clinics operated for three hours a week or less. Obviously, some of those remaining 19 clinics would be operating on the regional basis that I mentioned before. So, one cannot assume that 23 have closed. For the exact number, I would have to get back to him. But, of course, that changes very frequently from time to time. In fact, a number of baby health clinics closed while Mr Berry was Minister for Health, and they have closed from time to time. So, if he wants to set a date from which I can say that a particular change has occurred, I am very happy to get back to him on that.

Thermal Insulation in New Buildings

MRS GRASSBY: My question is to the Chief Minister, Mr Kaine. Twelve months ago you, as Minister responsible for the environment, released a paper entitled "Developing an ACT Strategy for the Response to the Greenhouse Effect". In that paper you committed your Government to require the incorporation of thermal insulation in new buildings. What action have you taken to implement this commitment?

MR KAINE: I am not certain of the status of that requirement, Mr Speaker. It is a stated requirement of the Government and it will be implemented, but I will have to get a report from the people at the appropriate level as to where we are with it.

Senior Executive Service - Employment of Women

MS FOLLETT: My question is addressed to Mr Kaine as the Minister responsible for the status of women and for public administration. Can Mr Kaine inform the Assembly of the proportion of women in the Senior Executive Service in the ACT Administration? Could he also inform us what steps he is taking, as Minister responsible, to ensure that more women reach senior positions?

MR KAINE: I cannot give that percentage figure off the top of my head, Mr Speaker, and it is not as good as it might be, as is true of the entire Australian Public Service. The policies of recruitment, promotion and the like in the ACT Government Service are, in fact, those of the Australian Public Service. As to what I am doing or what I can do, my views on that matter are well known to the Administration. It is quite clear that I, in particular, and this Government in general, support the concept of equal opportunity and the concept that there should be no discrimination against women in any endeavour which they seek to pursue. There is certainly no constraint being imposed by this Government to prevent women achieving their potential in the ACT Government Service insofar as we are operating within the Australian Public Service rules.

Adolescent Day Care Unit

MRS NOLAN: My question is directed to the Deputy Chief Minister. I would like to ask: On what basis is funding being made available for the establishment of an adolescent day care unit?

MR COLLAERY: I thank Mrs Nolan for the question. Mr Speaker, as part of the Government's overall budget response last year, our first such opportunity, the Government applied considerable funds to the youth sector. There has been some public debate about the emphases there, but I am pleased to say that planning is well advanced on the new initiative for an adolescent day care unit; that is, a care unit to deal with young persons between the ages of 12 and 18 years who are at the top end of an emotional disturbance spectrum. Although school counsellors know what I am speaking of, we are speaking, in fact, of a daytime therapeutic environment for severely emotionally disturbed children and young persons who have not crossed the rubicon of requiring psychiatric day care and the like. We allocated to this area funds of approximately $120,000 for the implementation of a three-year program.

Much is said in the papers at the moment about the problems at school and other places with young children and younger persons with severe emotional disturbances. The Government has formed an inter-agency management agreement comprising representatives of the Community Welfare branch, Community Programs, and the mental health and education areas of my

colleague Mr Humphries, to oversee development and operation of the service. It has been carefully planned and I can assure the community that it has been very much welcomed by those people in the counselling and psychiatric day care circuit who see the need for this service to fill a gap which existed when we took government.

Radio Station 2XX - Management Decisions

MR STEVENSON: My question is directed to the Attorney-General, Bernard Collaery. Is the Attorney-General aware of the cancellation of the 2XX fortnightly radio program "On the Left", hosted by David McMullen? Would Mr Collaery indicate whether or not the management of 2XX has the right to determine which side of an issue aligns to its political viewpoint and then censor out the other side, by programming policy, cancellation of programs, or removal of presenters? And he might like to comment on how 2XX is funded and what percentage of public funds are used for the funding of that radio station.

MR COLLAERY: I thank Mr Stevenson for a very timely question. Mr Speaker, there are a number of issues engaged by this matter. Firstly, I think it is no secret that my Law Office is contributing to the States and Territories Attorneys working group on a matter that relates not only to defamation law reform but also to media ethics. We are working on that matter and I will be speaking on it interstate in the next few weeks. It will be a keynote national address. In that paper that is being prepared by our law reform unit, which is one of the most impressive - - -

Ms Follett: Are you selling tickets?

MR COLLAERY: The Leader of the Opposition laughs, of course. She purports to want to form a government, but mocks our public servants at every juncture.

Mr Connolly: Mr Speaker, on a point of order: There has been no mocking of public servants by the Leader of the Opposition, and the Attorney-General should - - -

MR SPEAKER: Order! I do not believe that that is a valid point of order.

MR COLLAERY: They are very sensitive on this topic, but they will get a little more jumpy in a moment. Mr Stevenson asked specifically about the ethics of 2XX. I have heard Senator Bob Collins state his position in relation to being Minister assisting the Minister responsible for telecommunications and the like. He stated very clearly that if the allegations are correct it is a broad-ranging breach of the Broadcasting Act and it would be a matter for the Broadcasting Tribunal.

I make no further comment on that, other than to say that, when our anti-discrimination Bill becomes law, discrimination on the ground of political beliefs, which is the allegation here, will be an offence. Our law will require there to be a conciliation period which would involve the program managers at 2XX and the complainant being brought together in the office of the Human Rights Commission, and if a solution is not reached and if the breach continues - if it is a breach - there would be a fine of $2,000. I can only applaud the establishment of that type of provision when we have the mad loony Left now moving into our freedom of speech in this country.

Gungahlin Development

MR CONNOLLY: My question is addressed to Mr Kaine, as Treasurer and Minister for planning. Mr Kaine, how much money has been spent this year on preparations for the development of Gungahlin, and how much is budgeted for the remainder of this financial year?

MR KAINE: I do not usually run around with figures of that kind in my head, Mr Speaker. Clearly I will have to take the question on notice and find out.

Weston Creek Community Service

MR MOORE: Mr Speaker, my question is directed to Mr Collaery as the Minister responsible for welfare and community services. Minister, as a result of fallout from school closures, the Weston Creek Community Service has been pushed from pillar to post and has been moved from South Curtin to its current location at Cooleman Court. Can you tell this Assembly how long their lease is for, how much the rent is for occupancy of those premises, who in fact is paying it and how the costs compare with what was being paid when it was at the Weston Creek Community Centre?

MR COLLAERY: I thank Mr Moore for the question. Mr Speaker, I think the drought is about to break. I have still not had a question from the Opposition, as far as I recall, on any of these social justice concerns, so I am pleased to receive a question from Mr Moore. At least he on that side is interested in those matters.

In my department there was a consequential effect from some of the school closure moves. That did affect the Weston Creek Community Service and yes, the Community Service was moved to a location on the corner of Brierly Street in Weston. The rent is in the region, at the moment, as I understand it, of $50,000 a year. The premises, in my view, are not the most satisfactory premises the Government could seek, because they are in a commercial shopfront. I

have been out there, of course, as Mr Moore seems to know; I inspected the premises myself last week, with the Community Service people. I have examined problems that have arisen there in relation to the tenure of the Community Service because, on my information, the landlord has been approached by an alternative tenant, the Westpac Banking Corporation. Perhaps Mr Moore got the tip from them; I am not sure.

