DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

21 November 1991

Thursday, 21 November 1991

Thursday, 21 November 1991

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

SUPERANNUATION (LEGISLATIVE ASSEMBLY MEMBERS) BILL 1991

MR BERRY (Minister for Health and Minister for Sport) (10.31): Mr Speaker, on behalf of the Treasurer, Ms Follett, I present the Superannuation (Legislative Assembly Members) Bill 1991. I move:

That this Bill be agreed to in principle.

Mr Speaker, the Bill establishes a superannuation scheme for members of the Assembly. The Commonwealth, State and Northern Territory governments each have their own superannuation legislation. This Bill will bring the Legislative Assembly into line with the other Australian parliaments.

The standards of the scheme are consistent with those laid down by the Commonwealth in its occupational superannuation legislation for superannuation funds, both public and private. The Government believes that, at a time when superannuation provisions are being extended to all sectors of the work force, it would be inappropriate to leave Assembly members without any coverage.

The purpose of this Bill is to implement a suitable parliamentary superannuation benefit at minimum cost and to avoid the financial and administrative complexities that are faced by introducing a superannuation fund. Administration of the scheme will be the responsibility of the Legislative Assembly Members Superannuation Board as established under the legislation. The board has a duty to determine the entitlements for ex-members according to the provisions laid down in the Bill and to make decisions on invalidity applications.

The scheme will require a contribution by members. Member contributions will be 5 per cent of salary paid into the Consolidated Revenue Fund. The benefit will be equivalent to 29 per cent of salary paid for each year of service as a member, Minister or office holder.

This arrangement provides for a once only lump sum benefit on cessation as an Assembly member. Expenditure will be met through the Consolidated Fund as required. Members are entitled to a benefit from the day they cease to be a member. However, consistent with Commonwealth occupational superannuation standards legislation and the objective of providing for retirement, members who leave before the age of 55 would have benefits preserved and paid into an appropriate fund. Such benefits would not be available from the receiving fund before a person reached the age of 55 and retired from the work force.

The Bill provides for an additional lump sum benefit for either invalidity or death. This benefit is calculated as equal to the benefit that would have been received on retirement at age 60. This method reflects that generally used in public sector superannuation legislation. The additional benefit in invalidity cases requires both medical evidence and the board's agreement that the invalidity retirement is necessary.

The proposed superannuation benefit arrangement avoids the need to establish a fund to receive and invest contributions on behalf of members as this would incur substantial costs associated with the cash management, administration and statutory reporting requirements of superannuation funds.

The scheme is voluntary for the life of the first Assembly and obligatory thereafter. There is no minimum qualifying period and the scheme will commence from the date this legislation is gazetted. Members of this first Assembly will have the option to backdate membership in the scheme to the date of taking office by payment of 5 per cent of past salary into the Consolidated Fund.

The cost to the ACT taxpayer is similar to that for the Tasmanian parliamentary lump sum superannuation scheme, which has lower costs than other Australian parliamentary schemes. A critical consideration in recommending this scheme as a lump sum benefit rather than a pension scheme was the need to contain costs whilst allowing members a reasonable benefit. I must emphasise that administrative and benefit costs are significantly lower for lump sum schemes than for those that offer a pension benefit.

Mr Speaker, the Commonwealth is reviewing superannuation policy, and it may be necessary to consider legislative amendments if new Commonwealth occupational superannuation standards are implemented. I present the explanatory memorandum for the Bill.

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

AIR POLLUTION (AMENDMENT) BILL 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.36): Mr Speaker, I present the Air Pollution (Amendment) Bill 1991. I move:

That this Bill be agreed to in principle.

Neither the Air Pollution Act 1984 nor the Water Pollution Act 1984 has provisions which allow the Pollution Control Authority to require immediate abatement or preventive measures for emissions or discharges to be undertaken. Under the Air Pollution Act, as it now stands, action can be taken only after an emission has occurred. The mechanism for abatement involves a considerable amount of time before remedial action is forthcoming.

Under the current provisions the following steps need to be undertaken before an emission is controlled: Firstly, issuing a section 30 notice seeking advice from the occupier of preventive measures proposed to achieve control; secondly, reviewing the response from the occupier; thirdly, advising the occupier of acceptance of the proposal or directing other works which must be undertaken. The power to issue pollution abatement notices means that the time for remedial action will be halved and, in most instances, result in immediate cessation of emissions. The authority will be able to require self-monitoring.

As with the Air Pollution Act, the Water Pollution Act also has no provisions for any preventive measures. Inspectors encounter considerable numbers of minor discharges or potential discharges which could readily be resolved through preventive controls. A large commitment of resources is required for prosecution. Therefore, this course of action is not suitable for the majority of infringements.

I will therefore be introducing today a separate Bill to amend the Water Pollution Act 1984. Both the Bills will provide for the issuing of pollution abatement notices to similarly facilitate early rectification. Both Bills will provide for issuing of notices where there are reasonable grounds for believing that pollutants or wastes have been emitted or discharged, are being emitted or being discharged, or are likely to be emitted or discharged from premises in contravention of the legislation and it is necessary to control the emissions or discharges.

Failure to comply with a notice will be an offence. Penalties for failure to comply will be $25,000 for a body corporate and $5,000 or six months' gaol or both for a natural person. Appeals for a review of the decision of the Pollution Control Authority or an inspector may be made to the ACT Administrative Appeals Tribunal.

This is a further example of the ACT Government's commitment to improving and enhancing the quality of the ACT environment. There are no additional administrative costs associated with this proposal. Mr Speaker, I present the explanatory memorandum for the Bill.

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

WATER POLLUTION (AMENDMENT) BILL 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.40): Mr Speaker, I present the Water Pollution (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

As mentioned in the presentation of the Air Pollution (Amendment) Bill 1991, the Water Pollution Act has no provisions for any preventive measures. The Water Pollution (Amendment) Bill 1991 provides for the issuing of pollution abatement notices which will facilitate early rectification. I have outlined the provisions of this Bill in the presentation of the Air Pollution (Amendment) Bill 1991. Mr Speaker, I present the explanatory memorandum for the Bill.

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

AIR POLLUTION (AMENDMENT) BILL (NO. 2) 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.41): Mr Speaker, I present the Air Pollution (Amendment) Bill (No. 2) 1991. I move:

> That this Bill be agreed to in principle.

Concern has been expressed in the media about Canberra's high lead-in-air levels, and this has been linked to the fact that Canberra was receiving some country grade petrol - which has a high lead concentration, that is, up to 0.84 grams of lead per litre as compared with 0.40 grams in Sydney metropolitan grade petrol.

The Air Pollution Act 1984, as it now stands, does not have controls over the maximum concentration of lead in leaded petrol. However, unleaded petrol is controlled in an earlier amendment to the Act that prevents leaded petrol from being sold or used as unleaded petrol. Monitoring for

lead in the air in 1990 showed a continuing improvement in air quality. This has been the result of the introduction of unleaded petrol in 1986. Unleaded petrol has captured 43 per cent of the petrol market in Canberra, compared to 30 per cent Australia-wide.

Although the downward trend is encouraging, the 1990 result showed that national air quality guidelines were marginally exceeded on one occasion in Civic and once in Woden. These high readings occurred during winter when calm conditions and temperature inversions trapped pollutants closer to the ground.

In order to accelerate the improving trend in air quality, talks were instigated by Mr Duby and the previous Government with the Australian Institute of Petroleum to supply Sydney metropolitan grade petrol, which contains not more than 0.40 grams per litre of lead, to Canberra. As a result of Mr Duby's discussions, the Australian Institute of Petroleum announced on 13 May that only Sydney metropolitan grade petrol would be supplied to Canberra as of the end of May 1991.

It is considered desirable that this undertaking be formalised through amendments to the Air Pollution Act 1984. The amendment Bill provides for a maximum limit for lead in leaded petrol of 0.40 grams per litre and makes it an offence to supply or use petrol which exceeds the prescribed concentration.

The Minister or the Pollution Control Authority, in the event of an emergency, may exempt a company from the requirement to supply leaded petrol at the prescribed concentration for a limited period. Examples of an emergency include industrial action or refinery malfunction.

The reseller will be able to request a written warranty from the supplier certifying that the product complies with the legislation. The penalty proposed for failing to supply a warranty, when requested, is $1,000. Other penalties proposed for failure to comply are, for a body corporate, $2,500 to $50,000 and, for a natural person, $500 to $10,000. These penalties are in line with those which apply to unleaded petrol.

This legislation should ensure the reduction of ambient lead levels in the ACT. Mr Speaker, I present the explanatory memorandum.

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

SURVEYORS (AMENDMENT) BILL 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.46): Mr Speaker, I present the Surveyors (Amendment) Bill 1991. I move:

That this Bill be agreed to in principle.

The Government has now established an ACT Survey Office within the Department of the Environment, Land and Planning. Historically, the Australian Surveying and Land Information Group (AUSLIG) undertook the surveying and mapping of Canberra. However, under self-government, the functions are administered by the ACT Government. The transfer of the survey resources from the Commonwealth to the Territory was delayed pending a review, during 1990, of the resources required by the Territory to take over ACT survey matters. A memorandum of understanding was entered into to allow survey matters to be conducted during the period of the review.

That review is complete and agreement has been reached with the Commonwealth on the resources to be transferred to the Territory. The transfer will include 64 staff at no capital cost to the Territory, the Belconnen survey depot, valued at $1.5m, at no cost to the Territory, and necessary associated equipment and data for the carrying out of the survey functions.

The ACT cadastre is the land boundary description, as defined by the register of deposited plans held at the Land Titles Office. It is already in the Territory's possession and will be made available to the Commonwealth at no cost. The transfer process is almost complete, and it is now necessary and appropriate to amend the legislation relevant to the survey function to reflect the Territory's independence in this regard and to allow the function to be administered by an officer appointed by the Territory Minister.

Accordingly, the Surveyors (Amendment) Bill 1991 amends the Surveyors Act 1967 to provide, at section 5A, for the appointment of the Chief Surveyor. That section, set out in clause 4 of the Bill, also provides for an Acting Chief Surveyor to be appointed. Any person appointed must be a public servant who is entitled to be registered under the Act.

The Surveyors (Amendment) Bill 1991 also provides for all references to the Commonwealth Surveyor-General to be references to the Chief Surveyor. Similarly, the Districts (Amendment) Bill 1991 and the Real Property (Amendment) Bill 1991 amend such references in the Districts Act 1966 and section 64 of the Real Property Act 1925, respectively.

I present the explanatory memorandum for those three Bills - the Surveyors (Amendment) Bill 1991, the Districts (Amendment) Bill 1991 and the Real Property (Amendment) Bill 1991.

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

DISTRICTS (AMENDMENT) BILL 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.49): Mr Speaker, I present the Districts (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

Under self-government, the surveying and mapping of Canberra are administered by the ACT Government. To accommodate this change, the Surveyors (Amendment) Bill 1991 provides for the amendment of the Surveyors Act 1967 so that the ACT survey function will be administered under the Chief Surveyor in place of the Commonwealth Surveyor-General.

As a consequence of the amendment to the Surveyors Act 1967, it is necessary to amend the Districts Act 1966 to allow sections in that Act which are relevant to the survey function to be administered by an officer appointed by the Territory Minister. The Districts Act 1966 provides for the division of land in the Territory into districts, divisions, sections and blocks. The Act also provides for the description of land.

Section 7 of the Districts Act 1966 provides that the Registrar of Titles may not accept a plan for lodgment as a deposited plan unless the Commonwealth Surveyor-General has certified the plan in accordance with the section. The Districts (Amendment) Bill 1991 amends the reference to the Commonwealth Surveyor-General in section 7 to be a reference to the Chief Surveyor. The explanatory memorandum has been presented.

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

REAL PROPERTY (AMENDMENT) BILL 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.51): Mr Speaker, I present the Real Property (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

Under self-government, the surveying and mapping of Canberra are administered by the ACT Government. To accommodate this change, the Surveyors (Amendment) Bill 1991 provides for the amendment of the Surveyors Act 1967 so that the ACT survey function will be administered under the Chief Surveyor in place of the Commonwealth Surveyor-General.

As a consequence of the amendment to the Surveyors Act 1967, it is necessary to amend the Real Property Act 1925 to allow sections in the Act relevant to the survey function to be administered by an officer appointed by the Territory Minister. The Real Property Act 1925 provides for the declaration of titles to land in the Territory and also facilitates the transfer of land in the Territory.

Section 64 of the Real Property Act 1925 provides that, if the requirements as to the deposit of a map or plan referred to in that section are not complied with, or if it is not approved by the Surveyor-General for Australia, then it is not incumbent upon the Registrar of Titles to bring the land under the provisions of the Act or to proceed with the registration of a transfer or a lease. The Real Property (Amendment) Bill 1991 amends the reference to the Surveyor-General for Australia in section 64 to be a reference to the Chief Surveyor. Mr Speaker, the explanatory memorandum has been presented.

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

LAKES (AMENDMENT) BILL 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.53): Mr Speaker, I present the Lakes (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

This Bill has come to the Assembly and it is going to be passed, I am sure, in the life of this parliament. It relates to amendments to the Lakes Act 1976, which controls the commercial and recreational activities taking place on Lake Ginninderra, Lake Tuggeranong and the Molonglo River upstream of Dairy Flat Bridge. The Bill does not relate to activities on Lake Burley Griffin, which, being national land - I will have to look at that definition - is governed by Commonwealth legislation.

Mr Jensen: By definition, land includes water.

MR WOOD: Yes, we know that. The proposed amendments are part of a larger review undertaken on a variety of management issues relating to the territorial lakes. Assembly members are most likely aware of a recent government decision to allow electrically and steam powered boats on our lakes. This initiative has been welcomed by both the ACT Sport and Recreational Fishing Council and the ACT Traditional Boat Squadron, as it allows better access for fishing and other recreational activities and has the potential of increasing tourism to the ACT.

Steamboats and electrically powered boats are now allowed on Lake Ginninderra and Lake Tuggeranong under a free yearly permit system and are restricted to a maximum speed of three knots for safety and environmental reasons. As the management agency responsible for Lake Burley Griffin, this Government has made recommendations to the Commonwealth to allow these boats on Lake Burley Griffin.

