DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

17 October 1991

Thursday, 17 October 1991

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

PUBLICATIONS CONTROL (AMENDMENT) BILL 1991 [NO. 2]

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.30): Mr Speaker, I present the Publications Control (Amendment) Bill 1991 [No. 2]. I move:

That this Bill be agreed to in principle.

The purposes of this Bill are to establish a scheme whereby some films may be advertised before they have been classified and to prohibit the publication of advertisements for unclassified films and films which have been refused classification.

The film industry has been concerned for many years that much potential revenue is lost because in most Australian jurisdictions films must be classified before they can be advertised. The loss occurs because of advertising opportunities missed while films are in the final stages of production; for example, for sound dubbing after filming. In some overseas jurisdictions, such as the United States and some Canadian provinces, censorship schemes allow unclassified feature films to be promoted as "coming attractions".

The scheme set up by this Bill will allow 30 films each year to be advertised before they are classified, provided they meet certain conditions, which will be set out in the *Gazette* by the Commonwealth Attorney-General. Only films for which it is expected that a general exhibition, parental guidance or mature rating will be granted will be eligible for this exemption. "R" and "X" films will not be included. The films will be viewed by the Chief Censor and may be given an exemption. When the films are complete they will be classified and the exemption will cease.

This Bill will also prohibit the advertising of films which have not been classified and films which have been refused classification. This will mean that films which the censor has refused to classify because they contain objectionable material, for example, scenes of sexual violence, cannot be advertised. This Bill provides a model which will be adopted in all other Australian jurisdictions and will establish this scheme throughout Australia. I now present the explanatory memorandum for this Bill.

Debate (on motion by **Dr Kinloch**) adjourned.

LAW REFORM (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.33): Mr Speaker, I present the Law Reform (Miscellaneous Provisions) (Amendment) Bill 1991. I move:

That this Bill be agreed to in principle.

This Bill amends the Law Reform (Miscellaneous Provisions) Act 1955. In conjunction with the Compensation (Fatal Injuries) (Amendment) Bill 1991, it will give effect to the recommendations of the ACT Community Law Reform Committee in its third and fourth reports. The Community Law Reform Committee prepared those reports before the change of government. The Assembly has already passed legislation giving effect to the first two Community Law Reform Committee reports, dealing with the Crimes Act and occupier's liability.

In its third and fourth reports the committee recommended a number of important changes to a number of different aspects of actions for damages. Members will recall that the third and fourth reports were tabled in this Assembly yesterday afternoon. In its third report, the committee recommended the abolition of the defence of contributory negligence in breach of statutory duty and fatal accident cases.

The committee also recommended increased compensation for funeral expenses. In its fourth report, the committee recommended the abolition of the action for loss of consortium. The committee also recommended that legislation should be enacted to enable negligently injured people to claim compensation for loss of capacity to do housework.

Two of the draft laws attached to the committee's reports amend the one Act. Accordingly, I have consolidated the draft laws into the one Law Reform (Miscellaneous Provisions) (Amendment) Bill 1991. This consolidated Bill deals with four matters from those two Law Reform Committee reports.

Firstly, the Bill overcomes, in relation to funeral costs, a narrow interpretation of the Law Reform (Miscellaneous Provisions) Act 1955 to provide simple and clear rules about what funeral costs the estate of a negligently killed person may claim. The Bill allows a claim for reasonable compensation for funeral expenses, including the cost of a headstone, funeral notice, church service and undertaker. These rules bring the ACT closer to other Australian jurisdictions.

Secondly, the Bill abolishes the defence of contributory negligence in breach of statutory duty cases. A claim for compensation for injury resulting from another person not obeying a particular law is known as an action for breach of statutory duty. Statutory duties protect the safety of people. Many statutory duties apply in the workplace. A typical statutory duty might require an employer to fence off dangerous machinery from human contact, to ensure that all holes in decking or factory floors are firmly sealed off, or to ensure that all employees have access to hard hats or other protective clothing.

However, as the law stands, a person sued for damages under the law can take advantage of the defence of contributory negligence. For example, if an employer breaches a statutory duty and an employee is injured, the employer can reduce the employer's liability by arguing that the employee was partly to blame for the accident.

The Community Law Reform Committee recommended that this defence should be abolished because it is illogical to apply it to breach of statutory duty claims. Statutory duties are safety standards passed by the legislature to ensure, as far as possible, that accidents do not happen, even though people are careless and will make mistakes.

It is therefore contrary to the purposes of the imposition of a statutory duty to reduce compensation for contributory negligence when that very purpose is to protect people against their own mistakes. The defence of contributory negligence has no place in claims for breach of statutory duty, where its effect is illogical and unfair and prevents proper compensation from reaching the injured person.

The third aspect is the abolition of the action for loss of consortium. The action for loss of consortium is a right belonging to a husband to claim compensation for the loss of the society and domestic services of his wife if she is injured through negligence or assault. Only husbands have this right; wives miss out. The loss of consortium action is a descendant of the mediaeval law which regarded a wife and children as the property of the husband.

The action, as we know it today, stemmed from decisions of the Court of the King's Bench in the sixteenth century, which allowed a husband to claim for loss of his wife in the same way that he could claim for the loss of a servant. It was a right of the master of the house to sue for trespass to his wife, just as he might sue for trespass to his property, farm or servant.

Developing alongside and as a part of the action for loss of consortium was the right of the husband to sue for the defilement, enticement away and harbouring of his wife. The husband could claim for loss of consortium as a result of the enticing away of his wife, as well as her abduction,

imprisonment or injury. Loss of consortium never became a right of the wife because historically women were not seen to have a legal identity separate from their husbands and could not hold property or take legal action independently of their husbands.

Regrettably, as recently as 1955 the High Court, in the case of Toohey v. Hollier, affirmed the action which, in the absence of legislative change, has survived in the ACT until today. This law is repugnant because it is clearly discriminatory and demeaning of women and people in general. It is with some pleasure that I endorse the recommendation of the Community Law Reform Committee and ask members to help consign this outdated action to the history books.

The fourth aspect of this legislation is the loss of capacity to do housework. Historically, the courts and the law have taken a narrow and somewhat Dickensian view of matters which did not fit easily within the standard legal concepts of contract or property. If a loss was not written into a contract or had no explicit monetary value, then the law had great difficulty in seeing it as a loss at all.

The development of the law in relation to loss of capacity to do housework is one example of this. If, for example, a husband became a quadriplegic because of someone else's negligent actions and his wife and family devoted themselves full time to looking after him, the husband could not claim for the fact that he needed this help. He was barred from claiming compensation because it was provided voluntarily by his wife and family. There was no contract or payment in a monetary sense and therefore, the law said, no loss.

This harsh and illogical approach finally melted away in a series of court decisions in England in the 1960s and 1970s. In 1977 it was put to rest in Australia by a decision of the High Court in Griffiths v. Kerkemeyer. This case concerned a quadriplegic in need of full-time domestic and nursing care. In this landmark decision, the High Court swept aside the rule that a financial liability or contract for services was necessary in order to recover damages. Mr Kerkemeyer was able to claim compensation for his loss, even though he had not paid and did not intend to pay for the assistance, which instead would be provided free by his fiancee and family. This decision has been applied by the Federal Court and the ACT Supreme Court.

The Community Law Reform Committee recommended that the Assembly should give a statutory form to the principle in Griffiths v. Kerkemeyer to allow full compensation for loss of capacity to do housework. This Bill bolsters the law by affirming in clear and unequivocal language the right of people to adequate compensation for loss of capacity to do housework. The provisions of the Bill make clear that liability for the loss should not be affected by matters

which are irrelevant to the extent of the loss or which have influenced the courts in the past as they have grappled with this principle. The Bill states that it is immaterial whether the housework has been paid for, whether the relatives were to provide voluntary help, and whether the loss included loss of capacity to work for others as well as oneself.

This Bill is about just and reasonable compensation and therefore does not impose an arbitrary formula for the calculation of compensation. It allows the courts to continue to determine a level of compensation reasonable in all the circumstances of each particular case. As in the past, this will often involve an estimation of the cost of employing a houseworker to do the work which the injured claimant is no longer able to do. In the case of Griffiths v. Kerkemeyer, the value of Mr Kerkemeyer's loss was calculated on the basis of what he would have had to pay for nursing care if his family had not provided the help he needed. This Bill is a major and overdue step towards proper recognition of the value of work done in the home.

I now present the explanatory memorandum to this Bill.

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

COMPENSATION (FATAL INJURIES) (AMENDMENT) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.42): Mr Speaker, I present the Compensation (Fatal Injuries) (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

This Bill amends the Compensation (Fatal Injuries) Act 1968. In conjunction with the Law Reform (Miscellaneous Provisions) (Amendment) Bill 1991, which has just been presented, it will give effect to the recommendations of the ACT Community Law Reform Committee in its third and fourth reports, tabled yesterday. This Bill provides for a clearer and greater compensation for funeral expenses and abolishes the defence of contributory negligence in fatal accident cases.

The Bill overcomes a narrow interpretation of the Compensation (Fatal Injuries) Act 1968 to provide a simple and clear rule about what funeral costs the dependants of a negligently killed person may claim. Like the Law Reform (Miscellaneous Provisions) (Amendment) Bill 1991, it allows a claim for reasonable compensation for funeral expenses, including the cost of a headstone, funeral notice, church service and undertaker. I add that the Government has not adopted the approach adopted in some States of imposing a fixed and arbitrary limit to the amount of compensation for funeral services, in recognition of the fact that in a

multicultural society different groups and different faiths have different approaches to funeral services. We leave it to the courts to determine what in all the circumstances is reasonable, reflecting that diversity within the community.

Secondly, the Bill abolishes the defence of contributory negligence in fatal accident cases. The Compensation (Fatal Injuries) Act 1968 allows dependants of a person negligently killed in an accident to claim from the person responsible for the accident compensation for the loss of the services or wages of the deceased. The Act does not allow compensation for the emotional or spiritual effects of loss of life.

The Act allows a person, in effect, to say, "I would have received benefits in terms of child-care, housekeeping services or income; but now because of the death I will receive nothing, and I claim monetary compensation for this loss". It is a significant and fundamental right which plays a major part in allowing a family unit to continue to function in the face of the loss of a parent.

In the ACT the right is especially important in relation to fatal accidents on the road, and it is, I believe, road accidents which make up the vast majority of claims of this sort, with work accidents coming a distant second, very fortunately. In the ACT the defence of contributory negligence applies to these claims. In a practical sense, this often means that the court will have to analyse and dissect the actions, motives and mistakes of a person killed in a road accident in the moments before death. If in this retrospective exercise the court finds that the person killed contributed to the accident in that perhaps he or she did not keep a sufficient lookout or did not brake soon enough, then the court will reduce the amount of compensation going to the relatives who make a claim for the death.

Besides the many practical difficulties which bedevil this exercise, it is fundamentally an unfair process. The existing legislation says that the court may reduce compensation as it thinks just and equitable, having regard to the deceased's share in the responsibility for the damage. The Community Law Reform Committee reported that it will never be just and equitable to reduce a dependant's compensation for these reasons. This is because dependants, the bereaved family, have nothing to do with the mistakes the dead driver may have made in the moments before death. What the present law does, in effect, is burden the dependants with the sins or momentary mistakes of another person, the deceased.

Abolition of the defence will not affect the basic requirement of claimants that they prove that the defendant was negligent and that the negligence caused the injury. Drivers or employers and their insurance companies will continue to be able to defend claims by arguing that they were either not negligent or not responsible for the

accident. If we allow the defence of contributory negligence to continue, we are not saving any costs. What we would be doing, in effect, is saying to future bereaved families, "You will bear this particular burden and you will bear it alone, even though you are entirely innocent of any involvement in the accident which was the cause of your loss".

I now present the explanatory memorandum to this Bill.

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

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (NMRB) BILL 1991

MS FOLLETT (Chief Minister and Treasurer) (10.47): Mr Speaker, I present the Australia and New Zealand Banking Group Limited (NMRB) Bill 1991. I move:

That this Bill be agreed to in principle.

The Australia and New Zealand Banking Group Limited (NMRB) Bill 1991 provides for the integration of the National Mutual Royal Bank with the ANZ Banking Group. The ANZ Banking Group took over the National Mutual Royal Bank and the National Mutual Royal Savings Bank in April 1990 as wholly owned subsidiaries of the ANZ Banking Group.

The ANZ's purchase of the National Mutual Royal Bank in 1990 was approved by the Reserve Bank of Australia on the condition that the licences to conduct banking activities held by the National Mutual Royal Bank and the National Mutual Royal Savings Bank be surrendered by 15 November 1991. The ANZ Banking Group is therefore required to integrate the businesses, assets and liabilities of the National Mutual Royal Bank and the National Mutual Royal Savings Bank into the ANZ Banking Group by this date. This will involve the transfer of over 700,000 accounts and the transfer of the borrowing arrangements of more than 85,000 customers Australia-wide. In the ACT, there are 1,500 account holders who will be affected.

The ANZ Banking Group has sought the introduction of enabling legislation to facilitate the transfer of banking activities and assets and liabilities in all affected Australian States and Territories, including the ACT. Other States are therefore introducing similar legislation to the proposals in this Bill, to meet the ANZ Banking Group's request.

The proposed legislation will vest the undertaking of the National Mutual Royal Bank and the National Mutual Royal Savings Bank in the ANZ Banking Group. All existing contracts and obligations will remain unchanged, except that the ANZ Banking Group will replace the National Mutual Royal Bank and the National Mutual Royal Savings Bank as

the contracting party. This type of approach has been used on several occasions in Australia to transfer businesses, assets and liabilities between banks. For example, the mergers of the Commercial Banking Company of Sydney and the then National Bank of Australasia and of the Bank of New South Wales and the Commercial Bank of Australia, both in 1982, were facilitated in the same way proposed in this Bill by a Territory ordinance and similar Acts around Australia. Facilitating bank mergers in this way creates considerable savings of time and effort for bank customers and staff as each individual banking arrangement, contract and mortgage will not need to be tediously renegotiated.

The integration of the National Mutual Royal Bank with the ANZ Banking Group will not entail the transfer of any premises and equipment in the ACT and therefore the integration will not attract any tax or stamp duty. The Financial Institutions Duty Act 1987 of the ACT exempts from duty the transfer of accounts from one financial institution to another that occurs as a result of amalgamation. ACT account holders will not be paying any duty because of this merger.

By passing the legislation, the ACT will assist the 1,500 ACT customers of the National Mutual Royal Bank as the customers will not be put to the inconvenience of renegotiation of all banking arrangements. Overall, the legislation will contribute to the efficient operation of the banking system. The ANZ Banking Group is meeting the costs associated with the preparation of this legislation.

I now present the explanatory memorandum for the Bill.

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

HUMAN RIGHTS AND EQUAL OPPORTUNITY BILL 1991

MS FOLLETT (Chief Minister and Treasurer) (10.51): Mr Speaker, I present the Human Rights and Equal Opportunity Bill 1991. I move:

> That this Bill be agreed to in principle.

The Human Rights and Equal Opportunity Bill 1991 is the cornerstone of a package of legislation which will establish the Office of ACT Human Rights Commissioner and provide a legislative framework to protect the residents of the ACT from unfair discrimination. The Office of the ACT Human Rights Commissioner will be responsible for administering the provisions of this Bill and for promoting an understanding and acceptance in the community of the objects of the legislation. The office will also be responsible for research and development of educational and other programs to help achieve this.

The balance of the legislative package complements this Bill and extends equal employment opportunity to employees of ACT statutory authorities. The Government will be introducing the remaining Bills later in this session.

This Bill is the result of a process begun under my first Government and it has now been brought to fruition under my second Government. Equal opportunity legislation has always been a priority for Labor. Even in opposition, I produced and introduced the Human Rights Bill, and this Human Rights and Equal Opportunity Bill is the result of Labor's untiring push for this kind of protection for the residents of the ACT.

We have picked up the work done by the former Government in particular, and the invaluable contributions made by the community during the consultation process, and we have revised the draft legislation to bring it more into line with Labor policy. The current Bill directly reflects Labor's commitment to social justice and the promotion of equality of opportunity in the ACT.

The principal objects of the Bill are set out in Part I. They are: To eliminate, so far as possible, discrimination in employment, education and a range of other areas; to eliminate, so far as possible, sexual harassment in those areas; to promote recognition and acceptance within the community of the equality of men and women; and to promote recognition and acceptance within the community of the principle of equality of opportunity for all persons.

In order to reflect more clearly these policy objectives and to stress the positive concepts which lie at the base of the legislation, we have changed the name of the Bill from "Discrimination" to "Human Rights and Equal Opportunity". It is important to emphasise that this legislation is intended to protect the rights of those who are disadvantaged in our society, including women, people with disabilities and members of ethnic minority groups, and to ensure that they are offered equal opportunity to participate freely in the community.

In designing legislation which would be most appropriate and effective for the Territory, consideration has been given to the principles of the international law of human rights, legislation in force in other jurisdictions, the experience of anti-discrimination bodies interstate, including the Commonwealth Human Rights and Equal Opportunity Commission, the opinions of legal experts in the field, and submissions received during the community consultation period.

Part II of the Bill sets out the grounds on which discrimination will be unlawful. These are sex; sexuality; transsexuality; marital status; being a parent or having responsibilities as a carer; pregnancy; race; religious or

political conviction; and physical, mental or intellectual impairment. No other Australian jurisdiction has this breadth of coverage and, indeed, we are the first jurisdiction to extend protection to those who are responsible for caring for another person.

In extending the Bill to cover parents and carers, we are responding to Australia's international obligations under International Labour Organisation Convention No. 156, Workers with Family Responsibilities, which Australia ratified in March 1990. The convention provides, among other things, for workers with family responsibilities to exercise their right to work without discrimination. The new ground in the Bill will go a long way towards achieving this goal.

However, the Bill throws the net of protection wider than the terms of the convention by not limiting its operation to family responsibilities. This Bill will protect anyone who has responsibility for providing ongoing care and attention for another person, whether or not they are related to each other. This would include, for example, someone who was caring for an elderly neighbour or nursing a friend or partner suffering from AIDS.

The ACT will join the only other jurisdictions - Western Australia and Victoria - that protect people from discrimination on the ground of their religious or political convictions. These terms are not expressly defined in the Bill because it is intended that they be given their natural and wide meaning. Political conviction would include, for example, the expression of political views and participation in political activities. The impairment provisions have been carefully drafted to include conditions such as HIV and AIDS and to ensure that the definition of impairment extends to all kinds of physical, mental and intellectual disability.

The Bill also goes beyond other Australian jurisdictions in extending its protection to those associated with someone in one of the classes protected by the legislation. The initial draft of the legislation that was circulated for comment covered only the relatives, carers and friends of HIV-AIDS sufferers; but this has been widened to include all the grounds. Thus, those who are discriminated against because, for example, they have a family member who has an intellectual impairment or because they work for an AIDS support organisation would be protected.

The Bill also makes it clear that people are protected from discrimination if they do, in fact, have one of the attributes covered by the Bill or in the situation in which someone presumes, perhaps mistakenly, that they have that attribute. One example of this is IV drug users who are discriminated against because it is presumed that they are HIV positive.

One of the most significant changes made to the Bill is in the definition of what constitutes discrimination. The traditional definition which is used in all other State legislation has proved difficult and often unworkable in the courts. The definition in this Bill is a clear statement of what we mean by discrimination, without the unnecessary tests and conditions which unduly complicate the matter in other jurisdictions.

Part III of the Bill will make discrimination on the stated grounds unlawful in the following areas of activity: Employment; education; access to premises; the provision of goods, services and facilities; the provision of accommodation; and club membership. The protection offered by the Bill extends right back to the beginning of the selection process for jobs and the application process for educational institutions, clubs and accommodation. We have also extended the coverage of the employment provisions to unpaid workers.

In the area of access to premises - and the term "premises" is intended to include all sorts of places, buildings, open spaces and vehicles - it will be unlawful to refuse someone access, but it will also be unlawful to discriminate in the manner in which access to premises is provided. This clause is designed to ensure that there are adequate means of access for disabled people in particular.

Equal opportunity legislation is always a matter of balancing rights, and Part IV of the Bill, which deals with exceptions to unlawful discrimination, provides that balance. Some of the areas that are exempted from the operation of the Bill are employment and the provision of accommodation in the domestic sphere; voluntary and religious bodies and institutions; clubs for members of one sex or one particular race; competitive sporting events for one sex or people with particular impairments; and the situation in which being of a particular race or sex or having a particular impairment is genuinely necessary to do a particular job. A good example of this is where the job is in the welfare area - a rape crisis centre, for example - and the job can be done most effectively by someone of the same sex as clients.

The Bill also contains a limited exemption for acts done under laws of the ACT. This exemption is intended to be only temporary and it will cease to have effect once we have completed a review of ACT laws to ensure that they are consistent with the terms of the legislation. In relation to the general exemptions covering educational institutions established for religious purposes, voluntary bodies, sport, and acts done under statutory authority, the Commonwealth Human Rights and Equal Opportunity Commission is currently conducting a review of similar exemptions in the Federal Sex Discrimination Act. We will, of course, be examining our own exemptions in the light of the results of that review when they become available.

The Federal Government is also considering the question of age discrimination, and the Standing Committee of Attorneys-General has established a working party of officials from the Commonwealth, States and Territories, including the ACT, to examine the matter, with particular reference to superannuation, compulsory age retirement and pensions.

In order to ensure that these issues were dealt with in a uniform way throughout Australia, the former Attorney-General, Mr Collaery, gave a commitment that ACT legislation will not affect superannuation until the results of the working party deliberations are known. I am happy to support this approach. For this reason, superannuation is currently exempted from the provisions of the Bill. The exemption is, however, intended to be a temporary one, and the provisions will be re-examined once the working party concludes its work.

The working party discussions are also obviously relevant to the inclusion of age as a ground of discrimination in the Bill. The Government's policy is aimed at maximising the independence of the aged and minimising loss to the community as a result of compulsory and forced retirement based on age alone. Age discrimination occurs across the entire age spectrum, and the Government recognises the special need of young people for protection against unwarranted discrimination.

We are committed to protecting the residents of the ACT from discrimination of this kind. Proposals regarding age discrimination are presently being developed and will be given a high priority to ensure that the legislation is extended to cover age discrimination as soon as possible. Apart from the exceptions provided for expressly in the Bill, the commissioner has the power to grant additional exemptions in particular cases for up to three years.

In line with the Government's social justice policy, the Bill makes discrimination on the ground of mental or physical impairment unlawful. The terms of the legislation recognise that sometimes it is necessary to accommodate the special needs of people with impairments in order not to discriminate against them. This may involve, for example, providing a special piece of equipment to enable a person to do a particular job or modifying access to a building to allow equal access for people in wheelchairs. Where such measures would impose unjustifiable hardship, however, discrimination will not be unlawful.

The test of unjustifiable hardship is designed to enable a balance to be struck between providing real equality of opportunity for people with impairments and the needs and resources of the community. In deciding what constitutes unjustifiable hardship, it will be necessary to look at all the circumstances of the case, including the nature of the

benefit or detriment likely to accrue or be suffered by all the people concerned, the nature of the person's impairment, and the financial circumstances and estimated expenditure required to be made by the person claiming unjustifiable hardship.

I believe that this standard is a fair one and that it will offer real protection from discrimination for people with impairments by requiring that reasonable accommodation be made, while at the same time recognising the rights of all the parties involved. The provisions dealing with discrimination on the ground of impairment involve some of the most complex issues in the Bill and will certainly be kept under review. A number of very constructive submissions from interested groups and individuals were received suggesting alternative approaches in this field, and we will continue to work on and develop our policy in light of these suggestions.