I see the potentiality for there to be a rent increase; it could well be on the cards, but not in the short term. Given its commercial frontage, we could be into two-yearly rent reviews. It is a matter that my colleague Mr Humphries and I are looking at right now. We discussed it several times this week. I discussed it with my ministerial staff before I came into the chamber. I can assure Helen Szuty and the staff of her service that I have gone to considerable lengths to see what we can do. There may be a solution for her, but she certainly has tenure there at the moment and there is no threat to move her out.

There is a sublease for the premises which expires on 28 February - this month. I understand that there was an option to renew; but, as fortune has it, that option may well have locked us into a considerably higher commercial rental. I am assured by my colleague Mr Humphries, who is bearing the cost of these relocations from his education budget, that a solution to that situation will be reached, hopefully in the next few days. We are looking broadly at other issues that may result in a situation that would be most acceptable to the Weston Creek Community Service.

MR MOORE: I ask a supplementary question. Mr Collaery, you indicated to me that we are talking about roughly $50,000 a year, but you later indicated that in fact you were about to have to renegotiate this lease. So I will be interested to understand what you expect the cost to be. Also, the part of the question that you did not answer was: How does the cost compare with what was being paid before?

MR COLLAERY: The office has moved into a Brierly Street frontage which has a corner glass frontage that has never been leased since the building was built a couple of years ago. On my advice, the landlord has received a much more attractive offer from Westpac, who are interested in the premises for opening a branch or the like, and the real issue at hand is whether we will have tenure there, not whether we will be able to renegotiate another lease. I would imagine that, if we have to renegotiate another lease, we would be asked to take the entire block - that is, to take double the space that we are presently occupying - and that would obviously, ergo, double the rent as it stands.

But, as rent escalations go in this town, if there is to be a sublease increase, whether CPI based or 10 per cent, whichever is the lesser, you would see the rent going up by a minimum of, by last year's CPI, 6.9 per cent. But they are speculative comments for Mr Moore.

TAFE Campuses - Consolidation

MR WOOD: I direct a question to Mr Kaine as the Minister responsible for TAFE. I raise a matter of considerable significance in the TAFE sector. Chief Minister, in 1991 what further actions are taking place to consolidate TAFE campuses and what will be the effect of those consolidations on TAFE students?

MR KAINE: I do not recall the specific details of the timing of the consolidation of the TAFE campuses; but there is a program to reduce the campuses down to, I believe, five in the fairly short term, and I think that this year two consolidations will be effected. But I am not sure of that, and I would prefer to be certain of it before I answer that question. I will take that part of the question on notice. In terms of what the impact on students will be, of course, it will mean that some students will have to go to a different campus from the one they currently attend to take the course of their choice. That is a simple fact of consolidation of campuses. I do not know that there will be any student materially or significantly affected by that. The courses will not change; it is just the location of those courses that may change. But I will get a more specific answer as to what consolidations are likely to occur this year.

Petrol - Lead Levels

MR BERRY: My question is directed to Mr Kaine. Mr Kaine, as Minister for the environment, what action are you taking to ensure that lead levels in ACT petrol are reduced from country to urban New South Wales standards?

MR KAINE: We are monitoring this question of the lead levels.

Mr Berry: Still monitoring.

MR KAINE: If you do not want me to answer the question I will sit down, Mr Berry. You throw out these floaters. You think you are going to trap me into saying something that I do not want to say. Well, you will not. The fact is that the area most affected by pollution has been the Civic Centre area. I am told that the percentage of lead in the atmosphere has been reduced by something of the order of 60 per cent in recent years by the use of unleaded fuel and by the introduction by some suppliers of city grade fuel instead of country grade. That is a very significant reduction. The lead levels are way below permissible limits. We are monitoring that. We are encouraging suppliers to eliminate country grade fuel altogether. I think the Government is doing very well. It

is certainly doing a great deal better than the previous Labor Administration did, because you did not even address the question.

I request that any further questions be placed on the notice paper.

Macquarie Primary School

MR HUMPHRIES: Yesterday, following a question from Mr Wood, I advised the Assembly that year 5 at Macquarie Primary School had 36 students and two full-time teachers. In fact, one and a half full-time equivalent teachers are allocated specifically to the year 5 teaching unit. This means that, with the assistance of other specialists, there is more than one teacher present for most - that is, 62 per cent - of the time. During this time students are involved in work on science, music, mathematics, dance, technology, physical education skills and health. For the remaining time - that is, 38 per cent - the students with one teacher present are involved in library, social education, private reading and language arts. I apologise to the Assembly and to Mr Wood for misleading in this regard.

Mr Berry asked about the student-teacher ratio. The ratio with those one and a half full-time equivalent teachers works out at 1:24, which is a better than average ratio. However, that does, of course, come at the cost of having, on occasions, a rather worse than average ratio for that 30 per cent of the time.

As I indicated on the earlier occasion, I am not satisfied with the arrangements and I am prepared to push as quickly as possible to have a better arrangement provided at Macquarie school. I hope that will be the result of an early move of the Independent Living Centre from the Macquarie school.

X-Rated Videos

MR DUBY: Yesterday Mr Stevenson asked whether, as a consequence of John Lark and Graham Carr being convicted of contravening South Australian advertising law, I would be prepared to consider whether they are "fit and proper" persons to be licensed under the Business Franchise ("X" Videos) Act 1990. Unfortunately, Mr Stevenson is not here to hear my response; but under the Act it is the Commissioner for ACT Revenue and not me who has responsibility for issuing, renewing and cancelling licences.

The circumstances under which the commissioner may cancel a licence are set out in section 10 of the Act and I am pretty sure that Mr Stevenson would be aware of that. Mr Stevenson has provided me with a copy of a newspaper article pertaining to this matter and I have forwarded it to the commissioner for his consideration.

House Building Approvals

MR KAINE: Mr Speaker, yesterday I took on notice a question from Mr Connolly which had to do with the ITPA contacting neighbours affected when a building is allowed to be sited closer to a boundary, and he asked whether or not such discussions had taken place in connection with a specific development in Calwell.

In fact there is no requirement under the current design and siting policies of 1973 for consultation with neighbours - and that, I would point out, goes back a long way, and hopefully our draft legislation will change some of these matters. But, notwithstanding the fact that there is no requirement, the ITPA has a practice of consulting neighbours where building proposals may result in a loss of adequate light, ventilation or privacy, and that is defined in terms of the performance standards for those design and siting policies dealing with buildings in relation to side and rear boundaries. So, if it is a question of loss of adequate light, ventilation or privacy, the ITPA does consult even though there is no requirement.

In the case of the particular development to which Mr Connolly referred, only one corner of the building was less than the standard setback of seven and a half metres and the average setback of the buildings is greater than 10 metres. Under these circumstances the ITPA was of the considered view that there would not be any loss of light, ventilation or privacy to adjacent blocks and therefore they believed that consultation was unwarranted. That appears to me, under the circumstances, to be a reasonable decision.

Jindalee Nursing Home

MR KAINE: Yesterday Mr Berry asked a question in connection with the Interim Territory Planning Authority's draft proposal to rezone the land around Jindalee Nursing Home in Narrabundah; and he asked why townhouses are being proposed for the Jindalee site before the detailed plans for its relocation have been made available.

The answer to the question is that the draft variation to policy for section 100 of Narrabundah, as it applies to blocks 2, 5, 11, 12, 19, 20 and 21, seeks to broaden the existing land use policy from "community facilities" to

include residential uses. It should be noted that the draft variation to policy does not preclude the continued use of these blocks for the Jindalee Nursing Home, nor does it place any obligation on the existing lessees to expand the range of uses to which they put their land. The draft variation to policy was prepared as a result of inquiries from a number of existing lessees regarding the redevelopment opportunities and constraints for blocks within section 100.