The legislation being introduced today proposes a range of amendments to the existing Lakes Act. It is considered appropriate by this Government to recoup some of the costs associated with administering a permit scheme that regulates the use of powerboats in the Molonglo Reach water-ski area. Support for the current management strategies and the application of a permit fee would not generally affect whether or not people would use the area.

Other proposed amendments to the Act could be viewed merely as "housekeeping" strategies. There is a proposal to delete specific references to Lake Burley Griffin in the Act since that lake is controlled under Commonwealth legislation. It is also proposed to remove the duplication in the issue of water-ski permits when water-skiing is already controlled through the issue of powerboat permits. Changes are also being proposed to section 38 to correct existing misprinted subsection sequences. Further amendments are proposed to ensure that the wording of the Lakes Act 1976 complies with the requirements to be gender neutral.

The boating safety issues relating to lighting raised on behalf of the Canberra Yacht Club by the Chief Minister, when Leader of the Opposition, are also finally being addressed. I am sorry that Ms Follett is not in the chamber today to become aware of that. These amendments will bring the ACT into line with the States and will satisfy international boating regulations. The amendments will ensure that safety of all lake users is improved.

The proposed amendments to appeal rights contained in this Bill are in line with the principle adopted by the Administrative Review Council. These amendments provide for appeals against the conditional authorisation or the refusal to authorise the use of a powerboat, the anchoring of a buoy, the erecting of a wharf or jetty, the mooring of a boat or the use of a hovercraft on territorial waters.

This Government is satisfied that the proposed amendments are in the best interests of the general users of the territorial lakes and the management agencies involved. Where the amendments may have some negative impact on specific users, such as the levying of powerboat permit fees, consultation has been undertaken with a wide representation of these groups. I am confident that the Government's initiatives will provide for more equitable and safer use of the Territory's lakes.

Mr Speaker, I present the explanatory memorandum for the Bill.

Debate (on motion by **Mrs Nolan**) adjourned.

POWERS OF ATTORNEY (AMENDMENT) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.58): Mr Speaker, I present the Powers of Attorney (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

Mr Speaker, in October 1989 this Legislative Assembly passed the Powers of Attorney (Amendment) Act 1989 to introduce an enduring power of attorney into the Territory. This overcame a problem in the existing law which meant that ordinary powers of attorney lapsed when a donor became incapacitated. In its usual form, an enduring power of attorney operates when the donor of the power is incapacitated by stroke, trauma or senility and is no longer capable of rational decision making. In such circumstances, decisions are then made by an authorised person called the attorney.

It is possible for a donor to activate the authority so that it operates immediately or, alternatively, from a specified date, such as the day before he or she undergoes major surgery, or a specified birthday for a senior citizen. The reality is, of course, that the enduring power of attorney assumes its greatest importance when the donor is no longer able to make critical decisions. These decisions cover property matters, personal matters, such as where the person should live, and decisions about medical treatment.

This Labor Government initiative has been well received in the community. The standard form for the enduring power of attorney has been styled in simple English and is accompanied by explanatory notes. Members will find an example as form 2 in the schedule to the Bill. Since the introduction of the standard enduring power of attorney

form, some financial institutions have rejected the instrument because part A is not in a deed form. Part A deals with the primary appointment of the attorney, and it authorises the attorney to make decisions about the property of the donor.

Centuries ago it became a rule of law that for a legal document to become a deed it must satisfy 10 criteria. These included criteria that the document must be of parchment or paper; that the document must be in writing; that the author must be competent to contract; that the author must be named; that the person to whom the document is addressed must be able to contract; that the document must be sealed and delivered; and so on. In modern times the criterion for sealing is accommodated when a person signs, seals and delivers the document by way of attestation before witnesses. Sealing, in the traditional sense, is now required only of bodies corporate, and then not by way of a wax seal.

New rules of law can and are made by legislatures. In the case of the enduring power of attorney, this Assembly made a law in 1989 which said that a simple signed authority is sufficient. That should have been the end of the matter. All transactions in real property, by law, must be reduced to writing and, where a pecuniary interest is involved, be in a deed form. It appears that some financial institutions may believe that the authority for an attorney to sign a legal deed should itself be in deed form. Consequently, some financial institutions will not accept the ACT's simple English form.

The Government's legal advisers reject that interpretation, and I think any lawyer or person interested in simplifying the law must reject that interpretation. It is unfortunate when parliaments provide for simple English and some lawyers refuse to accept the effect of a simple English term. However, the persons who have used the form would be obliged to take the financial institution to court to prove that the form was effective. Rather than encourage unnecessary legal disputes, the Government has decided to remove the uncertainty by deeming all such instruments to operate as a deed, irrespective of whether they are strictly in deed form.

An opportunity has also been taken to include a general power of attorney form in the schedule to the principal Act. This new form 1 will help differentiate between a general power of attorney, used, for example, when a person is overseas and unable to attend to his or her local affairs, and an enduring power of attorney, which usually is used when a person becomes incapacitated or expects so to become.

The Bill also adds a new section 13A to the principal Act to assist attorneys when the question of whether the donor was incapacitated becomes an issue. The section will provide that a certificate from a medical practitioner will

be evidence in proceedings. This will generally avoid the cost of obtaining certification or second opinions from a range of experts. For example, it is known that some illnesses associated with ageing mean that a person may have lapses in memory or rational thought. If an attorney acts in good faith while the donor is incapacitated, the attorney should be able, if necessary, to rely upon simple proof to support his or her actions.

The Bill makes a range of other minor technical amendments and includes the new form 1 and the revised form 2. I draw to the attention of members the fact that form 2 now includes in its headings on page one the notation "This instrument has effect as a deed". The forms also now have a useful reminder near the signature block for witnesses that witnesses must not be related to the donor or donee of the power.

Finally, the Bill includes a saving provision which deems all forms already executed to be as valid as if they were in the new modified form. This saving provision protects those who may have completed an old form but who are now not mentally capable of executing a fresh enduring power of attorney. I present the explanatory memorandum for the Bill.

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

CREDIT (AMENDMENT) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.04): Mr Speaker, I present the Credit (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

This Bill amends the Credit Act 1985. The Credit Act is part of a uniform scheme of legislation for the regulation of consumer credit transactions which is presently operating in the Australian Capital Territory, New South Wales, Victoria and Western Australia. The Act protects consumers who enter into credit sale, credit loan and continuing credit contracts for amounts of $20,000 or less. It requires credit providers to comply with certain formalities when making or servicing contracts which are covered by its provisions.

I might say, at this point, that all the States and Territories of Australia are currently working together to develop new and improved uniform credit legislation. Assembly members will be aware that a draft uniform credit Bill is presently circulating throughout Australia for public comment. As they have already been provided with

copies, I would like to remind them that their comments should be lodged by 30 November. Interested members of the public may obtain copies of the draft uniform Bill from the Consumer Affairs Bureau.

Returning to the Bill at hand: Members will note that the amendments contained in this Bill address problems arising from the operation of the civil penalty provisions of the Act. These provisions operate in such a way that credit providers who fail to disclose to borrowers the prescribed financial information about the contract lose the right to collect any credit charges due under the contract. To regain the right to collect these charges, credit providers must apply to the Credit Tribunal for an order restoring the borrower's liability to pay the charge.

In late 1990 and early 1991, two national credit providers, the State Bank of New South Wales and Westpac, were discovered to have breached the disclosure provisions in the Act in at least 650,000 credit contracts Australia-wide. The directors and commissioners of consumer affairs in the uniform credit States met to discuss this situation. They agreed to recommend to their respective governments mechanisms to assist their credit tribunals to deal with the large number of applications involving such a vast number of contracts. The ACT Government has agreed to adopt these recommendations, which are implemented in this amending Bill. Similar Bills have already been passed by the Victorian and New South Wales parliaments.

This Bill contains mechanisms to deal with two types of breaches of the disclosure provisions of the Act. The first type, which can be characterised as a technical breach, covers some 3,500 contracts made in the Australian Capital Territory. These breaches occurred because the credit providers did not disclose insurance commission payable under the contracts in the contract documentation itself. However, the information was provided in insurance certificates attached to, but not forming part of, the credit contract.

In this case, as the borrowers have suffered no detriment, the Government has agreed to amend the Act to validate these contracts retrospectively. This will restore the credit providers' right to collect all credit charges. The amending provisions are set out in clause 8 of the Bill. Only a limited class of contracts will be covered by this retrospective validation, and only because the information was provided to the credit consumers, although not on the precise document that it ought to have been provided on. Because the majority of breaches cannot be characterised as merely technical, they remain to be dealt with by the tribunal. It is necessary, therefore, to give the tribunal additional procedural powers to assist it to hear applications involving a large number of contracts.

The amendments contained in clauses 5 and 7 of the Bill will allow the tribunal, where the application involves a large number of contracts and it is impractical to give personal notice to each debtor, to deal with applications on a class basis. These new procedures will apply to the applications currently before the tribunal. Members may be aware of class action provisions in other overseas jurisdictions. This, in effect, is introducing that approach here.

The Bill also contains a number of related amendments to the Credit Act which will assist credit providers to comply with the Act. In particular, clause 6 will amend the civil penalty provision to provide that, where a credit provider applies to the tribunal to retain the right to collect credit charges after a breach of the Act, the credit provider may continue to collect credit charges till the application is determined. The credit provider may not, however, enforce or refinance the contract or impose default charges during this time. The tribunal may make orders to protect the interest of the borrower, if necessary.

In addition, the scope of the descriptive term "consumer credit insurance" is widened to include insurance against unemployment. This recognises the growing practice amongst credit providers of offering borrowers packages of credit risk insurance. The Act presently requires separate disclosure of unemployment insurance commissions. Incorporating the disclosure of commissions for unemployment insurance with insurance against death, accident, disability and sickness, which are already covered under the term "consumer credit insurance", will assist both credit providers and borrowers.

In closing, I note another small but important amendment. Clause 4 amends the provision relating to the setting of account charges. This amendment will bring ACT charges into line with those in the other uniform credit States. The maximum annual fixed fee that a credit provider may charge a debtor after the first year of the credit contract is raised from $75 to $90. In the future, such changes will be able to be effected by regulation rather than by amendment of the Act.

Mr Speaker, I commend the Bill to the Assembly, and I present the explanatory memorandum for the Bill.

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

CRIMES LEGISLATION (STATUS AND CITATION) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.09): Mr Speaker, I present the Crimes Legislation (Status and Citation) Bill 1991. I move:

That this Bill be agreed to in principle.

The Crimes Act as it operates within the ACT has its origins in the New South Wales Crimes Act. The New South Wales Crimes Act 1900 was in force immediately before the establishment of the Australian Capital Territory and was, therefore, continued in force by the Commonwealth Seat of Government Acceptance Act 1909. It is for this reason that the Act is conveniently and correctly referred to as the "Crimes Act 1900 (New South Wales), as amended in its application in the Australian Capital Territory by laws of the Territory", or words of similar effect.

The Bill's main purpose is to facilitate the citation of the Crimes Act 1900 without any reference to New South Wales or the qualifying words "in its application in the Australian Capital Territory". In addition, the Bill asserts the status of the Crimes Act as a law of the Australian Capital Territory by deeming it to be an Act of the Legislative Assembly. Aside from the obvious advantage of convenience attaching to the simplified title, this Bill concurs with the principle of self-government by removing the reference to New South Wales.

To continue the convention of referring to the Act's origin is to ignore the ongoing process of reform whereby the Crimes Act has acquired, over the years, a distinctive territorial character. Indeed, over the years, the Act has been amended many times by Commonwealth ordinances and, more recently, by New South Wales enactments. There have also been amendments in New South Wales which have not been replicated in the Territory. Consequently, the Territory legislation now bears little resemblance to the New South Wales Act as it is presently in force.

I commend the Bill to members of this Assembly. Mr Speaker, I present the explanatory memorandum for this Bill.

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

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.12): Mr Speaker, I present the Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1991. I move:

That this Bill be agreed to in principle.

This Bill contains amendments which will complement the introduction of a high-tech automatic breathalyser instrument known as a Drager Alcotest 7110. This breathalyser enables the police to carry out breath analysis in a more efficient and cost-effective manner than the instruments that are currently in use. The Drager Alcotest 7110 is in use in several jurisdictions, particularly New South Wales. Hence, the Australian Federal Police, responsible for policing in this Territory, will benefit from the research and ongoing development carried out by the New South Wales police force.

The Bill removes the need to have each breathalyser instrument approved by the Minister individually as at present. Instead, it enables the Minister to approve breathalyser instruments by type through gazettal notice. This will reduce the delay and paperwork involved in having an instrument approved individually.

The Drager Alcotest 7110 is preprogrammed to follow a set procedure. Each stage in the operation of the instrument must be completed successfully. If a person is unable to supply a steady stream of breath in an uninterrupted manner, the instrument will stop the procedure. There is at present an ambiguity in the legislation as to whether a police officer could in such circumstances make a second and further request to a person to supply samples of breath where the person has not followed the procedure by unintentionally interrupting his or her flow of breath. The Bill seeks to remove this ambiguity and to enable a breathalyser operator to request a test subject to provide samples of his or her breath sufficient for carrying out a breath analysis.

At present the Act requires the police to take steps to ensure that it is not readily apparent to members of the public that the test is being carried out. That is why they are usually done in the back of the van. This creates certain difficulties for the police, particularly when the test is carried out at a police station. The test subjects are in police custody, as any other offenders would be, and the police practice is to observe the test subjects for 15 minutes before testing, so that nothing is consumed which might interfere with the test, such as Ventolin or cough lollies, and to allow time for any alcohol present in the mouth to disappear before testing.

Therefore, another procedural reform will remove the requirement to ensure that the tests are not readily apparent to members of the public in cases where the tests are carried out at police stations. This will enable the police to carry out the tests in the same room where other test subjects are under observation.

The Bill makes two changes to evidentiary provisions in the principal Act. Firstly, a written statement in the form of a print-out issuing from an approved breathalyser will be evidence of the particulars contained in it. The Drager Alcotest 7110 issues print-outs. The particulars to be stated in such a print-out are prescribed in the regulations and include matters such as the date, start time and location of the test; particulars of the test subject and the police involved; test results; and so forth.