Part V of the Bill deals with sexual harassment and is another area in which the ACT legislation will offer protection far beyond that provided by equivalent legislation in the other Australian jurisdictions. The sexual harassment provisions have been extended to cover access to premises and club membership and to deal with harassment of students and staff by students. These were all identified as specific problem areas in submissions from the community.

The definition of sexual harassment in the Bill eliminates the standard requirement that the complainant must be disadvantaged or believe, on reasonable grounds, that he or she will be disadvantaged by a rejection of the unwelcome sexual conduct. Instead, the Bill adopts the definition from the South Australian Equal Opportunity Act, that the complainant need show only that he or she was offended, humiliated or intimidated by the behaviour in question and that it was reasonable to feel that way.

I expect that the educative role of the ACT Human Rights Commissioner will play a significant part in eliminating unlawful discrimination and sexual harassment in the areas covered by the Bill. However, I recognise that a mechanism for hearing and resolving complaints of discrimination is a necessary adjunct to legislation of this kind.

Part VII of the Bill sets out the procedure for lodging a complaint of discrimination with the ACT Human Rights Commissioner and the process for handling those complaints. A person who believes that he or she has suffered discrimination or - with the authority of the commissioner or the complainant - the person's agent may lodge a complaint. An agent might be another person or an organisation, for example, a trade union.

This will also allow someone from an ethnic organisation or a women's group, for example, to lodge a complaint on behalf of a member of that group and will help considerably to defuse the tension and trauma often suffered by individuals bringing complaints of this nature. I believe that this will make the commissioner more accessible and approachable and will encourage people who believe that they have suffered discrimination to come forward with complaints.

The commissioner has a wide discretion to deal with complaints as he or she thinks fit, but is obliged to make a thorough investigation of each matter and to ensure that every party to the investigation is given a reasonable opportunity to present his or her case.

Within these constraints, the process is to be conducted with as little formality and technicality as possible. The commissioner has a range of methods available to conduct investigations and deal with complaints and is at liberty to choose the most appropriate method in each case. However, wherever possible, the Bill requires the commissioner to try to resolve a complaint by conciliation, that is, to reach a solution that is acceptable to all the parties. The experience in other jurisdictions is that by far the majority of complaints are settled in this way.

As part of the process of investigating a complaint, the commissioner has the power to require the parties to attend a compulsory conference. This conference is to be held in private and is to be conducted in such a manner as the commissioner thinks fit. The commissioner may also proceed to investigate a matter by way of a public hearing. The commissioner is free to choose which method is the most appropriate in a particular case or to adopt a combination of methods.

For example, during a public hearing the commissioner may decide that it is appropriate to deal with some part of the investigation in private and may call a compulsory conference to deal with those matters. The commissioner might also decide, for example, that a particular case is suitable for referral to the Conflict Resolution Service for mediation in the first instance.

Where conciliation is not possible or appropriate and after completing an investigation, the commissioner may give a variety of directions, including a direction to the respondent not to continue the unlawful conduct or to pay the complainant a specified amount of money by way of compensation for any loss or damage. Failure to comply with a direction of the commissioner will be a criminal offence.

By combining the roles of conciliator and adjudicator in the one office of Human Rights Commissioner, we aim to provide a flexible, informal forum for dealing with complaints of discrimination as quickly and efficiently as fairness to both parties will allow. Parties to an investigation will be made fully aware of the procedures to be followed and of their appeal rights following a decision by the commissioner.

In other jurisdictions, pursuing a complaint of discrimination often involves a lengthy staged process, culminating in a formal hearing before a tribunal. This can give rise to all of the problems associated with a court-like structure, including costs in terms of money and time. It is the Government's firm intention that our system will not operate in this way. If either party is dissatisfied with any aspect of a decision of the commissioner or the procedure which led up to the decision, there is a full right of appeal to the ACT Administrative Appeals Tribunal.

The Human Rights and Equal Opportunity Bill establishes the Office of Human Rights Commissioner for the ACT. In addition to the complaint resolution and research and educational functions I have mentioned, the office will be responsible for such things as advising the Government on any matter relevant to the legislation and whether any laws of the Territory are inconsistent with its provisions. Apart from the commissioner, there will be two or three full-time staff in the office who will act as investigators and conciliators and will also be involved in the research and educational functions of the office.

The Bill also provides for an intergovernmental arrangement which will allow, for example, the performance by the Commonwealth Human Rights and Equal Opportunity Commission of functions under this Bill on an agency basis in the ACT. Negotiations are currently under way with the Federal commission to settle an arrangement for administering this Bill in the most cost-effective and efficient way possible. In anticipation of this kind of cooperative arrangement, we have been working closely with the Commonwealth commission on the legislation. While this has meant revising our timetable for introduction of the Bill, their advice and assistance have proved invaluable.

I would like to thank all those who contributed to the development of this Bill and to assure them that all their comments were given the most serious consideration. Wherever possible and appropriate, the suggestions made have been adopted, and we will certainly continue to develop and review the legislation once it is in place.

The Human Rights and Equal Opportunity Bill provides broad-ranging and comprehensive protection for the residents of the ACT from unlawful discrimination and sexual harassment. It establishes a lean and effective Office of Human Rights Commissioner which will be able to deal with complaints swiftly and with the minimum of formality. It represents the best in equal opportunity law in Australia, and I commend it to the Assembly.

I now present the explanatory memorandum for the Bill.

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

SUSPENSION OF STANDING AND TEMPORARY ORDERS

MR BERRY (Deputy Chief Minister) (11.12): I move:

> That so much of the standing and temporary orders be suspended as would prevent notice No. 6, private members' business, relating to a motion of disallowance of tobacco exemptions, being called on forthwith.

Mr Speaker, by way of explanation, this matter came up for mention yesterday and, because of some disquiet over the matter coming on at short notice, the motion to suspend standing orders was withdrawn. It is now appropriate for it to be brought on and dealt with in order to put it to rest. I know of no objections to the matter being dealt with.

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

TOBACCO ADVERTISING - EXEMPTIONS NOS 79 AND 80 OF 1991
Motion of Disallowance

MR MOORE (11.13): I move:

> That the Exemptions Nos 79 and 80 of 1991, insofar as they relate to the display of perimeter and score-board advertising at Manuka Oval in the ACT during the conduct of cricket games on 17 December 1991 and 11 March 1992, from the operation of subsections 10(1), 12(1) and 12(2) of the *Tobacco Act 1927*, be disallowed.

At the beginning of this speech I think it is appropriate to thank Mr Connolly and the Labor Party for introducing into this Assembly the mechanism by which disallowance can be moved and the onus to call on such a motion becomes the responsibility of the government. This is the first time that this has been done. I think it is also appropriate to thank members of the Assembly who agreed to that Bill last

year. It is an entirely appropriate method of putting the onus back on the government when any member believes that there is a good reason for disallowing a decision of a Minister, and that is what this is.

For the purposes of background, I am going to quote from a speech delivered in this house in 1989 which talked about tobacco. In fact, it was delivered on World No Tobacco Day, whose theme was "Women and Tobacco". It is important to get a feeling of what tobacco does, and that is why I refer to this speech. It said in part:

> At least 23,000 avoidable premature deaths occur annually in Australia because of tobacco use. This makes smoking and its effects the leading cause of premature death and the major single cause of preventable illness and disease in Australia. I am sure members will agree that this is a staggering figure. In its local perspective, it equates to 368 deaths per year in the ACT - one death per day. This is an unacceptable situation and it is the responsibility of the ACT Government and the community at large to reassess the place of tobacco in our society.

The speech went on to talk about an increasing number of young women taking up smoking and taking it up at an earlier age. Later it said:

> Health risks to young women extend well beyond the now commonly known risks of lung cancer, emphysema, stroke, chronic bronchitis, gangrene and heart attack ... Women who smoke are more likely to suffer from osteoporosis ... Women who smoke are more likely to develop cancer of the cervix -

and so it went on. The person making this speech pointed out:

> Already the annual cost to the Australian economy is estimated to be in excess of $2.5 billion.

When we come to debate the amount of money involved in this sponsorship, we should keep in mind that the cost to Australia is $2.5 billion a year. Mr Berry, in making this speech in 1989, said:

> I have already publicly stated this Government's commitment to review legislation ... and to establish policy on tobacco advertising, promotion, sales and pricing in the ACT. These reviews will take particular note of recent developments in Victoria and South Australia.

> It is now time to draw attention to the continuing and increasing need to reduce the demand for cigarettes and other tobacco products - in particular, here in Canberra, for promoting anti-smoking campaigns and healthy lifestyle messages.

As we know, it was the Alliance Government, under Gary Humphries as Minister, that introduced the Tobacco (Amendment) Act 1990 and put some of these ideas into effect. Mr Berry went on:

> We are all aware of the Canberra Cannons' efforts to retain their national basketball league championship status, but most of us would be unaware of their extensive school visits program involving basketball workshops and camps for school children and aspiring basketball players. This program is an ideal promotional vehicle to deliver the anti-smoking message to a large number of Canberra's young people.

The sponsorship program Mr Berry spoke of was a sponsorship from the Health Promotion Fund to the Canberra Cannons and was part of his attempt to draw our attention to the fact that tobacco does so much harm in our society.

Keep in mind throughout this debate that we are talking about $2.4 billion per year in Australia. Keep in mind throughout this debate that the cigarette companies are making astronomical profits and that governments, in particular the Federal Government, also derive an incredible taxation benefit from the tobacco industry. They are in that bind of taking money on the one hand and not being quite sure how to resolve the problem on the other hand.

The speech delivered by Mr Berry in 1989 was a very good speech, setting out the problems in relation to women in particular. It is not necessary for us to extrapolate any further from there, because we can understand the message. The message is that tobacco is the killer drug. It is the worst drug in Australia at the moment. We cannot be seen to be supporting it in any way.

The legislation introduced in 1990 provides in section 10(1):

> A person shall not for any direct or indirect pecuniary benefit -
>
> ... ...
>
> (e) place or display, or cause, permit or authorise to be placed or displayed, a tobacco advertisement so that it is visible in or from a public place;

The penalty for that is $5,000. I must say, and I was party to this amendment, that maybe we need to look at that penalty and see whether there is a problem. Perhaps the penalty should be $5m to have some impact. Granted, we have to be realistic, but we also have to remember what we are dealing with. Section 10(3) states:

> The Minister may, by notice published in the *Gazette*, exempt specified tobacco advertising from the operation of subsection (1).

It then explains how to go about it. That is what the Minister has done in this case. Why did we allow this exemption at the time? We all remember that the example given was the Winfield Cup. We had very little control over what would happen as far as the Winfield Cup was concerned, because we had players in Canberra who would be excluded from playing rugby league if we did not allow this exemption.

The critical part of this is that, with the Prime Minister's XI playing in Canberra on 17 December, this is not a situation of protecting local cricket players. The way cricket sponsoring works is that the Australian Cricket Board has as a subsidiary New South Wales country, which covers the ACT. The sponsorship provided to the Australian Cricket Board by these tobacco companies is in the millions of dollars.

The question for us is how we can compete with that sort of sponsorship. The real question we are going to have to ask ourselves is: Should we compete or should we simply say that we are not prepared to tolerate cricket at this price? What is the price? It is 368 deaths in Canberra per year, and that is something we have to take very seriously.

It is very important for me to take this point, having advocated only two days ago, as chair of the committee, a more lenient approach to the drug marijuana. My position is totally consistent. It is to seek harm reduction in both cases. If we are going to reduce the harm associated with the way people use tobacco, we have to start in the obvious area of attacking the advertising. The sponsorship provided by the cigarette firms is not simply out of the goodness of their hearts to sponsor a wonderful sport. After all, smoking is anti-sport; it takes away from people's ability to perform. We need to be able to stop the harm associated with smoking. They are sponsoring sport so that they can have their advertising across television screens on the ABC and commercial television in particular.

I understand that the greatest difficulty we have with this motion I have put is that it may be challengeable under section 92 of the Constitution. We have certainly seen a huge number of challenges under section 92 of the Constitution. Going right back to the 1920s, I think it was a South Australian sultana farmer who originally raised

a series of problems and challenged the Constitution. Sir Garfield Barwick really made his name by challenging issues under section 92 of the Constitution. The most famous was the Commonwealth Bank Bill introduced by the Labor Government just after the Second World War. There is definitely a problem with section 92 of the Constitution.

But perhaps we should ask ourselves: What would be the advantage if this matter of tobacco went to the High Court and the challenge was there? Would there be such community outrage that the Federal Government would accept that it also had a responsibility in this area and that it should be finding ways to take over this sort of sponsorship? The methodology used by the ACT Government with the Canberra Cannons in taking over their sponsorship is ideal.

Let us get this advertising of the killer drug away from where our young people can be influenced by it. I see this motion of disallowance as a start. The Winfield Cup is next. It is entirely inappropriate that the Winfield Cup competition should be supported in the way it is, even to the use of the name, advocating that young people involved in the sport should be involved in cigarette smoking. The companies, the cricket boards and the rugby league associations need to be put on notice. They need to know that this is unacceptable.

If we are not prepared to do it now, and I am given to understand that the numbers are not with me, let us not just say, "We will stage the introduction of this legislation". Let us set a time. Give us a time, Minister, when you will refuse to sign these sorts of exemptions. Let us set a time. Let us not make it too far away. Three hundred and sixty-eight people a year are dying in Canberra. We are talking about $2.4 billion a year across Australia. It is time for us to take a harder line on this drug.

The method of dealing with tobacco is not to prohibit it. People have the right to harm themselves, if that is what they decide to do. But we can certainly ensure that the message getting through to our young, of an association between cigarettes and sport, between cigarettes and their heroes, is not going to continue. It is an entirely inappropriate message.

The message should be: "If you are going to smoke, you are going to be sick. If you are going to smoke, you are much more likely to die early. If you are going to smoke, you are much more likely to get cancer. If you are going to smoke, you are going to find it bloody difficult to give up, even though you really want to". Those are the sorts of messages we need to get across, not the association of sport with this killer drug.

MR STEFANIAK (11.28): There was very much in Mr Moore's powerful and moving speech that I and, I think, my Liberal colleagues would agree with, although we will not be supporting his motion, as I understand the Government will not. There is probably a lot in what he said about section 92 of the Constitution and also the rationale for the two exemptions in the Act brought down last year by my colleague Mr Humphries. The exemptions were the Winfield Cup and the Benson and Hedges cricket. Those two competitions, of course, are extraterritorial; they go throughout the States of the Commonwealth, not just the ACT. So, there are big problems there. This is why, unfortunately, Mr Moore's attempt at disallowance will not and, in fact, cannot be supported.

That is not to say that there is no force in what Mr Moore says. Twenty-three thousand Australians die each year; probably 400 now each year in the Territory, or a little over one per day. Mr Moore is quite right when he says that $2.5 billion a year is spent on health care and health-related costs as a result of people smoking tobacco. I understand that the revenue government gets from the tobacco companies is still only a little over $1m. Perhaps there is some force in the argument that this very harmful drug should be banned. I do not know whether any government, either State or Federal, would have the guts to do that; but ultimately that might be the most responsible thing to do.

There are some heartening figures from the long campaign over the last 20 years to warn people of the dangers of tobacco. After World War II about four million Australians were smokers, and in those days we had only seven or eight million Australians. The number of smokers has not risen, which means that a hell of a lot more Australians are not smoking. One of the most worrying aspects in recent times, however, has been the incidence of young women and girls in their teens taking up smoking. This certainly is not good. It is something the health promotion people are homing in on so that this very vulnerable and impressionable age group can be targeted and warned of the dangers of taking up smoking.

Smoking certainly is not smart; it is the very antithesis of playing sport well. When I smoked regularly - I think it was a packet of Winfield a day from about 1976 through to 1983, and I still, rather stupidly, have the odd cigar - I used to amuse my football team mates by coming in before the game and coughing up my guts in preparation for going out on the field. Perhaps Chicka Ferguson might be a little different, but it certainly was not terribly conducive to my ability to play that sport. I found when I stopped, after a particularly bad bout of flu, that I did not cough and splutter so much in the mornings and before and during physical activity. It certainly is not good for any individual - I suspect even someone as talented as Chicka Ferguson - to be a smoker and to play sport.

Accordingly, I was pleased to see the Health Promotion Fund introduced in the Australian Capital Territory last year by the Alliance Government. I was particularly pleased that, up until the time we went out of power, over $400,000 had been given to sporting groups. I am certainly of the view that the most effective way to get to the community, especially young people, to promote to them the dangers, indeed the evils, of smoking is through sporting activities and sporting heroes. Mr Moore mentioned the Canberra Cannons campaign to promote the Quit for Life message. That is particularly effective because it goes out to the schools. Young people know who the Cannons are and they look up to them. The Cannons are excellent role models, and that is one of the most effective ways of getting the message across.

In the past year I have been very keen to see not 30 per cent of that Health Promotion Fund but 50 per cent spent on sports-related activities. That is the best way of getting across an anti-smoking message. That is the best way of pushing a healthy lifestyle. It is a most effective marketing tool. That is why the cigarette companies are so keen to sponsor sporting events. That is why the sponsorship of the Winfield Cup by Rothmans has been so terribly effective and why Rothmans are desperately keen to keep it.

That agreement is due to expire in 1993. It would have been interesting, given that our beloved Canberra Raiders did not win the grand final, if Norths had been in there and won it, because the president of Norths indicated that they did not want the Winfield Cup. That did not happen and, unfortunately, our team narrowly missed out on winning its third successive premiership. The same situation applies with Benson and Hedges cricket and the sponsorship of various motor races. It is an excellent vehicle for getting a sponsorship message across, and that is clear to the cigarette companies.

I am also interested to see moves being made at the Federal level in relation to these major sponsorships. The present Sport Minister is quite keen to come up with a national health promotion fund that will buy out these very large sponsorships. We are talking about a fair amount of money. We are talking about $20m to $30m a year in sponsorship for these major competitions, and a considerable amount of money would be required to buy them out. It would certainly be more than any State or this little Territory could find. So, we are talking big dollars and there is a need for concerted national action.

I doubt very much whether any government will ever ban smoking - certainly not in the foreseeable future. I would not be terribly upset if that did occur, but I doubt that it will. The educative campaigns are working, but they are working very slowly. There is certainly some heart to be taken from the way they are working; but it is a long, hard process. I wonder whether we will ever get to the stage where no-one smokes.

Tobacco is still a legal product. There are no moves to make it illegal, and the proponents of anti-smoking have a long way to go before they see a very large light at the end of the tunnel. Perhaps there is a light at the end of the tunnel: We can all be heartened by the fact that the number of Australians smoking now is exactly the same as it was close on 45 years ago. So, the educative campaign is helping.

To sum up, whilst the Liberal Party has a lot of sympathy for Mr Moore's motion, as we were the major party in the Government that introduced the amendments to the Tobacco Act last year, we will not be supporting his motion and, along with the Government, as I understand it, will be objecting to it.

DR KINLOCH (11.36): I applaud Mr Moore's sentiments and his motion and I see no reason why it cannot be supported. I heard Mr Moore say that he does not have the numbers. I do not know why that should be. Presumably, no-one here wishes to see an association between healthy sport and smoking. Put your hand up for that. Vote for that. It is as simple as that.

Mr Berry: You voted for this sort of thing to happen. That is why it is happening.

DR KINLOCH: Not me; I did not. Mr Moore is doing what is obviously the right thing, and all of us can now do the right thing to remove any positive imaging between a healthy sport and the consumption of tobacco products. If, inadvertently, I was caught up in any kind of legislation in the past, I deeply regret it and I apologise for it. I cannot remember what that was, but I assure you that I am now standing up for Mr Moore's motion. I hope that we can ban the advertising of these tobacco products in connection with any healthy sport.

Mr Berry: You voted for the exemptions. Heavens above!

DR KINLOCH: Mr Berry, please. I am not here advocating the banning of a product. Tobacco companies can continue to sell their product. I would argue, if we are thinking of sport, that it is entirely proper that a tobacco company should sponsor a sport such as motor racing. I am not opposed to the sponsorship by tobacco or liquor companies of a sport such as motor racing, which is itself of dubious merit.

Mr Berry: Oh!

DR KINLOCH: Hear me. Have an open mind on this. It is a sport which makes excessive use of scarce fossil fuels; it is a sport which is surrounded by noxious fumes; and, above all, it is a sport which is dangerous to life and limb. I think it entirely appropriate that a tobacco company should sponsor it. May they live in peace together.

Mr Collaery: Rest in peace.

DR KINLOCH: Indeed. I thank Mr Collaery for an even better comment. In the case of rugby league, which is, after all, in many ways, a rather unpleasant, dangerous sport, although it has its healthy aspects, I think it very sad indeed that we should be allowing any support locally of that product. Especially I think that is so of cricket. Cricket goes beyond a mere pressing of flesh. Cricket is a game of aesthetic values as well as of physical values, and the idea of linking that game with the Benson and Hedges firm, I think, is highly unfortunate.

I am terribly old-fashioned: I remember when sport used essentially to be amateur. I think sport has gone downhill steadily since it has become more and more professional. It is merely great big bodies displaying themselves, the way the Romans used to watch gladiators. It is a very sad thing that has happened to sport, including the Olympics. I do not think we should encourage the relationship between sport and tobacco that now exists. I congratulate Mr Moore, and I will support his motion.

MR DUBY (11.40): Mr Speaker, my remarks will be short. I think Dr Kinloch has missed the point entirely. The legislation that was passed in this Assembly last year allowed for the specific exemption of imported out-of-the-Territory sports that are played in the Territory and may have large commercial sponsorship by tobacco firms. There are only two examples - rugby league and cricket - and those two sporting groups have national obligations to their sponsors, namely, Winfield in rugby league and Benson and Hedges in cricket. They have been given specific exemption to operate in the ACT under those names and to use the logos that are appropriate to the competitions. They are the only sports that are able to use tobacco sponsorship in the Territory.

This legislation was passed last year - and it was passed, I have to say to Dr Kinloch, with his vote. There is a very logical reason for it. If we did not have these provisions to enable national sporting competitions to be held, the sports men and women of the ACT, and indeed the sporting public, the viewing public, would be disadvantaged to a greater degree. So would the sporting bodies here - the ACT Cricket Association, the ACT Rugby League and the Raiders.

There is nothing underhand about these exemptions. They have been expected. The Minister has been fulfilling the wish of the majority of the Assembly when he has gazetted them, because it is provided for in legislation passed by this Assembly only 12 months ago. Whilst the speeches that have been made against the evils of tobacco may well be

correct - I should state my interest; I am an addict of the weed - nevertheless, I can accept the arguments put up by many people against nicotine and its associated products. What Mr Moore said is correct: Once people start smoking, it is very difficult to cease.

However, whilst the comments that were made were very long on rhetoric, they were very short on logic. These exemptions should be allowed and, if people have a problem with those two sports - rugby league and cricket - as part of a national sponsorship competition being played here in the ACT, they should amend the legislation that was passed last year.