These inquiries and recent changes affecting section 100 of Narrabundah, notably the reduced traffic along Jerrabomberra Avenue, have led to a planning review for the area. Subsequently the ITPA prepared the draft variation to policy which proposed a broadening of the existing land use policies to provide opportunities for residential development, which was considered to be an appropriate addition to the existing uses.

The Interim Territory Planning Authority will assess public comments received on its draft variation and ultimately submit its report to the Executive for consideration. So, there has been no change, yet; it is a proposal - and it is a proposal to expand the use.

Passive Smoking

MR KAINE: Yesterday Mr Moore asked a question which had to do with the High Court decision on smoking. He wanted me to report back on the ramifications of the decision.

Mr Moore: The Federal Court, actually. It was my mistake.

MR KAINE: The question referred to the High Court decision and it was taken from the proof *Hansard.*

Mr Moore: I corrected it at the time.

MR KAINE: Okay, whatever court it was. Mr Speaker, I think I can say that the ACT Government is at the forefront of protecting its employees from the effects of passive smoking. The Occupational Health and Safety Unit of the Chief Minister's Department, in consultation with all ACT government agencies, has drafted a comprehensive policy limiting smoking in the workplace.

The proposed policy goes further than that inherited from the Commonwealth at self-government in that it aims to protect all ACT government employees by banning smoking in all enclosed workplaces used by blue and white collar employees, not simply in office space. The policy extending the smoking ban is to be considered shortly by the ACT Trades and Labour Council through the normal consultative processes established by this Government. The resulting policy will have joint management and union support for early and effective implementation and I will

make this policy available to all Assembly members for their information once it has gone through the consultation process.

With regard to the private sector, the ACT Occupational Health and Safety Office is examining the Federal Court decision for its implications in the ACT and I will advise the Assembly of the outcome of that examination.

The Occupational Health and Safety Office encourages consultative mechanisms to minimise health risks from passive smoking in the workplace. It has a resource base on smoking issues, and can provide information to employers, employees, and the general public. The OH and S office is the coordinating agency for the Worksafe Australia national consensus statement on smoking in the workplace, and this statement is on the agenda for discussion at the March 1991 ACT Occupational Health and Safety Council meeting. The consensus statement will be made available to Assembly members on request.

PAPERS

MR COLLAERY (Deputy Chief Minister): For the information of members I table, pursuant to section 30A of the Interpretation Act 1967, the following papers:

Interpretation Act - Department of Urban Services - Financial statements for the period 11 May 1989 to 30 June 1990 - Extension of time.

Interpretation Act - Forestry Trust Account - Financial statements for the period 11 May 1989 to 30 June 1990 - Extension of time.

MR DUBY (Minister for Finance and Urban Services): For the information of members, I table the following paper:

> Interpretation Act - Department of Urban Services - Report and freedom of information statement for the period 11 May 1989 to 30 June 1990.

I move:

> That the Assembly takes note of the paper.

Question resolved in the affirmative.

HAGUE CONVENTION ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS
Ministerial Statement and Paper

MR COLLAERY (Attorney-General), by leave: I inform the Assembly that the ACT Alliance Government has advised the Commonwealth Government, on 9 January 1991, that the ACT supports the accession by Australia to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. The formal advice about the ACT's support for the convention was by way of exchange of letters between the Commonwealth Attorney-General, the Hon. Michael Duffy, and me. Members will be aware that I have already written to them about this matter under correspondence dated 9 January 1991.

The convention has been in existence since October 1961 and the parties to the convention comprise some 36 nations, including those with which Australia has significant contact such as Japan, the United States, the United Kingdom and several European nations. The parties to the convention are listed at the back of the convention, which I will table for the information of members at the completion of this statement.

The convention is a technical document and is designed to streamline certification of public documents which have been executed in one contracting nation state and which have to be produced in the territory of another contracting state. At present the system which applies involves a significant amount of time and money being expended by Australian residents in dealing with foreign embassies and consulates to have Australian documents certified for use overseas. This has had a particularly heavy impact on ethnic communities. This is even more onerous when one realises that validation of some documentation requires a series of certificates. The convention recognises that a party to the convention agrees to recognise certification of the validity of a document under a single approved certificate referred to as an apostille. The documents in question range from court documents, including those delivered by a process server, administrative documents and official certificates. The convention does not cover documents executed by diplomatic or consular agents, customs documents or commercial papers.

The consequences of accession to the convention will involve legislative amendments to evidence Acts and the appointment of authorities in each capital city of Australia to certify documentation. Members will recall that, when I tabled the UN Convention on the Rights of the Child and the optional protocols to the International Covenant on Civil and Political Rights on 14 August 1990, I explained that, while the Commonwealth Government has exclusive constitutional power to enter into these international agreements, it prefers not to ratify or accede to these instruments until it has sought the views of the Australian States and Territories.

This Government has also undertaken to put up all such matters for debate in the Assembly. It is in this context that I make this statement; but, in light of the urgency of the matter, during the Assembly break I informed members and gave the ACT Government's support to Australian accession. Naturally, we should fully support this particular convention. I table the following paper:

> Hague convention abolishing the requirement of legalisation for foreign public documents - Text and report, dated 5 October 1986.

I move:

> That the Assembly takes note of the paper.

Question resolved in the affirmative.

BUILDING APPROVALS
Discussion of Matter of Public Importance

MR SPEAKER: I have received a letter from Mr Stevenson proposing that a matter of public importance be submitted to the Assembly for discussion, namely:

> The concern by residents of Calwell and other suburbs at the inappropriate building approvals which have been granted for some dwellings in Calwell.

MR STEVENSON (3.22): This is a matter of public importance, particularly for residents of Calwell, and for Canberrans as a whole. It is important to anyone who is concerned about planning approvals and living in Canberra, the sort of community we live in and how it is planned. Very simply, it concerns a number of residents of Calwell who invested a great deal of money and built houses on blocks of land that were quite expensive, mainly because they offered excellent views.

Building approvals have been given for three dwellings to be built behind those properties on the down side of the hill that will effectively greatly reduce or block out the views from the properties above. The approvals for those buildings are obviously in clear breach of the spirit of the planning regulations. There also appear to be a number of cases where they are in breach of the actual policies and regulations.

The regulations that are mainly used in this area are the NCDC regulations from 1973. A particular document is somewhat ambiguous in its definition of an amenity. It refers to those qualities or conditions associated with a site or locality that are conducive to its better enjoyment for any permitted use. The policies' objectives were to provide for:

> the maintenance of amenity of adjoining houses and to ensure that an acceptable environmental quality is obtained in the neighbourhood.

These planning approvals would appear to be in contravention of that requirement. If you look at the design and siting policies booklet, perhaps the basic principle you get from that booklet is that buildings should be harmonious - harmonious with the environment and with other adjoining buildings.

It was only by chance that these residents discovered the problem. The reason for that is that there is no definite requirement - so the residents are told - that they have to be given notification of potential problems. Indeed, there is a great concern with the height of these three buildings that have been given approval. However, residents were not told. Residents do have a copy of the initial plans which show single storey dwellings, but that has been changed. They are not sure when it was changed. They are not sure why it was changed.