Secondly, the words "prima facie" and "and of the facts on which they are based" will be omitted from the Act wherever they occur. These words do not add to, or detract from, the standard or burden of proof otherwise required for establishing evidence under the relevant provisions of the principal Act. The Bill also treats the instruments already approved under the Act as deemed to be approved under the proposed amendments.

I commend the Bill to the Assembly and, Mr Speaker, I present the explanatory memorandum for the Bill.

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

CULTURAL ACTIVITIES AND FACILITIES - SELECT COMMITTEE
Report

Debate resumed from 21 June 1991, on motion by **Mr Berry**:

That the report be noted.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.15): Yesterday I tabled the Government's response to the committee's report and today I will speak to that. I am in the unusual position of having been the chairman whose duty it was to report on behalf of the select committee - - -

Mr Connolly: A very good report.

MR WOOD: Thank you. And now, a few short months later, I am the responsible Minister to whom has fallen the task of presenting the Government's formal response to the committee's recommendations. Indeed, I believe that I presented that report on the day I became Minister. I was so involved in the process that I preferred to take that course. I see no conflict in all this process.

The select committee's recommendations reflect the personal and political preferences of its members and of the many members of the public who gave evidence before it. The committee's final report was not simply a catalogue of the opinions and desires of its chairperson. Rather, the report represents an expression of community needs and priorities. The fact that I happen to concur with most of

what the report contains is purely a statement about the success of the parliamentary committee system, which distils contributions from all points of the political spectrum. In this instance, it is also a statement about the valued contributions of my colleagues Dr Kinloch and Mr Stefaniak, and I take this opportunity again to thank them and the committee secretariat for their unflagging effort during what proved to be a marathon inquiry.

As I pointed out in my preface to the report, the committee was privileged to witness and record the energy, enthusiasm and talent of local artists and performers. As I said then, these people make enormous contributions to the life of our city-State. On behalf of the Government - I think of all members - I thank those artists and performers for the essential spirit and vitality that they give to us all.

The Legislative Assembly established this committee in recognition of a perceived community need for a comprehensive and searching examination of the role of the arts in the ACT and the adequacy of facilities for the arts. Such an examination was also considered appropriate in view of the fact that at the time tenders were being called for the construction of a casino on section 19. And, of course, this process coincided with statements by the Government of the time that the substantial cash premium expected to be obtained from a successful casino bidder might be allocated to cultural facilities.

The Follett Government is committed to the general revitalisation of section 19 and to the protection of the existing cultural facilities on that site. There is still the prospect, however, of a casino being established elsewhere in the city, and I reaffirm the Government's pledge that the premium obtained through that process will be devoted specifically to the benefit of the community.

The final report of the select committee contains no fewer than 74 recommendations concerned variously with issues of arts funding, the provision of cultural facilities, education and youth art, consultation and development, and the like. This Government is supportive of the broad thrust of the vast majority of those recommendations, and as Minister I am pleased to be able to say that.

The Government well recognises the importance of the cultural activities and the need to nourish the flourishing cultural life of our city. We recognise that artistic and cultural activities provide significant additional benefits - culturally, educationally and economically - to the community as a whole. As well, Mr Speaker, the ACT has of late entered a new and, I believe, more mature phase of development under self-government during which the continued emergence of a distinctive community identity can be assisted by public sponsorship and guidance of the arts.

This Government maintains that the principles of social justice must be applied as much in cultural activities as in other areas of community and government activity. In stark contrast with some activities in this Assembly and the different opinions opposite, we maintain a genuine commitment to the principle and practice of consultation with the community on all aspects of government affecting the life of the community.

The opportunity exists now for the Government of the ACT to make a lasting and beneficial impression on the development of arts and culture in our city-State. Concurrently, the opportunity also exists to remove some of the administrative inefficiencies which we inherited with self-government.

Of the 74 committee recommendations, the key one is that a broad community-based cultural advisory council should be established. The Follett Government intends to create immediately just such an ACT cultural council. This landmark initiative fulfils an ACT Labor Party pledge to the arts community of Canberra and to the community as a whole. The 15, or thereabouts, members of the new ACT cultural council will provide advice to the Government on a range of cultural issues and specific advice on strategic directions for the development of cultural activities and facilities throughout the Territory.

This new peak advisory body will have wide ranging terms of reference. It will be expected to foster and encourage excellence and achievement in the arts and cultural activities. It will be expected to promote the development and continued growth of a creative, diverse and dynamic cultural sector in the ACT, with appropriate input from the community. It will encourage both public and private sectors to support cultural activities in the ACT, and promote the social and economic benefits of the arts. And the ACT cultural council will be expected to maintain effective relationships with the Australia Council and regional bodies, the universities and cultural societies and enterprises.

Lest anyone fear that the ACT cultural council might become a haven for vested interests, I wish to stress to the Assembly that its members will reflect broad rather than specific cultural interests and will not represent, as of right, any particular organisation or institution. I stress also that the Government's commitments to gender equity and to community consultation and representation will be observed.

Mr Speaker, as I mentioned a few moments ago, concurrent with the establishment of a new cultural advisory body, the opportunity also exists to rid ourselves of some of the administrative inefficiencies which we inherited with self-government. This Government believes that, in order to achieve better administrative effectiveness and efficiency, many arts and cultural functions presently located

throughout the ACT Government Service should be consolidated. Administrative arrangements within the ACT Government Service are the responsibility of the Chief Minister, and she will announce separately any details of any new administrative structure.

I am in a position today to suggest that a new such administrative structure would most likely include the existing ACT Arts Bureau, presently in the Department of Education and the Arts, and the Museums Unit and the Special Events and Festivals Unit, both presently in the Department of the Environment, Land and Planning. Similar arrangements under the Arts Bureau have previously provided services to the Arts Development Board, so the new consolidated structure would provide secretariat and policy support to the new ACT cultural council.

Mr Speaker, before mentioning some of the matters which the Government intends to refer to the new cultural council, I would like to make a number of comments about public expenditure on the arts in the ACT. In my preface to the select committee's final report, I said that by not recommending the expenditure of vast sums of money, specifically for a major new theatre complex, the committee demonstrated that it was not driven simply by impulses to spend money or build monuments. I also noted that adoption by the Government of a range of the committee's recommendations would result over time in a substantial increase in expenditure on the arts and cultural activities and facilities in the Territory.

In the committee's view, this increased expenditure would be justified because it would result in real aesthetic and economic benefits to the community as a whole. In this context, members will note that the Chief Minister, in her recent budget speech, announced a capital allocation of $2m for a new community theatre in west Civic, as well as a further $430,000 for refurbishment work at the Canberra Theatre Centre.

The Government faces intense continuing budgetary pressures, but the Follett Government remains committed to reasonable and equitable funding of the arts. Apart from the recent extra budgetary assistance I just mentioned, two other important measures will have a long-term effect on the availability and expenditure of arts funding. These are, of course, the establishment of a more powerful voice for the arts in the form of the new cultural council and the concurrent consolidation of arts and culture, should that proceed.

Mr Speaker, it is proof positive of this Government's commitment to supporting the arts that, despite the continuing budgetary pressures, arts development grants have been increased by 2.9 per cent for the 1991-92 financial year. *(Extension of time granted)* Overall, the Labor Government has been able to increase total arts funding

from $8.7m last year to $9.4m this year. Further, the Government intends to ask the new cultural council to examine the advisability of biennial or even triennial funding to recipients of major arts festival grants, rather than year-by-year funding. Our hope is to inject a greater degree of certainty into the activities of these valued organisations.

But this is only one of an array of issues which the Government proposes to refer to the cultural council. For instance, the select committee made recommendations about the possible establishment of a Territory library, art gallery and museum, with appropriate advisory boards. The committee made numerous recommendations concerning the literary arts, visual arts and crafts, the performing arts, community art, education and youth art, and development and promotion of arts and culture in the ACT. All these matters will be on the cultural council agenda, to be addressed in terms of strategic directions for the development of cultural activities and facilities.

Mr Speaker, this proposal is receiving a kick-start through the first of a series of special arts planning conferences being held in Canberra yesterday and today under the theme "Towards 2001 - Cultural Policy for the ACT". The conferences are being conducted by the Centre for Continuing Education at the ANU, on behalf of the ACT Arts Development Board - which now, of course, will be subsumed into the new cultural council.

These conferences will give the community an opportunity to discuss the nature and scope of cultural policy for the ACT and help to devise guidelines that will shape cultural policy over the next decade. Further, the conferences will consider ways in which the arts can be integrated into ACT planning and development and will outline ways to implement the plans. The Follett Government regards these conferences as an integral phase in the development of community consultation on the development of arts and culture in ACT. This community input will not cease with the conferences, of course. By means of the cultural council, community representatives will be able to continue providing advice to the highest levels of Government.

The word "culture" can mean many things to many people. No dictionary definition I have ever been able to dig up is entirely satisfactory. Perhaps, rather than defining it, "culture" might better be described as the way we as a community see ourselves, as what we most value in our society, as what makes us distinct. However we attempt to define or describe it, and generally we fall short of the ideal, we do know that culture affects every one of us in terms of expression and participation and creative development. I believe that the Follett Government is making a solid start in this process with the many

initiatives outlined in our formal response to the final report of the select committee. Mr Speaker, I commend this government response to the Assembly. I present the following paper:

> Cultural Activities and Facilities - Select Committee - Final Report - Government Response - Ministerial Statement, 21 November 1991.

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

LAND (PLANNING AND ENVIRONMENT) BILL 1991

[COGNATE MOTION, BILL AND REPORT:

PROPOSED ENVIRONMENTAL ADVISORY COUNCIL
HERITAGE OBJECTS BILL 1991
PLANNING, DEVELOPMENT AND INFRASTRUCTURE AND CONSERVATION, HERITAGE AND ENVIRONMENT - STANDING COMMITTEES - JOINT REPORT ON PLANNING LEGISLATION]

Debate resumed from 24 October 1991, on motion by **Mr Wood**:

> That this Bill be agreed to in principle.

MR SPEAKER: I remind members that, in debating order of the day No. 1, they may also address their remarks to order of the day No. 2, Executive business; order of the day No. 2, Assembly business; and order of the day No. 19, private members' business.

MR JENSEN (11.30): The debate which continues today is probably the most significant since self-government. I am sure the majority of members agree with that statement. Certainly, I heard those sentiments expressed the last time we were debating the Bills in the Assembly. The legislation has been prepared via a process that has required considerable time and energy on the part of members of the Assembly, the bureaucracy and the community. That work is still going on as we develop amendments to the legislation.

We must never forget those community members who have done hours of unpaid work in preparing comments and making submissions to the joint committees. Some of those views were accepted. However, I am also aware that some residents and community groups are concerned that insufficient notice has been taken of their remarks. There is no doubt that some of the matters raised by the community have not been followed through. However, the Bills are new and there will be ample time in the future for further refinement of legislation that I am sure we all agree will need a period of settling down.

That is not to say, however, that there is not a requirement for amendments to be made at this stage, and the Rally will be moving some amendments in the detail stage. Some of those amendments are quite substantial. Some will be no surprise to members, as our Interim Planning (Amendment) Bill and comments in the Assembly on planning issues have provided a clear indication of our views.

The legislation before us today and the associated matters we are debating cognately will set the scene for the future planning and development of the ACT for many years to come. These Bills also include the very important area of environmental impact and heritage legislation, as well as a report by the joint committees of the Assembly that considered the draft legislation put forward by the Alliance Government. It was unfortunate that the Territory Plan had not been released when debate on the Bill was brought forward; but more of that later. Having had a chance to hold the final document in our hands only in recent weeks, I have had little time to consider what is, after all, a very important adjunct to the legislation before us today.

One cannot operate without the other, and it is unfortunate that the plan has only just become available. There is a considerable amount of information in it that I know the community is interested in seeing. The plan and the legislation are linked inextricably. There are some things in the plan that must be completed before those sections of the legislation can take place. It is unfortunate that the plan could not be tabled before the debate on the legislative package commenced, and we have been through this discussion before.

I have already indicated that many very busy community groups will have to work overtime to ensure that they are able to make reasoned comments on the plan, in much the same way as lobby groups and individuals have commented on the legislation. That comment, as we all know, extended over a period of well over 12 months. I am pleased that the Minister has at last accepted the inevitable by extending the time allowed for comments, as there is much to be done, even in the period allowed.

I trust that the Minister will ensure that copies of the plan will be made available to community groups and organisations, who over the years have shown an ability to provide sensible and reasoned comment on the Bill. I look forward to a positive response from such community groups when I ask them whether they have a copy of the draft plan and whether they have had to pay for it. Community groups do much of their work on a voluntary basis and they should be encouraged, not hindered, in providing what is a very expensive consulting service, with many eminent people on board. It is for this reason that I have spoken out

strongly about the requirement for those residents who participated in the consultation process on projects such as West Belconnen to purchase copies of the implementation plan and the environmental impact statement.

One of the issues related to community consultation is the availability of information and access to that information. It is all very well to say that people can purchase those documents or read them in the library. I am afraid the system does not necessarily work that way, particularly when people have spent a considerable amount of time preparing comments on information they have already received. Members will no doubt recall the comments I made last month about the large volume of draft variations that have seen the light of day recently. Indeed, one of them was finalised in the Assembly yesterday.

We must never forget that community groups have a role to play, and any attempt, however innocent, to restrict the time available for the community to have a say, particularly on contentious planning variations, is not to be supported. A cynic, and I try hard not to be one on planning matters, might well say that this recent influx of draft variations has been designed to help slow down the comment on the plan. Maybe some proposals could be allowed through that process because of our Assembly workload and the workload of those many volunteers in the community who are committed to a well-planned and affordable city and want to ensure that it stays that way.

The Rally will be moving similar amendments to those proposed in the Interim Planning (Amendment) Bill we introduced some time ago. These amendments are required to ensure that the Executive is not able to put forward a proposal and finalise the variation until the Assembly has completed its assessment. Much was said yesterday about the need for a change in the process, especially a process to allow for appeals against planning decisions on the merits of the proposal. Narrow legal decisions based on fine points of law should not be part of our planning process.