MR COLLAERY (11.43): I rise to clarify the understandings on which this house passed the legislation last December. On behalf of the Government, Mr Humphries said, as recorded at page 3928 of *Hansard:*

> I also have to indicate that I have been cheered by the extent to which the Health Promotion Fund's role in this whole process has been successful to date -

I stress that -

> and shows every prospect of being successful in the future. The level of tobacco sponsorship of sports in the ACT, I think, has now been confirmed to be relatively small - in the order of $70,000 to $100,000 - and much of that is accounted for by major events of the kind that may not be affected by this legislation, namely, the Winfield Cup and others.
>
> The fund is operating effectively and approval of more than $400,000 worth of expenditure to health, sports and arts bodies has already been given. We are continuing negotiations with the groups that are affected by the ban to make the transition to the new arrangements easy.

The Rally would be standing today with its prior commitment on this issue, if Minister Berry could give us a correlative commitment as to how the staged buying out of these sponsored events is to take place.

The fact is that in the Estimates hearing last night Mr Berry confirmed that the Health Promotion Trust Fund as a separate entity has been abolished. It has gone into the general health vote, and members might refer to Budget Paper No. 4, at page 54, to see the evidence of that. The last $500,000 in the Health Promotion Fund was transferred to the consolidated fund of the Health Department. Mr Berry has given an undertaking, through his officials, that every cent of that "will be spent on health promotion objects".

It appears that the Minister, unless he is going to rise shortly and make those commitments, is not able, for a variety of technical reasons, to start to buy out the exemptions we gave in the tobacco legislation passed by the Assembly in December last year. What I am saying is that Dr Kinloch is not going back on any vote he cast. It was a clear understanding when we passed that legislation in the house that there would be a forward program - it was a commitment from Mr Humphries on our behalf - to buy out these sponsored events. We all saw the exemption in the Bill as a necessary evil, if you like, until such time as we could tackle the very big issues of Benson and Hedges, Winfield and the rest.

With Dr Kinloch, I say that we mean no ill towards the bodies that are accepting this sponsorship at the moment. What we do say is that the Minister has not yet brought forward a program of staged buying out or withdrawal. We accept the difficulties with an interstate fixture such as the Winfield Cup.

I want to record my admiration for Mr David Hill and the way he has given the league executive one kick after another from his perch in North Sydney. It is a maverick club on the Ginger Meggs lines. I very much like the way David Hill is running North Sydney and objecting to the backroom faceless power games that are going on in the league judiciary in Phillip Street. I include in that my continuing criticism of the new High Court of Australia that sits in Phillip Street every week after the Winfield round, that is, the rugby league judiciary. It is symptomatic of the problem.

We have to tackle Winfield for its sponsorship; we have to tackle Benson and Hedges for its sponsorship. If we concede the tobacco argument in this house, as we all did - I do not think there were any dissenters - then it is only logical that we should have a staged program of buying it out. It is not hypocritical of Dr Kinloch to take the stand he has. With respect to my colleague, he could have phrased a couple of his remarks a little better. But the fact is that we in the Rally are not being hypocritical on the issue.

If Mr Berry can say, as the Government has on Aidex, the arms bazaar, that we are contractually bound to the current sponsorship, and my colleague Mr Duby accepted that as well, then we have to live with it. But we have plenty of people queuing to rent that space in the future. No harm is going to come to it. What have we done to see who else wants the billboards at Manuka Oval? What are the alternatives for the league? How can we negotiate this without blood on the floor here? There are some logical inconsistencies about the contrary stands that we may take on this debate. The fact is that we all accept the deleterious nature of the substance. It is an argument about procedure more than symbolism.

MR BERRY (Minister for Health and Minister for Sport) (11.48): The speech I made in 1989 on World No Tobacco Day, which Mr Moore quoted, is as relevant today as it was then. The effects of the dreaded weed are well known and well documented. There is no need to dwell on that. We have to deal with the introduction by the Assembly of tighter tobacco-related laws in the ACT, and I am proud to have played a part in that.

The first Labor Government set up the first Health Promotion Fund in the ACT and moved quickly to commence the process of introducing tobacco laws. Regrettably - I must say that it was one of the things I was disappointed about - I was unable to introduce that legislation into the Assembly, because of the history of government in this Territory. However, I am happy that Mr Humphries, as the next Minister for Health, was an advocate of stronger laws against tobacco advertising in the ACT. Whether or not we agreed at all times on the process of introducing that legislation, I think that between us we ensured that a lot of pressure was exerted on tobacco sellers in the ACT as a result of the efforts of this Assembly.

It is a matter of fact that a piece of legislation was passed in this Assembly, with the approval of every last member of the Assembly, which provided for exemptions in advertising of tobacco products and for sponsorships. Those exemptions are very clear in the legislation. Nobody regrets more than I the need to provide those exemptions, but it is a matter of fact that tobacco sponsorship and tobacco advertising are sourced from outside the Territory. Events that are held to be important by the people of the Territory have sponsorship sourced from outside the Territory, such as the Winfield Cup, which has been referred to.

It is a great pity that Rothmans have been able to hold onto that sponsorship with the New South Wales Rugby League, as it is a great pity that the cigarette companies that are involved in these exemptions have been able to get their hooks into cricket. But those are matters of fact. They are issues this Government has had to deal with in the context of the legislation, which was passed with the approval of all the members of this Assembly. There has been no indication in the past that their attitude to those exemptions had changed. Indeed, they have accepted it wholeheartedly.

I think this is a sign of the season. We are approaching election time, and opportunities for bright young politicians are not plentiful. One has to go for what one can get. But this is the wrong one. Everybody knows that the members who are going crook about this exemption are the same members who supported the inclusion of exemption provisions in the legislation. It smells of hypocrisy, and it is entirely regrettable that we have had to take this course.

As Mr Moore has said, it is a good thing that these matters come up for debate. The opportunities are there for members to disallow these exemptions, and I think that is a good thing for the Assembly. But for Mr Moore to take the line he has in relation to this one is opportunistic and does nothing for his credibility. The same applies in respect of Dr Kinloch, because he was a great supporter of this legislation as well. He was a great supporter of the exemptions.

Mr Jensen: Where is it in the *Hansard?* Come on, where does the *Hansard* say that?

MR BERRY: I have had a look. It was carried on the voices. There was no dissent at all. For Dr Kinloch to come out and cry about his concern over this is opportunistic. The real issue is how we deal with this process. The exemptions have been made, and I have written in relation to the matter to Mr Boardman of the ACT Cricket Association. I will just quote from the letter. If members really want to have it, I can table it. I said:

> I should stress that I see sports sponsorship by tobacco companies, particularly of high profile sports such as cricket, as a deliberate attempt to circumvent national media advertising bans and a cynical exploitation of sportsmen and sportswomen.

My view on that stands, because that is what it is. It is no more than that. It is about encouraging young people to take up cigarettes. What is happening in the Australian community today is that some people quit smoking because they die and some people quit smoking. The real issue for tobacco companies is to encourage young people to start. That is how they improve their market, and they will do it any way they can. They have got their hooks into these sports, and the sports are very keen to ensure that their source of funds is maintained.

It was mentioned earlier that about $30m was provided to sports by way of this sort of sponsorship around Australia. Our Health Promotion Fund is worth about $900,000.

Mr Moore: Before you abolished it, that is. We do not have a promotion fund any more.

MR BERRY: What are you talking about? The Health Promotion Fund clearly exists. There is a fund for health promotion of around $900,000 a year.

Mr Duby: There is no trust account any more. Read your budget papers.

MR BERRY: We will go over the old argument about the CDF too, if you want to.

Mr Moore: That was the one you raised. I am glad you brought it up. It is exactly the same situation.

MR BERRY: We will go over that one too - the former Government, all that sort of stuff. The fact is that $900,000 is going to be spent by the Health Promotion Fund in this Territory, and there will be no duplicity about it either, Mr Moore - no doublespeak. We will get on with the job and provide the funds for health promotion, as was planned in the first place. We will provide support for the legislation that you supported in this house.

What we have in front of us is an exemption - a regrettable one, no doubt, one that I dislike intensely and one that I will continue to dislike whenever it arises. I will work to ensure that every effort is made to prevent it in future.

Mr Duby: Does that mean that you will not go to the game?

Mr Collaery: He will lie in front of the sign.

MR BERRY: You can all laugh; but we know, for example, in relation to - - -

Mr Duby: Will you go to the game?

MR BERRY: Of course I will go to the game as Minister for Sport, if I have exempted it in accordance with the legislation that Mr Duby and the rest of you supported.

One example of how the promotion of health in sport has worked by way of the Health Promotion Fund is in soccer. The former Government last year supported a buy-out of tobacco support for soccer, and the second round of that is continuing this year. That is a staged process, and that process will continue. The same will apply at every opportunity that arises in relation to these other sports, including cricket and rugby league, given the opportunity.

Mr Duby: And racing.

MR BERRY: Racing is another example where tobacco sponsorship locally was bought out by the Health Promotion Fund. From memory, it was about $30,000 for a horse race. That was done by the former Government and that was the intent of the Health Promotion Fund. So, we are moving on. There is a staged process of reducing the amount of tobacco advertising and sponsorship in the Territory. But we have to accept that we are a very small island in New South Wales, which supports tobacco sponsorship and advertising. *(Extension of time granted)*

It is up to the ACT to keep the pressure on tobacco companies to ensure that there is a diminishing amount of advertising and sponsorship in order that our young people do not take up consumption of tobacco. At the end of the day, not only does it affect their quality of life, it also affects demand and the services that are provided within the hospital system generally. That is well documented.

I call on members to oppose the action taken by Mr Moore. I think it should be opposed, although not on grounds that members in any way support the consumption of tobacco or sponsorship by particular tobacco companies, or that they support tobacco companies. This is a legitimate exemption that was made in circumstances provided for in the legislation supported by members of this house. That is what this is about. It is an exemption that was given unwillingly. It is an exemption that was given with regret. Nevertheless, it is an exemption that was given in accordance with the legislation to provide for high profile sports that travel to this Territory with sponsorship that is sourced away from here.

As I have said to the ACT Cricket Association, there is no doubt that this is a deliberate attempt to circumvent national media advertising bans and a cynical exploitation of sportsmen and sportswomen to encourage young people to smoke and to encourage those that continue to smoke to buy more cigarettes. We will work, while ever we have the opportunity to do so, to reduce the amount of tobacco advertising and sponsorship in the Territory. Our record in office is good. We will move quickly to do something about this.

I congratulate the Alliance Government for supporting the initial moves that were taken by Labor and further developing those. I can say to this Assembly that we will work to improve the position in relation to tobacco consumption in the Territory. It is a staged process - we have to accept that - and we will continue to work for it; but I urge members to oppose the motion of Mr Moore.

MR HUMPHRIES (12.02): Let us be perfectly - - -

Mr Jensen: I thought I was up first, but never mind.

MR HUMPHRIES: I will not take too long. I am sure that there will be plenty of time for other speakers. I want to make it quite clear that any occasion where an exemption has to be granted under the legislation put through the Assembly last year by the Alliance Government is an occasion for regret, and one where we would have to say that in one small way or other the thrust and spirit of that legislation to create the best anti-smoking, anti-tobacco environment in the country is being compromised. Obviously, we regret any occasion where that has to occur.

Let us be quite clear: Sponsorship of sporting, cultural or other events by tobacco companies is advertising, pure and simple, nothing less. I agree with the comments made by Mr Berry that events such as the Prime Minister's XI cricket match which are sponsored by tobacco companies are nothing more than a cynical exercise by those tobacco companies to exploit sports men and women to promote their cause, to promote the product they are trying to sell.

They do so at the risk, ultimately, of the lives of young people who take up smoking and, in some cases, die from that habit.

Because of that view, it is vitally important that this Assembly protect and strengthen the role of that legislation and the capacity to grant exemptions to particular tobacco companies in certain circumstances, not as a device to weaken the Act but rather as a device to preserve the strength and integrity of the Act. I am prepared to accept the Minister's assurance that the use of the exemption for this particular occasion does not detract from the operation of the Act and will preserve the value of the Act for other occasions.

I will explain what I mean by that. Clearly, if the Government were to exempt frequently, it would make a mockery of the Act. Equally, not to exempt at all would undermine the spirit and the operation of the Act. Tobacco companies would be able and very willing to make the most of those refusals and to play up the fact that the ACT was missing out on important sporting, cultural or other events. They would say quickly and emphatically, and no doubt with some advertising dollars behind them, that the ACT was missing out because of these tough government regulations. They would say that the people of the ACT were suffering under a regime which deprived them of access to the same sporting and cultural events that other Australians enjoyed.

On this side of the house, and I imagine the Government feels the same way, we do not want that kind of thing to be happening. We do not want this legislation to be undermined by that kind of comment. We want to preserve the legislation in such a form that ultimately it will embrace all sporting and cultural activities in the ACT. Ultimately, events of that kind will have been outlawed across the country through the concerted operation not just of governments in this Territory but of governments across the whole country, both State and Federal. I believe very firmly that we are going down that path.

It is only a matter of time before all governments in this country accept and acknowledge that sponsorship of sporting and cultural events is advertising of tobacco products, pure and simple, and that the best way of dealing with that advertising is to ban the sponsorship. I believe that it can be done, and we are heading down that path. Paradoxically, this exemption is one way of making sure that that happens. We do not wish to give succour. We do not wish to strengthen the hand of tobacco companies and make them believe that they have weapons to use against legislation of this kind because major events are turned away from the ACT.

I speak from experience when I say that those companies will react in a cynical and destructive fashion if they find that they are unable to hold these major events in the ACT. Last year, while Minister, I was written to by a company seeking to exempt a particular activity - in fact, a photographic display in the ACT. The request was extremely unspecific and vague, and I imagined, on receipt of that letter, that they were going to follow up with a formal application for exemption. I wrote back to them without making specific promises about the exemption, but I expected to receive further details of their request in due course.

The company put out a press release indicating that they had been refused an exemption by the Government. That was a false claim and it was rebutted by me the following day in the media. I believe that their attempt to attack the legislation and the Government's resolve in this matter was rebutted on that occasion, but it indicates the depths to which those organisations will go if they believe that they can successfully undercut this kind of legislation.

I am pleased to hear that the Government believes that it is moving quickly in this area. I welcomed the Labor Party's support last year; but I have to say that I do not believe that the Government is moving particularly quickly in this area, as in a number of other areas. The fact of life is that, if anything, the pace of reform of the tobacco law has slowed down under the second Follett Government. Mr Berry was very fond of criticising the Alliance Government for our lack of resolve on this issue, despite the fact that they supported the legislation pretty well in toto when it came forward. Now we see a number of things that I would have expected to be happening rather sooner in fact not happening at all, or being put indefinitely on the back burner.

Mr Berry was quick to say that the Health Promotion Fund ought to be constituted as a statutory authority. He told the Estimates Committee only last night that the Health Promotion Fund has no immediate prospect of changing its status and will remain in its present form for some time to come. I got a rather more urgent intimation from the message he was giving us some months ago. Mr Berry has gone in the opposite direction by removing the trust account status of the fund for the time being. I wonder how long that temporary measure will be in place. I would welcome from the Minister a firm date when we are going to see a reconstituted and beefed up Health Promotion Fund.

I also indicate that I was gravely disappointed by the Government's slow progress on the establishment of no-smoking zones in restaurants. It was my belief in office that we would quickly be able to resolve whether or not legislation was required to establish no-smoking zones. I understand now that we do not even have the beginning of the survey which will ascertain the extent of the need for legislation in this area. It just has not happened.

Mr Berry: That is because you did not do it.

MR HUMPHRIES: I certainly would have expected it to happen before now, and I am disappointed that the Government does not seem to make it a priority. Mr Berry indicated yesterday that the thing was really on the back burner; it was not really happening. We will see what happens. He could not give me any date when we could expect to see legislation. He could not indicate even the rough intention, the broad impression, of the Government with respect to the success or otherwise of the voluntary no-smoking zone experiment.

Nonetheless, I am not entirely going to attack Labor on this occasion. I think one Labor politician in particular deserves to be congratulated for her stand, and I refer to the Federal Minister for Sport, Ros Kelly. I have been extremely impressed with Ros Kelly's statement on the need for Federal Government action to do away with tobacco advertising through sponsorship. In the circumstances, I think her statement was extremely brave. I believe that politicians of all hues ought to be congratulating and supporting statements of that kind from a politician who is, in a sense, exposed on that kind of issue. Her decision took some courage, and I will be offering her whatever support I can in my own humble position in the coming months.

We do require some concerted action, and I hope we can get that kind of consensus on the floor of this Assembly. I am sure that if we do we will achieve great things in this area, but there is still some ground to be made up in the coming months.

MR JENSEN (12.12): I do not think anybody in this place has doubted the commitment of two Health Ministers, both past and present, in relation to the use of tobacco in our society and the advertising of tobacco products. Sometimes I wish that they would take a similar approach to some of the issues related to the advertising of alcohol. But that is another story.

Mr Berry hit the nail on the head very early in the piece in relation to a little point scoring going on here. I am not quite sure whether this debate was necessary today. It is a very divisive issue, and I think Mr Moore and Mr Berry were a little hypocritical, but for different reasons. In Mr Moore's case, a report brought down this week with the full support of Mr Moore allowed the continued use of a product that has been shown to have a 70 per cent greater chance of producing cancer amongst those who use it. I suggest that if tobacco had appeared in our society in a more enlightened time, when people knew more about health issues and the effect of tobacco, it may well not have become the problem that it is today.

Mr Berry's comments in relation to the CDF and the Health Promotion Fund have already been referred to by Mr Humphries. In Mr Berry's case, it depends a little on whether you are in government or in opposition as to which side you support. I see that Mr Berry, in the Estimates Committee last night, said that the Health Promotion Fund has continued. Okay, the money has gone into Consolidated Revenue.

Mr Berry: No, it has not.

MR JENSEN: It has effectively gone into Consolidated Revenue. He is providing $900,000 this year, which is not even keeping up with inflation. In fact, it is a decrease in the amount of money that is to be provided.

I guess we all have to be careful at times to remember what we have said in the past, because occasionally it will become a rather large boomerang. It may be that these days more people are expressing concern about political statements on things such as this. They want people to stand up for their rights and for their convictions, as my colleague Dr Kinloch has done today. Anyone who has young children and has seen them affected by the pressures in relation to both alcohol and cigarettes would have to have some concern. A relative of mine wasted away before my very eyes as a result of the effects of both these drugs.

My colleague Mr Collaery indicated today that what we want is a commitment from the Minister to implement very quickly the national health strategy on tobacco, which was agreed by the Ministerial Council on Drug Strategy in 1989. It states:

> One of the overall goals of the national health strategy on tobacco is to improve the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms.

It goes on to talk about marketing:

> Advertising is of particular concern because it reinforces smoking as an acceptable behaviour and maintains levels of tobacco consumption. This contradicts the primary goal of the national health strategy on tobacco.
>
> The World Health Organisation has long since recommended a ban on advertising and promotion of all tobacco products.

That is effectively what is happening at the Winfield Cup; and it is happening at the Benson and Hedges games, whether we like it or not.

How many of us will ever forget the advertisement that appeared on our TV screens every night: "Anyhow, have a Winfield". The name "Winfield" has been burnt into the minds of the Australian community as being related to cigarettes: "Anyhow, have a Winfield". That is where it came from. People see "Winfield" and they think of cigarettes. That is what it is all about. The Winfield Cup is the same thing.

One of the other objectives, on page 9 of the statement, reads:

> To eliminate all forms of tobacco advertising.

Another on page 10 reads:

> To discontinue promotion of tobacco products.

As to the strategies, the objective in relation to sponsorship reads:

> To phase out sponsorship of sporting, cultural and educational activities by tobacco companies.

The first strategy reads:

> The introduction of legislation to prohibit promotion of tobacco products through sporting, cultural and educational activities.

The reason Mr Moore's motion is unfortunate is that things have been set in concrete in relation to the two events for which the exemptions have been granted. While I accept the need for it, it is unfortunate that Mr Moore has brought it on today.

Mr Berry: No, he did not bring it on today; I brought it on.

MR JENSEN: Okay, you brought it on today; but Mr Moore put it on the notice paper. We will be supporting Mr Moore's motion, as has already been indicated.

I think it is time for politicians to take a stand and join people such as the Federal Minister for Sport, Ros Kelly - I do not always agree with Ros, but in this case I do - and David Hill, who have come out strongly in support of the removal of Winfield sponsorship from these organisations. It is about time we took a stand and were counted on this very important social and community issue.

MRS NOLAN (12.19): Mr Speaker, I will be brief. I think the real issue is the legislation. The provision is there for those exemptions. I do not want to debate the tobacco sponsorship issue; I think that is for another time. I certainly will not be supporting Mr Moore's motion.

I would have thought that, as the national capital, we would have been trying very hard to get an additional cricket match for this city rather than be talking about exempting the Prime Minister's XI match. The situation currently is that capital cities in every other State and Territory around Australia have at least one of the Benson and Hedges one-day matches or test cricket. I think it is time that Canberra had one of those one-day matches. At this point, I am not quite sure where those sponsorship dollars are going to come from if it is not from Benson and Hedges.

I will not be supporting Mr Moore's motion. In cases such as Benson and Hedges, and also Winfield - that really is another issue - I do not agree that sponsorship necessarily causes people to smoke. I have had a long involvement with the Rothmans Foundation. I was an athlete for a number of years, and I have to say that I was provided with an enormous amount of dollars for training that I would not have been able to enjoy had it not been for the Rothmans Foundation.

MR MOORE (12.21), in reply: Mrs Nolan finished her speech by saying that she had had a long involvement with the Rothmans Foundation. She has also had a long involvement with the product that Rothmans and others produce. But congratulations to her. I understand that she has given up smoking. That is a major step forward and not an easy thing to do.

I think we should have had a conscience vote. When I look around me, I know that, if it were not for the way parties drive people, the vote on the issue would have been divided, but it would have carried. We would have sent a message to Australians about tobacco, the like of which has not been seen since Victoria had the courage to say, "We are not going to accept the motorcycle grand prix". They lost it, and that had some difficulties for them; but at least the message was loud and clear. We could have sent the same message, except that in many ways it would have been more effective because the particular game we are talking about is the Prime Minister's XI game.

What a wonderful opportunity we have to show the courage of our convictions. Almost everybody here has spoken against tobacco sponsorship. Almost everybody has agreed that it is important for us to take on those tobacco companies and try to change things. We have the opportunity to do so. And what is the cost? We balance the deaths we have been talking about against two cricket matches. The important one, the critical one, is on 17 December, and that is the Prime Minister's XI match.

Mr Humphries raised the issue of the stand taken by Ros Kelly, who is currently Minister for Sport. What will she do when she sees the Prime Minister's XI? Look at the emotive strength of the stance we could take on this issue - the Prime Minister's own cricket team, the Prime Minister's XI. Look at the chance we have to send a message throughout Australia that tobacco is not - - -

Ms Follett: But if it were marijuana that they were smoking it would be all right.

MR MOORE: I hear an interjection from the Chief Minister, and it is the same issue Mr Jensen raised earlier, about the fact that I advocated the decriminalisation of marijuana. My position is particularly simple to understand, and I want Mr Jensen to try to wrap his mind around it, if he can. It is a harm reduction approach. It is very simple; it is very consistent. We do whatever we can to reduce the harm associated with the use of any drugs. If you read my report carefully and look at the position, you will see that they are totally consistent.

The easy, ignorant way to do it is to put things in black and white and say, "We will ban everything". I am not suggesting banning tobacco. I do not think that will work, any more than it has worked for other substances. What I am saying is that by getting rid of this advertising - and most of us are trying to do it - most of the problems can be resolved as far as this sort of sponsorship goes.