Indeed, it is an interesting situation where you cannot have a look at the plans of a building before the building actually goes up. The statement has been made that the residents in the area could not be shown the plans because they might copy them. I can understand that that could be a valid concern in certain situations. However, I imagine that anyone with a rule and a pen or a pencil could well draw up something letting the people in the surrounding dwellings know what was going on, with no possibility whatsoever of copying such plans. This is not being done. What could happen is that someone could build an anti-scud missile shelter and the first thing the surrounding neighbours would know about it is possibly a warning that scud missiles are coming. There is no requirement that they be told what is happening.

One would say, and I am sure they will, "Ah, yes, but there are regulations covering what can be built". What I am saying is that the spirit of the regulations has been broken and it looks like the actual wording of the legislation has been changed as well. The buildings that are being built are all basically the same. You have three buildings in a row that can be seen from a long way away. They are all the same.

They are laid out diagonally across the block. They are about 20 metres long and very narrow. Obviously they have been set there to take advantage of the view. Indeed, they all have wonderful views. There are no problems with the views across the other road on the down side. But, their view cuts out the view of the people behind. Some interesting statements were made by Richard Johnston of the ITPA at a meeting that Mr Jensen, Mr Connolly and I attended on Sunday on site.

He said that with regard to planning views are not considered. As a major statement it states, basically, that the views are not considered. It talks about privacy. It talks about being overshadowed and other things. One of the amenities not listed is the views. That is an incredible situation. He also talks about the whole area of planning with regard to amenities being a grey area. One would think that the major purpose would be to ensure the harmonious design of buildings, which is what the building booklet talks about. For that to be a grey area is indeed unusual.

Let us have a look at the actual approval that was given and that the Chief Minister spoke of a moment ago. He said that there is only one corner of a building, as I heard, that encroached on the requirement that the back of the building be at least 7.5 metres from the fence. Let us have a look at the particular statement here. Under Policy 4: Buildings in Relation to Rear Boundaries, it talks about performance standard and quantitative standards. Policy 4.2 states:

> The minimum distance between the rear wall of a single storey building and the rear property boundary shall be 4 metres and the corresponding distance for a 2 storey building shall be 7.5 metres.

It says it clearly. It does give an allowance for this to be looked at but only where it does not encroach on neighbours. If it does, then it should not have been done. The fact that that has been allowed would appear to be a breach of the regulations.

There is an unusual situation. Apparently the developer's private surveyor gives a reading of the ground contour level one metre higher than the Government's surveyor. There are a number of questions that come out of this that Mr Jensen may like to address: Firstly, how is that the case; secondly, which is being used as the valid ground contour level; thirdly, there is some disagreement as to whether or not it is a two-storey or three-storey building. The first storey starts 1.8 metres from natural ground level. Above that you have two storeys of dwelling. The suggestion that it is a two-storey building seems a little bit unusual. It is certainly the height of a three-storey building.

In dealings with the bureaucracy on the matter - the planning people - Mr Johnston has been out on site a number of times, and he deserves to be congratulated for that. Mr Jensen has also been on site on a number of occasions. However, no valid action has been taken. There has been a lot of concern and sympathy. The building plans have not been given to the residents so that they could see exactly what is happening. They were trying to get hold of a copy of the building code; but the department said that they did not have any, and that the people could get them for some

$75 or $80 through the Government Printer, but they were also told that they would not be ready for some weeks. That is not providing a public service to people who need to look at the regulations to find out whether or not they were followed. We should look at that and note that for the future, to make sure that people are given assistance in these difficult planning areas.

Talking about design and siting policies, the policies, overall, state:

> The Commission firmly subscribes to the belief that an individual should, in the ordering of his own affairs, suffer the minimum restrictions and inconveniences imposed by administrative controls. On the other hand, Canberra is a unique city. As a national capital it has special purpose and character and this imposes responsibilities on persons planning the city and obligations on those carrying out development in it.
>
> In exercising control over the development of the city, the Commission is guided by a desire to have quality, character and permanence consistent with the concept of a national capital in all construction. It seeks to develop an atmosphere of civil dignity and domestic amenity. Its aim is to ensure that development in all forms will not take away but rather add to the value of the total investment in Canberra. That is to say, development must complement and enrich its surroundings.

Well, it will not enrich the surroundings if it goes ahead with these places in McManus Place, Calwell, because their value will drop markedly if that happens. Indeed, the general look of the place, with three buildings practically the same and all in line, will do nothing for the general amenity of the area.

In part II, regarding policies for detached houses, the introduction states:

> In relation to a detached house, the objectives of the policies are to provide for the residential amenity of the occupants of the house and the maintenance of amenity of adjoining houses and to ensure that an acceptable environmental quality is obtained in the neighbourhood.

Once again, the spirit of these objectives has been broken. As far as side widths go, under the heading, Buildings in Relation to Side Boundaries, Policy 3, Performance Standard, subsection (d) states:

> To create a spacial separation between detached buildings, for reasons of civic design.

Because these places have been placed diagonally across the blocks there would be doubt that that was certainly complied with in spirit. Policy No. 7 of the ITPA design and siting policies talks about the height of the buildings and states:

> Detached houses shall not be more than two storeys in height ... designs should not be adapted to take advantage of any allowance for basement and attic in circumstances where the design is unsuitable both in relation to the site and the neighbouring buildings.

With regard to building over a normal two-storey level there is a problem caused to the neighbouring buildings. Once again, the spirit and the implication of these regulations has not been followed.

The whole thread of what goes through these regulations is that the whole area should be in harmony; buildings should harmonise with each other. We have a situation where there are serious concerns by many people in the area - not just neighbours. At one meeting there were some 120 people, and some 80 people were at another meeting. There is a lot of concern there; as well as from other people around Canberra. Let us have a look at what the solutions are. One of the solutions, for a start, is that, if the people in front - the developers - were prepared to put a flat roof on, that certainly would save some space, and give them some view back. Indeed, where the Chief Minister says that there has been an encroachment of the 7.5 metre requirement to the rear boundary, if that was not allowed, that would also solve some of the problem.

There are unanswered questions, and Mr Jensen might like to take this one on: Were the three blocks treated as a group for approval purposes? Were they treated - though they have single leases - as a group for approval purposes? The people in that area have been told that there is no appeal possible. Again and again a lot of people have said, "Look it is a terrible thing"; or, "It does not look good at all"; or, "The buildings are not particularly attractive"; or, "Perhaps it would not happen again because in some months the ACT is going to have its own regulations and that will tend to solve this problem". However, none of these provide an answer to the existing trouble that has been caused.

This Assembly has the power to act as if there were just regulations, and act accordingly. We need to seriously look at that. There are some structural concerns as well. We need to look at why the initial plans were approved and then changed. What was that planning approval situation? I think it is most important that there be a meeting between the Minister, the planning people and residents as soon as possible. That is what I would call for - a meeting where the residents have an opportunity to present their just concerns.

MR KAINE (Chief Minister) (3.37): Mr Stevenson has raised a matter of concern that did not arise in the ACT only yesterday or last week or last month. It has been a matter of some concern for many years. Over a period of years there have been many cases of differences of opinion between neighbours as to what should be done on particular pieces of land. It is a matter that requires some sensitivity. I think Mr Stevenson gets onto dangerous ground, however, when he starts talking about the spirit of the law or the spirit of regulations. Regulations are quite specific. The standards are quite specific and I do not know how you can talk about the spirit of standards and regulations. They are either applied or they are not.