While this legislation does not establish the sort of stand-alone tribunal envisaged by Rally policy, division 5 of the legislation provides for the review of all decisions outside the Supreme Court. I know that all members of the community fully support that proposal. It has long been recognised that the Supreme Court is not the place to argue these questions, for a number of reasons, the cost to those seeking to appeal being a major concern.

The legislation before us today also provides for a form of third-party appeal. However, much of what can be appealed against will be in the plan, and it was for this reason that we in the Rally were concerned that the plan was not available when the debate started. Now that we have seen the plan and the wide degree of discretion proposed by the plan, we have some concerns. I am sure that, if the plan

gets to the Assembly in its current form, many amendments will be required to ensure that the availability of appeal rights is not lost by the community. A prime example, of course, was the process we saw enacted in the Assembly yesterday. I will not dwell on that as I may be accused of reflecting on a past vote of the Assembly.

One very important concept that our policy fully supports is that of community consultation. I venture to suggest that many more developers are finally accepting the fact that adequate and careful attention to this factor, at least in Canberra, can often save them considerable time and effort and money. Might I be so bold as to suggest that the proponents of the Forrest bowling club development may have done better to take more notice of the concerns of the community during the early stage of the development proposal rather than to push ahead with what was clearly not wanted by the community. Had they done so, they may have saved themselves some money on their balance sheets.

On the issue of wider and more general consultation, we are disappointed to see that the Government has chosen to remove the statutory requirement for the establishment of a planning and advisory committee that was in the legislation developed by the Alliance Government. Before I entered the Assembly I was fortunate to serve on a non-statutory and non-paying committee established by the then National Capital Development Commission to involve the community via peak bodies in the planning process. I seem to recall that at the last meeting of the committee we were looking at proposals to change the design and siting guidelines that had applied in the ACT since 1974. I see that many of those concepts have been included in the Territory Plan that has been put before the community.

The Rally has always supported the concept of community consultation; it is something we worked hard for in government. It is unfortunate that the Minister has allowed himself to be talked into removing this very important body, which would have been invaluable in providing assistance and comment on the major planning policy decisions still to be made.

Mr Wood: I was not talked into it; I urged it.

MR JENSEN: You will get your turn, Mr Wood. The plan and this legislation will not put an end to the need to consider wider policy issues, and to do so without a reasoned and well-balanced advisory panel is seen to be a major deficiency of the legislation. We will be moving, in the detail stage and within the bounds of section 65, to re-establish this committee.

It was also very interesting to hear Mrs Grassby's suggestion that the only group in the ACT interested in planning matters is the Labor Party. It is significant that I do not recall seeing any members of the ALP at the seminars called by the Planning Authority as a focus for

community input into the Territory Plan that was released in draft form recently. I also did not see Mrs Grassby at any of the seminars being run by the NCDC before self-government. However, I did see my colleagues Mr Collaery and Mr Moore at those meetings. It could also be said that the degree of support for the ALP's so-called interest in planning matters is typified by the poor response they received to a letter to the residents of Forrest. The Rally had a much more receptive response to our concerns about that issue. I rest my case.

It is also unfortunate that it is necessary for me to comment briefly at this stage on some comments made by Mr Connolly. Mr Connolly is starting to develop the art of telling part of the story and conveniently forgetting to include the rest - selective quoting, I think it is called. For example, during the debate recently Mr Connolly forgot to mention that it was the commitment of the Rally to the needs and interests of the community, particularly when it comes to their suburban open space, that enables him to sit opposite us here today, drawing a nice salary as a Minister and seeking to bask in the glory of the hard work put in by my colleague Mr Collaery.

Mr Connolly: Mr Kaine sacked you. You did not resign; Mr Kaine sacked you.

MR JENSEN: Mr Connolly, you have to ask why you are sitting across there. Mr Connolly also made much of some comments by the Rally, at the time of the first change of government, about the failure of the first Follett Government to bring forward planning legislation. Let me remind Mr Connolly, who as we all know was not present in the house at the time and still has to get his tick from the voters, that the best the Follett Government could do under Ms Follett's ministership of this portfolio area, with the assistance of a member of the ALP as a fully paid consultant, was an incomplete set of drafting instructions that had to be refined and turned into a very comprehensive package of legislation by the Alliance Government.

This work, of course, was done by a group of hard-working ACT public servants in the Department of the Environment, Land and Planning and the Parliamentary Counsel's Office. I would like at this stage to thank publicly those officials for the work they did on this legislation during the period of the Alliance Government. I think it is a credit to the officers involved that we got as far as we did.

Once again, Mr Connolly, you had it easy, as all the hard yards had been achieved before the change of government. At least Mr Wood was not as churlish as his leader over the discrimination legislation in saying that the Bill was all his own work. One would have to ask why it took so long for the new Government to cast an eye over the legislation prepared under Alliance Government direction, including some of the very good recommendations made by my colleague

Dr Kinloch and me in our additional comments to the Assembly committees' report. We could have had the legislation ready to commence operation by January 1992. Of course, there would have to be some changes made to that to take into account the requirements of the plan; but that is something we can come to later, in the detail stage. Frankly, they were given a much better package than they left us.

However, never let it be said that we in the Rally were totally happy with the proposals in that first Bill. I think the Bill tabled recently to amend the interim planning legislation included some areas where we had some disagreement with the Liberal planning Minister, but I guess that was always on the cards. I am sure we will get the support of the ALP to ensure that, if no change is made to the starting date for the new legislation, the very sound improvements to the interim legislation proposed recently by the Rally, which we all expected to be dead and buried by now, will be accepted. I am here talking specifically about disallowance provisions.

Now that I have disposed of the carping comments by the Government, let me move onto the legislation. There is much in the papers and legislation before us today, and to comment on all of it would take more time than I have available. I am sure we can address much of this in the detail stage. While it is difficult to know where to start today because of this, I will attempt to comment on the general rather than the specific, wherever possible. To assist me in the task, I thought it appropriate to make reference to some of the Rally policies and to see how much of our policies has been included in the Bill.

The Rally has always fought for genuinely open and consultative planning and development systems, with an affordable and accessible appeals process for those affected by planning and development decisions. While the Bill goes some of the way to meet this demand, there is still more to be done. The amendments we will move later, in the detail stage, will seek to do just that. Our policy goes even further and requires the Government to ensure that bona fide community groups are given sufficient information to enable them to provide advice to the Government at a more local level without charge. It is the old story about information: If you keep the information from the people, they are unable to assist you in the development of this most important community legislation and of the plan itself.

From a government seemingly committed to consultation, I am, to say the least, disappointed in the suggestion I have already touched on - that community groups who have a proven interest and ability to provide comment have to pay for their copy of the plan. Frankly, this is a little like saying to members of this Assembly that they have to pay for their copies and their regular updates. I trust that the Minister will review this inequitable decision. *(Extension of time granted)*

The ACT Government already provides some funding to community groups to assist them in this role. These include the Conservation Council, the National Parks Association and some community councils. It is a bit tough to make them use some of their grant money to buy what is, after all, community property. Those grants are provided for other reasons. A couple of copies in each library are not really sufficient to serve this need, as a library copy should be available to those who want only to enlighten themselves without necessarily providing written comment.

Let me now comment briefly on some of the key factors of this legislation and on what we in the Rally consider ought to be changed or on which we seek a response from the Minister. Let me start with the section dealing with the Territory Plan. For the purposes of debate today, I will deal with the variations to the plan. As I said yesterday, the Rally is not happy with the amount of detail required to be provided in the preparation of a variation. Members may recall that my proposal was to require at least two other forms of advice to be considered and included in the draft variation to the plan.

It is our view that the proposed Act should be amended to require comments, recommendations and reasons for those recommendations to be obtained from the Minister for Urban Services on traffic and safety matters and Australian Capital Territory Electricity and Water on the infrastructure areas they are responsible for. Basically, we are saying that the community and the Assembly, especially the committees of the Assembly, need this information. Quite frankly, there are holes in what we have before us.

Naturally, we also consider that the proposed changes to the interim legislation requiring the Executive to forward all papers to the Assembly for consideration by a committee, and requiring the Executive to wait for this report before making a final decision, should be included in the Bill. This will require an amendment to clause 28 of the Bill. Over the time I have been in the Assembly, as a member of the Planning Committee and as its chair I have had discussions with both the current Minister and the previous Minister, Mr Kaine, about this requirement. There seemed to be some problem in making this information available to the committee to enable it to do some of its work and provide advice. After all, committees are about providing advice to the Executive before it makes its final decision.

As the name suggests, commercial leases are purchased for the express purpose of making a profit. Before anyone suggests that I am averse to an enterprise making a profit, let me say quite clearly that I am not. However, unlike our residential owners, the commercial property owner has various ways whereby the costs of establishing a business can be recovered from profits made from the hire or rent of

the building or space. There is also a general consensus that commercial space, be it retail, wholesale or even warehouse, could well change at much shorter intervals than does residential property. We have already seen that in our commercial areas.

It is important that any criteria for the granting of concessional leases be clearly identified and then set out in legislation to ensure that no-one is able to trade in the provision of a community facility or asset to a group that has as one of its main aims the provision of a service to the public. Such leases should be available to be passed to a like organisation only with the consent of the Minister, and then only when it can be clearly shown to be in the public interest.

One of the problems with regulations is that in most cases it is the Government that controls the regulations, not the Assembly. Once a regulation is brought down, it is very difficult for those of us on this side to change it. However, if it is included as a schedule to the Bill, it is possible to seek to amend that schedule if we find that it is not working. I argued while I was part of the Government, and I continue to argue, that a lot of this information - criteria for heritage, for granting of leases, et cetera - should be included as schedules to the legislation. I know that people in the departments with whom I discussed this do not accept this argument, for various reasons; but the Rally believes that the Assembly should have some control over this matter, not just the Government.

In closing with some comments on disallowable instruments and regulations, let me take this opportunity to thank the Minister for providing a comprehensive summary of where such instruments are required and a brief date of each instrument. This will be most helpful in enabling me to prepare my amendments to the legislation. This document has been very useful in identifying the various instruments. However, it is still considered, for example, that instruments for granting leases under clauses 162, 163 and 166 of the Bill should be provided as schedules to the Bill. They should also include a requirement that the Minister must also make an assessment as to whether the granting of the lease is in the public interest.

Our position on the need for the schedules, which are much more difficult to amend, has not changed. Much of this material, as I have already indicated, relates to setting criteria for heritage assessments, granting of leases and public land, to name a few. They should be fully debated in the parliament before, rather than after, the event.

As I said at the beginning, there is much to comment on in this very important legislation. However, the Rally reiterates once again that the legislation should, if possible, commence on 1 January. I think my colleague Mr Collaery may be making some comments in relation to that

during his contribution to the debate. However, as I have indicated, that may well require some amendments to the legislation because of the link between the legislation and the plan. There are ways to do that, and the Rally will be seeking to bring those amendments through during the detail stage. I thank members for their attention this morning and I commend the comments I have made to the Assembly.

MR STEFANIAK (11.52): This is historic legislation, Mr Speaker. I was very happy, under the Alliance Government, to be the deputy chairman of the joint committees that looked at it. A number of issues were raised by me and my colleague Mrs Nolan in dissenting comments. I was pleased to see, however, that this legislation, which has been altered slightly by the Labor Government, although not to a huge extent, has the support of most groups who will be affected. It is good that it has been consolidated. It is crucial legislation.

There will be a lot of teething problems in some areas in relation to its operation. However, even today we can see from a couple of sections of the legislation that it is starting to work already, even though it has not been passed. Yesterday we had a very good example of the fact that the provision of a six-day sitting period for disallowance is sufficient. I can recall some of us wanting 15 sitting days for disallowance; but, as I indicated in April, in my additional comments in the report, six days seems to be sufficient. It was shown to be yesterday when, with three days to go, we had a very detailed debate on the proposals for the Forrest bowling club. The disallowance motion was unsuccessful on that occasion.

In the report and in the legislation, I am pleased to see that provision has been made for a fee for heritage listing. I think that is important. We need to look very closely at heritage listing. I had no problem with this Government's decision in relation to the heritage value of the Forrest bowling club. In many ways, it reminded me of a constituent who came to see me in July 1989 with a problem of rising damp and the need for some $30,000 worth of renovations to her house. She had all sorts of problems because her house was listed as a heritage house. The streetscape, certainly, had heritage value - it was a beautiful streetscape - but her house had been substantially modified, and well modified, since its construction in the late 1920s or early 1930s.

Her name was Bronwyn McCaskill and she had an original weatherboard house which had had some type of metal cladding put over it. There had been some further fairly grotty, to use her description, modifications to it before she bought it. It was in need of substantial renovations so that air could get into it to stop rising damp and, basically, to make it livable for her health and her family's health. She had to go through a quite convoluted process and she ended up, I think, winning in the

Administrative Appeals Tribunal. I think she is still chasing up her legal costs and other expenses incurred as a result of the action she had to take. It cost her about $12,000 for what was, one would think, basic commonsense.

Here was a house which, when one looked at it closely, had very little heritage value of itself. The area certainly had a heritage value - the streetscape, but not the house itself. It was a case, perhaps, of overriding bureaucratic and not practical considerations coming to the fore. Indeed, a lot of the concerns people have with planning legislation and the way planning has operated in the past in the ACT are about the bureaucratic controls and the restrictions, sometimes unreasonable restrictions, in relation to planning issues. It is good to see that some of that has been addressed in this complex but basically sound legislation.

Similarly, I personally had no problem with the Forrest bowling club building. Having seen the place at first hand, having been there a number of times for a drink over 20 years, I have a fair knowledge of what it looked like 20 years ago and just what renovations, additions and deletions have occurred since. I saw some very nice beams there, but there was not too much that would lead me to dispute the Government's decision that that building did not have any real remaining heritage value. I note that the Government will look at that again. I will be interested to see what they come up with.

Mrs Nolan: What about the green?

MR STEFANIAK: I am not talking about the green, Mrs Nolan; I am talking about the clubhouse. The clubhouse reminded me very much, in terms of the modifications and problems it had, of Bronwyn McCaskill's house.

In this legislation there is provision for third-party appeals. That is to be reviewed after two years, and I think that is very sensible. I do see the question of third-party appeals as one where there are a number of potential problems, and it is very sensible that that be reviewed.