Mr Berry, in a rather confused speech, talked about this motion of disallowance somehow smelling of hypocrisy - and that was echoed by Mr Jensen - because we allowed a clause in this legislation that a Minister shall be able to provide exemptions. There is no hypocrisy about that. This is fine. The Minister has been allowed to provide exemptions. Equally, we have the right to move disallowance, which is exactly what has happened. There is no hypocrisy associated with that. We are able to move disallowance, and that is what I have done.

I am suggesting that that motion being carried on the voices did not necessarily mean that it had unanimous agreement. The only time we know that motions have unanimous agreement is when somebody actually calls for the vote. Nobody called for the vote. All it means is that nobody called for the vote; it does not mean that it had unanimous support.

I am quite happy to say that I did support the legislation and I did support this exemption with specifically, for a short time, the Winfield Cup in mind. Because so many Canberra players are involved, because it affects the way that sport operates, it is something I have to live with.

But this is a different situation and we can send a very clear message about a cricket game, in particular the Prime Minister's XI game. It is the one game about which we could send a great message. If we had the courage of our convictions and chose between one game of cricket and all these deaths, we could make that choice.

The second point I would like to make is that it is quite clear to me that this motion does not have the numbers. So, let us at least show the courage of our convictions in this way. Let us say that we will do it, that we will not grant an exemption in a given year. I suggest 1995; others might say 1996. But let us think about it in that way. Let us at least make it very clear to Australian cricket that we are not going to tolerate the slimy relationship it has with these killer companies.

Question put:

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

The Assembly voted -

AYES, 5	*NOES, 11*
Mr Collaery	Mr Berry
Mr Jensen	Mr Connolly
Dr Kinloch	Mr Duby
Ms Maher	Ms Follett
Mr Moore	Mrs Grassby
	Mr Humphries
	Mr Kaine
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

PARTY MEMBERSHIP
Statement by Speaker

MR SPEAKER: Members, in view of the practice to be followed with respect to registration of political parties and members' party status, as announced by me last Tuesday, 15 October, acting on advice from the Leader of the Parliamentary Liberal Party, I hereby advise that Mrs Nolan will henceforth be listed in Assembly documentation as an Independent until further notice.

HOSPITAL BED NUMBERS - SELECT COMMITTEE
Membership

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

> That Mrs Grassby, Mr Humphries and Dr Kinloch be appointed members of the Select Committee on Hospital Bed Numbers.

Sitting suspended from 12.34 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Rural Firefighting Service

MR COLLAERY: Mr Speaker, this is historic. I got the first call for the first time. Clearly, Mr Speaker, you noticed me. My question is directed to the Minister for Urban Services, Mr Connolly. I refer to the public statements yesterday afternoon by the New South Wales Minister for police and other matters, Mr Ted Pickering, your opposite number in New South Wales. In view of that Minister's revelations that high winds and low humidity can produce tragic bush fires, would you like to add anything to your somewhat intemperate remarks yesterday?

MR CONNOLLY: In fact, I thought of Mr Collaery last night while I was watching the television coverage of the very tragic events in New South Wales. I thought of him in particular when I saw - I think it may have been on the ABC news from Sydney - the tragic vision of a woman in tears outside her burnt and destroyed house, tearfully saying, "We wanted to back-burn only last week and they wouldn't let us". That is what she was saying. She had wanted to take exactly the sort of fire hazard reduction measures that were taken yesterday; but she had not been allowed to by her local council, which must have denizens of the Residents Rally on it.

As I said, yesterday, the program of controlled hazard reduction is an extraordinarily sensible program. The operation yesterday was conducted safely. On the day of yesterday's burn there was considerable liaison between the manager of the Canberra Nature Park and the fire office to ensure that it was safe to proceed with the burn, given the known conditions yesterday. The burning off operation yesterday was very successfully carried out, with very satisfactory fuel reduction results. As I said yesterday, it will avoid, hopefully, the likelihood of a recurrence of that very fearful day last year when houses, property and potentially lives were threatened in O'Connor because burning off had not occurred. Indeed, my colleague Mr Wood had to go home that day.

The operation yesterday was conducted safely. It was clear that, had similar operations been conducted in some areas of New South Wales, yesterday's events may not have occurred. It is a very responsible program and it will continue.

MR COLLAERY: I thank the Minister for his response. It is a serious question. The real point of the question is: In view of the numbers of phone calls to at least the Rally's office over that burn, will the Minister undertake to attempt to influence the people responsible for these activities to issue a public notice, so far as that is practicable, when these operations are programmed to take place? We have all seen such notices in country newspapers and they are prefaced by the statement, "So far as is practicable, depending on weather conditions, burn-offs may take place on such and such a date". I ask the Minister whether he would be interested in seeing that those procedures, at least, are instituted, so that we do not have the misunderstandings, perhaps, that arose yesterday.

MR CONNOLLY: I have no problems with announcing in advance where controlled burn-offs will occur. Because they are controlled and because careful consideration is given to them, the decision is made some time in advance. I will certainly undertake to look very carefully into how practical it is to implement that. I cannot see any overwhelming reason why it ought not be possible to advise, perhaps through the community newspapers, where such events will occur on the south side and the north side.

Children's Day Care Services Section - Staffing

MS MAHER: My question is also addressed to Mr Connolly, as Minister for Housing and Community Services. Given the Chief Minister's assurance to the community that the ACT Labor Government has a very strong commitment to the provision of quality child-care, can the Minister explain why, in this budget, he has reduced the staffing level of the licensing related functions area within the children's day care services section by almost 50 per cent; that is, from an ASL of 4.5 to 2.5, with effect, I believe, from the end of this month?

MR CONNOLLY: I presume that Ms Maher is making some reference to some of the reductions in administrative staff that are occurring in administrative positions throughout the ACT Government Service in order to achieve the targeted savings that were announced by the Chief Minister. Administrative positions in central office positions are somewhat different from sharp end service delivery. Despite the problems of a massive decline in Commonwealth Government support for this Territory, and a consequent massive and sudden decline in the size of its budget, we are endeavouring to ensure that the service delivery ends continue.

I presume that this reduction of two staff in the administrative unit is what is of concern to Ms Maher; but I am afraid that, in difficult budgetary times, those sorts of savings have to occur. And I think it is better to make the saving at the administrative level than at the service delivery end.

MS MAHER: Mr Speaker, I ask a supplementary question. Minister, will you please explain, if you have just confirmed that reduction, what you meant when you categorically denied that there would be any reduction in the staff in this area, during the evidence you gave to the Estimates Committee on 8 October? I wish to read into the *Hansard* questions and answers from page 751.

MR SPEAKER: It is hardly a supplementary question, if you are going to read that into - - -

MS MAHER: Well, it is relating to Mr Connolly's - - -

MR SPEAKER: No new information or material is to be presented in a supplementary question. Have a look at your standing orders. You could just ask the question without reading that in, and do that at a later stage. You could seek leave after question time.

MS MAHER: Will the Minister confirm that he categorically denied that he would have a reduction in staff, and said that there would not be a reduction in staff, in the information he gave to the Estimates Committee? Did he mislead the Estimates Committee? If so, was it unintentional or intentional?

MR CONNOLLY: I will obviously look at the transcript; but my answer to the repeated question was that I did not have the names, addresses, telephone numbers, hair colour or photographs of staff positions that were going away. That was my repeated answer and you repeatedly failed to accept it. So, given that, I would find it implausible that I would have given some categorical assurance that any single administrative unit would "no, no, never, ever" have any staff reductions.

I am not, indeed, today confirming to Ms Maher that a particular ASL in a particular unit has been reduced from 4.5 to 2.5. I will take it on the assumption that what she says is right and confer with my officers afterwards, look at the transcript, and report to the house. But, no, I certainly, to my knowledge, have not said anything other than that negotiations were occurring as to where staff positions would be saved.

School Closures

MR HUMPHRIES: My question is addressed to the Minister for Education in the hope that he treats the institution of question time a little more seriously than his colleague the Minister for Urban Services does. My question concerns education demographics. I remind the Minister of comments that he made on 15 May last year, reported in the Canberra *Chronicle* of that date as follows:

> Inevitably, because of demographic changes some schools have to close.

I ask the Minister: Does he still believe that some schools have to close, particularly in light of the fact that we now have more schools and more empty places than we did when the Alliance left office earlier this year?

MR WOOD: Mr Speaker, it would be a foolish person who would stand up here, or anywhere, and say that in a period of some years' time well into the future we will have the same configuration of schools that we have now. Mr Humphries, let me tell you: Times do change. It would be an even more foolish person, as you were, who would walk out of one's office one day and say, "We are going to close a quarter of our schools this year", which is exactly what you did. There is no question about that.

Certainly, circumstances change and governments adjust to it, and the communities in Canberra will adjust to it. If, Mr Humphries, you had walked out one day and said, "Look, the demographics of this Territory are going to change. We are moving out into the suburbs. I am going to institute a procedure whereby schools will be notified of enrolment changes, whereby they will respond to those enrolment changes by varying their curriculum and whereby, if things do become unsustainable, communities will pass a view after this has occurred over a period of some years", I would think that you would have successfully negotiated some change. It takes time, Mr Humphries. That is a lesson that you had to learn, and which this whole community had to impose on you, after bitter debate.

School Bus Services

MRS NOLAN: Mr Speaker, my question is addressed to Mr Connolly in his capacity as Minister for Urban Services. Minister, I understand that there are some school bus services that will be no longer operational at the beginning of the 1992 school year. How many services will be affected? What consultation has taken place with the schools, parents and children? When will the announcements be made?

MR CONNOLLY: I thank Mrs Nolan for the question. It is a matter which I believe we went through in some depth at the Estimates Committee hearings, although not on that specific question. There are criteria that are being developed by ACTION in consultation with the school communities, at the public and private school levels. As patterns of demand change and demographics change, so the feasibility or otherwise of providing a service will change.

I can provide Mrs Nolan with a detailed response on which services are looking as though they will be affected, after question time; I cannot give her the details of the individual route numbers now. But there are criteria for when services are sustainable which have been developed in consultation with school communities and the bus service providers.

MRS NOLAN: Mr Speaker, I ask a supplementary question. Mr Connolly, can the house then have an assurance that we will not have a similar situation to what has happened in the past - and last year was a perfect example - where we had those announcements made a week prior to the schools commencing? I am talking about the 1992 school year. I believe that it is more appropriate that parents be made aware some time before school is actually about to recommence.

MR CONNOLLY: Announcing it the week before, which occurred perhaps this year, is the typical process of lack of consultation that one would have expected from that Alliance Government. I certainly assure Mrs Nolan that I will instruct my officers to make sure that the people are well aware of the situation before the school year commences. As I say, I stress that the criteria for those decisions are made available for the school communities. But I will certainly ensure that that is made available.

Non-Government School Funding

MR JENSEN: Mr Speaker, my question is directed to the Minister for Education, Mr Wood. Has the Minister or his Department conducted an assessment of the likely increase in the number of pupils at public schools in the ACT because of the discriminatory cuts in the non-government schools budget, and the consequent cost to the ACT education budget? If they have not done so, why not?

MR WOOD: I will answer the second part of the question first and that will answer the whole question. I doubt whether there will be any movement of enrolments. There is no need to make such an inquiry. I would say further that the government school system will enrol every student who comes to it. Again, I do not anticipate any change.

Before School Care

MR MOORE: Mr Speaker, my question is also directed to the Minister for Education, since he has been up and down on his feet today. It is a good change to see that we can get some answers. What are the responsibilities of schools in looking after children prior to starting times? Obviously, this ought not require extra duties for teaching staff, so what is being done to encourage after school care-style facilities where that is appropriate?

MR WOOD: I suppose you mean "after school care" before school.

Mr Moore: Exactly. They call it "afters"; maybe they will call this "befores".

MR WOOD: Maybe they should call it "befores". The matter of caring for children before school is a vexed one. Teachers, I believe, are now expected to keep a brief on children. Close supervision is not always required, although I want to point out, Mr Moore, that I will get back to you with precise legal requirements. I know that, in schools in which I have taught, we kept a watch on children. We were aware of what was happening, but it was not necessarily as structured a supervision as occurred during the school day.

Technically, as I understand it, children do not become the responsibility of the schools until they arrive at school, and then there is some question of when that starts. But the main point that you raise is the question of before school care. It is an important issue. It is one that does need attention. I am aware of a number of schools where the after school group has endeavoured to do this, though I am not aware of any school where that has been successfully developed. It is a procedure that I would do all that I could to assist.

Handyhelp Home Help Service

DR KINLOCH: My question is directed to Mr Connolly, Minister for Community Services. It is alleged by a client of the Handyhelp home help service that the home help service has closed its books due to lack of funds. I cannot vouch for that at all. I wonder whether the Minister could bring us up to date on that.

MR CONNOLLY: It is an allegation that I am unaware of. I will certainly have it fully investigated and respond to the house or to Dr Kinloch directly.

Liquor Licence Payments

MR STEVENSON: My question is addressed to the Chief Minister. It concerns payments by businesses holding liquor licences. Under the budget, the licence payments for new businesses will be payable quarterly, whereas for those businesses that previously held liquor licences they will remain payable yearly. The question is: Firstly, where is the equity in old businesses being able to pay yearly and new businesses being required to pay quarterly; and, secondly, if one were going to favour anybody, would it not be new businesses, as they are just starting up and have not been established?

MS FOLLETT: I thank Mr Stevenson for the question. I think Mr Stevenson will need to go back a little bit and just review the fact that under the old liquor licensing arrangement there was a significant amount of bad debt, a significant amount of inability on the part of the Commissioner for Revenue to collect liquor licence payments, for a variety of reasons. That largely arose because of the long time delay between the collections of liquor licensing fees.

Under the previous Government a scheme was proposed to introduce a quarterly liquor licensing arrangement; but under that scheme, of course, what was proposed was that old businesses would, in effect, have to pay a double amount for their fees because of the introduction of the new scheme on top of the operation of the old scheme.

Mr Duby: No, they would pay for four years in three. That is not double.

MS FOLLETT: Of course, this was somewhat abhorrent to people already in the business of selling liquor. I know that Mr Duby has tried to justify what he was proposing, but I think he would be forced to accept that his proposal was indeed abhorrent to people already in the industry. So, in government, I accepted fully that there was a need to overcome the previous problems in collecting liquor licensing fees, and the Government has developed quarterly assessment and payment arrangements which both address the concerns of liquor licensees and reduce the Territory's exposure to bankruptcy and bad debts in the liquor licensing area.

The new scheme, as Mr Stevenson has correctly said, will require new licensees to pay quarterly in advance before a licence is issued or renewed. Existing licensees, as, again, Mr Stevenson has said, will continue to pay in arrears, but they will be required to pay quarterly. So, we will not have that very long gap between the collections of the money. It is a fact that there is a different scheme for older licensees and for new licensees; but I think it is a matter of striking a balance between the need for arrangements to protect the ACT from the bad debts and the need, of course, not to disadvantage people who are already in business.

I realise that there are, in effect, two schemes, Mr Stevenson. I do not believe that that represents a lack of equity or a discrimination; I think it is just a recognition that in trying to address this problem we had to strike a balance between the interests of existing business people and the interests of the Territory.

MR STEVENSON: Mr Speaker, could I ask a supplementary question, please. Thank you very much indeed for the explanation. Is there any attempt, or future proposal, to make them both the same?

MS FOLLETT: I do not have such a proposal under consideration, Mr Speaker.

Supreme Court

MR COLLAERY: My question is directed to Mr Connolly in his role as Attorney-General. I ask the Attorney whether he could outline briefly, to the extent which is proper, the steps he is taking to ensure a smooth transition and handing over of the Supreme Court to this jurisdiction from, presumably, the last date that is statutorily possible, that apparently being a policy of the current Government.

MR CONNOLLY: Mr Speaker, the incoming Labor Government inherited a position where there were certain steps under way and developments occurring to bring forward the date of the transfer of the Supreme Court to 1 January. We have taken the view that that is not necessary or desirable. The sitting times this year were short; we were a government coming in in a minority situation. The statute, the constitution of the ACT in effect, provides that that transfer will occur on 1 July. That date will follow a substantial sitting period of an incoming, stable and, we are confident, Labor government; and we believed that there was no need to pull forward that process.

There are ongoing negotiations with the Commonwealth Government as to the form of Commonwealth legislation that may be necessary and such transitional provisions as the Commonwealth may see appropriate for the position of existing judges. But we believe that it is unnecessary to lock into a position on that in the life of this Assembly.

MR COLLAERY: Mr Speaker, I ask a supplementary question. I note the Minister's answer. Further to his response, and with reference to the indications in the budget papers available to us that the Government is continuing with design assessments for a proposed legal precinct, I ask whether the Minister is in fact setting the groundwork to ensure that, if the court is not to come over and if his

Government is returned - and I stress "if" - following, no doubt, successful negotiations with the Commonwealth, there will be adequate and proper facilities provided in a better state for our judges, who are not appropriately housed and provided for at the moment.

MR CONNOLLY: When the Labor Government is returned and when the courts come over on 1 July, I am sure it will be a smooth process. We said in opposition that we were somewhat sceptical about the rather grandiose proposals that had been announced for a major redevelopment of a court precinct in the Territory. We have to face the reality of a budget with difficulties.

There is work going on within the department and with Public Works about ways of refurbishing the Supreme Court building to make it somewhat more useable - and I acknowledge that the facilities there are less than appropriate, and they, of course, are Commonwealth facilities now. It seems fairly clear that they have been allowed to run down. The Commonwealth has had in recent years a major program of upgrading Commonwealth court facilities around the Commonwealth; but, strangely enough, the ACT dropped off that program and we still have, effectively, 1960s standard facilities in judges' chambers there. The magistrates courts are dispersed around the Territory.

We are looking at cost-effective ways of perhaps extending, altering or building an annex to that building that would bring the courts together. But it will not be a grandiose project. We will also be looking, of course, at negotiating with the Commonwealth - - -

Mr Jensen: Show some vision.

MR CONNOLLY: I hear, "Show some vision", from the Residents Rally. What I want is for the Residents Rally's vision of the money tree to be realised. You see, in their vision there is a money tree. We keep looking for it throughout the Territory. Mr Wood has his conservation officers out in the forest looking for this mythical money tree, but so far we have not found it. Until we do, we have to operate within the parameters of the budget in a responsible manner. So, we are doing what we can; the situation is under control; and, as I say, we will negotiate with the Commonwealth - - -

Mr Collaery: You are doing nothing for social justice.

MR CONNOLLY: It is a question of priorities of social justice. To me, the choice between building a $50m court precinct and putting more money into disability services or the like does raise the question of which entails the greater social justice - and I know on which side I fall in that debate.

Mr Duby: Do you think the judges can go hang?

MR CONNOLLY: I do not think the judges can go hang themselves, Mr Duby. I certainly do not repeat those assertions. But we will certainly negotiate with the Commonwealth with a view to having some accommodation which could be shared between Commonwealth and Territory judges. I would certainly again draw the Assembly's attention to the way in which we negotiated on the police budget - resulting in a doubling of the Commonwealth funded officers for this Territory. So, the Labor Party has a clearly satisfactory record on those issues.

Children's Day Care Services Section - Staffing

MS MAHER: Mr Speaker, my question is addressed to the Minister for Housing and Community Services, Mr Connolly. Minister, during the Estimates Committee proceedings on 8 October, you stated in evidence to the committee that there would be no reduction in the licensing related functions area of the children's day care services section. I will read from page 751 of the transcript:

> THE CHAIRMAN: ... And in the budget papers on page 133, you refer to 80 new child care places being established. Will there be any changes in the number of staff employed in the licensing related functions in the children's day care services section in 1991/92?
>
> MR CONNOLLY: No, no. And indeed, in all administrative areas, more efficiencies are being sought throughout the service.
>
> THE CHAIRMAN: So you are confident that you will be able to establish and license and supervise those additional 80 new child care places with the same staff you already have at the moment; is that correct?
>
> MR CONNOLLY: Yes.

In light of the answer you gave to my earlier question - - -

MR SPEAKER: Order! Ms Maher, under standing order 117(e)(ii), "proceedings in committee not reported to the Assembly", we are not permitted to read that into the - - -

Mr Jensen: I raise a point of order, Mr Speaker. The transcripts have actually been approved for publication by that committee and Ms Maher was actually referring to those transcripts.

MR SPEAKER: Thank you for your observation; but that has not been reported to the Assembly, on my understanding, as a committee report. Therefore, again, Ms Maher, I would ask you to seek leave if you want to bring that information into the Assembly.

MS MAHER: Can I seek - - -

MR SPEAKER: Not during question time. Please proceed, but do not bring that information into the Assembly.

MS MAHER: Mr Connolly, during your answers to questions during the Estimates Committee hearing, did you say that there will be no reduction in the licensing related functions in the children's day care services area?

MR CONNOLLY: I obviously did not have that transcript in front of me. I have just had it given to me.

Mr Collaery: You cannot refer to it.

MR CONNOLLY: But I cannot refer to it. So, I really cannot give any sensible answer to the question: "Did you say this?". It depends what "this" is. I suspect that Ms Maher has selectively quoted the "this", and that, when the "this" is read in the context of other "this-es", the issue will make sense.

Mr Jensen: Ooh, sprung.

MR CONNOLLY: I rather like Mr Jensen's rather pathetic, learner plate interjections. When this issue is open for questioning, I would be happy to take Ms Maher's question on the detail. We are in something of a cleft stick here in that she cannot refer to what I am alleged to have said and I cannot refer to what I am alleged to have said or what I additionally said.

There was no assurance, as I read the statements and the context, of any individual job cuts. The overall position remained that we did not know where the cuts were. I notice that there was a context of "could we provide more services; did we need more staff?", and I was clearly giving assurances that more efficiencies were being sought and that we did not need more staff.

Mr Jensen: You hang yourself, Terry.

Ms Maher: You are just getting worse, Terry. You are getting in deeper.

MR CONNOLLY: The chooks are cackling over there. In respect of the words that I cannot refer to - "No, no" - I must say that that is usually the "No, no" that I say when I am trying to cut a silly question out. Although I cannot refer to it here, as it has been authorised for publication the media can read it and the media will understand that there are no contradictions or "shock, horror!" here.

Mr Berry: A silly question, Carmel.

MR CONNOLLY: It was a rather silly question, because we cannot refer to the detail; but I am confident that I have not misled anyone. But I would be happy, when we can refer to this, to have the debate rather more fully.

MS MAHER: Mr Speaker, I ask a supplementary question. Can the Minister give an assurance that the staffing allocation in the licensing related functions area of the children's day care services section will not be reduced in the term of this budget?

MR CONNOLLY: No, I have never been asked for that assurance and I will not give it, as I was - - -

Mr Kaine: You have just been asked for it now.

MR CONNOLLY: Indeed, and I will not give it, because we are looking to achieve savings in administrative staff. We are looking at savings in administrative staff. As I always said, we did not know where it would occur. As I had always said, I was confident that we would be able - - -

Mr Duby: There will be no staff reductions.

MR CONNOLLY: No, I have not said that; there is no such statement. There was a "No, no" to cut off a question and the statement:

> And indeed, in all administrative areas, more efficiencies are being sought throughout the service.

When asked whether I was confident that we could do it with the same staff we have at the moment, I said, "Yes. You would be aware there has been significant administrative changes ...", and so I went on about administrative savings. I at no stage have given an assurance that no job would be lost in any area. Given the tenor of my repeated answers, to the intense chagrin of members, that we could not at that stage identify the position number, name, address and hair colour of administrative officers, it would have been absurd for me to have said anything different.