Given the title of Mr Stevenson's matter of public importance, I thought that he was going to proceed from the specific to the more general. However, he confined his remarks almost entirely to a case at Calwell and I will do the same and attempt to deal with the matters that he has raised. The case in point is where a builder representing three lessees has applied to construct identical houses on three adjacent blocks of land. In considering applications the planning authority assessed them against the design and siting policies and against any special conditions which were available at the time of the sale of the blocks. These applications conformed with the design and siting policies and in this case there were no special conditions. Quite properly, the applications were approved.

The arguments advanced by the nearby neighbours opposed to these houses relate to four specific matters: Loss of amenity; the height of the houses; the proximity to the rear boundary and loss of privacy; and the loss of views. I will deal with each of those separately. All of these issues were raised in a complaint lodged by nearby residents with the ACT Ombudsman, and I will include in my remarks on each of these matters the Ombudsman's response, because the Ombudsman is an independent and objective person with no political or other axe to grind, and he is not concerned about whether an ACT public servant or politician is right or wrong. I think his views, therefore, are relevant.

May I say at the outset that the ACT Ombudsman concluded that the ITPA and the building section officers acted reasonably in relation to the approval of the subject plan and the granting of the builders licence. Firstly, I remind members that the relevant basis for the consideration of these houses is the design and siting policies of 1973. Whether we like them or not, we have a set of policies that we have inherited, and the design and siting of every house is measured against them by competent and experienced officers.

Let me turn now to the first point made by the objectors, and that is the loss of amenity. The design and siting policies have as their objectives to:

> ... provide for the residential amenity of the occupants of the house and the maintenance of amenity of adjoining houses and to ensure that an acceptable environmental quality is obtained in the neighbourhood.

In addition, the policies state:

> The Commission -

that is now the ITPA -

> expects the builders and owners of houses in Canberra to take advantage of opportunities provided by the policies for achieving a harmonious and satisfying environment for living.

There is no provision in the policies to require varying designs for adjacent houses, and I am informed that other examples of adjacent identical houses exist, for instance, in places like Bruce Heights. It is not unusual to find that somebody builds houses of the same design. Members may be interested to know that the Ombudsman's consideration of this issue led him to conclude:

> In the circumstances I do not consider that it was unreasonable for the ITPA to approve the plans as they now stand.

The second issue is the question of the height of the buildings. This part of Calwell is fairly steep and the subject blocks are on the high side of the street. The lessees, like many other residents of Canberra, wish to have two-storey houses. To achieve this on these steep blocks, the houses have been sited parallel to the contours to minimise cut and fill; nevertheless, the ground floor level will be above the natural ground level. The ITPA has placed a restriction on the houses, requiring the ground floor level to be no more than 1.8 metres above the adjacent external ground surface. It was claimed by neighbours that this constituted a three-storey building. However, the Ombudsman observed:

> An examination of the relevant files showed that the proposed buildings are two storeys.

The fact that the foundations are above ground, because of the contours, is entirely irrelevant to that.

The third issue here is the proximity to the rear boundary and the loss of privacy. This was an area in which the ITPA exercised a discretion provided for in the design and siting policies. It is also an issue closely examined by the Ombudsman, and his response addresses it very eloquently. I will quote it in full. He said:

Policy 4.2 states that:

> "the minimum distance between the rear wall of a single storey building and the rear property boundary shall be 4 metres and the corresponding distance for a 2 storey building shall be 7.5 metres".

While your complainant has identified that the buildings are in apparent breach of this policy, the ITPA has a discretion to give design and siting approval "under special circumstances when the performance standards can be achieved without complete compliance with the quantitative standards". This may be found at Policy 1.1. In this case only a corner of each building extends beyond the 7.5 metre setback, such that the average setback is over 10 metres. In addition, the houses also have a very limited window area on their rear faces.

The relevant performance standard at clause 4.1 states:

> "Requirements for rear distances are intended to allow adequate light and ventilation, to preserve the privacy of neighbours and to ensure the provision of a service yard.".

Having examined the plans and had the scene viewed, I am satisfied that the ITPA acted reasonably in approving a variance to the Policy.

That is the Ombudsman - not me, not the ACT Administration; the Ombudsman.

Finally, Mr Speaker, I come to the question of the loss of views. The Ombudsman himself described this as the heart of the complaint. Naturally, when people buy a block or a house which has good views they want to retain those views. But the plain fact is - despite Mr Stevenson's assertion and his questioning - that nobody has a right to a view across a neighbour's block. Nor, should I say, does a neighbour have the right to try to impose restrictions on his neighbour's opportunities for the use of his block just to retain his own amenity. That simply is not an entitlement at law.

As I said at the outset, the yardstick by which all houses are assessed is the design and siting policies, and they must be administered in an even-handed way. In this case, I believe that the ITPA has acted in an even-handed and proper way, and its actions in approving the plans of these three houses have been endorsed by the Ombudsman. I will table copies of the Ombudsman's letter for the information of members, Mr Speaker. I table it now.

MR CONNOLLY (3.45): Mr Speaker, Canberra is a planned city. Anyone who has had dealings with getting approvals for building work knows that. Often it is said that it is overplanned. But, on balance, most people accept the high degree, and perhaps intrusive degree, of planning control that is provided, and traditionally has been provided, in Canberra because they assume that that strict planning control is dedicated to ensuring that everybody gets a fair go and that Canberra is planned in a way that preserves the character of this city. Mr Stevenson, in his remarks, quoted extensively from the design and siting policies of, originally, the NCDC but which continue in force today and which have legislative effect under the 1973 Buildings (Design and Siting) Act. He quoted extensively from those to set out what is taken to be the goal of the Canberra planning system.

The residents of Calwell, like probably all other Canberrans, assumed that that planning system, that detailed and complex planning system, would ensure that they would get a fair go. But, sadly, it appears that that has not been the case. The heart of the problem here, I think, is that when the Interim Territory Planning Authority exercised its discretion to allow a building to be set further back on the rear building line than is normally permitted it did not consult with the neighbours.

Mr Kaine today, in response to a question asked yesterday, gave the Assembly the benefit of the considered response of the ITPA on that point. That was, as I understand it, to this effect: "We do not consult when we allow a setback on a building because there is no requirement under the Act, and our practice is to consult neighbours only when it affects light, ventilation or privacy". Well, as for light, it would seem that you would have to be right up on the back fence to affect that. As for ventilation, again, it is hard to imagine where one building affects the ventilation of another.

As for privacy, the interesting aspect of the privacy complaint is that it would seem that if this building at Calwell had a large number of windows, or even the normal number of windows, perhaps privacy would be an issue. In fact, this building has an extraordinarily low level of windows. As I understand the complaints of the existing residents, they are actually concerned that what is going up is an enormous brick wall, with very few windows. Because it is an enormous brick wall with very few windows, privacy is not an issue, and therefore the ITPA presumably thinks they do not have to consult. It is almost a reversal of what one would expect. From the point of view of the existing residents' aspect of this building, one of the offensive aspects is that it is a brick wall with little in the way of windows, and yet that, in the ITPA's reasoned statement today, is a reason for not consulting.

But, Mr Speaker, I think Mr Kaine's remarks yesterday were of real significance. He decided to lay into Mr Stevenson and knock him for his reference in his remarks to the spirit of the planning processes, and I think that was very unfair. I think people do have an expectation that the planning system is conducted in a fair way here, and that is an expectation, Mr Kaine, that you shared yesterday. I asked you yesterday, in question time, what was the policy of the Interim Territory Planning Authority when a setback is allowed to exceed the normal standards. My specific question was:

> ... does the ITPA contact a neighbour affected when a building is allowed to be sited closer to that neighbour's boundary than would normally be permitted? If it does not contact the neighbour, why is that the case?