I note in clauses 193, 194 and 195 the old question of the renewal of residential and commercial leases. To my mind and to the Liberal Party's mind, these must be the same. You cannot and you should not differentiate between the renewal of a residential lease and the renewal of a commercial lease. The renewal should have an administrative fee only; to do otherwise puts a damper on business confidence to invest. I am not going to go in any great detail into the various problems there; that has been talked about before ad infinitum. I think it is important, however, that the renewal have simply an administrative fee. Business leases can be treated differently by way of a betterment tax and other rates, rather than a renewal fee.

On the whole, I think this is sound legislation. Perhaps we need to look at when it should start. I think the Minister was quite sensible in extending to 20 March the time for further consultation and feedback. That is fair enough. Administrative arrangements have to be put in place, and I wonder whether that can be done by 1 January. Something like 1 March might be a more appropriate date, but it is important that this legislation be up and running as soon as possible.

When looking at Canberra's future development, things such as green space in the city area are very important. They have to be considered, as does sensible and environmentally and commercially sound development. For example, I was driving around Kingston the other day; having grown up in Canberra, I am well aware of how Kingston looked in the late 1950s and early 1960s. Certain houses have been kept around Telopea Park; there has been some development there, although the buildings have had to conform to the streetscape and the types of houses that were there before. I note that my friend Mr Collaery was very concerned back in May 1989 about the redevelopment of four houses there and was lying down in front of bulldozers. Having driven past that area, I think the redeveloped houses blend in quite well with the original homes, which are still the vast majority of the homes in Telopea Park. So, perhaps Mr Collaery's fears have been alleviated.

It is also pleasing to note that those original homes are there, yet on the other side of Telopea Park there are townhouses and then the shopping centre and some more original homes. That development has certainly not taken away from the area; in fact, it has probably tidied it up to an extent. There is now a blend of new and old original Canberra-type homes within the one area, plus a fully developed park leading down to the lake, and it looks very attractive.

That is a very good example of how certain areas can change and good, sensible development occur, while retaining some of the essential old-world charm. That is very important when we look at developing various areas of Canberra, especially inner Canberra, because there is a great need for some urban infill. There is also a need to do it sensibly and I think, on balance, this planning legislation will - as best it can at this stage - ensure that that happens.

This is, of course, a living piece of legislation. It will continue to be amended; of necessity, I think it has to be. Obviously, a few things will go wrong and it will have to be finetuned. With something as complex and, indeed, as emotive as this, that is understandable. I was interested to note that, with a very complex piece of legislation, there are not too many objections by members, and that is heartening. I look forward to seeing, in the years to come, the further development and refinement of this very crucial legislation.

MR COLLAERY (12.02): I have listened to the comments of prior speakers and, in amalgam, they record the various pros and cons of the Bill. I want to restrict my comments to an historical overview because I think that is important. These speeches are used as extrinsic aids, and I would like to put on record the historical development of this legislation.

On 24 October 1987, around a table tennis table at Rocky Knoll, a number of ACT citizens met. From recollection - I have not brought the minutes in today - they included, from the Casino-Free Committee, Hector Kinloch; from the Reid Residents Association, Michael Moore; representatives from the O'Connor-Lyneham interest groups and other community groups; and individual representatives, including Greg Cornwell. We resolved that we needed to amalgamate our neighbourhood action groups and to have that amalgam focus more fully on community concerns - not just those within the planning spectrum but also those that touched it, such as the Conservation Council of Canberra and the South-East Region, which was represented at that meeting, from recollection, by John Rowland. Other representatives were Anne Kent, whose husband and others had fought a major battle over the Black Mountain tower whilst I was living in France.

We came together on that fateful day of 24 October 1987, and a resolution was carried that the Residents Rally for Canberra be formed. That was carried unanimously on 24 October 1987 - with Greg Cornwell's support. On 13 November 1987, just three weeks later, the first major rally this city had ever had on planning issues, except for individual protests, was held. City Square was full. The rally had speakers of the calibre of Manning Clark, Sir Mark Oliphant, Charles McDonald of the TLC, Caitlin Crowe of the Youth Accommodation Group, and David Read of the Tuggeranong Community Council. Messages were read from Sir John Gorton, my neighbour at Rocky Knoll, Professor Reid of architecture fame, and Harold White, a former National Librarian. I mean no offence to those I am forgetting; I forgot my papers this morning.

Those records should go to the National Library, at some stage. I was looking through them on the weekend, after reading a letter in the newspaper from Don Allan, who came on the scene very late and who claimed that he had set up neighbourhood groups.

Mrs Grassby: The Labor Party did it first.

MR COLLAERY: We have debated that before with Mrs Grassby. From that representative spectrum we made official contact under a new letterhead, the Residents Rally for Canberra. I had proposed the term "Residents Rally" because I had lived in France, where I had watched a political leader secure all the arrondissements in Paris by forming a group called Reassemblement pour le Republique. He won that

election hands down because the term "rally", into which "reassemblement" translates, is onomatopoeic; it translates to action, and many of us wanted action. The name was coined that day and will go down in Canberra history, come what may.

The National Capital Development Commission made formal contact with us. Jill Lang was then one of the prime movers there, and Malcolm Latham, who was a correspondent with us. I am pleased to say that one of our correspondents at that time, the executive officer, John Meyer, is present in the chamber today in another guise. We then made contact with the Canberra Association for Regional Development and other groups, and gradually an increasing spectrum of parties joined with us to form a working party, which commenced meeting at the Canberra International Motor Inn in about March 1988. It was called the Metropolitan - - -

Mr Connolly: This is the extant history of the Rally, is it?

MR COLLAERY: I am sorry, Mr Temporary Deputy Speaker; some people find an historic overview amusing and a matter for cynicism. I am attempting to put something on the record. I am not scoring points here, and I think it is in the community interest that this be done at last.

The seminars continued; they were called Metropolitan Policy Plan meetings. Finally, on 31 May 1988 we received a letter from Peter Leonard, then of the NCDC, making this comment:

> Dear Mr Collaery,
>
> Thank you for your positive contribution -

he is referring to the Rally -

> to the discussion at the Urban Design Seminar last Friday.

Here are the fateful words:

> The community appears to be willing to incorporate local ideas into the beginning of the urban design policy process. There also seems to be acceptance of principles of landscape and building linkages and open space.
>
> Contributions from the seminar will be included in the background report on urban design policy issues.

We are indebted to those officers of the former National Capital Development Commission who saw what was occurring and started the process of workshopping with community groups. Those workshops continued through to 1 December

1988 - the final one was at the City Gate Motel, Lyneham - by which time the NCDC was on the ropes. The Block report had come in, the NCDC was about to go, and there was concern among former NCDC officers.

I go back for a moment to David Block and his report to the Prime Minister on the role and future of the National Capital Development Commission. The Rally was invited to comment by the statutory board, which we heard little of in those days. It was known as the National Capital Planning Committee, which was an entity under the then National Capital Development Commission legislation. The members of that committee as at June 1988 were Malcolm Latham; Mr John Andrews, architect; Mr McNeill, architect; Mr Lindsay, engineer; and town planners, Mr Hardman and Mrs d'Rozario. There was a cultural representative, Mr Tieck, and Professor Marceau.

It is interesting, I say to Mr Bill Wood, that there was a cultural representative on the National Capital Planning Committee at that stage. We have not managed to reformulate that prospect in the current Bill, but more of that at the detail stage.

There were continued meetings, and finally the production of some formal papers dealing with a revised Metropolitan Policy Plan and a major press release by the National Capital Development Commission announcing that there would be a new land use planning appeal system for this Territory. That had been foreshadowed on 4 March, exactly 12 months before the election for self-government, by Mr Latham in a press release.

That is a short overview of the groundwork to the land planning system. After that, there were a series of more specific meetings dealing with the type of land planning appeal system we wanted. Those meetings developed a high degree of commitment and equanimity between, believe it or not, the Residents Rally, other interested groups and the developer industry. I clearly remember coming to terms at one stage with Mr Bob Winnel; as Mr Kaine will appreciate, that was quite an event. We recognised the possibility of joint recognition of our bush capital and that to meet the requirements for the planning system we would need to continue with our joint objective of retaining the city in its built and natural form.

The one and only meeting of its type in that era was held on 11 March 1988. It was an action planning meeting for self-government, which had then interposed itself in the process. It was at that workshop on 11 March 1988 that I first met my colleague Mr Trevor Kaine. I recall him speaking at the meeting. A number of people who had been prominent in the former Assembly, including Barry Reid and others, spoke about what self-government could do for the planning process, the economic situation of the Territory, and so on.

I shall read the workshop proposals that were formulated that day: To put together a working party to negotiate an appropriate form of self-government for a five-year financial transition arrangement for the Territory - that was supported at the time by Mr Kaine, if I recall correctly; that there be no further cuts in services or sales of revenue-earning assets prior to the ACT achieving self-government; that compensation be made to the ACT budget for the loss of assets such as the Belconnen Mall, the fruit markets at Belconnen, and private servicing of land; that all land revenues become part of the revenue base of the Territory, including betterment taxes for lease purpose changes; that arrangements be made to begin the policy making, implementation and funding of all community services under a single administration; and that the Commonwealth Grants Commission be given a standing reference for the ACT.

As we well know, the Federal Government churlishly ignored all of that and we were not given our say, despite the fact that we were a discrete and organised grouping of informed community representatives. During the self-government process, planning went on the back burner. The planners were in disarray because of the impending dissolution of the National Capital Development Commission, and the administration was working towards self-government and other perceived priorities.

During that period, activists continued to try to protect some of the natural and built features of the city. Some demolitions took place in that period - I will not reopen old scars. My colleague Mr Stefaniak mentioned Rocky Knoll. Pleasant though he may think it, I invite him to try to sleep there on the three or four garbage days a week, between private and government contractors. The Reid Residents Association ran their famous protest of an endless line across a pedestrian crossing in their legitimate attempt to stop flow-through traffic. The police attended, and so on. As Mr Stefaniak knows, I stood in front of the bulldozers and did other things at that time.

My colleague Mr Jensen attended when they felled those beautiful old yellow box trees on Rocky Knoll and literally cut through the bodies of a couple of possums who were nesting in those trees. They felled an ancient yellow box tree that had been used for aeons by nesting birds. They were sad moments in the midst of the self-government process.

Mr Berry: Were they starlings?

MR COLLAERY: Mr Berry is amused by it; he has never been touched by those events, clearly. We continued our activism, centred around the appeal process, finally formulating a Rally policy for the election. Amongst others, the planning policy said:

> These policies are based on the main premise that planning decisions in the ACT should be made in open forum. Provision for community participation from individual neighbourhoods to forums within the Territorial Planning Authority ... will be our priority.

So, those who claim to have invented NAGS, or what have you, have lost sight of the history and the work that many good citizens of this Territory, across the political spectrum, did towards a community consciousness that surfaces today in a Bill providing for a more open planning process, a planning process that provides real appeals on the merits, not just appeals on formal legal points. *(Extension of time granted)*

When we look at the legislation before the Assembly, we see that it is compact and that it is in two pieces of bound paper. There is another history to this Bill, and I believe that someone should put some remarks on the record. I refer to the work done by the successive government law officers and draftspersons to bring it to fruition. As my colleague Mr Kaine knows, it started off as several pieces of paper. Under direction, it was consolidated into two Bills, and during that process the status of the drafting was constantly questioned by well-meaning politicians and great pressure was placed on those drafting it. On 12 May 1990, as Attorney I informed the Chief Minister that the drafting of the Land and Leasing Bill, as it was then called, was well advanced and that three draftsmen were currently engaged in preparing it. A draft of the Approvals and Orders Bill had already been provided to instructing officers.

Great credit for these reforms goes to those legal minds who converted our political instructions into the Bill before us today. This Bill was quite properly described by consultants Dunhill Madden and Butler as well advanced in the Australian context, and my colleague Mr Wood mentioned that in his presentation speech. I am pleased to see that recognition. The Law Office submitted its work to a private consultant for overview, at my request, supported by my colleagues in the then Alliance Government. The outcome of that process will require further refinement, and we should not overlook the fact that all substantial legislation of this kind will require ongoing, detailed attention.

I recall Mr Connolly, in making one of his earliest comments in this Assembly, describing the package as confused, all over the place and somewhat obscure. Those comments were made while the draftspeople were battling against the odds to get the legislation together and to interpret the at times conflicting messages coming from the coalition Alliance Government. We had differing views on

some important aspects, notably the renewal of leases and one or two other areas. I am pleased to say that the view the Liberal Party took during the drafting stage was enlightened and sensible, particularly on the appeals prospects.

I do not think it would be fair to say that there were overt developer instincts emanating in any way from elements in the Alliance Government, until the fateful couple of weeks before the Government fell on the issue of commercial leases. We worked together to bring this together and at that time, to their credit, the Liberal Party read the numbers and did not press for a perpetual lease system or freehold. What they would do, were they ever to get power in their own right, might be another matter; but in the Alliance Government they worked towards improving the Canberra leasehold system.

Finally, I commend as a sort of benchmark reference point the momentous report commissioned by the Joint Parliamentary Committee on the ACT from Professor Max Neutze of the Urban Research Unit of the Australian National University and entitled *The Canberra Leasehold System.* That historic document represents the optimal statement, in my view, of what the Seat of Government Act intended for the Territory in terms of the land New South Wales gave to the Federation to be held in good stewardship for future Canberrans. I trust that this Bill will continue that ethic.

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

Sitting suspended from 12.20 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Absence of Chief Minister

MR BERRY: Mr Speaker, as members are aware, the Chief Minister is representing the Territory at a meeting of Premiers and Chief Ministers in Adelaide. Questions that normally would be directed to the Chief Minister should therefore be directed to me.

Mr Kaine: We are going to get absolutely no answers on a few questions today.

MR BERRY: If there is any more levity, all ministerial questions will be directed to me.

Mistral Fans

MR STEVENSON: My question is to Mr Connolly. I bring your attention to the Mistral fans that you spoke on recently, which have been proven to be unsafe and have been linked to at least 100 fires in Australia and overseas. Should not the company responsible for the fans place an advertisement in all national newspapers warning of the defects, recall all faulty models and offer the trusting purchasers full compensation or replacement? I remind you that the makers were aware, so the report said, that the fans were faulty but had engaged in a cover-up. Mr Connolly looks a little bit puzzled. It says in the article that Coroner Graeme Johnstone said in Melbourne on Friday that the makers of the fan knew that it was faulty but had engaged in a cover-up.