Minister for Housing and Community Services

MR DUBY: Mr Speaker, my question is also addressed to the Minister for Housing and Community Services. Can he assure the house - and I would ask him to think about the answer - that he has not misled the Estimates Committee?

MR CONNOLLY: Mr Speaker, until I pore over the entire transcript, all I can say is that I can assure the house that I, as always, endeavoured to give full and frank answers to questions. The question that was asked is a sort of "When did you stop beating your wife?" question. I assure members that, being a prudent person, I will carefully scrutinise the full record when I have it - and I do not have it with me in question time; I expect that no member takes the full transcript of all committees with them to question time.

I am sure that I always give a full, frank and educative answer which, if listened to by members, would leave them better informed, though probably no wiser, in respect of government activity. I will carefully examine the transcript. On the transcript which I have in front of me, but which I cannot refer to, I am utterly confident that on page 751 I made no statement that could be taken to be misleading.

Ms Follett: Mr Speaker, I ask that further questions be placed on the notice paper.

Northbourne Oval

MS FOLLETT: I would like to respond to a question that I took on notice earlier in the week. The second part of a question from Mr Collaery asked me, in view of an article in the *Chronicle* newspaper, whether I would agree that the Alliance Government gave no approval to develop Northbourne Oval and whether my Government would now revisit that decision and approve the development.

My answer is: Firstly, I understand - I was not in the Alliance Government, so it is on my understanding - that the former ACT Government accepted a recommendation from the ACT Planning Authority that Northbourne Oval be retained as open space, and my Government does not intend to consider the matter further.

Quarterly Economic Report

MS FOLLETT: Also, Mr Kaine asked me a question about the quarterly financial statement for the June quarter of the last financial year. Mr Kaine explained that he had understood that the document would be available by 10 October. I would just like to reassure Mr Kaine that the June 1991 quarterly financial statement has been completed. It will be published as a matter of priority.

Demolition of House at Manuka

MR BERRY: Mr Jensen asked Mr Wood a question in relation to a building demolition at Bougainville Street, Manuka, and Mr Wood has asked me to answer the question. Mr Jensen asked:

> Can the Minister advise whether it is correct that the Heritage Committee accepted a certificate from the builders that the building was unsound and that no independent assessment was made by the Heritage Committee or the Territory Planning Authority in relation to the soundness or otherwise of the building? ... Will the Minister make available to the public details of the approvals for the demolition, including the certificate of the unsound nature of the building, which were used by the Heritage Committee to make its recommendation?

At this juncture, I just mention, on the issue of questions, that it is very interesting that not one health question was asked today. So much for the interest in the provision of details about what is going on with the health budget.

Mr Wood's answer is: The architect for the development obtained an independent structural engineering report from a qualified and practising structural engineer. The report stated that the building was structurally unsound and recommended demolition. The ACT Heritage Committee viewed the report and agreed with its conclusion. No independent assessment was made by either the ACT Heritage Committee or the ACT Planning Authority. The Government is happy to make available to the public the details of the demolition approval and the structural engineer's report. However, Mr Wood has asked his officers to seek the consent of the lessee who commissioned the report. That concludes the very good answer to that wobbly question.

School Bus Services

MR CONNOLLY: Mr Speaker, in question time this afternoon, Mrs Nolan asked me about the changes to school bus services and I said that I would advise her when decisions had been made. Fortuitously, there was a meeting going on from 2 o'clock, which stopped at about 2.30, between schools and ACTION, as part of the full consultative process. I can say that there are three services that are proposed to be deleted: The service from Farrer and Isaacs to Marist and Melrose, which will be combined with another lightly used route; and two services servicing South Curtin and Macquarie schools which are no longer necessary because of the enlightened reversal of the former Government's school closure policy. The Macquarie service, for example, today had only two students travelling on it.

However, there will be three new services - from Gordon and Conder to both Calwell Primary School and Calwell High School, and from Gordon and Conder to St Peter's College. So, while there will be a reduction, which has been sorted out in consultation with parents today, many months before the new school year, there will also be new services introduced to service the community in the growing southern suburbs.

BUDGET DEVELOPMENT AND MANAGEMENT
Discussion of Matter of Public Importance

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

> The ineptitude of the Follett Labor Government in budget development and management, exemplified in the failed 1991-92 budget.

MR KAINE (Leader of the Opposition) (3.07): Mr Speaker, one sometimes wonders, when matters of public importance are brought up, just to whom they are important. I think this is a case when it is a matter of public importance because there are 300,000 people out there who at the moment have some real reservations about this budget which this Government has put forward. People wonder, firstly, whether it is focused on any particular issues or whether it is not simply a grab bag of things thrown together in a hurry; and, secondly, whether or not the budget will achieve any objective at the end of the day. It is therefore very much a matter of public importance, and I am sure that other members of this Assembly will speak at length on this matter.

The budget, of course, is the means by which a government conveys to the community its intentions. It can talk about its policies, and it can speak at great length about what it might do, what it would like to do, or what it wishes to do. But, in the end, what the government intends to do is expressed in its budget. So, I think that, when you examine the question of whether a budget has failed or not, you do not simply wait until the end of the year to see whether the government achieves its financial objectives. That is only one measure, and perhaps the least important, of whether a budget is successful or whether it has failed.

It is now the middle of October and I think it is already possible to judge that, by any practical measure, this budget has already failed. It has failed because of the way that it is perceived by the community. Two days after the Treasurer presented her budget, I - - -

Ms Follett: I raise a point of order, Mr Deputy Speaker. May I draw your attention to the state of the house, not to mention the state of the media gallery.

MR DEPUTY SPEAKER: The state of the house actually is quite all right now. We now have 10 people in the house. Continue, Mr Kaine.

MR KAINE: I did say that I thought members would want to make some comment on this matter. I do not think the Treasurer will be disappointed.

Two days after the Treasurer presented her budget I made a speech in reply. I made some comments about the budget then. I made the point, even at that time, that the budget had failed to confront the reality of the financial situation in which the Territory found itself; that it reflected the Treasurer herself in that there was a propensity for focusing on the peripheral problems and ignoring the central fundamental issues that the budget should have addressed; that it in fact ignored the long-term economic reality; and that it was quite clearly aimed at the February election and the Government hoped that it would hold together until then.

In respect of confronting the fundamental problems, which is what budgets ought to do, and confronting the long-term economic realities, one can make a judgment about whether the budget is likely to succeed. But it certainly failed in the sense that the Treasurer and her Government aimed this budget at the February election. It is already clear that the Government has failed on that objective, because the effects of the budget are quite selective and quite discriminatory, and the debate, both in this house and outside it, in the very short time since the budget was tabled, demonstrates quite clearly that that is how the community perceives this budget; it is selective and it is discriminatory.

We have already seen the parents of students at some of our schools protesting outside this building because this budget is discriminatory in connection with them. We have already seen protests from members of the Australian Federal Police - people who are not accustomed to such action and who are not traditionally out there on the streets protesting. But we have had a very strong protest from the Australian Federal Police Association on the basis that this budget was discriminatory in connection with them. We have had a very strong protest from the real estate industry. *(Quorum formed)*

I was talking about the failure of this budget in the sense that, to reiterate, it appears to be simply a grab bag of things thrown together with no particular objective in mind, except to survive until the February election, while hoping that it does not all fall apart in the meantime. If that is not so, I would like the Treasurer and Chief Minister to tell me what the fundamental issues are that this budget addresses, and what the long-term objectives are that she is addressing with the thrust of this budget. I cannot find any.

I think that the public perception is that it has failed, and I was talking about some of those people who have already perceived the budget to have failed and have been out there on the streets making it clear that they believe so. People in business are already beginning to object. They are beginning to object about the land tax, because they see the consequences of that for this community, and particularly the business community.

We have had some objections already from the Housing Industry Association in terms of the impact, which is only now becoming apparent to it, in terms of payroll tax. Of course, that goes back to the first Follett budget; but the measures are only now beginning to have their effect, and business is beginning to object.

Of course, we are also seeing this perception in that constituency that the Labor Party claims to be its own - the Trades and Labour Council, the Public Sector Union and the unions generally. They are already beginning to realise, fully, the impacts of this budget for them in terms of jobs - and not only in terms of jobs but also in terms of their ability to do the job for which they are being paid. They are becoming very apprehensive, in the health area in particular, about whether they can continue to deliver a satisfactory health system with the impositions that this Government has put upon them.

I would just like to read from my speech of 19 September. I said:

> The budget has failed before it has begun. It addresses only short-term issues - perhaps, as I said before, with an eye to the election - and totally ignores the real and fundamental issues that it should address. It contains no strategy but reflects merely ad hoc solutions to emerging problems. It sets objectives which, even though short-term in nature, will prove to be unachievable.

I had an eye to the health budget and the hospitals when I said that. I continued:

> It exhibits a distorted, ideologically-based set of priorities.

That is beginning to show up to be true. Further:

> It does nothing to substantiate the Treasurer's oft asserted concern for the private sector as the generator of jobs and as the growing potential revenue base. It fails the test of social justice.

It was only a bit over a month ago that I said that. And what is happening already and what has happened in that month demonstrate it to be true. We do not have to go very far outside this building to find the parent of a schoolchild in the private school system who believes that this budget has failed. We do not have to go far outside this building to find a police officer who believes that this budget has failed. I know that Mr Connolly is trying to get himself off the hook now, but when the police wanted to actually negotiate with him about - - -

Mr Connolly: I said that I would, and then they said that they wanted to deal with management.

MR KAINE: No, you did not. I think you ought to go and review history and not try to rewrite it. When the Police Association first objected to your budget, you virtually said, "Buzz off, we are not interested. We have made our decision; that's it". After you got a bit of pressure and you started to feel the blowtorch on your belly, then you said, "We will talk". Then, when they said to Mr Connolly, "If you do not insist that all of this money comes out of the operational overheads budget and if you will allow us to talk about staff cuts, we can come to some agreement", Mr Connolly, quick to jump in without very much rational thought, said, "Give us your 12 people, and I want them tonight". That is Mr Connolly's negotiation.

Only when the blowtorch was applied to Mr Connolly's belly for the second time did it finally dawn on him that this consultation that he talks about all the time is something that he had better get active and do something about. Only in the last few days has there been anything remotely like something that you would call consultation with the Federal Police Association.

Mr Connolly: I have not spoken to them at all this week.

MR KAINE: Well, you had better start talking, because they are not too pleased with you, Mr Connolly. You can talk about consultation and you can talk about the effectiveness of your budget; but yesterday I did read Ms Follett's words from the budget speech that, if the community does not believe that it is working, then it ain't working. That is the case with the police budget.

One does not have to go far out of this building to find a health delivery worker who thinks that this budget is not working. One does not have to go much further than Calvary Hospital. One need not go any further than Royal Canberra Hospital, which is just down the road, where the nursing staff are now beginning to wonder where their job is going to be next week and whether there is going to be one. And one does not have to go far outside this building to find a person in the business community who is asking, "What about us? What did this budget do for us, except, once again, kick us in the teeth?".

I mentioned yesterday the tourism industry, which is probably the most important industry for us, in the short term at least. We have this downturn, which is beginning to show up in the figures. That downturn will be reflected, in the end, in reduced employment, higher unemployment figures and reduced retail trading. All the good figures will start to deteriorate. And what happens at the same time that these figures come out - in fact, three months afterwards, because they were the figures for the June quarter? What does this Government do? It takes a million dollars out of the budget and gets the response that the Chief Executive Officer of the Tourism Commission, not long before employed, resigns.

So, we do not have to go very far in the business community to find out that there is discontent. And, of course, as I said, we do not have to go far to find a trade union official who is starting to wonder about where this Government is going, because they still do not know whether the staff reductions for the next year - affecting their constituency - will be 250, 520 or 700.

So, one does not have to go very far in any direction from this building. And one can talk to any sector of the community and one will have a hard time finding anybody, I submit, who thinks that this budget is a good one - and one will have a hard time finding anybody who is not concerned about the consequences of it for them.

That leads me to the great consultation hoax, which this Government perpetrates constantly. It claims that it consulted with the business world. What happened, in fact, was that CARD went along and gave it the same briefing that it gave to my Government before we moved from the fifth floor. There was no other consultation; there were no other discussions with the business world; that was it. Government members claim consultation. Consultation is one meeting where they give you some ideas and you ignore them entirely! That is your consultation.

Mr Berry: That is the Liberal version.

MR KAINE: That is your consultation. If you can show me somebody else that you consulted with in the private sector, I will be fascinated. There is this consultation hoax. They keep talking about consultation and they simply have not consulted with anybody on any issue. This budget, as I stated on 19 September, failed before it began, and nothing has happened since to change my view.

MS FOLLETT (Chief Minister and Treasurer) (3.22): Mr Deputy Speaker, I was expecting to have to fight my way through Mr Kaine's rhetoric to get to any grain of argument that he might have put forward in introducing this MPI this afternoon. Unfortunately - and it is unfortunate - he is lacking in both rhetoric and argument. Since it is a rare event indeed for Mr Kaine to introduce an MPI, I think it

is a pity for all of us that he has missed the opportunity this time. I think that the state of the house throughout his remarks made it quite clear that people on his own side were as unimpressed with what he had to say as we were on this side.

Mr Kaine, really, has put up this so-called matter of public importance in an attempt to divert attention from the failure of his own Alliance Government to manage the budget during Mr Kaine's own time in power. In doing so, Mr Kaine, of course, has betrayed his total confusion about not only the budget process but also the political process. On the one hand, early in his remarks he accused me of aiming my budget wholly and solely at the February election. Throughout the rest of his remarks he accused me of having an unpopular budget. I do not think I could have done both. Mr Kaine is terribly, terribly confused.

He also asked the question: "What are the fundamental issues of the budget?". I am surprised to have to reiterate them again for Mr Kaine's benefit. Fundamentally, the budget that I have brought forward is a balanced budget - and, of course, that marks it in stark contrast to Mr Kaine's budget, which featured a deficit. So, it is a balanced budget - a budget under which the ACT will live within its means.

As Mr Kaine has said on many occasions, our means are somewhat reduced. Due to our harsh treatment by the Commonwealth and due to the outcome of the May Premiers Conference, at which time Mr Kaine had the responsibility of arguing the ACT's case, we find ourselves with a lot less money. So, it is a budget which recognises that fact and which reins in the ACT to live within its means. As I say, that puts it in sharp contrast to Mr Kaine's effort.

Mr Kaine not only had a deficit but also relied enormously on borrowings. During his time as Treasurer Mr Kaine had what I could only call an inflated capital works program which relied on $43m of new borrowings. That is $43m, Mr Kaine, which you borrowed in order to finance your capital works. In contrast to that, under my budget, we will be repaying significant amounts of debt. Mr Kaine, that is a responsible action. That is a way by which the ACT can live within its means, not just this year but in future years, by reducing interest.

I know that your mentor, the New South Wales temporary Premier, Mr Greiner, is a great one for deficits and a great one for borrowings. He has almost bankrupted his State in the process. His deficit this year was, in fact, about the size of the entire ACT budget. If that is the kind of model which the Liberal Party in the ACT wishes to follow, I do not think you will find that the ACT community is prepared to go along with you on that.

Mr Duby: How does the New South Wales deficit relate to the Victorian deficit?

MS FOLLETT: Mr Deputy Speaker, Mr Kaine has further said that he finds my budget selective and discriminatory.

Mr Duby: I think the figure is something like 20 per cent.

Mr Humphries: Something like that, yes.

MS FOLLETT: Mr Deputy Speaker, are you going to protect me from these continual interjections?

MR DEPUTY SPEAKER: I will, when you need protection, Chief Minister, yes.

MS FOLLETT: Mr Kaine has pointed in particular to the effect of my budget on the business community. What a joke! Let us have a look at Mr Kaine's record, in budget terms, in respect of the business community.

Mr Humphries: I raise a point of order, Mr Deputy Speaker. I can understand the Chief Minister wishing to go into some length about the former Government's budget because of the very attractive example it sets her; but the subject matter for this MPI is clearly the Follett Labor Government, its budget and nothing else. I would respectfully ask that you ask the Chief Minister not to stray into other budget matters.

MR DEPUTY SPEAKER: I do not think she has strayed that far yet, Mr Humphries; but thank you for that. Yes, try to keep it to the point, Ms Follett.

MS FOLLETT: Thank you, Mr Deputy Speaker. On any objective assessment, my budget this year protects the business community in a way which was certainly not the case under Mr Kaine's treasurership. Mr Kaine, who had, after all, promised to abolish payroll tax, last year increased it to 7 per cent. By contrast, in my budget I have not increased payroll tax. It was Mr Kaine, the Liberal leader, who did increase payroll tax.

In my budget, I have not touched the financial institutions duty - a major taxation measure for the business community. Last year, Mr Kaine doubled it. He increased the financial institutions duty from 0.03 per cent to 0.06 per cent, and he raised himself $6m extra in the process. He later tried to move to increase it further to 0.08 per cent and, in fact, that is its current level. So, Mr Kaine, by his own action, has increased enormously that tax on the business community. It was Mr Kaine who introduced the 3c a litre tax on petrol. By contrast, no such action was taken in my budget.

So, the matters about which the business community is complaining are largely ones for which the gentleman opposite, Mr Kaine, was responsible. Mr Kaine it was who increased the motor vehicle registration charges by 20 per cent. What a record this is for the business person's friend! He increased the municipal rates by 16.6 per cent

across the board. In contrast, my budget kept the municipal rates overall to the level of the CPI. I really think that Mr Kaine's duplicity is exposed by his very own remarks.

Of course, he also referred to consultation with the business community. It is a fact that I held consultations with CARD - and there was more than one such meeting, Mr Kaine, it might surprise you to know. It is also a fact that CARD's budget submission contained a proposition to establish a consultative mechanism, which I have now implemented. I have taken up that suggestion from CARD. Of course, neither Mr Kaine nor CARD itself would ever give me any public credit for that; but it is, in fact, the case. I saw the merit of CARD's argument, took it on board and have done something about it - which is more than Mr Kaine ever did.

I also, of course, in framing my budget, met with other groups, particularly representatives of the liquor industry, who, under the Kaine regime, were threatened with going broke because of the way that the Kaine Government had intended to implement the quarterly payments system. I met with them and was able to reach an agreement with them on a much more fair and just method of achieving just the same outcome. I also, of course, have had meetings with representatives of the computer industry over its payroll tax arrangements. It is the case that I am able to meet that industry's concerns and adjust that tax regime to reduce the impact on that sector of industry. Mr Kaine did not do any of that - either when he was in government or since. He really is talking through his hat.

Mr Kaine, in what I can only refer to as a totally masochistic manoeuvre, referred to the health budget. What a blunder! Mr Kaine it was who presided over a blow-out in the health budget of $17m, and who allowed his struggling Minister to continue in virtual ignorance of even what the health system's budget contained, let alone how they were attempting to meet it. Mr Kaine it was who continually had to prop up the health budget because of his Minister's and his Government's total inability to control it.

By contrast, I require that the health area live within its means, like every other area. I have set it a budget which I expect it to manage. Mr Kaine made no such expectations at any point while he was in government. He allowed that budget to blow out and to become totally uncontrolled, and he handed over to me in government the mess that resulted. He really has a disgraceful record in the area of health budgeting.

He also, of course, referred to the issue of jobs. Mr Kaine it was who made the pronouncement that he would reduce the ACT Government Service by 3,000. He did not say where or how, or how that might be reflected in budget terms; he would just reduce it by 3,000, presumably with a stroke of the wand. But, of course, what we saw was the

ACT Government Service actually increase in size under Mr Kaine's so-called management. What a shame, and what a pity to draw attention to it out of your own mouth, Mr Kaine.

By contrast, in my budget this year we have made a targeted and moderate attempt to reduce public sector expenditure and to ask that all areas of the Government Service live within their budgets. We have given them budgets which enable them to do just that, and to do it in a much more efficient way. We have entered into negotiations on a very modest reduction program, as members know; I have made no secret of that. We are negotiating openly with the trade unions on those matters.

So, the contrast here really is between a targeted and achievable program in relation to reducing the size of the public sector and Mr Kaine's bluster on the matter. That is all it was; it was sheer bluster. He blustered also, of course, on the matter of schools. Mr Kaine it was, and his Minister Mr Humphries, who, when they came into government last year, said that they would close 25 government schools - a quarter of the schools - and that this would save them money. In fact, that was just sheer bluster.

They ended up, of course, thanks to a very energetic and dedicated campaign on the part of the community, not achieving those closures - thank heavens - and managing to close only a tiny number of schools. But, most significantly, they did not save any money at all. It was just sheer rhetoric - these so-called savings of money. What I have managed in this budget is to protect all of those community services, to protect the government schools in particular, and to reopen those which were closed on such an erroneous basis and in such a short-sighted fashion under Mr Kaine's Government.

So, I really believe that Mr Kaine has reaped the whirlwind in bringing forward this matter of public importance today. It is a blunder. Why draw attention to your own failures? Mr Kaine, unfortunately, was not the world's greatest Treasurer; he was certainly not the world's greatest Chief Minister. Had Mr Kaine wanted to make an issue of the budget, he had the opportunity to do so in responding to the budget speech. What we got then, of course, was a lot of rhetoric and no substance. Mr Kaine again took the opportunity today, and what we have had is no rhetoric and no substance either. It was dreadful.

Finally, to talk, as Mr Kaine does, of the failed 1991-92 budget is mystifying to me. The fact is that in all his bluff and bluster Mr Kaine has not referred to the fact that the budget has not yet been passed. He may want at some future date to refer to my failed budget, but I would like it to be given a chance to at least be passed and get

into implementation first. He has got a bit ahead of himself. I am afraid he has been proved to be totally devoid of argument and to really be just trying to bluff and bluster in an attempt to cover up his own failures in his budget last year.

MR HUMPHRIES (3.37): Mr Deputy Speaker, I cannot see where Ms Follett gets the pride with which she appears to defend this budget. If I were her, I would be extremely wary about putting my head up anywhere and saying, "I am proud about having masterminded the 1991-92 budget". Mr Kaine described this budget as a failed budget. The matter of public importance itself makes it quite clear that this is a failed 1991-92 budget that we are talking about. Of course, it is a fair description, even though it has not been passed, on the very criterion which Ms Follett herself said, in the budget speech - which I do not have in front of me - that she would use to assess the value of her own budget achievements.

Ms Follett said in her budget speech - and I thank Mr Kaine for having found that reference for me:

> No matter how strong the rhetorical justification that may be given for particular budget measures, they will not succeed if the community believes that these measures are unjust or unfair.

On that criterion, this budget, although only a few weeks old, has already failed. On that criterion - Ms Follett's own criterion - the budget has failed. The budget clearly does not have the support of the ACT community - in a way which would have been, frankly, inconceivable a few months ago when the Alliance Government was facing difficulties. I am extraordinarily surprised at how quickly this Government has fallen foul of the very community it relied upon to win office only a few months ago.

We have seen the most extraordinary unravelling of a budget ever in the life of this Assembly. Labor claimed, at the very early stages of this budget - and I think Mr Connolly was one of the chief protagonists of this point of view - that this was a well received budget, a popular budget. That description has not been used for some weeks, and I can well understand why. The singed hair and the shell-shocked eyes of those opposite, I think, indicate pretty clearly that those Ministers and members opposite do not really believe that little story any more.