You said yesterday:

> It is my understanding that there is no consultation if an approval is in accordance with current regulations as applied. To what degree, when there is a variation from the current standards, there is some form or some degree of community consultation on a day-to-day basis, I do not know. But I would expect officials to make sure, if there was any variation from the standard, that they would ensure that at least the immediate neighbours took no exception.

So, Mr Kaine, yesterday you acknowledged the fairness of the expectation that every citizen would have here, that in the spirit of these planning laws the ITPA would consult when there is a setback. Yet we are told today that that is not the case; that in fact these criteria of light, ventilation and privacy are applied before there is any consultation.

I would suggest that your statement yesterday was the fair thing, the policy that one would expect in the spirit of the Canberra planning system; that what you expected reasonably yesterday is what the neighbours, the residents of Calwell, reasonably expected. But, of course, that was not the case; there was no consultation and as a result this building was approved. The tragedy for the residents of Calwell is that, with the new planning package that is coming into place, we hope, through the middle part of this year, these problems will not or should not recur, because there will be rights of appeal, there will be requirements for notification and consultation. But that is cold comfort when you find that the development has gone ahead and totally built out your views.

It is all very well to take a legalistic position. Mr Jensen took that position at the meeting the other Sunday afternoon, and he said, "There is nothing that can be done. The siting approval has been given and there is no power to

revoke that under the Act". I accept that what he said is legally correct; but really that is putting us in a position that we were in pre-self-government, saying, "Well, the authorities have conducted themselves in accordance with the letter of the law and there is nothing that we can do. The approvals just have to take their course and, if you are adversely affected, so be it".

I think that is an unsatisfactory response from Government. I think the acknowledgment yesterday by the Chief Minister that he would expect that neighbours would be consulted really goes to the heart of the matter here. That did not occur. Had it occurred in relation to the setback, the neighbours would have had the opportunity at an earlier stage to see what was being proposed and would have had the opportunity to discuss the matter with the person who is proposing to build this group of houses. There would have been an effective form of negotiation because the person seeking to build these houses was seeking dispensation from ordinary rulings to enable him to get this additional setback. If the neighbours had been told of that at the time and brought into the picture, there could have been a satisfactory trade-off where the person was allowed to have the setback on condition, perhaps by going down somewhat and digging footings into the back of the hill, thus keeping his two-storey house and allowing the existing residents of Tuthill Place and McManus Place their views as well.

All that these residents were expecting was that there would be a fair go. A person who has built a two-storey house up on a hill should not expect that they would continue to have superb views from their ground floor or basement; but these residents did have an expectation that, when the block immediately below them was developed, they would retain a view from their top storey. I am sure that no-one who buys a block on a hill expects that they will always have unimpeded views from both storeys, particularly when they understand that they are in an area where a two-storey building can be constructed; but it certainly must have come as a shock to be told that a two-storey building can be a two-storey building with a 1.8-metre high buildup from which the first storey commences. Now 1.8 metres, I think, is about six feet and I am about six feet tall, so it basically means that, if I am standing on the top of a two-storey building, that is the additional height that you can find imposed upon you.

Mr Speaker, it is unusual for me to compliment Mr Stevenson, but the case was very well put by him in his opening remarks. This is a case where people had an expectation that they would be fairly treated, an expectation shared really by the Chief Minister in his remarks yesterday when he said:

> ... I would expect officials to make sure, if there was any variation from the standard, that they would ensure that at least the immediate neighbours took no exception.

If that had happened this dispute would not have occurred. It did not happen, that ordinary expectation of fairness was not applied, and the Government really has an onus to find a solution to this problem.

MR JENSEN (3.55): Mr Speaker, as the Chief Minister has said, this matter has been the subject of independent assessment by the ACT Ombudsman as to the conduct of the government agencies involved. The Ombudsman has concluded that the actions of the ITPA and the building controller have been correct and reasonable. Design and siting approval, I am advised, was granted in December last year for the three houses by an authorised officer of the Interim Territory Planning Authority on the basis of Design and Siting Policies 1973 as amended up until 4 June 1984. These policies were, in fact, gazetted in January 1989 in a process which I will cover further in my remarks. Building approval had also been granted by the ACT building control office.

At this stage I want to take issue with Mr Stevenson on one point. He said that the residents did not know the date when the change was made from single storey to two-storey. This is not so. Following my inquiries with the office of the building controller on this matter, I was advised that approvals for two-storey buildings were granted by the builder controller as follows: On block 2, 12 December 1990; block 3, 31 October 1990; and block 4, 31 October 1990.

Mr Stevenson: They have two different dates; that is the problem.

MR JENSEN: Mr Stevenson said that the residents had not been informed. I am saying, Mr Stevenson - through you, Mr Speaker - that this information was passed to the residents on Sunday. I am advised, as the Chief Minister has indicated, that such approvals cannot be withdrawn - I will comment further on that later - and in all reasonableness should not be, because applicants are entitled to rely on formal decisions by government authorities as a basis for entering into financial commitments and building contracts.

However, since objections to the proposals were raised following their approval, the ITPA and I have attempted to facilitate discussions between the builder and the existing residents in order to try to offer an opportunity for voluntary alteration to the design in response to neighbours' concerns because, as I have indicated already, the approval cannot be overturned. I have asked the Attorney-General, Mr Collaery, to re-examine this issue of law and he has agreed to do so. I am sure that as soon as that information is available Mr Collaery will make that available. I also indicate to the Assembly that I provided to Mr Connolly some information on advice that I had received from the Interim Territory Planning Authority in relation to their experience. Mr Connolly is fully aware of that.

Mr Connolly: I acknowledged in my speech that it is legally correct.

MR JENSEN: I noted that and I thank Mr Connolly for making that point. While the builder has, in fact, offered some concessions which would vary the external appearance of the buildings from each other and make more substantial changes to the one building which has not been commenced, the residents in Calwell and in the immediate vicinity of the development are still concerned and not happy with these proposals.

I am still hopeful of a solution to this matter which will be acceptable to both sides. I am working to reach a solution. It is complicated to a certain degree, Mr Speaker, by the fact that I am not able to get the parties together. The developer at this stage is not prepared to negotiate directly with the residents and I am being used as an intermediary. I am now waiting for some more information following my meeting with the builder on 7 February 1991 and subsequent discussions with the immediate neighbours. As soon as I get that information, Mr Speaker, I have agreed to pass it on to the people involved and discussions will continue from there.

Mr Speaker, the essential issue here is the extent to which property owners, particularly in a newly developing area, should be able to influence the design of other people's homes. This matter is the subject of consideration in the draft Territory Plan. One possibility is that a discretionary decision, such as in this case the decision to permit the corner of the building to be constructed beyond the rear setback line, would be subject to neighbour notification - something that I am concerned to see implemented. I will be doing my best within government to make sure that that takes place. However, such a possibility, of course, will need to be the subject of public comment in the draft Territory Plan process before it is adopted. Given such notification, the draft Land Use (Approvals and Orders) Bill then foreshadows the right of appeal to those who submitted comments or who have been consulted in the process.