MR CONNOLLY: Yes, they are the coroner's words. This occurred because of a coronial finding in Melbourne on Friday. The response around Australia of consumer affairs Ministers in the early part of this week was to get out a quick warning rather than to go through a process of arguing with the manufacturer about who should be liable, who should pay for the ads and what should occur. The decision was taken that it was best to get out a warning fairly quickly. That has occurred. There obviously is an issue of the liability of the manufacturer of goods that proved faulty. There is a potential legal action which is essentially a private matter. Consumer affairs bureaus throughout Australia are looking very carefully at this issue.

There was an earlier recall, I understand, of these products. The products were actually made, I think, in 1985 and 1986. There had been a recall previously, but it is apparent that a number of these products are still out in the community. There will be some close work and attention paid to who eventually should pay for this and whether the consumers who still have these products will have some comeback. But the decision was taken that rather than argue with the manufacturer about that - a process which might take some weeks or months, or, if the manufacturer's lawyers and government lawyers get into dispute, some years - it was better to get out to consumers quickly the message that these products are potentially dangerous and to alert the general public.

I take Mr Stevenson's point that a manufacturer who produces a product that proves to be dangerous obviously can expect to be exposed to some liability, and I assure him that the Government is not unaware of that. I assure him that we took the decision to make the announcement ourselves in order to get the message out to the people quickly rather than go through the process of talking to the manufacturer, which may take some time.

MR STEVENSON: I ask a supplementary question. Mr Connolly was quoted as saying that the faulty fans should not be dumped but destroyed. That would make it very hard for someone to seek compensation, unless they took the bits along. Was that basically a misquote of what was said? Would it be best simply not to use them but keep them for possible compensation?

MR CONNOLLY: Yes, I suppose Mr Stevenson's point has some validity; it would be best to disable the fan and not use it. The essence of the Government's response was that we wanted to get out to consumers a quick message that there is a risk; do not use this product and certainly do not sell it or get rid of it. I think the reason why we said "Do not dump it" was that these fans look, to all intents and purposes, like a very pleasant fan and if you threw it on the tip somebody else might come and grab it and it would be back in the community. There may be - - -

Mr Duby: Revolve will have a special on fans.

MR CONNOLLY: Revolve may have a special on fans, as Mr Duby says. We are essentially saying, "Do not use the things". There are some - - -

Mr Stevenson: Would it be worthwhile saying that they should be kept but disabled?

MR CONNOLLY: They certainly should not be used.

Health Budget - Staff Reductions

MR KAINE: I would like to direct a question to the Minister for Health. Minister, you told the Estimates Committee that a significant proportion of your savings in the health budget would come from staff reductions. I think you referred to a figure of some 275 jobs that had to go. Given that we are now five months into the fiscal year, can you tell us how the staff cuts program is going? How many jobs have been shed so far from your Health Department, and how many more are to go by the end of the financial year?

MR BERRY: I would have thought that the Chief Minister would have asked a more pressing question which included the names and addresses of all of those people who have lost their jobs. The issue of changes in the health system is one of significance for the board. There is a close consultation process going on between management and unions in relation to how the budget that the board has to live with will be delivered. I certainly cannot give figures on progress at this point. It is silly to suggest that a Minister would have those sorts of details at his fingertips. But what I can say - - -

Mr Jensen: Who is responsible, Wayne?

MR BERRY: I am trying to answer the question. Yesterday I got hammered because I did not answer questions the way they wanted me to. Now I am trying to answer the questions in a way which might satisfy them and I am getting hammered again. Just lay off for a little while.

Members opposite know that there is a tight budget for the Board of Health and a very significant set of negotiations will have to be dealt with by the board in the normal management process. The board is under a lot of management pressure, and that has not been helped by the decision of the Assembly yesterday to further pressure it. The staffing levels within the hospitals will be discussed with unions. It will be helpful that the Labor Government has a special relationship with unions that will assist us in getting through that negotiation process. I am prepared to take the question on notice and examine the issue, but I am not prepared to - - -

Mr Humphries: He does not know, in other words.

MR BERRY: Mr Humphries blurts out, "He does not know, in other words". Mr Humphries, from one day to the next, did not know what was going on within the health system. He did not have a clue. He could not tell us from one day to the next how many people were working in his health system. I am not like the firebug screaming about the smoke. I am about trying to answer a question, which is becoming very difficult, given all of the interjections. I am prepared to look at the question which has been put by the Leader of the Opposition and examine the issue.

MR KAINE: I ask a supplementary question, Mr Speaker. I appreciate the fact that the Minister will take that question on notice; but, given his statement that he has to enter into negotiations with the unions, does that mean that five months into the fiscal year no job has yet been shed in the Health Department?

MR BERRY: I think I said to the former Chief Minister, the Leader of the Opposition, that I do not have those sorts of details in front of me. I do not know how many jobs or how many job statements have been changed as a result of negotiations with the unions. I certainly will inquire into the matter, as I have indicated to the Leader of the Opposition. Our special relationship with the unions has assisted us in the negotiation process. It is a complex one. Jobs are being affected. It is serious for health workers and it is something that will take some time to complete. The Board of Health have indicated to me that they will deliver the health budget, and I am hoping that that is notwithstanding any political interference. I will examine the question that has been put by Mr Kaine and talk to him later about it.

Cultural Council

DR KINLOCH: My question is to Mr Wood in his role as Minister for the Arts. He and I yesterday were at a most fascinating seminar on Canberra in the year 2000 and the question of cultural policy. The meeting was, I think, very fascinated but also agitated by his proposal to set up an ACT cultural council. In particular, they wondered how much time they have to approach him on this matter, when the council will be set up, and what its composition will be. Although there was a great welcome for the council, could he tell us the nature of that council and how soon it will be created?

MR WOOD: Yes, I am happy to respond to that. Dr Kinloch will know the genesis of this. It arose out of the report of the Select Committee on Cultural Activities and Facilities and was, of course, prompted from many other sources too. How much time do people have to make suggestions? Well, I would have to say "Not much".

At the last arts consultation I held - I have followed on from Mr Humphries' example - I made mention of the fact that we were likely to go down this path and anybody interested should provide me with names. I made the same invitation last night to that group where Dr Kinloch was, and I will make it here again. If you know of people who would be competent to serve on that body, please advise me; but do so quickly, because the cultural council will be set up very soon. I do not have a particular timetable on it. I am working on the lists of names that have been drawn up, rather informally at this stage, Dr Kinloch; but I will certainly consider all names that come to me.

Members would be aware that there is a variety of approaches, I suppose, to filling the bodies we have around advising government. On this occasion I did not go out and advertise because I am quite emphatic, and the arts community is supportive of this, that the members on the cultural council should not be delegates or representatives of particular bodies. They should have a broad rather than a specific interest, though obviously they will have connections into various arts-related activities. That is the question, Dr Kinloch. If you want to give me any names, I would be quite happy to consider them. Perhaps at the same time you could provide a brief CV for me.

Under-Age Drinking

MR STEFANIAK: My question is to the Minister for Health. Yesterday the Minister for Health announced a number of so-called initiatives in relation to under-age drinking. One of them was to conduct a campaign, utilising Health Promotion Fund moneys, in an attempt to counter under-age drinking and promote a healthy message. What percentage of the Health Promotion Fund in this financial year is he proposing to utilise for that campaign?

MR BERRY: On announcing the initiatives that the Government had decided upon in relation to under-age drinking - they are very important initiatives too, I should add, Mr Speaker - I have made contact with the chairman of the Health Promotion Fund Advisory Council and I have also informed the secretariat of the Government's position. The Health Promotion Fund Advisory Council was appointed by the former Government, and this Government has decided to continue with the practice of arm's-length consideration of the way that funding is provided as a result of tobacco taxes for health promotion purposes. At this point, Mr Speaker, I am prepared to listen to the advice of the Health Promotion Fund Advisory Council on how much funding it believes should be made available for health promotion activities which are related to the campaign which the Government has decided upon; but Mr Stefaniak can rest easy.

The Health Promotion Fund will provide money for that process in accordance with the Government's wishes. It is a matter of the Health Promotion Fund Advisory Council being allowed to consider the matter in the normal way. Of course, at the end of the day it is up to the Minister whether he accepts the council's recommendations or not. But I expect that, as in the past, the Health Promotion Fund Advisory Council will note and endorse the Government's position and will make a responsible decision about what allocation of funds should be made to deal with this very important issue for the community.

Sporting Clubs - Equal Opportunity

MR COLLAERY: My question is directed to Mr Berry as Minister for Sport. Mr Berry, bearing in mind the provisions of our Bill on unlawful discrimination by clubs, which we are to consider later today, will you indicate what your policy is as Minister for Sport in relation to those clubs that have as their general purposes and objectives the furtherance of a sport which can be enjoyed by equal sexes? In your government dealings, will you require them, by some affirmative program, to provide for equity in access to membership?

MR BERRY: I think the question probably borders on being out of order because it would require the Government to make an announcement on policy, but I am prepared to have a lash at it. Mr Collaery anticipates the passage of the Bill which will get a name later on today, one hopes. It is hard to say what one might be able to do with that Bill unless it finds its way through this Assembly intact. I do not like anticipating outcomes of unknowns, and I think we have a bit of a way to go on the equal opportunity Bill, discrimination Bill, or anti-discrimination Bill - call it what you will. I can assure Mr Collaery that any policy on sport that the Government adopts in the light of that Bill will adhere to the provisions of the Bill to the letter.

MR COLLAERY: I have a supplementary question. If that is the case, Mr Berry, if you do intend to apply the letter of the law, which, hopefully, will be passed today, will you then be taking up with the Forrest bowling club its restriction of having male playing members only?

MR BERRY: I wondered when we would get to the Forrest bowling club. I have never been in the Forrest bowling club; I do not know what its policies are. But if the Forrest bowling club or any other club, or any other person, for that matter, offends a piece of legislation which is passed by this Assembly, they will be required to observe the letter of the law as determined by the Assembly.

Telephone Services

MR MOORE: My question is addressed to Mr Connolly, as Minister for Urban Services, and it is another question of which I provided some notice. My question refers to the program of installation of new telephone systems which is intended to save the Government more than $1m. Will any telephone or radio operators in Health or Urban Services lose their current positions? Will they still have a job? I understand that the installation process has already begun. Have the contracts with Telecom been finalised, and were they finalised before the start of the work? I think I added a supplementary question. Is it true that the sharps hot line has been staffed for a third time by people contracted to Telecom who have no specialised knowledge of AIDS other than the location of the needle exchange?

MR CONNOLLY: I thank Mr Moore for his question and again I thank him for giving some notice when he seeks detailed information on a detailed question, because it allows Ministers to respond promptly and accurately. My answer to Mr Moore's question is that the new telephone system will provide for the rationalisation of telephone operator services across the whole of the ACT Government Service, thus reducing the cost of these services while improving the service to the public overall.

While some positions may be abolished as part of this process, no decisions have been made which would affect the jobs of telephone or radio operators in Health or Urban Services. The Government has made it clear that there will be no compulsory redundancies and any persons affected will be redeployed in accordance with the award provisions. The appropriate consultation process is presently going on.

The essential elements of the final contract were agreed with Telecom and ratified by an exchange of letters prior to any installation work commencing. Some aspects of the contract are subject to further discussions. The most important of these concerns the number of locations for installation, which is still being determined by the Department of Urban Services. That will go on for some time, until we work out every last phone.

The technical performance standards to apply and the simplification of the tariff arrangements have now largely been resolved, and the official signing of the contract is programmed for 2 December.

The sharps hot line after hours is answered by the general emergency switchboard of Urban Services. This is a 24-hour service and the 24-hour operators are a mix of government employees and Telecom contracted staff. They receive after hours calls from the public on a wide variety of emergency issues, ranging from water mains to the sharps calls. The operators filter the calls and pass them on to the appropriate area of the department. In the case of the calls about syringes, the calls are passed to the waste management section of the city services group, who dispatch a trained staff member to collect and dispose of the syringes. To that extent, that is the level of their training.

Breast Cancer

MRS NOLAN: Mr Speaker, my question is to Mr Berry in his capacity as Minister for Health. Mr Berry, the women's budget statement 1991-92 paper No. 1, at page 6, states:

> The ACT will be participating in the National Program for the Early Detection of Breast Cancer.

During the Estimates Committee we were told that the Commonwealth had not been advised that the ACT would be participating. Has that now been rectified? If not, when will it be done, or is the statement in the women's budget statement incorrect?

MR BERRY: I thank Mrs Nolan for the question. The issue was raised in the Estimates Committee. I think that one of the questions that Mrs Nolan asked was whether the statement was false. Of course, it is not false. I think we said in the Estimates Committee that the process of securing funds for that program was still under consideration. I am not able to give her any advice in advance of that, but I am prepared to look into the matter further and talk to her again on the subject.

Paterson's Curse

MS MAHER: My question is to the Minister for Urban Services. I have been approached by a constituent regarding Paterson's curse around the Territory. Given that Paterson's curse is a noxious weed, what is the Government doing to eradicate it from the Territory, especially from public land?

Mr Kaine: There is a whole bunch of it just over my back fence. When are you going to get rid of it?

MR CONNOLLY: Being a South Australian, I refer to it as Salvation Jane rather than Paterson's curse. That is the wrong title of the plant. The question also, I am afraid, is addressed to the wrong Minister, because lands is now the responsibility of Mr Wood, with parks and conservation. I will defer to Mr Wood.

MR WOOD: The department monitors Paterson's curse and encourages people like Mr Kaine to cut it wherever it appears. The precise details of the departmental surveillance and notices it puts out will be something I will advise you about in detail.

Territory Plan Variations

MR JENSEN: My question is to Mr Wood in his capacity as Minister for the Environment, Land and Planning. I refer the Minister to annex I of the Planning Report which is part of the draft Territory Plan documentation. Will the Minister use his powers under subsection 30(1) or 30(2) of the Interim Planning Act to direct the Territory Chief Planner to ensure that at least all those residents who are directly affected by the 232 proposals to vary the current Territory Plan will be provided with details of the changes and the rationale for them, in the same way as is provided for in that legislation by the requirement to issue formal draft variation documents? Or is it proposed to seek to have these changes made by default, without a detailed explanation or the reason for the proposed change being given to those residents affected?