One has only to look outside at the health unions, the non-government school parents, the tourism commissioners and the police - almost anybody you care to talk to about this budget - to see that there is, in fact, widespread community disenchantment with this Government and with its budget. I think that particular lesson is going to come home to roost, because those opposite know that this budget is the culmination of the mistake that they made in electoral terms by taking back office on 6 June this year.

The seats that that decision has cost them will, of course, deprive them of government in February of next year. They know in their heart of hearts that they have committed a serious blunder in doing what they did a few months ago.

Mr Kaine referred to the consultation hoax. That goes without saying. The consultation hoax, of course, is the image or myth being perpetrated every day by this Government that somehow it is a caring and consultative government. We know full well that this Government does not care to consult with anybody that it does not intend to listen to. I know also that, in the experience of some community groups, the consultation has been an extremely cruel and sadistic hoax. For example, non-government school parents were told that they would be consulted about changes in education budgeting.

Mr Berry: No, no. You are talking about the people from the highly funded schools.

MR HUMPHRIES: We hear "No, no" coming from the Deputy Chief Minister. Apparently - - -

Mr Berry: The very comfortable schools, the richest schools.

MR HUMPHRIES: I think we are seeing now that only some schools have the privilege of consultation.

Mr Berry: No, they are the ones that you are talking about.

MR HUMPHRIES: Only some schools have the privilege of consultation. Apparently, there are different classes of citizen in the ACT - some with whom consultation will be engaged in and others with whom no consultation will be engaged in. That is the standard of this Government.

Mr Kaine: There will be $70,000 worth, with the Trades and Labour Council.

MR HUMPHRIES: That is right. Mr Kaine reminds me that, of course, in the case of some citizens of this Territory, you actually have to pay them to provide for consultation; you have to actually butter them up with a few dollars to produce some effort at consultation. Of course, as in other cases when one pays someone to do things, one gets the sorts of things one expects. Of course, one gets what one pays for. I think we can expect this Government to continue with this hoax of pretending that it is consulting when in fact it has no intention of listening to anybody with whom it disagrees.

Let us go to our old favourite of health. Of course, this Government is already - in the short space of three months - in the most almighty shemozzle about health that could possibly be imagined. Let us just listen to some of the things that Mr Berry had to say about the former

Government. Ms Follett has been very keen to refer to the former Government's record, and I would like to quote some of the pronouncements of the former Opposition's spokesman on health. On staff cuts, Mr Berry said:

> What is proposed by the Liberal-Residents Rally coalition will mean a further attack on public sector jobs and services. All we hear from the Liberal-Residents Rally Ministers is slash or close down services. The stale excuse of Grants Commission identified over-funding is a Liberal-Residents Rally red herring.

The red herring is getting a second use. The red herring has been trotted out again and used extensively by this Government to justify its own cuts, its own slashing and its own closing down of services now that it has taken office.

Of course, most people in this Territory can distinguish between the rhetoric that they heard before this Opposition took government and the rhetoric that they are hearing now. They see a party which says one thing in opposition and does another in government, and they will take that impression very strongly with them into the ballot boxes next February. Mr Berry had other things to say. He said in July of this year:

> The conservatives are desperate to close public hospital beds and force people into the private sector - we want to provide more public hospital beds.

Where are they, Mr Berry? Where are the "more public hospital beds" that you wanted to provide? Are they hidden under your desk? Are they upstairs on the fifth floor, stashed away in the Cabinet room? You have been taking them away so far. Of course, we will find out all about that when our select committee meets very shortly. We will find out what you have done with those public hospital beds, and I think you will be very embarrassed when we discover just how much dirt there is to be discovered about this Government.

Mr Stevenson: Under the bed.

MR HUMPHRIES: Under the bed, indeed, Mr Stevenson. Mr Berry said, on 9 April last year:

> What Mr Humphries is being very quiet about is the fact that already Canberra has fewer beds per 1,000 residents than elsewhere in Australia and the only way to redress this imbalance is to keep Royal Canberra Hospital open.

Well, well, well! I wonder what has happened to that promise, Mr Berry. Of course, it has gone out the window. I will not embarrass the Government any more on this matter. There is plenty of embarrassment left in the select committee, and I am looking forward to that particular exercise - - -

Mr Berry: That is right, because it is a big stunt.

MR HUMPHRIES: Mr Berry says that it is a stunt. When he sees what comes out of it he will probably be looking for excuses, and I suggest that Mr Berry save his excuses for the report, not give them now.

This Government - in particular its leader, the Chief Minister - has relied on a series of distortions to make its case, such as it is, today. I want to touch on a couple of those things before I sit down. Ms Follett claimed that payroll tax was increased by the Kaine Government to 7 per cent. That is a distortion. The fact of life is that our Government, quite wisely, rounded off payroll tax to make it more equitable in its application to businesses in this Territory. In fact, previously payroll tax had ranged between 6 and 8 per cent, and we rounded it to 7 per cent. We also raised the threshold on payroll tax, again relieving the burden on business.

The petrol tax that Ms Follett had the nerve to refer to, of course, was the temporary petrol tax introduced by the Alliance Government, which we faithfully promised would be a temporary tax for two years. It was a tax for two years only. Ms Follett at that time said, "We do not believe you. You are going to make this tax permanent. We can see what you are up to". She attacked the Government and won some brownie points on that basis. What did she do when she took office herself? Of course, she announced that the petrol tax of 3c a litre would now be permanent, not temporary at all.

We see the kinds of hypocrisy and double standards which have now become the hallmark of this Government. Openness is not a feature of this Government. Consultation is not a feature. Being prepared to debate the issues facing this Territory in this Assembly, in the Estimates Committee or whatever is also not a feature of this Government.

MR COLLAERY (3.47): Mr Deputy Speaker, I was surprised that this MPI was put on in the terms that it was, because it was capable of being turned against us on the non-government side. I believe that its wording was somewhat unfortunate, simply because I am on record as saying that much of the budget development work done for this budget was done by the Alliance Government, as indeed it was.

In fact, this budget is not through yet, and the Rally has already signalled that the Government is going to have trouble at the appropriation stage in relation to at least one part of the budget. So, I am not prepared to concede at this stage that the Appropriation Bill is going to go through unamended.

Mr Berry: How tough are you prepared to be? Are you prepared to be real tough?

MR COLLAERY: I tell Mr Berry that I am not prepared to concede that the budget, the Appropriation Bill, is going to go through unamended. We have the right to amend the budget, subject to certain restrictions, as is laid down in the self-government Act. What I want this MPI to say is that, given the budget development work done by the Alliance Government up to the end of May 1991, I believe that the Follett Cabinet failed to capitalise on the verve, the flair and the imagination that were in a lot of our preparatory budget documents.

Mr Berry: What, the same as your $6m wish list?

MR COLLAERY: I have that wish list here. I am glad that Mr Berry introduced it. He now concedes that he saw it, as indeed he did. Prior to the fall of the short-lived Kaine independent Government, in that list of new policy proposals much of the social justice aspect of the forthcoming Alliance budget was handed to the Follett Government. She got it on a plate. Under the Cabinet conventions, she may not have had easy access to those proposals, but she got them.

They proposed things like this: An expansion of ACT counselling services to deal with much needed grief and bereavement counselling - a modest sum of money; an after hours emergency service for children, $220,000; a child protection community education program, identified through well informed surveys as being needed, $91,000; and a prisoner reintegration service initiative.

Mr Berry stood with me down at Garema Place. We agreed on a bipartisan approach to prisoner return issues, so as not to raise hopes unjustifiably, and I am pleased to say that it still persists. I would have thought that Mr Berry would have been strong enough in his Cabinet to have got the $400,000 to start to bring some of our prisoners home, particularly those prisoners graded C2 or C3 downwards in the New South Wales system, because they are graded as quite safe to the community. I was saddened to see that proposal dropped out, but I have not taken a political point over it.

There was also the proposal for the daytime activities for severely disabled people, for $25,000. There are a number of people isolated in homes who need some daytime activities. People can go there and read books to them,

talk to them and bring things to their homes to do something for their lives. Another proposal was for $38,000 to make up for a breach of faith by the Commonwealth Government on the Melba child-care centre.

There was the proposal for vacation and outside school hours care for children with special needs. There are children who go to after hours care who have special needs. An amount of $30,000 was proposed just to pick that up. There was also the outdoor wilderness program for our juvenile offenders, which I felt a strong personal commitment to - a commitment deeply shared by many of the staff in the government - at a cost of $286,000.

Of course, there was also the residential service for men, male domestic violence perpetrators, who get booted out, justifiably, but who then go off to the club or off to their mates to booze and become a worse menace. It is generally agreed - and those of us who have had those orders served on men know this full well - that there is nowhere for those blokes to go to. We know this particularly if they have been our clients sometimes. We needed $400,000 to get them a place where they could go.

Some of the more eminent community workers in this community, women such as Pat Sorby from Cura Casa, and others who are on the moderate left - if I may take that liberty; I will stand corrected and apologise to Pat Sorby for that description if she takes offence - supported this notion. But the rad fems did not, because it gave some money to deal with the male problem. The fact is that it dropped out of the proposed budget.

I could go on and on, but the list did amount to about $5m or $6m. I figured that with Mr Kaine I might get half of that and half of those proposals up. I had the success last year with Mr Kaine that suggested to me that I would get that. I believe that, regrettably and sadly, we went backwards on social justice by putting the Follett Government into power. I feel partly personally responsible for having some trust in the Labor Party's sense of social justice. The shame of it all is that a number of those initiatives that I have mentioned, such as neighbourhood-type initiatives for children's safety, could easily have been funded by effective negotiations with the NRMA over that $40m surplus.

I am sick and tired of the Liberal-Labor banter over the budget. The fact of the matter is that, if Mr Berry goes down to the youth centre, to ACTCOSS, to the situations where people on the left congregate, he will see that his name is mud. His Government's name is mud where it counts - in his bailiwick. I do not know whether they will transfer their votes to the Rally. But I will tell you this: Their blood oath for your party is weakening. You ran out on social justice. You had the temerity to issue an additional budget paper stating that the Labor budget was founded on social justice. What a joke!

Simone De Beauvoir wrote that the greatest bad faith for those on the left is to posture a thing which they know is not true. It was mauvaise foi of the very worst order that your Government engaged in. You are a Government that failed the people of the ACT when they needed it. There are identifiable needs in the community; there was an identifiable $40m out there, which right until now I have kept very properly quiet about. But I have forced your pace because your budget is not through yet, as Ms Follett properly recognised, and you have $40m with which to effectively negotiate some social equity and justice into your budget to deal with those matters.

Apart from that $40m, what did you do with the $3.5m surplus out of the Community Development Fund? You cannot say that we intended to send it out to roads and bridges at Gungahlin, but you did. Your Government sent it to roads and bridges at Gungahlin. You used the surplus CDF funds to stack them into your recurrent municipal budget. You went to the piggy bank to buy the week's groceries. What kind of budgeting is that? That CDF surplus was destined to be partly allocated, subject to the views of the Alliance Cabinet, to provide for a structured day program for a select group of young disturbed people, to outfit two four-bedroom group homes in the disability services area for $92,000, and so on and so forth.

There were reasonable ways that you could have dealt with some of that CDF surplus, but you did not. You sent it to roads and bridges. The youngsters and the not so young buying out there should help pay the interest on municipal borrowings through their rates, as is done in every other municipality in this country. One borrows on the municipal account, properly and orthodoxly, so that future generations pay those sums. You failed the current generation of Canberrans, particularly in the youth area, at a time when we have youth unemployment of between 16 and 20 per cent.

You do not feel a commitment to this Territory. The CRA chief said on *AM* the other day that Canberra people were a pampered group. No-one from your Government went on *AM* to respond to that. No-one responded to point out the social justice needs of this Territory. You have either lost sight of them or turned your back on them. You turned your back on the proclaimed place for inebriates. You pressed us here like crazy last year to create one; we put it into our budget planning and you took it out. Out went your own private member's Bill for an inebriates' drying out place in this Territory, so sorely needed.

So, really, you will squirm on this, and you know it. You squirm on this talk. You might have made a few points off Mr Kaine, but you are in trouble on it. Come out and say whether you are going to fund any of those things before your budget comes up for in-principle debate.

MR BERRY (Minister for Health and Minister for Sport) (3.57): Mr Collaery accused us of being mauvaise foi. I am not quite sure what that means and I was therefore not sure whether I should call a point of order - but I will bet that he is more mauvaise foi than we are.

Mr Collaery has returned to being all things to all people. He deserves to be right where he is: On the crossbenches, being all things to all people and promising them all sorts of things such as those which he cited from his generous wish list. I am sure that he would promise them to everybody who knocked on his front door. Of course, we knew, as soon as we took over government, that very few of those promises could be met. They were merely hollow promises meant to satisfy prospective constituents out there - promises which would never have been delivered.

I must say that, when Mr Kaine was making his speech, I thought it was one of his worst attempts. In particular, I was surprised that he even bothered to raise the elite schools funding issue, because it seemed that he took so long to get to his feet about the issue in this house. It was really Dennis Stevenson that shocked him into some sort of activity on the subject. That is pretty much an indictment of the Liberal Party on that score.

In relation to the police, I was reminded of a comment Mr Kaine made in relation to the police budget on 8 August 1990. He was reported in the *Canberra Times* as having said:

> The police force will be like any other element of the community and if we have to make cuts they will have to bear their share.

Is it not amazing - the big turnaround?

Mr Kaine: And I still agree with that. It is not the cuts that I object to; it is the way that you did it.

MR BERRY: Oh dear! We probably did it in much the same way as you had intended - we reduced their budget. That is the truth of the matter.

In what I would describe as a "loyal yawn", following Mr Kaine's speech, Mr Humphries made the point about how much our taking office would cost us. Labor is not frightened of making the hard decisions. We knew that government in the Territory needed to be protected. The Alliance had fallen apart. We knew of the risks, and we took them on because we knew that there needed to be good government in the Territory - and that is what we will provide. This budget has a disciplined approach to financial management, unlike that of the former Government. It will make real progress to providing a fair and just community. It is not something that will happen over the next year; it will take some time.

Tax increases have been kept to a minimum and no new borrowings have been made for general government purposes. The budget has been based on consultation with the community and I submit that it has the community's support. There is a focus on public sector efficiency and reductions in the cost of administration. When considering the budget issue, one has to compare our performance with that of the former Government, particularly when one listens to the accusations which have been made by Mr Kaine and Mr Humphries.

In response to a question from me, the former Health Minister said, on 19 February, as recorded in *Hansard:*

> At this stage I have received no advice of any variation in the patterns of expenditure on the part of the hospital system, vis-a-vis the budget. I therefore operate on the assumption that the budget is on track.

The former Minister was later quoted, on 26 February, as saying:

> The vast bulk of the problem is of a standard and customary nature and occurs in many departments annually and is certainly no cause for alarm.

There are 17 million reasons why there was cause for alarm. That is the real fact of the matter; it fell apart. What he was doing was denying to the community of the ACT that there was anything wrong in the health budget, which later proved to be untrue. It was later shown that the Minister knew what was going on, quite contrary - - -

Mr Humphries: Mr Deputy Speaker, I think Mr Berry is implying that, in some way, because I knew that things were going wrong and did not say so to the house, I was in some way misleading the house or the community. I ask him to withdraw that allegation.

MR BERRY: Mr Deputy Speaker, there is nothing for me to withdraw. The point that I am trying to make on this issue will become evident.

Mr Connolly: Mauvaise foi.

MR BERRY: I am not sure whether it was one of those. The chief accuser, Mr Kaine, said, on 21 February, in response to a question in relation to the health budget:

> I cannot answer that question off the top of my head, Mr Speaker. I have seen figures on the operating budget - - -

Mr Humphries: Mr Deputy Speaker, Mr Berry indicated that I knew that there was something wrong, even though I said to the Assembly that there was nothing wrong in the health budget. That clearly implies that I was misleading the Assembly, and I ask him to withdraw it.

MR DEPUTY SPEAKER: Yes, I would ask you to withdraw any such implication.

MR BERRY: Mr Deputy Speaker, if Mr Humphries has taken any imputation, then I apologise. Mr Deputy Speaker, I read to you from the *Canberra Times* of 16 October - - -

MR DEPUTY SPEAKER: Mr Berry, would you just withdraw any imputation.

MR BERRY: Withdraw what?

MR DEPUTY SPEAKER: Withdraw the imputation.

Mr Humphries: The imputation that I misled the Assembly.

MR BERRY: I withdraw the words that said that he knew it, Mr Deputy Speaker.

MR DEPUTY SPEAKER: Thank you, Mr Berry.

MR BERRY: I will now demonstrate, Mr Deputy Speaker, that what I said was probably true.

MR DEPUTY SPEAKER: Mr Berry, I would like a complete withdrawal - not a qualified one - and then you can continue with your speech.

MR BERRY: I withdraw that, Mr Deputy Speaker. In the *Canberra Times* of 16 October 1991 - and I will quote from the articles - Mr Humphries is reported in the following terms:

> In the budget blowout during his stewardship, he said, the signs of a blowout had appeared around October-November.

I can understand why the former Minister is twitching. He had said that he did not know that anything was going on. It is quite clear that Mr Humphries was ignoring the facts. It was demonstrated that the budget that he managed was, of course, out of control. It had been reported to him, when Labor was thrown from office, that there were difficulties in his budget, and the real problem is that this former Minister did nothing. And these are the people that are criticising. These people did nothing - and we got 17 million explanations of his refusal to do anything.

Mr Humphries: I raise a point of order, Mr Deputy Speaker. The Minister referred to my having done nothing about budget management problems. The Minister, only a few days ago in the Estimates Committee meeting, conceded that, in fact, that was an untrue statement. I would ask him to withdraw the assertion that that was the case.

MR DEPUTY SPEAKER: That is probably more along the lines of a personal explanation; but, Mr Berry, if what Mr Humphries said is correct - and I was not there - that might be an imputation. Would you withdraw any imputation, and continue.

MR BERRY: Mr Deputy Speaker, I withdraw that. Mr Humphries did something, all right; but it ended up with a $17m blow-out - and that is something that he will not be able to criticise this Government for. This is a budget which is aimed at bringing the health service into line. It is about making sure that quality government - not the sort of government that was applied by the ragtag Alliance Government - is given to the people of Canberra. And, of course, at the end of the day, we will be proven correct.

MR STEVENSON (4.06): If the indication by people in the community is to be heard, the police, the nurses, the motorcycle riders and the people involved in non-government schools are not happy.

MR DEPUTY SPEAKER: Order! The time for the discussion has now expired.

PERSONAL EXPLANATION

MR HUMPHRIES: Mr Deputy Speaker, I have a personal explanation to make under standing order 46.

MR DEPUTY SPEAKER: Certainly. Go ahead, Mr Humphries.

MR HUMPHRIES: During that debate Mr Berry made reference to a press statement in which he attributed to me a comment that I had known about budget problems in October-November, presumably meaning October-November of 1990. Mr Berry clearly has misread the newspaper article that he was referring to. I was making reference to Mr Berry's budget in 1989, not to our budget in 1990. I certainly did not know about any budget problems in October or November of 1990.

MR DEPUTY SPEAKER: Mr Berry, do you claim to have been misrepresented, too?

MR BERRY (Minister for Health and Minister for Sport): Mr Deputy Speaker, I will accept Mr Humphries' explanation - - -

Mr Humphries: Is he making a personal explanation, Mr Deputy Speaker?

MR BERRY: And, of course, that supports my accusations on many occasions that he knew about it for a long time from 1989 and did nothing.

Mr Humphries: Mr Deputy Speaker!

MR DEPUTY SPEAKER: Yes, all right. You are on a point of order. What are you doing, Mr Berry? Are you making a personal explanation, too?

MR BERRY: Mr Deputy Speaker, I have just responded to those things that Mr Humphries said in relation to what I had said; and it does, in fact, support what I have said in relation to the matter on a number of occasions.

MR DEPUTY SPEAKER: Unless you are making a personal explanation, you have no right to. Sit down, Mr Berry.

PUBLIC ACCOUNTS - STANDING COMMITTEE
Inquiry into Auditor-General's Report No. 6 of 1991

MR KAINE (Leader of the Opposition): I seek leave to make a statement regarding the review by the Standing Committee on Public Accounts of the Auditor-General's report No. 6 of 1991 on efficiency audits and the Audit Office's activities of 1990-91.

Leave granted.

MR KAINE: The sixth report of the Auditor-General, tabled in the Legislative Assembly by Mr Speaker on 6 August 1991, contained the Auditor-General's report to the Assembly on efficiency audits carried out in the year 1990-91, and the activities of the Government Audit Office during that period. As it has done on a previous occasion, the committee has decided that it will not prepare a formal report to be tabled in the Assembly following the committee's examination of audit report No. 6.

The committee notes that later reports of the Auditor-General, in particular report No. 9, dealing with financial administration and audit independence, comment further on several of the important issues raised in report No. 6, specifically, funding of the Government Audit Office and the issue of an independent external auditor and/or a peer reviewer. The committee believes that it is more appropriate to examine those issues in detail in the context of its other inquiries.

While the committee believes that the matters contained in report No. 6 are of particular interest and that the report is a helpful, concise document, because these matters have been or will be dealt with in response to other references, it intends to take no further action on this particular audit report.

LEGAL PRACTITIONERS (AMENDMENT) BILL (NO. 2) 1991

Debate resumed from 19 September 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR COLLAERY (4.10): Mr Deputy Speaker, this is a functional amendment to allow the Government Law Office generic description to be altered to take account of the revised description of that function in the administrative arrangements orders initially, and now in legislation. It is a technical amendment and, of course, it has the support of the Residents Rally.

I want to take this opportunity to say just a couple of words about legal practitioners. Of course, as one of the more recently readmitted legal practitioners - in fact, from the day before yesterday - I am pleased to be up speaking again as a practising solicitor.

I am reminded of a cartoon that appeared in the *Justinian* earlier this year. It shows a group of people mounted on horses holding up sabres, with a dramatic Cecil B. De Mille sort of sight of a cavalry charge coming down a hill. The leader is holding up a sabre and saying, "Charge" - and at the back someone is saying "How much?". I make that available to members on an informal basis; I do not know how long I will last back in my profession.

I assure you that it is an interesting prospect to read that there is now a vast oversupply of legal practitioners in New South Wales. It will mean competition. I remember the grim struggle in the Law Society a few years ago - more than a few years ago - when a group of us wanted to advertise for conveyancing, and we lost the battle. The vote was taken at the Canberra Club. I am not sure how our women members were admitted to that club at that time. Things have changed in that regard at least; but, of course, the Federal Government has taken many initiatives in the area that will allow some of the monopolies in the law to go away.

The practice of law in the Territory is an onerous one. It requires people in it to have extremely good personal integrity and personal values. The vast majority of lawyers in this country are good people; but there is, in my view, a need to develop a new form of legal professional. The new legal professional is that person who is actually tied to a corporate function. It is a corporate lawyer in-house - stabled, in effect; a corporate lawyer who exists, of course, in a recognisable firm but is entirely preoccupied with the advisings to sometimes a single corporation. And they often become almost a veritable mouthpiece, as we saw during the period of the celebrated Westpac letters.

I believe that the profession in this Territory should give a lead, since we are city-state size and have the homogeneity to start to develop the concept of a different type of practising lawyer. Many corporate lawyers never go to court. They are not advocates. They are not people who fit the traditional mould of lawyers. You will never see them in court - or rarely, if ever. They have practising colleagues and partners who often take care of other parts of issues that come up in their corporate management.