I am also aware that the appeals process is designed to operate when approvals are granted in accordance with design and siting guidelines that apply at the time. I hope that the design and siting policies will be given some process of amendment in the not too distant future, once the Territory Plan is identified and solved. As I have indicated to the people of the Calwell area, perhaps the issue of amenity in these sorts of areas may be considered as part of that process. I believe that this process that we are currently working on will clarify the position for lessees and neighbours and therefore reduce the doubt in the public's mind that appears to be associated with this case. The right of third party appeals will also provide an opportunity for independent review of the decisions of

the planning authority before those decisions have taken effect - something which is not available at present. This is one of the problems with the current system that we have in the ACT.

Unfortunately, Mr Speaker, the issue of planning appeals of this nature has been a problem for some years. My colleague Mr Collaery is well aware of the problems associated with this, as are many other residents. This is because, for some years, these issues came within the province of the old National Capital Development Commission and, as a statutory authority, the commission applied design and siting principles and other planning policies which had no basis in law. In other words, they were not statutory documents. These policies were without legislative back-up. In those days, of course, the NCDC had no legal obligation to consult at all. But, as I have already indicated in this place on another occasion, they were starting to work towards that view as self-government arose. Officers in the Interim Territory Planning Authority and residents that I have dealt with are fully aware of my views in relation to the rights of residents to be consulted in circumstances like this. I will continue to work very hard to ensure that these matters are raised as quickly as possible.

Mr Speaker, since self-government, section 73 of the Australian Capital Territory (Planning and Land Management) Act has provided that the policies of the NCDC which were gazetted in January 1989, the same date on which this policy was gazetted, now have statutory authority. During the transition period, which is still in place, these policies can be changed only for individual blocks on sections of land and not as general policies. In fact, Mr Speaker, it is not possible at this stage for us to change these policies because they are general policies, not specific policies.

I am advised, Mr Speaker, in response to a question from Mr Stevenson, that discrepancies in the survey of the site will be resolved when the walls are going up. The building section is keeping a close eye on the work and has requested an engineer's certificate for the footings. The applications, Mr Speaker, were dealt with as a group by the planning authority. In fact there are approximately 8,000 to 9,000 design and siting applications dealt with each year. About two-thirds to three-quarters of these are residential and are handled by three staff members. Applications were approved on 18 and 19 December. That is in response to those points raised by Mr Stevenson. I will take up the issue of the survey outside this place. We will continue our endeavours to resolve this issue.

Mr Stevenson: I raise a point of order under standing order 47. In regard to the point that Mr Jensen made about the 12 December approval for the plan, and two October

dates, Mrs Noreen Parker, one of the residents, was sent a letter stating that it was 19 December. She has also heard 12 December mentioned. That was not a date that Mr Jensen mentioned and that is the confusion.

MR MOORE (4.05): I hope that Mr Jensen will be able to clarify that matter in a short time. Mr Speaker, I welcome hearing that the Government is going to re-examine the process of approval because that process has fallen down here. It is not good enough for the Chief Minister in question time - I think in response to a question from Mr Connolly, or maybe a question from Mr Stevenson the other day - to stand up and say, "Well, everything has been done according to the process". Clearly the process has some major fault in it. Anybody who has been out to Calwell and stood there and looked at what exactly is happening would, no doubt, understand that there is a major problem as far as this particular process goes. An improvement in the process is certainly a very important function. That this could happen is absolutely appalling.

It was interesting that Mr Collaery should refer to Rocky Knoll, because that case really is the reason why Mr Collaery is in this house.

Mr Collaery: It is not the only reason.

MR MOORE: It was the original motivating force. That drew Mr Collaery's attention to the fact that there was a lack of consultation, that there was a difficulty with the processes.

I am not saying that it was the only reason. Do not mistake me. What I am saying is that Rocky Knoll was a very important factor as far as Mr Collaery was concerned. I strongly recommend that he go out to Calwell and have a look.

Mr Collaery: I have looked at it. I have been there by helicopter. I have hovered over the house in a helicopter and looked at it.

MR MOORE: I welcome Mr Collaery's interjection that he has looked at it from a helicopter. I am sure he has a really good idea of the line of sight. I am sure Mr Collaery gained a good idea from the helicopter of the line of sight. I am sure he would have appreciated it if the Minister at the time, Clyde Holding, had flown over the top of Rocky Knoll in a light aircraft and felt that he had a case.

Mr Collaery: I would have shot it down.

MR MOORE: The emotion that Mr Collaery shows, even now, is quite appropriate. It is understandable that he would have shot him down. We realise that Mr Collaery is talking metaphorically; nevertheless, the extent of his emotion comes through in his voice. Mr Collaery, it is how these

people feel. Protect them. Use your influence in the Government to protect these people and to protect the reason why they bought those particular properties, why they spent the sum of money they did, why they chose this rather beautiful site in Calwell to build their houses. They now find that other houses are about to be built which will ruin all that. There has been a failure of the process to look after them and to protect them. That really is what we are talking about.

A short while ago we had Mr Jensen talking about the contours. I will just explain that. Mr Connolly pointed out that he is about 1.8 metres tall. It is equivalent to Mr Connolly standing on top of the roof of what people expect in a two-storey house. But also, when there is a one metre discrepancy in the contours, we expect yet another metre on top of Mr Connolly's height. Quite clearly, the view will be obstructed by that and the amenity that these people are entitled to is going to be ruined. Mr Jensen says, "Don't worry; the contour problem is going to be resolved when the walls are built".

Mr Jensen: I never said "contours". I said "heights".

MR MOORE: The heights of the contours are going to be resolved.

Mr Jensen: I said the height levels as opposed to contours.

MR MOORE: The height levels. That is exactly what we are talking about, Mr Jensen - the height levels, the metre discrepancy. The height levels are measured according to the contours. So we are now talking about that being resolved after the walls are built. It is not good enough.

The Government must wear some responsibility to look after people under these sorts of circumstances. They had a reasonable expectation, a fair understanding, of what they were buying into and what was going to happen. That fair expectation, for whatever the case, for whatever the reason, has been dashed. The Government does not have to accept fault, but it must take some responsibility to see whether there is any way that it can be restored. If it means going back to the plans, taking out the foundations and wearing some of the cost, or negotiating the cost with the residents for changing the concept so that these houses are dug further into the hill in order to resolve the problem, then so be it.

Occasionally the community as a whole must wear the cost of looking after something that has gone wrong in the process. Even if that process technically has been followed, clearly in the spirit there has been a breakdown. Mr Collaery, of all people, knows exactly what it feels like to be on the receiving end of this. It is to him in particular, and to Mr Jensen, that I appeal to use the Government's influence to see what they can do to resolve this in a satisfactory

way. It will not be enough to continue the attempts. Mr Jensen made good attempts to negotiate a settlement. Clearly, a negotiated settlement simply is not going to - - -

Mr Jensen: Under difficult circumstances, I might add.

MR MOORE: Mr Jensen interjects, "Under difficult circumstances". I do not think anybody should take away from the attempts that Mr Jensen has made to negotiate, to act as a go-between under most difficult circumstances. I think credit should go to him. The reality remains that this is not something that can be negotiated in that way. It is still not enough. The situation has to be looked at much more carefully. I think it is going to require some much greater response from the Government on behalf of these people.

It is, clearly, a matter of public importance that Mr Stevenson has raised and, clearly, the Government should show some sympathy to the people, should show some understanding and should reflect on what they can possibly do. I see that Mr Collaery is interested in making a comment. Rather than going on in the same vein, I shall cut my speech and allow him the chance to add a few words, if he happens to beat Mr Wood to his feet. See whether you can do the same.