MR WOOD: This is a matter that I have given some little consideration to. I am not prepared to say at this stage that we will individually advise each householder who may be affected. The information is publicly available in an understandable form. However, I have not finally ruled that out. I am not yet totally convinced - hence the reason for the delay - that it is a step I need to take.

Backyard Swimming Pools

MR DUBY: My question is directed to Mr Connolly in his capacity as Minister for Urban Services. Bearing in mind that, of almost 30 children under five who drowned in New South Wales last year, nine drowned in backyard pools, and that almost invariably those pools were unfenced, that, for every child who drowns, another four suffer serious and recurring medical problems, including brain damage, and given the fact that the ACT has some 10,000 backyard pools in a population approximating one-tenth of that of New South Wales, do you agree that statistically it is almost certain that at least one child will drown in the ACT in the coming season and that others may well be severely injured? Do you or your Government propose to do something about these tragic statistics and introduce legislation to enforce the proper fencing of backyard pools, as recommended by all experts in this area, including, of course, the national Child Accident Prevention Foundation of Australia?

MR CONNOLLY: I thank Mr Duby for his question. It is, indeed, a serious question. He raises a statistical likelihood that we all hope will not occur. This is not the sort of thing to play politics about; we will not mention weirs and the rest of it. New South Wales a year ago, or maybe a bit over a year ago now, introduced legislation to make compulsory the fencing of existing swimming pools. That legislation has caused a fair degree of agitation and consternation in New South Wales and problems with councils and is now under review, I understand, in that State. It was the only State that went that far.

In the ACT Mr Duby was, I think, personally responsible for this matter. Amendments to the building Act or the building regulations - I think you did it by regulation - required the fencing of new pools. So, that is the law in the ACT, by way of regulation, as it is in the entire rest of Australia - certainly the majority of States.

Legislative intervention to require the fencing of existing in-ground pools has proved to be fairly unsuccessful in New South Wales. We are very actively monitoring what is happening in New South Wales, where they seem to be retreating. I would personally favour a national uniform approach to this and I am taking steps to encourage that. The ACT Labor Government at the moment has no intention of replicating the New South Wales legislation while it is itself being reviewed and there is a likelihood of New South Wales moving back from that position, until such time as all States and Territories can agree on a national approach.

Hospitals Budget

MR HUMPHRIES: My question is to the Minister for Health. The Minister said in question time yesterday that he had been made aware of matters which were of some concern in the hospitals budget. I think that was the phrase he used. Will he tell the house when he was informed of these problems and by whom? Were these concerns contained in the monthly financial updates or were they provided in some other form of documentation?

MR BERRY: Mr Speaker, I do not recall the context in which I made the comment "some concern", but I have long said that there is concern about financial management in ACT health. That, of course, is a flow-on from the former Government. We all recall that because of the inactivity of the former Government there was a loss of control in financial management culminating in the Enfield report, a report which in my view was unnecessary had the Government taken it into its mind to act as it should have done when it was first reported to it in December 1989 that there were difficulties in health. The lack of action and the lack of appropriate direction from the former Minister led to a situation where the health and hospital system was in deep trouble.

If I said that there is some concern, that is an understatement; there is deep concern about financial management in the hospital system. That concern remains. Labor has been in office for a short time. We have put together a budget, which is a tight budget. We have given the board the task of delivering that budget. The board has said that it is prepared to do so, and is getting on with the job of managing the hospital system. So, I have to say that there is some concern about it. It has always been the case and it arises principally, Mr Speaker, from the lack of action and the mismanagement of the former Government.

Land Development

MR KAINE: I would like to direct a question to the Minister for the Environment, Land and Planning. Minister, some months ago I asked two questions, one of you and one of the Chief Minister. I asked you what were the ramifications of taking back the development of land from the private sector and turning it into a public operation. At the same time I asked the Chief Minister where the estimated $70m was going to come from to allow public development of land to be resumed. In the answer to the question that I posed to you, you said that a review was being undertaken and that the completed review would allow the Government to judge the effects on future budgets. The Chief Minister, in answer to a similar question, said that the Government had not considered the issue of changing arrangements and has no intention of reviewing the matter during the term of this office. Which of you was correct?

MR WOOD: I do not think there is any inconsistency there at all. I have initiated, through my agencies, a look at this matter so that I can come up with options, and I will have some documentation shortly. The Government has not considered that; it is a review that I am looking at and that I will take to my colleagues at some time within this Assembly, and into the party, broadly, and I would expect into the community. At some future time, the Labor Government will consider these.

I think the answers are quite consistent. You may find that at some stage in the future we will make announcements about what we will do. But, clearly, I have said nothing in recent times to indicate that the Government is about to step back into this field. I think that in any answers to questions, either on notice or without notice - I think these that you quote were on notice - my response has always been that the return of the Government to land development will be very much a staged procedure.

MR KAINE: I ask a supplementary question. Are you telling me that a review being undertaken by a Minister is not a review being undertaken by the Government? Is there some semantic distinction here that I do not understand?

MR WOOD: Well, there may be, Mr Kaine. This is a review that I am undertaking. I can point to my colleagues here and they have not seen it. The Government as a whole is certainly not aware of it. In due course - and I have already indicated that "due course" is some time away - it will come to our notice.

Preschools

DR KINLOCH: My question is to Mr Wood in his capacity as Minister for Education. There is a story in the media about three-year-olds in preschools. Is this a likely plan? If so, would such three-year-olds be required to pay fees? I especially ask that because such a requirement to pay fees might not be fair to all the parents of three-year-olds.

MR WOOD: This is one of the options proposed in a paper that was commissioned by the former Government into the operation of preschools. You may recall that various projects were established on styles of running preschools. I think one was collocation; there was clustering; and there was administrative linking. The task force looked at a broad range of procedures and options. Amongst those was one option - I am emphasising that word "option" - that three-year-olds might be allowed into preschool if they were full fee-paying preschool students.

We hear much of full fee-paying students, but I had not heard of full fee-paying preschool students until this document arrived on my desk. That option, I understand, was in response to a request from some preschool parent associations who suggested that they could use that facility. I note what you say about the injustice of it, if that was the word you used.

Dr Kinloch: Fairness.

MR WOOD: Fairness. Some parents, because of their financial circumstances, would have access to that year and others would not. That is obviously a matter that this Government, concerned about fairness, will be giving very careful consideration to as we prepare our response.

Land Tax

MR MOORE: My question is directed to the Chief Minister through the Deputy Chief Minister, Mr Berry. It is a question on the land tax. I wonder whether there is any reason why the new land tax could not be collected quarterly in the same way that rates are levied.

MR BERRY: Mr Moore has asked a question about the collection of land taxes. One would not want to soak up the benefits of a tax like that in an administrative process. It seems to me that to load a good tax with some burdensome administrative arrangement would place an impost on government revenue that would leave us short in real terms. I am prepared to pass it on to the Chief Minister, but I think those sorts of issues would have to have further consideration.

MR MOORE: I ask a supplementary question. Will you make a commitment to find out what those extra costs would be and bring those costs back to the Assembly?

MR BERRY: I will pass the matter on to the Chief Minister, Mr Speaker. I am sure that we will report back to Mr Moore in due course.

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

Community Nursing Service

MR BERRY: Yesterday, Mr Speaker, Mr Humphries asked me about community nurses and the detection of cases of postnatal depression and child abuse on first home visits. I have made some statements about the issue, Mr Speaker. I think the issue was raised by Mr Humphries to take advantage of some very serious reports of child abuse which have appeared in the media in recent days. I think that to take advantage of those sorts of things is wrong; but I do

say, Mr Speaker, that by far the most effective way in which those at risk of suffering postnatal depression and of perpetrating child abuse are detected is through case work consultation between health professionals during antenatal care, confinement in hospital and follow-up home visits.

Community nurses have detected cases of postnatal depression and child abuse on home visits - - -

Mr Humphries: Thank you.

MR BERRY: But very rarely on a routine home visit to a normal mother. I point out to you, Mr Humphries, recent reports in the *Canberra Times* of a serious child abuse matter where community nurses had discovered nothing in relation to the matter. No other State, Mr Speaker, undertakes routine first home visits to new mothers. The emphasis for detection of these sorts of things is, as I have said, through case work consultation between health professionals during antenatal care, confinement in hospital and follow-up home visits. They are not to be confused with routine first home visits to new mothers.

Mr Humphries: So, you concede that some people might slip through the net.

MR BERRY: If you will allow me to continue, from January 1992 the ACT will adopt this policy, enabling the resources to be devoted to clients with special needs and to parenting groups. This does not mean that mothers will be discharged from hospital after their confinement and left to fend for themselves. So, let us have no more emotive language.

Mr Humphries: So, you are cutting out first home visits.

MR BERRY: Before leaving hospital, Mr Speaker and Mr Humphries, if you care to listen, every mother will be given a package of information on services for new mothers, including infant health clinics, parenting groups and immunisation clinics, lactation feeding advice and other support services.

This is the important part, Mr Speaker. New mothers identified as having special needs, including possible postnatal depression and child abuse, will be followed up by a home visit in the first week after leaving hospital. A case management plan for the new mother would then be drawn up by the community nurse. Points to remember, Mr Speaker: The emphasis should be on consultation between health professionals during antenatal care, confinement in hospital and follow-up home visits. Routine first home visits to new mothers do not occur in other States. I think we have to make sure that there are no more emotive statements about what might occur when the management of services is changed by ACT Health. The issue is one of deciding which mothers and babies require the service and providing it.

Health Budget - Monthly Reports

MR BERRY: Mr Speaker, I have a further response to questions raised by Messrs Humphries and Collaery yesterday. I wish to inform the Assembly that I have not received the Board of Health financial figures for the month ending 31 October 1991. An officer of my department has discussed the Assembly decision of yesterday with the chairman of the Board of Health. I have discussed it with him on the telephone. I am in the process of arranging a meeting with the chairman, which will occur early next week, to discuss the issue further. I remind members of concerns expressed by the board chairman about political interference by Assembly members in normally confidential management matters which, by way of process, are provided for under the Health Services Act. I am mindful of the provision under the Health Services Act which will allow me to issue directives to the board.

PERSONAL EXPLANATION

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

MR SPEAKER: Do you claim to have been misrepresented?

MR HUMPHRIES: Yes, I do, Mr Speaker.

MR SPEAKER: Please proceed.

MR HUMPHRIES: Mr Speaker, today on the Julie Derrett program the Minister for Health, Mr Berry, made reference to financial management in the hospital system and he said: "Certainly Health has been exemplary in its bad financial management". It is a curious phrase, but that is what he said. He continued: "That was, of course, most evident under the period of the former Government. What was most important about the former Government was that they did nothing to fix it". Mr Berry, I think, repeated that assertion today in the course of an answer in question time.

It is, of course, a reflection on me. I remind the house, Mr Speaker, and Mr Berry, that Mr Berry himself, before the Estimates Committee, has conceded that the statement is wrong. Mr Berry has conceded that the former Government did take action in response to both former reports, that is, by Mr Enfield and by the Treasury, in 1991 and 1989 respectively. Mr Speaker, I give Mr Berry notice that if he continues to push what he knows to be untrue, and what he has told the Assembly's Estimates Committee is untrue, I will take the matter further.

HEALTH BUDGET
Ministerial Statement

MR BERRY (Minister for Health and Minister for Sport): May I make a short statement in relation to this matter, by leave?

Leave granted.

MR BERRY: Thank you. I will repeat what I said today, Mr Humphries.

Mr Humphries: Oh, Mr Speaker!

MR BERRY: I have leave. The health budget has found itself in such difficult times because of the action or inaction of the former Government. There is no question about that.

Mr Humphries: That is not what I am taking issue with. You said that I did nothing to fix it.

MR BERRY: And I have said that it was the inaction of the Government in relation to financial management which culminated in the Enfield report. Mr Humphries seeks to use the period after the Enfield report as his saving grace. Well, that is not the problem. The problem is what he did not do up until the Enfield report.

MR HUMPHRIES, by leave: Mr Berry has missed the point of what I said earlier on, and I repeat it. His assertion today and in the Julie Derrett program was that nothing was done about financial mismanagement. That is untrue. He knows that it is untrue.

Mr Berry: Well, it certainly looks like it.

MR HUMPHRIES: He repeated it just then. It is not true. He himself conceded in the Estimates Committee that the previous Government did do a great deal about this problem, and I ask that that be noted by Mr Berry.

LEAVE OF ABSENCE TO MEMBER

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

> That leave of absence for 21 November 1991 be given to Ms Follett (Chief Minister) in order for her to attend the Premiers Conference in Adelaide.

PAPER

MR BERRY (Deputy Chief Minister): For the information of members I present the ACT Occupational Health and Safety Council 1990-91 Annual Report, pursuant to section 12 of the Occupational Health and Safety Act 1989.

INTERIM PLANNING ACT - VARIATIONS TO THE TERRITORY PLAN
Papers and Ministerial Statement

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning): Pursuant to the Interim Planning Act 1990, and at the risk of panicking the Residents Rally, I present the following approvals of variations to the Territory Plan:

Lyons, Section 5, Block 27 (Part);

Calwell, Section 71, Block 2;

Melba, Section 60, Blocks 1 and 3;

Lyneham, Section 59, Blocks 12 and 22 (Part);

Weston, Section 74, Part Block 2;

O'Malley, Section 32, Blocks 2, 3, 4, 5, 6, 16 and part Taronga Place; and

Ainslie, Section 35, Blocks 1 to 7.

I would like to give a very brief comment about each of those.

Leave granted.

MR WOOD: Firstly, Melba, section 60, blocks 1 and 2. This variation covers the site of the Melba Flats which are being demolished by the ACT Housing Trust prior to sale of the land and redevelopment by the private sector.

Secondly, Ainslie, section 35, blocks 1 to 7. These blocks are owned by the ACT Housing Trust and are to be redeveloped as an exhibition project under the Green Street joint venture initiative funded by the Federal Government.