I believe that it is time that the profession started to, in effect, mount a charge on those issues and reform itself so that the public clearly understands that a lawyer stands there only to assist the court, in the traditional mould. He or she goes there to affect a cause and, as Ben Jonson wrote, to support that cause to the best of his or her ability, not to take the cause on as his or her own. There is a profound difference in those issues.

Those values should apply at prosecution level particularly. Prosecutors should be there to elucidate the facts, to press the Crown charge and to bring about justice; but should not be there to secure a conviction at all costs and to represent and to form the idea that that occupation is dedicated towards the role of punishment in society. That lies elsewhere. It lies with the judiciary. I think that there is at times a prosecution attitude that suggests that prosecutors are there to do the cleaning up job in society. That is wrong. They are there to do the forensic legal services. They are there to prepare the cases and support the court.

I am pleased to have this opportunity, two days after I have resecured my practising certificate, to say that those issues are properly matters that we should remind ourselves and the profession of.

MR STEFANIAK (4.16): Firstly, I congratulate, I suppose, my colleague Mr Collaery on resecuring his practising certificate. Perhaps that is why he went into some detail in relation to what is basically a very simple and technical amendment to the Legal Practitioners Act and one which is consequential, in fact, to the second order of the day, the Government Solicitor (Amendment) Bill. This particular amendment merely omits the definition of "Government Law Office" and inserts the definition of "relevant administrative unit" to enable the Chief Minister to allocate responsibilities for the Government Solicitor Act 1989 and call the unit what he or she desires to call it.

So, it is just a technical amendment. I will say no more in relation to the Government Solicitor (Amendment) Bill, although I am tempted to make a few comments as a result of my friend Mr Collaery's learned dissertations on legal practitioners, prosecutors and God knows what else.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.17), in reply: I am pleased that the Assembly has general support for this motion. The Chief Minister is examining the cartoon comment on lawyers, apropos Mr Collaery's speech. I think we are all amused by that. I am pleased that this very minor technical measure has general support. Although minor, it does improve the smooth administration of the future running of the Territory government legal service and allows those professionals to continue to provide excellent service to the community.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

GOVERNMENT SOLICITOR (AMENDMENT) BILL 1991

Debate resumed from 19 September 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR COLLAERY (4.18): Madam Temporary Deputy Speaker, the Rally supports this Bill. It is another functional changing Bill, and I take this opportunity to record again the considerable respect that many of us in the practising profession have for the Government Solicitor's Office. I have tangled with the people there in the past. They have often won. I think they always did. They have eminent resources at their disposal, unlimited funds - until this Government came in, of course - and a good library. I wish them well in their newly styled operational activity and support the Bill.

MR STEFANIAK (4.19): The Liberal Party also supports this Bill, which basically enables the Government Law Office to be called whatever the Chief Minister of the day determines. I note that the current Chief Minister has called it the Attorney-General's Office, which probably is appropriate in the circumstances as the State offices are invariably called the State Attorney-General's Office. Again, this is a consequential and technical amendment to enable that to occur, and it has our support.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.20), in reply: I thank the Assembly for its general support for this minor technical amendment which is consequential to the Bill which has just been through the house, and I wish this Bill a similar speedy passage.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

GUARDIANSHIP AND MANAGEMENT OF PROPERTY BILL 1991
Detail Stage

Clause 1

Consideration resumed from 15 October 1991.

MR STEFANIAK (4.21): In relation to clause 1, we certainly have no problem; but in relation to this Bill there are a number of amendments. They have been scheduled, as I indicated yesterday when we agreed to this Bill being passed in principle, as did everyone in the house. There was a lot of cooperation between not only the community groups but also Mr Collaery and me, the government law officers and Mr Connolly. Accordingly, I think all parties have agreed to amendments, some of which will be moved by Mr Connolly, some by me and a couple by Mr Collaery. Without further ado, there is nothing to be amended in relation to clauses 1 and 2, and perhaps we can proceed to pass them.

Clauses 1 and 2, by leave, taken together, and agreed to.

Clause 3

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.22): Clause 3 in the Bill as it presently stands was drafted in accordance with the advice of a respected member of the community, Robyn Creyke of the Australian National University. As it stands, it identifies the welfare and interests of the represented person as the paramount principle that will guide the tribunal in its deliberations. Community groups, however, have looked at the matter again and have acknowledged a misunderstanding within their own ranks. They have requested that the paramount principle be the person's views and wishes, so far as they can be ascertained. The existing provision was seen as being somewhat paternalistic.

This is something of a departure from the legislation in jurisdictions such as Victoria and New South Wales, but the Government is certainly prepared to accommodate community concerns. Again I thank Robyn Creyke from the ANU, who spent many hours of her time in developing the form as it stands in the amendment.

I move:

Page 2, line 8, subclauses 3(1) and (2), omit the subclauses, substitute the following subclauses:

"(1) Where, because of a physical, mental, psychological or intellectual condition, a person -

(a) needs assistance or protection from abuse, exploitation or neglect; or
(b) is legally incompetent or unable to enter into particular transactions;

a person who exercises a power, or performs a duty or a function, under or in relation to this Act in relation to the first-mentioned person shall observe the principles set out in subsection (2).

"(2) The principles to be observed in accordance with subsection (1) are the following:

(a) that the person's views and wishes, so far as they can be ascertained, should receive paramount consideration;
(b) that the decisions made about the person should be, as nearly as possible, the decisions that he or she would have made if not affected by the condition concerned;
(c) that the person's welfare and interests should be appropriately protected;
(d) that the person's life should not be interfered with except to the least extent necessary;
(e) that the person should be encouraged to look after himself or herself;
(f) that, as far as possible, the person should live in the general community and join in community activities.".

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 4 to 19, by leave, taken together, and agreed to.

Clause 20

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.24): Clause 20 of the Bill authorises a duly appointed manager of a represented person's property to examine documents relevant to that person's property. Community groups have suggested that "access to" may be insufficient to convey the meaning that the manager is to have the authority to inspect the wording in the documents, some of which may be in sealed packages, such as a will. Amendment No. 2 standing in my name reflects those concerns of the community groups. I move:

> Page 10, line 27, omit "access to", substitute "inspect".

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 21 to 25, by leave, taken together, and agreed to.

Clauses 26 and 27, by leave, taken together.

MR STEFANIAK (4.25), by leave: I move:

> Omit "Community Advocate" (wherever occurring) from each of the following provisions, substitute "Public Trustee":
>
> Page 12, lines 8 and 9, subclause 26(1);
> Page 12, line 24, subclause 27(1);
> Page 12, line 35, paragraph 27(3)(b);
> Page 13, line 1, subclause 27(4);
> Page 13, line 8, subclause 27(5);
> Page 13, line 10, subclause 27(6).

As I indicated yesterday, I seek to omit "Community Advocate" and replace it with "Public Trustee". Basically, the idea behind that is that the public trustee is a more appropriate person to manage and also examine accounts. Concerns expressed by the various community groups were accepted by the Liberal Party and accepted by the Government. There are some pros and cons in relation to that, but on balance I think the pros of having the public trustee do it far outweigh the cons. Accordingly, I commend to the house the amendments that appear in my name.

Amendments agreed to.

Clauses, as amended, agreed to.

Clauses 28 to 31, by leave, taken together, and agreed to.

Clause 32

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.26): Subclause 32(4) as it stands would allow the community advocate to issue a notice to the tribunal notifying a substitution of a guardian where the community advocate becomes aware that the represented person's present guardian is no longer acting for the represented person. Community groups were concerned that the community advocate may not select a substitute satisfactory to the tribunal or the friends or relatives of the represented person.

The provision as it now stands was seen as a useful emergency mechanism in addition to the emergency provision at clause 67 whereby the community advocate may be guardian or manager of last resort. However, community groups do want the prerogative of appointment to be retained by the tribunal. Amendment No. 3 standing in my name, therefore, revises the notice to that of an application rather than a valid substitution in its own right. I move:

Page 14, line 19, subclause 32(4), omit the subclause, substitute the following subclause:

"(4) If the notice indicates that the Community Advocate or a person specified by the Community Advocate will act as guardian, the notice shall be taken to be an application for the appointment of the Advocate or that person, as the case may be, as the guardian.".

MADAM TEMPORARY DEPUTY SPEAKER (Mrs Grassby): Do you wish to move amendment No. 4 separately?

MR CONNOLLY: I will move it now, if that is appropriate.

MADAM TEMPORARY DEPUTY SPEAKER: Is that the Assembly's wish?

There being no objection, that course will be followed.

MR CONNOLLY: The reason I have given in relation to the community advocate's notice of a need for a substitute guardian applies to a substitute manager in subclause 32(6). Again, community groups want the tribunal to retain the authority to appoint a manager. The Government has considered the community groups' views and thinks that that is very reasonable. I therefore move amendment No. 4 standing in my name.

I move:

Page 14, line 30, subclause 32(6), omit the subclause, substitute the following subclause:

"(6) If the notice indicates that the Community Advocate or a person specified by the Community Advocate has consented to act as manager, the notice shall be taken to be an application for the appointment of the Advocate or that person, as the case may be, as the manager.".

Amendments agreed to.

Clause, as amended, agreed to.

Clause 33 agreed to.

Clause 34

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.28): This was one of the more contentious issues from the community groups. It relates to where the tribunal may sit. The Government made it very clear in the introduction speech that it was our intention that the tribunal operate separately and apart from the court.

We had, in fact, amended this legislation from an earlier form which allowed it to operate as part of the Magistrates Court, indeed as a division of the Magistrates Court, to a separate stand-alone tribunal that would, wherever possible, sit in premises separate from the court.

The community groups were still somewhat wary of the position and wanted an express provision to prevent the tribunal from sitting in a court of law. There is a similar provision in the Western Australian legislation, the Guardianship and Administration Act 1990, which states that the board shall not sit in a law court unless the chairman is satisfied that no other suitable accommodation is available.

While I would expect that, in any event, the tribunal would have sat away from the courts, I am guided by the strong views of the community groups and am moving amendment No. 5 circulated in my name, which does provide that clear statutory provision that the tribunal shall not sit in a court unless there are extraordinary circumstances.

I move:

Omit the clause, substitute the following clause:

"34. (1) Subject to subsection (2), the Tribunal shall sit at such times and in such places in the Territory as the President determines.

(2) The Tribunal shall not sit in premises customarily used by a court, unless the President is satisfied that no other suitable premises are available or appropriate in the circumstances.".

Amendment agreed to.

Clause 35

MR COLLAERY (4.30): I move:

Page 15, lines 11 and 12, omit the words "(unless the President determines otherwise)", substitute ", so far as practicable".

The reason why that amendment is moved, with agreement as I understand it, is that there is arguably an oddity about that wording which says that the president shall do something and then says immediately afterwards "unless the president determines otherwise". It might be expressed in a more positive fashion in terms of those words that are in the suggested amendment.

Consideration interrupted.

ADJOURNMENT

MADAM TEMPORARY DEPUTY SPEAKER: Order! It being past 4.30 pm, I propose the question:

That the Assembly do now adjourn.

Ms Follett: I require the question to be put forthwith without debate.

Question resolved in the negative.

GUARDIANSHIP AND MANAGEMENT OF PROPERTY BILL 1991
Detail Stage

Consideration resumed.

Amendment agreed to.

MADAM TEMPORARY DEPUTY SPEAKER: Mr Stefaniak, do you wish to move your amendments Nos 2 and 3 together?

MR STEFANIAK (4.31): Yes, I do, thank you. I move:

> Page 15, line 15, paragraph 35(c), omit "who has attained the age of 18 years".
>
> Page 15, line 19, add at the end the following subclause:

"(2) Subsection (1) shall not be taken to limit the persons to whom notice of the inquiry may be given.".

Firstly, I seek to delete the words "who has attained the age of 18 years" so that it is each child of the person if they are under that age. The second amendment adds an additional class, which the community groups wanted to ensure that everything was covered. Anyone who has been left out can be covered. The president of the tribunal can give notice to those persons, again as far as practicable, as Mr Collaery's amendment now reads. I commend to the House those two amendments which were sought by the various community groups.

Amendments agreed to.

Clause, as amended, agreed to.

Clauses 36 to 55, by leave, taken together, and agreed to.

Clause 56

MR STEFANIAK (4.33): I move:

> Page 21, line 18, paragraph 56(1)(a), after "appeared" insert ", or was entitled under subsection 36(1) to appear,".

This refers to the class of persons we just dealt with in clause 35, and I think it is most important. Clause 56(1)(b) takes care of the persons mentioned in clause 36(2), so there is no need for further amendment there. When you read those clauses together you see the need, as pointed out by a number of community groups, for the amendment which I have just moved.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 57 agreed to.

Clause 58

MR STEFANIAK (4.34): I move:

> Page 22, line 34, subclause 58(7), after "conditions" insert "(including terms and conditions relating to remuneration and allowances)".

This clause as it stood also caused some concern to the community groups. Indeed, when the government law officers looked at it they deemed it to be a very sensible amendment. By including in subclause (7) the words "(including terms and conditions relating to remuneration and allowances)" some of the concerns of the community groups were allayed. Apart from the president, the other members of the tribunal, who at this stage will be voluntary, may at some future time be able to have remuneration and allowances for the time they spend.

It also serves a very practical purpose in case the president is not in fact a magistrate but is a person described in clause 58(2)(b); that is, a legal practitioner of more than five years' standing. It is envisaged that such a person would need to be remunerated for the time spent as president of this tribunal.

Accordingly, it was deemed to be a sensible amendment by the Government Law Office as well as the community groups who put it to the Liberal Party and who accepted it. Again I am delighted to see that it has the Government's support. I hope that it has the support of the house.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 59 to 62, by leave, taken together, and agreed to.

Clause 63

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.36): Madam Temporary Deputy Speaker, there are two amendments proposed by the Government to this clause, which again come from discussion with community groups.

MADAM TEMPORARY DEPUTY SPEAKER: Is it the wish of the Assembly to take these amendments together?

There being no objection, that course will be followed.

MR CONNOLLY: Subclause 63(1) is presently worded to confine acting appointments to members of the tribunal other than the president of the tribunal, which is of course a part-time body. Community groups have suggested that a deputy or acting president be appointed to cover those situations when the president is ill or absent from the Territory on business.

Amendment No. 6, standing in my name, removes the restriction so that there may be the appointment of an acting president. For the reasons outlined in respect of amendment No. 6, amendment No. 7, standing in my name, simply provides a revised provision which governs who can be appointed to the position of acting president of the tribunal. I move:

Page 23, line 31, subclause 63 (1), omit ", other than the President".

Page 24, line 6, subclause 63(2), omit the subclause, substitute the following subclauses:

"(2) A person appointed to act as the President shall be a person referred to in paragraph 58(2)(a) or (b).

"(3) A person appointed to act as a member other than the President shall be a person who is qualified in accordance with subsection 58(4) to act as such a member.".

Amendments agreed to.

Clause, as amended, agreed to.

Clause 64

MR STEFANIAK (4.37): I move:

Page 24, line 17, at the end of the clause, add the following subclause:

"(2) A member of the staff of the Tribunal is subject to the directions of the President in the exercise of a power or the performance of a duty or function under or in relation to this Act.".

This clause deals with the staff. Community groups were somewhat concerned that, whilst the clause stated that the staff were required to assist the tribunal in the performance of its functions, being public servants they would be made available by the head of administration. There was some concern as to who they would be responsible to and who would direct them, and whether there would be any conflicts there.

The addition of "A member of the staff of the Tribunal is subject to the directions of the President in the exercise of a power or the performance of a duty or function under or in relation to this Act" clarifies that issue. It makes it quite clear that, whilst the public servants are made available by the head of administration, they are responsible and subject to the directions of the president, as it should be, and accordingly allays the fears of the community.

Amendment agreed to.

Clause, as amended, agreed to.

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

Amendment (by **Mr Stefaniak**) proposed:

Page 32, line 24, clause 75(b), omit "Community Advocate", substitute "Public Trustee".

MR COLLAERY (4.39): This is the moment of passage for the Bill and I would like to make a couple of comments. Firstly, I would like to thank the Attorney for making himself and his staff available to assist with all of these amendments sought by the community groups and requested of Mr Stefaniak. The way in which Mr Stefaniak has attended to the requests of the community is creditable.

I was pleased to participate in the requests for this amendment to clause 75 - to make the comments relevant - and all the other amendments. I believe that this has been a cooperative effort. It has been done swiftly. I thank the government law officers, in particular Mr Brendan Bailey, for his swift, prompt and generous advice. It was always proper; never on policy, always on law. I am sure Mr Stefaniak shares my views.

MR STEFANIAK (4.40): Yes, I certainly do. I thanked them yesterday. I would reiterate the thanks to the government law officers, especially, I think, Mr John Clifford, who drafted these matters, and also Mr Brendan Bailey, who is even in attendance here today, putting a few final finishing touches to this Bill. I thank the government law officers, the counsel and other members.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.40): I was going to rise on the final call of the Bill to do the thanks, but the thanks have been done for me. I certainly appreciate the way in which opposition members, Mr Collaery and Mr Stefaniak, have cooperated with officers of the Law Office. They have been named and are present here today.

The Government met with community groups some weeks ago and agreed that we would look very carefully at amendments. As a result of those discussions we were coming up with a slate of amendments. Mr Bailey then spent some hours going

through the detail of what the Government was proposing, taking on quite a degree of change to the original government proposals to reflect community views that were being transmitted by both Mr Stefaniak and Mr Collaery.

At the end of the day we have got through the house a piece of legislation which reflects very fully the views of the community and which is a credit to the Territory. It is a matter of some pleasure that persons in need of this type of assistance in the Territory will no longer suffer the indignity of having to appeal in the Supreme Court under the Lunacy Act of 1898. May that procedure be consigned to the dustbin of legal history.

Amendment agreed to.

Remainder of Bill, as amended, agreed to.

Bill, as amended, agreed to.

GUARDIANSHIP AND MANAGEMENT OF PROPERTY (CONSEQUENTIAL PROVISIONS) BILL 1991

Consideration resumed from 12 September 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

COMMUNITY ADVOCATE BILL 1991

Consideration resumed from 12 September 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clauses 1 to 12, by leave, taken together, and agreed to.

Clause 13

MR STEFANIAK (4.44): I move:

> Page 5, line 18, paragraph 13(1)(m), omit the paragraph.

Paragraph (m), as it stood, deemed that the community advocate had amongst his or her functions that of acting as subscribed representative under section 22 or 31 of the Mental Health Act 1983. Our concern in relation to that was that this presupposes, indeed assumes, that the community advocate would be taking on mental health functions. It is my understanding, and I think the understanding of the Assembly too, that the Government has not responded yet to the "Balancing Rights" report. Until such time as it does, mental health is really left there as a holding measure; it has not been decided by the Legislative Assembly as yet. That report has not been debated and concluded.

Part of that report, I think, dealt with the suggestion of having a mental health advocate, and the Assembly does need to consider whether, in fact, there needs to be a mental health advocate now. Until such time as it does, I think that particular paragraph is premature. It might well be that at some time in the not too distant future it may be deemed appropriate to reinsert that paragraph; but, at present, I think we would be jumping the gun. Accordingly, I seek to have that paragraph deleted.

MR COLLAERY (4.46): Madam Temporary Deputy Speaker, this amendment seeks to remove a provision that goes to the core of the function. The objection that, as I gather it, the community groups have had is that they believe that this puts too much onto the function. I believe that we should be ambitious, where we can, and not regard this role as necessarily, in terms of the legislation, limited by our restricted funds. Unless the Attorney, on the advice available to him, wishes to agree to this, my view is that we should support the broader, more ambitious function and retain the paragraph. I believe that Mr Stefaniak has the right to speak twice to this, and I would like him to clarify a little more what he is seeking.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.47): The original intention of the Government in having this provision in the package was really as protection against the time, in the future, when the Government and this Assembly have the opportunity to implement the "Balancing Rights" report. It is clear that mental health law and practice in this Territory does have a long way to go.

That rather comprehensive report was commissioned and handed down some time ago. We left this provision in against the day when there is a more comprehensive package.

The objection which Mr Stefaniak has taken to this is one which is shared by the community groups and, for that reason, our inclination is to support it. The community groups do not want this in because, they say, it is an additional burden on the functions of the office. We have, in consultation, said to them that it is really something of an academic point because, until the mental health package is got right, it matters little whether there is a residual power of the community advocate to act or not to act.

In practice, I think it matters little whether this provision is in or out; but, given that we have been wanting to meet the demands of community groups, I am prepared to support Mr Stefaniak's amendment, although what Mr Collaery says is very valid - that one should always aim high. But on this issue it really was a form of guarantee against a future call on the legislative package. Come the day when the future Labor Government after February next year is able to implement and develop fully a package to respond to "Balancing Rights", I would expect that we may be looking at consequential amendments to both the Community Advocate Act and the guardianship Act. So, there will be an opportunity, when we get the legislative package right, to appropriately amend this legislation.

On balance, while it is a fine call and I do not think it would matter if the paragraph remained in, the Government sees no harm in taking it out. It is certainly the express view of the community groups to take it out, although Mr Collaery's point is well made; but, on balance, we would support the removal.

MR COLLAERY (4.50): I should perhaps enlighten the house as to why I originally asked for this paragraph to be in. Mental health legislative reform has taken a long time in this Territory - many, many years. It is not an area that has developed at the pace that it should have. In fact, as someone aptly commented yesterday or the day before, 10 years before this decade closes we are coming into this century. The Lunacy Act is a nineteenth century instrument. It is my view that this should go in to act as an accelerant to those reformists, if there are any, in the mental health area, in the system, so that some pressure is exerted on them. People would commence pressing for adequate representation in the mental health area.

I agree with the comments of the Attorney-General; but I am a little more sanguine than he is as to where we are going to get, considering the fact that the Lunacy Act is still not repealed. The Lunacy Act is still there. We cannot do it yet. Of course, Robin Creyke wishes it to be repealed.

My strong view is that, with a statutory Board of Health and with a certain distance, as the Health Minister clearly demonstrates from time to time, between the Executive and the Board of Health, you do need a provision in here to drive the board and those involved to bring about reform.

I might say that I was not encouraged greatly in the Estimates Committee last night about the culture of reform in the health area. I believe that any government has a massive challenge in that area. We have inherited something that culturally has not been responsive for many years.

I would ask the Attorney whether he would like to revisit this slightly. If it is a matter of balance, perhaps he would consider those views, although I will not go to the wall on it. In trying to get even cross-departmental discussions under way, I found it necessary to write to my then colleague Mr Humphries to get him - as he properly did - to ask his department to accelerate their interest and attendance and involvement in these issues. I believe that the bureaucracy often survives the vicissitudes of government office, of politicians.

The reason for putting it in - I can enlighten the house - was that I felt very strongly that it was there to flag, as the Attorney seems to know now, to health people the need for reform, and the right of the community advocate, in his or her annual reports, to give some stewardship report, to give an account of where they are going.

This gives a right to make a comment. It does not provide any procedural or formal intervention steps yet, but it allows the community advocate to say, "I want to sit on any future panels like 'Balancing Rights'; I want to be involved; I want to have an active interest; I cannot be excluded from interdepartmental discussions and the like".

I just believe that it should be there. It was something that Mr Humphries and I discussed. I recall Mr Humphries and I agreeing at the time, informally, that I would like to see it in the Bill; but only to flag the need for it and to flag the fact that it will act as an encouragement and as a sign of things for the future.