MR COLLAERY (Attorney-General) (4.13): I rise as Attorney-General to endorse what my colleague Mr Jensen said to the effect that my Government Law Office is looking again, at my request, or will be looking again, at my request, at this issue. I want to remind members of the house of the situation that pertains - it was put eloquently by both of the Government speakers - and that is that we have a design and siting approval. All of us here understand that those procedures will go out when the new planning legislation is in. The problem that faces us is how to deal with this situation, having regard to any other like situations in the Territory, and having regard legally to the implications of our undoing now the legitimate expectation that has been given to the proprietor of these blocks. The legal issues that I will be asking the Government Law Office to look at include the question as to whether, if the Government did intervene and if it had the powers to frustrate these building operations, the costs are not simply those of the footings but also the loss of expected profits, the loss of expectation on the sale which, as we all know, may extend to many hundreds of thousands of dollars.

Given the margins that have been in issue, for example, in the school closures debate, I am sure that Mr Moore and other members will appreciate that there are some very serious questions to look at before we jump in and do anything of any nature. My legal colleague Mr Connolly will be well aware of the limit to which retrospectivity is

traditionally allowed in legislative change in situations where rights can be affected. We have all said things here about the problems of retrospective legislation.

It does appear, on advice available to me, that there is no scope, as Mr Kaine mentioned, to alter the current approvals. There is scope, of course, always, for this Assembly to jointly take the responsibility were it to plunge into retrospective legislation. We all caution ourselves about doing that, do we not, because it is a monstrous precedent and a very unwelcome one. Were we to do that, I doubt that, in morality at least, we still would not have to bear up to a claim for compensation. That quantum is a very important issue. I believe that all members here, although we have taken a little bit of political point scoring in this debate, understand the situation that has arisen. The Government Law Office will be asked to see whether there are any legal avenues in the matter, bearing in mind the other matters I have mentioned.

MR WOOD (4.16): Mr Speaker, people's rights should not be restricted or inhibited simply on the ground that there does not appear to be anything that we can do. I know that the various rules we have and for which we are substantially responsible do lay down what should and should not occur, but where citizens' rights find difficulty in working their way through established rules I believe that we ought to bend everything we can to see that those rights are upheld.

I have not seen this property, but I have been briefed by my colleagues in this chamber, and I believe that the people who already live in this area do have a legitimate complaint. We are supposed to be an enlightened planning city, a model for other parts of Australia, if not the world; yet I know that in other parts of Australia, were this situation to arise, the citizens would have been informed at an early stage, before planning approval was given, that there were proposals that could impact on their building.

Mr Jensen: Not so, Bill.

MR WOOD: I am not talking about Canberra; I am talking about other places in Australia.

Mr Jensen: Yes. It is not so.

MR WOOD: Well, I will tell you about them. You have only got to go down to the coast, not far from here, to find that that does occur. It is not very far away at all. People are refused a building permit if their building will obstruct a view. I know cases where that has occurred. So this enlightened community has left, in the past, a gap that ought to be filled. It may be that because we have a policy in the ACT that does not allow hills generally to be built upon, although obviously we do go up the sides to some extent, the problem has not arisen more in the past.

I do not know how long it is going to take - it seems to be an eternity - but we will, at some stage in the future, be moving into new legislation concerning planning, and under that legislation, I understand, there will be avenues for people to appeal to the Administrative Appeals Tribunal if they believe that planning decisions have an adverse effect on them. Given that there seems to be a gap here and given that we are moving to a situation where appeals will be possible, it seems sensible that we should all bend our maximum effort to resolve this issue. It would have been good if the developers of the project had had consideration for their future neighbours. That does not seem to have occurred on this occasion. It would have been good if they had taken every step that they possibly could to keep their roof-line down and to keep their building away.

I was in this situation many years ago when I built a house on a hillside north of Cairns. In the end I built well into the ground and I put a flat roof on my house so that my neighbours on the top side had minimal disruption to their view. I was quite happy to do that and my neighbours were pleased that I did so. I think that is the sort of thing that we need to do. Unfortunately it has not happened on this occasion. It seems necessary for considerable pressure to be applied, if only the pressure of members taking an interest and the debate in this chamber, for the developers to lower that building somewhat, to put a flat roof on it, to take it down on the contours a little more so that the people above them receive the justice that I think is due to them. I would urge all members who have an involvement in this matter to continue their efforts to protect the people who have already built there.

MR JENSEN: Mr Speaker, I wish to make a personal explanation under standing order 46 in relation to an issue on dates.

MR SPEAKER: Please proceed.

MR JENSEN: Mr Stevenson made a comment in relation to some confusion about dates. The dates that I gave in relation to the approvals for blocks 2, 3 and 4 as 12 December, 31 October and 31 October 1990 related to approval for a second storey. There were subsequent other minor approvals granted by the building section on the following dates: Block 2, on 16 January 1991; blocks 3 and 4, on 12 December 1990. That may be where some of the confusion arises.

MR SPEAKER: The discussion is concluded.

HIV, ILLEGAL DRUGS AND PROSTITUTION - SELECT COMMITTEE
Interim Report

MR MOORE (4.21), by leave: I move:

> That the Assembly authorises the Select Committee on HIV, Illegal Drugs and Prostitution to present an interim report on prostitution in the ACT.

As members will be aware, the select committee was established without a reporting date and with the idea that the committee would have some role in assessing community opinion and a role, in terms of consultation with the community, in developing an understanding of the very complicated and sensitive issues around illegal drugs and prostitution. The committee itself determined - the evidence will be presented - that there appears to be a very small relationship between HIV and prostitution. It therefore separated prostitution from the issue of HIV and illegal drugs and seeks to present an interim report. We would be seeking to present that report on 21 March. I would like to say to members of the Assembly that we intend to bring down the final report in the last sitting week in June, which will be quite early in June. The full report will be put down at that stage.

The committee appreciates the unusual procedure of a select committee not having a reporting date. It believes that it has been particularly useful in raising public awareness and in giving us the opportunity to talk to people and to prepare the report in the best possible way. We hope that the Assembly will approve the interim report on prostitution.

Question resolved in the affirmative.

ADJOURNMENT

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

> That the Assembly do now adjourn.

Youth Camp

MR MOORE (4.24): Mr Speaker, for a minute I thought we were not going to get the opportunity to speak in the adjournment debate. Today I would like to relate to members of the Assembly an experience that I had on the weekend. During the weekend I was invited by Youth Insearch Foundation Australia Inc. to attend one of their camps at Mittagong. I accepted that invitation, Mr Speaker, and spent a number of hours watching, listening and participating in the work of those people with youth

who are at risk. Those young people came from as far away as Brisbane, Sydney, Canberra and some of the other cities in New South Wales.

There were highly emotional times there. I heard stories from people who had been sexually abused as children and as quite old children, people who at less than the age of 20 had already been on the streets some six years, had been alcoholics and had been addicted to drugs. They were being dealt with in a non-religious and non-political atmosphere that encouraged them to look after themselves, to realise that there were alternatives to drugs and to build up their self-confidence so that they could deal with the world around them. I hope to spend more time with that particular group and with other youth groups in order to look at the different methods that are used to help people who unfortunately come into this category.

The other thing that was most influential on me at that stage was that a number of the parents had come to the camp with these young people. I thought it was tremendous that that group made an effort to get parents and children working together so that they could see the effect that love for one another could have and how much it could help if they took a rational and loving approach to each other. I am pleased to have had that opportunity.

Question resolved in the affirmative.

Assembly adjourned at 4.27 pm