MR HUMPHRIES (4.54): I have to say that I cannot agree with my colleague Mr Collaery about this amendment. I discussed this with the community groups that have been raising concerns with this package of legislation. It was my view that there was a real problem with making assumptions about the future course of events that might flow from the full consideration of the report "Balancing Rights" handed down late last year.

Mr Collaery described the addition of these words in paragraph (m) to the Bill as an accelerant to reformists. He said, "I think it would provide for speedy consideration of the issues arising out of 'Balancing Rights'". I have to say, Madam Temporary Deputy Speaker, that I see it in a quite different way.

I think the addition of those words would, in fact, potentially retard the pace of consideration of "Balancing Rights". There is an argument canvassed extensively in "Balancing Rights" that there should be a separate mental health advocate provided for in the Territory. That is an argument which we have to take extremely seriously, and I, for one, do not wish to pre-empt it by anything which is discussed or confirmed in this debate.

I do, however, wish to leave the door open and I believe that it is better left open by providing that paragraph (m) be deleted. I say that because I believe that the extension, expressly in legislation, of the community advocate's powers to deal with mental health and mental health advocacy would create an assumption that that was to be the status quo for some time to come.

That, I think, would not be a desirable outcome from the point of view of any of us here. I am sure we would all welcome, as Mr Connolly has indicated, a consideration by government soon of the balance of that report, and I do not think it is best served by making stopgap measures in this sense.

There is no problem, as the Attorney has indicated, with not having that particular provision in this Bill. Community groups to which I spoke certainly preferred not to have that stopgap measure there. I therefore support Mr Stefaniak's amendment and urge that we consider the broader question of advocacy for mental health patients in the full context, without any status quo that might retard the speedy consideration of those issues.

MR STEFANIAK (4.57): I do not think there is anything further to be said. I would commend this amendment for the reasons I have given, Mr Humphries has given, and I think even the Attorney, on balance, has given to the house.

MR COLLAERY (4.57), by leave: I wish to add some more comments, if I may. I think it would be unfortunate if we pushed anything to a vote in what is clearly a bipartisan debate today, so I will not press the issue.

Amendment agreed to.

MR STEFANIAK (4.57): I move:

> Page 5, line 20, paragraph 13(1)(n), omit the paragraph, substitute the following paragraph: "(n) to protect the rights of forensic patients;".

Members will see that the current paragraph (n) is one of the duties of the community advocate. One of his functions will be to represent forensic patients before the tribunal or any court. That can cause problems because it necessitates the community advocate representing forensic patients before the tribunal or before any court. That does, in the view of the community groups, impose quite a burden on an already very much overworked community advocate. Indeed, in many instances it is simply not necessary.

By amending the Bill along the lines I have suggested - to protect the rights of forensic patients - it still imposes the proper duty on the community advocate, and included in that duty will be, when appropriate, representation of forensic patients before the tribunal or before any court. That does not make it mandatory on the community advocate to do so. Accordingly, I think that is a more proper function for the community advocate, rather than mandatory representation before the tribunal or any court.

MR COLLAERY (4.59): I do not read it that way, with respect to my colleague Mr Stefaniak. I believe that the amendment he seeks actually narrows the protection for forensic patients. In fact, I would worry about a pejorative term such as a mandatory requirement to protect the rights of forensic patients. In all international documents that I have read there is a very heavy avoidance of terminology that can result in states or governments or persons being alleged to be negligent when the rights of patients sometimes are breached.

The fact is that the word "represent" is broad. It has been well interpreted in law. It means, in the commonly understood common law, powers to delegate, and there are specific delegations in the Bill. The advocate has to represent; Ministers have to represent, but they do not personally go and represent issues. Obviously, if they believe that the advocate has to go and represent everyone before a tribunal or court, they are wrong.

There is a very strong anti-lawyer flavour in the comments from the community. I can understand why; I appreciate why. They do not want to lawyerise this process. They see the word "represent" as feeding the lawyerisation of this role. They believe that the advocate will interpret it as meaning that he or she has to get a lawyer to protect the rights and go before a tribunal or any court.

I believe that the word means what it says - to represent forensic patients. People who go before industrial and arbitration hearings where there is no express right of appearance by lawyers also have the same injunction on them to represent issues. I think "represent" should be given its normal and natural meaning, which is that the advocate has to ensure that there is representation of a sort which is appropriate, of a nature which is correct in the circumstances.

So, I do not support the amendment moved by Mr Stefaniak. I can see where the reasoning comes from, but I think it would in fact narrow the rights of forensic patients. I think you have to do more than just protect them sometimes; you have to be pro-active, and representing gives a much broader role to the advocate.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (5.01): On this issue, of some fine balance, the Government is inclined not to support this amendment, and for very much the reasons outlined by Mr Collaery. To represent a patient is, as we see it, a fairly broad charter rather than a narrow one.

Insofar as there is a community concern, which I have heard expressed, that this will bog down the resources of the community advocate, because the community advocate will be personally required to be appearing in court proceedings all over the place, there will be an amendment moved later on which makes it abundantly clear, although probably it was unnecessary because the power was probably there generally anyway, that the community advocate can go to outside assistance or counsel if needs be.

So, I cannot accept that it overly burdens the community advocate. I think the phrase "to represent" encompasses a fairly broad range of activities which are appropriate. The alternative proposal of "protecting the rights" does have something of that flavour that Mr Collaery referred to, almost of paternalism. I am sure that Mr Stefaniak does not intend it to operate in that way or to have that flavour; but I think, on balance, the existing provision is better. Therefore, the Government cannot support this amendment.

MR STEFANIAK (5.03): I just reiterate the community concerns. I tend to think that, rather than restricting it, "protecting" gives a much broader scope. Obviously, Mr Collaery and Mr Connolly do not agree with that. We will see who is right as time progresses, if I go down on this amendment.

MR COLLAERY (5.03): I want to respond to what Mr Stefaniak just said. With respect, the word "represent" has to be read in its context as well. The injunction on the community advocate is very clear. The role of community advocate can be seen elsewhere in the legislation. In context it does not, with respect to Mr Stefaniak and to groups who have petitioned him to bring about a change, provide for a lesser role for the advocate.

"Protect" is one element of representing a client. I think there is a semantic problem in the perception of protection here. You find the role of the community advocate throughout the Bill. You read the word "represent" in the context of the purpose and nature of the legislation, in the traditional system of statutory interpretation, and it is quite clear that, if mandamus lay, or something, "represent" would be given its wide meaning within the context of the Bill.

Amendment negatived.

Clause, as amended, agreed to.

Clauses 14 and 15, by leave, taken together, and agreed to.

Clause 16

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (5.06): This is a clause on which there has been some concern from community groups. The community groups did not like the suggestion in clause 16 that the community advocate could go to an outside lawyer only if there was a potential for conflict of interest. They thought that there was perhaps a broader need to go outside.

There were two ways of dealing with that perceived problem. I think at different stages Mr Collaery, Mr Stefaniak and I have thought of dealing with that problem in different ways. One way would be to be silent on the matter altogether and rely on a general provision that a statutorily-created official can go and seek legal advice from lawyers outside that organisation. Many government departments do that on a daily basis, without any express statutory provision to say that they may engage a legal practitioner to assist them.

The other would have been to prepare a clause, such as the proposed amendment to clause 16, which is a general provision; rather than being headed "conflict of interest" and limiting the circumstances in which a solicitor can be engaged or a legal practitioner can be engaged, give a general power to engage a legal practitioner.

Given that there has been some debate, evidenced by Mr Stefaniak's previous amendment, about whether the community advocate's ability to represent forensic patients before a tribunal will be a problem for the community advocate, and whether it will overburden the community advocate, I think it is better that we have an express provision to say that the community advocate can engage legal practitioners, to make it abundantly clear that, if there is a problem about the community advocate being unable to perform the function under clause 13(1)(n) on the text of the Bill, under clause 16 that they can get assistance in performing those functions. So, I move:

Omit the clause, substitute the following clause:

Engagement of legal practitioner

"16. The Community Advocate may engage a legal practitioner to appear before the Tribunal or a court in relation to the performance of the Community Advocate's functions under this Act".

Ms Maher: I have not seen the amendment.

MR CONNOLLY: I apologise. We circulated a lot of this for the various discussions. I thought it had been circulated. In the discussions as to which way to go, perhaps it was not circulated. I apologise to members for that.

Amendment agreed to.

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

Bill, as amended, agreed to.

CHILDREN'S SERVICES (AMENDMENT) BILL (NO. 2) 1991

Consideration resumed from 12 September 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

ADJOURNMENT

Motion (by **Ms Follett**) agreed to:

That the Assembly do now adjourn.

Assembly adjourned at 5.13 pm until Tuesday, 22 October 1991, at 2.30 pm

ANSWERS TO QUESTIONS

ATTORNEY GENERAL
LEGISLATIVE ASSEMBLY QUESTION
QUESTION NO. 488

Liquor Licensing Legislation.

Mr Stefaniak - asked the Attorney General -

As a measure to combat the growing problem of alcohol abuse in the ACT
(1) Will the Government undertake to review 24 hour liquor licensing in the ACT.

(2) If so, will the Government ban the sale of liquor between the hours of Sam and Guam as requested by the Australian Federal Police..

(3) If not, why not.

Mr Connolly - the answer to the Members question is as follows:

(1) As indicated in the Assemblys recent Matter of Public Importance debate on the issue of the ACT liquor laws the Government does not believe that a formal review of the liquor laws, or the particular issue of 24 hour licences, is necessary.

(2) Not applicable - but it should be noted that the Australian Federal Police suggestion was not adopted in the majority report of the ACT Assembly Standing Committee on Social Policy

(3) An extensive number of amendments where made to the ACT Liquor Act in November 1990. The Government believes that these amendments should be given an opportunity to work. However, the Government is specifically looking at the issue of loss of amenity in the vicinity of licensed premises. One possible solution, which is successfully used in other states, involves a formal conciliation process between the complainants and the licensee. This process is supported by appropriate powers for the licensing authority to make orders in accordance with the terms of the agreed position or to issue directions. I am currently consulting the industry on this matter.

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Legislative Assembly Question
No. 569

Drugs of Dependence

Mr Collaery: to ask the Attorney General - in relation to drugs of dependence search warrants executed at residential premises within the ACT

(1) How many such search warrants were executed in the period 1 July 1990 to 30 June 1991.

(2) What has been the approximate percentage rise in such searches over the last financial year.
(3) What were the number and type of charges laid over the same period.
(4) What has been the approximate percentage rise in such charges over the preceding financial year.
(5) What substances were generally involved.
(6) In the financial year 1990-1991 (a) how many drug analyses were requested by the Australian Federal Police; (b) what was the approximate cost of each analysis; (c) what was the overall cost of police requested drugs of dependence analyses; and (d) how many analyses were for cannabis.

(7) How many persons were charged with (a) growing not more than (5) cannabis plants; (b) possessing less than 25 grams of a prohibited substance; and (c) possessing less than 25 grams of cannabis derived substance in any form.

Mr Connolly - the answer to the Members question is as follows:

The figures included in this response relate to Drugs of Dependence search warrants served by the Australian Federal Police, ACT Region, Drug Operations Branch. It is not possible to indicate how many warrants were served on residential premises without undertaking a labour intensive search of records.

(1) There were 222 search warrants executed by the ACT Drug Operations Branch during the period 1 July 1990 to 30 June 1991.

(2) There were 27 more warrants issued during the 1990/91 financial year. This was an increase of 13.84 percent on the previous financial year.

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With respect to questions 3, 4, 5, 6 and 7, it is not possible to supply the number and type of charges laid from the execution of Drugs of Dependence Search Warrants during the specified period. However, details of ALL charges laid during the period are listed below.

Charge 1989/90 1990/91 Difference
Drugs of Dependence Act 1989 section 161(2)
Manufacture prohibited substance - 1 + 100%
Drugs of Dependence Act 1989 section 162(2)
Cultivate prohibited plant 34 59 + 73%
Drugs of Dependence Act 1989 section 162(3)
Cultivate for supply - 4 + 400%
Drugs of Dependence Act 1989 section 164(2)(A)
Sell/supply drug of dependence
- not including cannabis 13 14 + 8%
Drugs of Dependence Act 1989 section 164(2)(C)
Possess drug of dependence for sale/supply
- not including cannabis 2 5 + 150%
Drugs of Dependence Act 1989 section 164(3)(C)
Possess prohibited substance for purpose
of sale/supply - not including cannabis 35 14
Drugs of Dependence Act 1989 section 165(1)(A) .
Sell/supply cannabis 43 13 - 70%
Drugs of Dependence Act 1989 section 165(1)(C)
Possess cannabis for the purpose of
sale/supply 16 16 no change
Drugs of Dependence Act 1989 section 169(1)
Possess drug of dependence 29 30 + 3%
Drugs of Dependence Act 1989 section 169(2)
Administer drug of dependence - self 1 4 + 300%
Drugs of Dependence Act 1989 section 171(1)
Possess prohibited substance 203 148 - 27%
Drugs of Dependence Act 1989 section 171(2)
Administer prohibited substance - self - 2 + 200%

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Charge 1989/90 1990/91 Difference

Customs Act 1901 section 233B(lXB)
Prohibited imports - cause to import - 1 + 100%
Customs Act 1901 section 233B(lXCA)
Possession of prohibited import 1 - - 100%
Crimes Act 1900 section 346
Accessory after the fact 1 - - 100%
Crimes Act 1900 section 349(i)(A)(I)
Conspiracy - 1 + 100%
A.C.T. Poisons & Narcotic Ordinance 1978
- section 5(1)
Possession narcotic substance 5 2 - 60%
A.C.T. Poisons & Narcotic Ordinance 1978
- section 4(3)
Possession of narcotic substance for supply 7 2 - 71%
A.C.T. Poisons & Narcotic Ordinance 1978
- section 6(2)
Administer narcotic substance
- self other than cannabis - 1 + 100%

(5) The major substances involved during 1989/90 and 1990/91, in descending order, were: cannabis; amphetamine; heroin; cannabis seed; cannabis resin and cocaine.
(6Xa) 379 narcotic drug analyses were requested by the Australian Federal Police; ACT Region, during the 1990/91 financial year.
(b) and (c) In accordance with the ACT Drugs of Dependence Act 1989, all narcotic seizures by the Australian Federal Police within the ACT are delivered into the custody of the ACT Department of Health, Analytical Laboratory. It is the responsibility of the Analytical Laboratory to analyse and store all narcotic seizures. Therefore, no costs are imposed on the Australian Federal Police.
(d) In 1990/91, 295 analyses were for the narcotic drug cannabis.
(7) In 1990/91, (a) 17 persons were charged with growing not more then five cannabis plants; (b) 98 persons were charged with possessing less than 25 grams of a prohibited substance; and (c) 63 persons were charged with possessing less than 25 grams of cannabis derived substance in any form.

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CHIEF MINISTER FOR THE AUSTRALIAN CAPITAL
LEGISLATIVE ASSEMBLY QUESTION

QUESTION NO. 576

Land Tax

Mr Humphries - Asked the Treasurer upon notice on 12 September 1991:

(1) What research and/or studies were conducted by Treasury or any other ACT Government agency into (a) the operations of land taxes in other Australian states and territories; (b) the impact of the land tax on the availability of private rental accommodation in the ACT; (c) the potential revenue which could beraised by the introduction of the land tax; (d) the possibility of the land tax being passed directly to tenants and the impact on the cost of private rental accommodation in the ACT; (e) the impact of the land tax on investments made by involuntary landlords, such as members of the Department of Foreign Affairs posted overseas; (f) the cost of administering the land tax; and (g) the need for and cost of additional public housing in the event of a reduction in the availability of private rental accommodation resulting from the implementation of the land tax.

(2) Will the Treasurer make these studies available to the Assembly; if not, why not.

(3) Were any individuals and/or organisations consulted before the land tax was publicly announced; if so (a) which individuals and organisations were consulted; (b) when did these consultations take place and (c) what was the result of this consultation.

(4) What consultation took place with the Real Estate Institute of the Australian Capital Territory and the Canberra Association for Regional Development.

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(5) Is the Treasurer able to advise what land tax applies in NSW and whether there is any incentive for Canberra investors to purchase real estate outside the ACT following the introduction of the land tax.

Ms Follett - The answer to the members question is as follows:

1) What research and/or studies were conducted by the Treasury or any other ACT government agency into:

a) the operations of land taxes in other Australian states and territories

The land tax policies and administrative practices of all States- were extensively studied by the ACT Treasury in the course of the development of the proposal to extend ACT land tax to income earning residential property. Additionally, the Commonwealth Grants Commission conducted an extensive study of revenue raised from land taxes in Australia. The Commission in its Fourth Report on ACT Financing (1991), concluded that, with respect to land tax, the ACT effort in revenue raising in 1989/90 was only 45.5% in comparison with the standard states. In dollar terms, the shortfall in ACT revenue from land tax was $11.5 million. The Commission attributed the below standard revenue raising effort to the relatively low rate of land tax (then .75% of unimproved value) and the fact that the tax was restricted to commercial properties, whereas all states tax rented properties and some also taxed residential properties. This indicated the desirability of increasing the land taxation level (now 1% of the unimproved value) and broadening the land tax base.

b) The impact of the land tax on the availability of private rental accommodation in the ACT.

Research by the ACT Treasury indicated land tax on an average residential investment property with a market value of

$150,000 and an unimproved value of $40,000 would result in

additional costs to the property owner of $400 per annum. This represented 0.26 of the total cost of the investment and it was considered that it would have negligible effect on the return of the investment. In addition, as land tax could be claimed as a deductible expense against income, it was considered most unlikely that the imposition of the tax would jeopardise the investment housing market in Canberra.

c) The potential revenue which could be raised by the introduction of the land tax.

ACT Treasury research had shown that land tax revenue based on all rateable ACT land other than land used in primary production and as an owners principal place of residence would amount to $6.3 million in 1991/92 and $6.9 million in 1992/93. Exemptions from the tax mainly .related to absences by an owner from a principal place of residence have reduced the revenue to $5.3 million and $5.9 million respectively. If a threshold below which tax is not charged had been introduced it would have reduced revenue considerably, to somewhere between $1 and $3 million, depending on the level of the threshold.

d) The possibility of the land tax being passed directly to tenants and the impact on the cost of private rental accommodation in the ACT.

Australian Bureau of Statistics AM statistics from the 1988/89 Household Expenditure Survey indicated that.the average weekly income of households renting privately was $887.43, nine percent above the ACT average of $814.13. In the average private rental household there were 1.8 employed persons, 20% greater than the number in the average household in Canberra. 35% of private rental households were group householders compared to 13% for the whole of Canberra.

The Government is fully aware that the burden of the land tax cost may be passed on to tenants. The ability of property owners to pass on the burden of the tax, in full or in part, however,

varies significantly between properties and is dependent on many market factors. Similarly, the ability of tenants to absorb an increase in rent also varies but as indicated above there is capacity in renters generally to absorb the small cost likely to be passed on and in the case of low income renters the Commissioner for Housings rent relief scheme is available to assist.

e) The impact of the land tax on investments made by involuntary landlords, such as members of the Department of Foreign Affairs posted overseas.

The Act provides for absences from the principal place of residence by reason of:

.the death or illness of any person;

.some other compassionate ground;

.the owners employment or occupation; without the property losing its exempt status. Where the reason for the owners absence is related to employment or occupation an exemption is only available if the owner occupies the premises continuously for two years in any five year period.

Research has shown that the tax on "involuntary landlords" arising from employment or occupation related reasons would have little effect because such people receive generous allowances to assist with accommodation costs overseas, as well as receiving their normal income and income from renting their property while they are away. AM statistics show that in the 1988 Housing Survey, of the 15,500 private rental dwellings in the ACT 7,800 were owned by private households. Of the 7,800 private households;

- 85% reported a weekly household income of $700 or more,

and the remaining 15$ between $400 and $699;

- 34% were renting a dwelling themselves while they

rented out the dwelling they owned;

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- 36$ owned their principal residence outright;

- 28$ were still paying off their principal residence and would include persons living temporarily overseas. 86% of these had aweekly income of $700 or more.

In the case of absences caused by the death or illness of any person, short-term rental arrangements will not of themselves lead to the property being land taxed.

f) The cost of administering the land tax.

The estimated cost of introducing and administering the tax in 1991/92 is $175,000. On going staffing costs from 1992/93 are expected to be $57;000. These costs however, would have increased significantly if the tax had been introduced with a threshold and consequent aggregation of properties owned.

g) The need for the cost of additional public housing in the event of a reduction in the availability of private rental accommodation resulting from the implementation of the land tax.

As indicated in b) above the imposition of land tax on rental properties is not expected to have any serious impact on the supply of investment housing. My Government is concerned, however, to ensure that low income families are not adversely affected by the extension of land tax on rental properties. Low income families who are on the waiting list for public housing may apply for assistance from the ACT Housing Trust Rent Relief Scheme. In addition the Minister for Housing is to closely monitor the housing situation following introduction of the tax and will advise the Government on any adverse factors.

2) Will the Treasurer make these studies available to the

Assembly; if not, why not.

The statistics and studies used by the Government to reach a decision to introduce land tax on residential land which is not

used as the principal place of residence of an owner are freely available from the Fourth Commonwealth Grants Commission Report on ACT Financing. ABM statistics from the 1988 Housing Survey and 1988-89 Household Expenditure Survey are mainly unpublished statistics which were obtained by the ACT Treasury. These can be made available on request from the ACT Treasury.

3) Were any individuals and/or organisations consulted before
the land tax was publicly announced; if so
a) Which individuals and organisations were consulted;

There are very clear constraints on the consultative process in the development of tax policy. The Government has an obligation to ensure that the Territory revenue is protected from tax evasion and avoidance resulting from awareness of impending tax changes.

Within these constraints every effort was made to ensure that the Government was fully apprised of the implications arising from the proposed changes to land tax liability in the ACT. There was extensive internal Government consultation and with other state taxing authorities. Also there was limited exposure of the proposal outside Government agencies. However, given the sometimes limited information made available to nongovernment bodies I do not believe it would be fair to identify them individually. b) When did these consultations take place;

May-June 1991 c) What was the result of these consultations,

On the basis of the advice received the earlier proposals of the Alliance Government were modified before the Rates and Land Tax (Amendment) Bill (No. 3) 1991 was presented to the Assembly.

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4) What consultation took place with the Real Estate Institute of the ACT and the Canberra Association for Regional Development.

None.

5) Is the Treasurer able to advise what land tax applies in NSW and whether there is any incentive for Canberra investors to purchase real estate outside the ACT following the introduction of the land tax.

LAND TAX NSW

From 1.1.90

Rates (Based on unimproved value of land)	- $100+1.5% over $160,000
On residential owner occupied land	Exempt unless land over 2,100 sq.m (2 heck. for sub-divided land).
On land used for primary production	Exempt

Land tax is payable on residential investment properties in all states of Australia. Different rates and tax-free thresholds apply, however, the low 1% rate in the ACT is not considered to provide any incentive for investors to purchase real estate elsewhere in preference to the ACT - see answer to 1(b) also.

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MINISTER FOR HEALTH

QUESTION TAKEN ON NOTICE ON

19 SEPTEMBER 1991

Obstetrics Beds

Mr Moore - Asked the Minister for Health:

Can Mr Berry tell us if it is true that there is going to be a reduction of obstetrics beds at Woden Valley Hospital from the planned 75 to 60?

Mr Berry - The answer to Mr Moores question is:

I am pleased to be able to advise the Assembly that there is no plan to reduce the number of obstetric beds from the 75 in the new Obstetrics Building.

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