Thirdly, Calwell, section 71, block 2. This variation will allow the development of professional offices and consulting rooms adjacent to an existing veterinary hospital.

Fourthly, Lyneham, section 59, blocks 12 and 22, part. This variation will enable the ACT Hockey Association to construct a further synthetic hockey pitch at Southwell Park. The ACT Government identified $600,000 towards this project in this year's budget.

Fifthly, Lyons, section 5, block 27, part. I think we might have some problems with this. This variation will enable a little bit of additional parking to be provided at the shopping centre.

Mr Jensen: Not a problem.

MR WOOD: It will be all right? Well done. Sixthly, O'Malley, section 32, blocks 2 to 6 and 16. This variation affects land which is proposed to be released to private enterprise for residential development and provides for a wider range of housing types than that in the original policy. Finally, Weston, section 74, block 2. This land is near the Cooleman Court shopping centre opposite Mirinjani Village, and the variation will permit the construction of special accommodation by the Mirinjani Retirement Village to accommodate confused aged people.

DAYS AND HOURS OF MEETING
Statement by Speaker

MR SPEAKER: Members, in accordance with the terms of the resolution of the Assembly of 21 June 1991 fixing the days of meeting of the Assembly, 10 members of the Assembly have requested that the Assembly meet on Monday, 25 November. Accordingly, the Assembly will meet on Monday, 25 November.

MR STEFANIAK (3.20): Mr Speaker, I seek leave to move a motion concerning the sitting of the Assembly on Monday, 25 November 1991.

Leave granted.

MR STEFANIAK: I move:

> That at the sitting of the Assembly on Monday, 25 November 1991: (1) the Assembly meet at 11 am; and (2) private Members' business have precedence of all other business and standing orders 74 and 77 be suspended for that sitting.

Mr Berry: Why 11.00 am? Why not 11.30?

MR STEFANIAK: The reason, members, for 11 o'clock is this: The Deputy Clerk came to see me today and he advised me that the Chief Minister has a function, to which all members have been invited, in relation to that tapestry outside which has been done by handicapped children. She is hosting a morning tea for the handicapped children. There are practical problems in terms of this Assembly sitting at 10.30 am on the dot. There are practical problems involving the handicapped children, their wheelchairs and such. Accordingly, it was suggested to me that we should start a little bit after that to enable these children to leave the premises and to enable the Chief Minister to conduct the function and have morning tea for the children.

Mr Berry: Would you be prepared to consider 11.30 am?

MR STEFANIAK: It was suggested to me that 11 o'clock would be fine, hence this particular motion.

Mr Berry: It is the first I have heard of it.

MR STEFANIAK: I thought you would have known; you are her deputy. I thought that was eminently sensible and, accordingly, this motion says 11.00 am, rather than 10.30 am. The second point is that I think it was always Mr Moore's intention, and the intention of the private members, that the private members' business take up the entire day without question time and other such matters. That is the reason behind paragraph (2).

Thirdly, I would just mention, Mr Speaker, that attempts were made by me and by other members to find some convenient date, effectively a day on which we could deal with private members' business for the full day. Apart from this date, which I appreciate is somewhat inconvenient for the Government, the greatest amount of time we could mutually agree on, I think, was about two hours on the Tuesday morning. The only really suitable day for the private members was 25 November.

I am grateful to Mr Berry, to whom I spoke yesterday, for not necessarily acceding but at least being gracious about that. I certainly trust that the day will be productive. Accordingly, I commend this motion to members.

MR BERRY (Deputy Chief Minister) (3.23): It seems to me that the opposition members are in a generous mood. I expected that the normal time of sitting would be adhered to, from 10.30 am to 5.30 pm or so.

Mr Collaery: You have a Cabinet meeting.

MR BERRY: No. If they are feeling in a generous mood, and they are prepared to demonstrate it in kind, I had a very important function programmed for 11 o'clock - the opening of the obstetrics ward at the hospital.

Mr Kaine: Invite us all and we will not start till 11.30 am.

MR BERRY: I would have thought that if you were in a generous mood you might have been prepared to consider 11.30 am. I am watching and wondering whether there are many nodding heads. I see that they are shaking rather than - - -

Dr Kinloch: No, do not assume that, Wayne.

MR BERRY: Well, can I get a few nods? I am not prepared to do a Geoff Kennett, you see. You cannot offer that sort of incentive. If there is no enthusiasm for it, I will not pursue the matter.

Dr Kinloch: We can sit on Monday night.

MR BERRY: I know that you might like to do that, Hector. I will leave it at that. I just bring it to your attention and test your generosity, that is all.

DR KINLOCH (3.25): Mr Speaker, this is the first I have heard of this obstetrics ward opening. I assume that those who were involved as health spokespersons would have known about that, but I did not know about it. It seems an entirely reasonable request on Mr Berry's part.

Question resolved in the affirmative.

ELECTORAL SYSTEM
Discussion of Matter of Public Importance

MR SPEAKER: I have received letters from Mr Humphries and Mr Moore proposing that matters of public importance be submitted to the Assembly. In accordance with standing order 79, I have determined that the matter proposed by Mr Moore be submitted to the Assembly, namely:

> That this Assembly calls on the Federal Parliament to discard the discredited d'Hondt and to provide the Senate electoral system for the 1992 ACT Legislative Assembly elections as recommended by the Australian Electoral Commission to the Electoral Matters Committee of the Federal Parliament.

MR MOORE (3.26): Mr Speaker, we can see the enthusiasm for this topic by the state of the gallery. I shall begin my speech by giving a quotation from the inquiry into the ACT electoral system, Report No. 5 of the Joint Standing Committee on Electoral Matters. It states:

> ... many interest groups will find a communality and as a result substantially less (sic) political parties and candidates will contest the next election.

The great irony is that the quote comes from Mr Duby, MLA. As he knows and as I well know, things change over time. Raising the matter of Duby leads me onto the matter of Hare-Clark, which Mr Duby has decided to turn into a party.

There is no doubt that all members here are delighted by the fact that we will have a referendum on our electoral system so that by the 1995 election the will of the people of the ACT will be implemented. I am sure that by 1995 elections will be carried out under the Tasmanian Hare-Clark system with the Robson rotation. The most important impact of that is that power will be taken out of the hands of a small number of party preselectors and put into the hands of the people.

But prior to that time, Mr Speaker, we are in a bind in that, as we are aware, the current Assembly has often had to suffer a tremendous amount of flak which has often been associated with the electoral system under which we were elected. We ought to take whatever action we can to ensure that we no longer have to provide the next Assembly with the same sort of flak.

One thing that we can do - perhaps it is timely - is call on the Federal Parliament, which is currently debating electoral matters with reference to the ACT, to draw up an amendment to the amendment Bill that is before it at the moment to give us the recommendation of the Australian Electoral Commission for this one election; in other words, to have the second ACT Assembly elected under a system other than a discredited one. The system that would be most acceptable, I believe, under these circumstances, is that which has been recommended by the independent body looking at electoral matters within the ACT, that is, the Australian Electoral Commission.

Mr Wood: I would not take any notice of them.

MR MOORE: Mr Wood interjects that he would not take any notice of them, and I feel compelled to respond to his interjection. I think he is aware that there are many people who believe that it is through the Australian Electoral Commission that the count of the voting took some eight weeks. It is very interesting. One of the few people who scrutineered for nearly that whole period after the last election was my wife.

Mr Jensen: And mine as well.

MR MOORE: Mr Jensen interjects that his wife was there, too. I certainly include her because I know that that was true, and they both did a tremendous job. In that time, I think those who scrutineered there recognised that the officers worked particularly hard, but the one thing in particular which was noted by those who observed the count was that the size of the ballot paper probably increased the time four- or five-fold just because they had such a large ballot paper to handle and scan. But those are issues that have already been well documented and dealt with.

The submission of the Electoral Commission on this matter made the point that the modified d'Hondt system is so close in its effect to the Senate system that it begs the question why the Senate system, which is familiar to ACT electors and to electoral workers although it is significantly less complex than the modified d'Hondt system and is widely understood and accepted, is not being used instead. They felt that there is no convincing

justification for the modified d'Hondt system. The Senate system, as they saw it, has all the advantages of the modifications made to the pure d'Hondt system, and they went on to set out the advantages of the Senate system which could replace the d'Hondt system.

The difficulty with it is that the modified d'Hondt system does favour major parties. It was designed to favour them, and it certainly is set up that way. The last election was a great shock to Labor and Liberal alike, I think, in that, even though they had set out to take advantage of that, they were not able to do it. However, with a more normal response from the electorate at another election it may well be that the modified d'Hondt system, with its 5.56 per cent cut-off, could have that effect.

In arguing in favour of the Senate system, the Electoral Commission stated that single-member electorates are not acceptable to the majority of citizens and went on with some of the political realities. But the political realities are not, I believe, the critical factor here; we need to attempt to turn around the attitude of people to this Assembly and to the second Assembly. I think the second Assembly, like ours, will start at a major disadvantage if it is elected under what is widely recognised as a shonky and discredited electoral system.

Therefore, Madam Temporary Deputy Speaker, I think it is appropriate for us to send to the Australian Parliament a clear message that members of this parliament believe that the time is appropriate for them to make a minor modification to a Bill that is before their parliament and to bring about a system that is much more acceptable to people in the ACT, that is, the Senate electoral system.

I think it is inappropriate for us to debate today the Hare-Clark system and single-member electorates system which has been the subject of much debate in this Assembly, as indeed it has been in the community. I would be prepared to debate it if people want that. But the issue here is quite different; it has to do simply with the 1992 election. I make it very clear that this is not a system that I personally advocate as a continuing system for the ACT; it is simply a system for the 1992 election. We could have a proportional representation system, which, as the Electoral Commission says, is very similar to the d'Hondt system but which is without the warts and has the ability to count the votes in a very, very short time.

I think it is important to recognise that, in making this recommendation, the Electoral Commission also suggested that they would want to make some very minor modifications to ensure that people's votes would be deemed to be counted, even though they did not mark all squares on the ballot-paper. I think that would be an important modification. One of the good things that came out of the last election under the d'Hondt system, for those who were scrutineering, was that people who had put only a single

mark on the ballot-paper had put in a valid vote; when there was no doubt about the intention of their vote it was counted. It is very important that votes like that should be counted.

With that in mind, Madam Temporary Deputy Speaker, I suggest that this Assembly call on the Federal Parliament to discard the discredited d'Hondt system and provide the Senate electoral system for the 1992 ACT Legislative Assembly election, as recommended by the Australian Electoral Commission. I say "as recommended by the Australian Electoral Commission" because that includes that minor modification that they talk about. The Federal Parliament has time to implement it. I believe that the Australian Electoral Commission, which has responsibility for carrying on the work, would be delighted with us taking up their recommendation. Any argument that we are getting too close to be able to facilitate this would not hold any water. Madam Temporary Deputy Speaker and members, I commend this matter to you.

MR STEFANIAK (3.37): I think this is a very interesting discussion. Unfortunately for Mr Moore and perhaps this Assembly if it were minded to do anything, I doubt that anyone would take any notice at this late stage. But, speaking personally, I think the Senate electoral system for a 17-member electorate is accepted and understood by the vast majority of people in the Territory and Australia. Indeed, the modified d'Hondt system is very similar in many ways to the Senate electoral system. If we were to have 17 members at large representing Canberra, I personally think the Senate electoral system would be the best one for it, rather than some other system which is used overseas and which certainly caused a number of problems last time round and which no doubt will again.

I tend to think the electoral office was perhaps a bit slow, maybe deliberately, in counting the vote, to show what a problem the modified d'Hondt system was. Apart from next time, we will not have it again.

I think there is a lot of merit in Mr Moore's discussion, and I privately would support that type of system, as I always have. Speaking personally, I wonder whether we could put a Robson rotation in that or even in the modified d'Hondt system, which I would love to see this time round. I might get back next time if that were the case. I might get back anyway, the way this Government is going. Who knows?

Mr Wood: Oh, no; come on! That is our line.

MR STEFANIAK: You are probably right, Willie. Even if you screw up monumentally as a government, No. 3 looks pretty safe for Labor. I think it is a pity too that, concurrent with the 15 February election, we will have a referendum to pick what system we have. It probably would have been much

more preferable if all the problems associated with that had been overcome earlier and if the referendum had been held at the end of last year, so that we would know what our permanent system is the second time around.

I think it is somewhat ludicrous that we have to go through the same modified d'Hondt system for another three years and then, in 1995, end up with what probably will be our permanent system. That, to me, really is quite crazy. I think the delays that were caused are not something that anyone in Federal Parliament can necessarily be proud of. Because under the self-government Act Federal Parliament still has power to decide, the decision should have been made promptly in 1990. I agree that it should have been done by referendum.

We should be going into the 1992 election knowing that we have either single-member electorates or the Hare-Clark system. Those are probably the two most appropriate systems for the ACT out of all possible systems. I would say, however, that, if you do want 17 or whatever number of members to represent Canberra at large, the Senate electoral system is the fairest one that you can have. I think it is better than the modified d'Hondt system, despite the various amendments that have been made to make that fair.

When one talks about this matter, Madam Temporary Deputy Speaker, I suppose it is quite relevant to look at reality and what exactly people will be voting for in February 1992 in terms of systems. On the one hand, single-member electorates are common in lower houses throughout Australia. It is interesting to note that most Australian parliaments have upper houses which are elected by some form of proportional representation on a Senate type of system or indeed one that is perhaps more akin to the Hare-Clark system. I think it is relevant in this debate to look at those two systems.

Canberra is an interesting place in that it is difficult to divide it into 17 distinct demographic areas. It is a city-State. I think single-member electorates might be more relevant if the ACT included large rural areas and perhaps took in most of south-eastern New South Wales; there would be a lot more force then for single-member electorates. As I asked David Wedgwood, one of your colleagues and also a Labor candidate in the forthcoming election, at the debate at the university several weeks ago: What would be the difference between the electorates of Stromlo and Arawang? Stromlo would include Duffy, Holder, Rivett, Stirling and Chapman and Arawang would include Waramanga, Weston, Lyons and Curtin. What is the difference between Weston and Waramanga, for example, and Stirling, Duffy and Holder?

Canberra does have some distinct demographic entities and features. They are based around the town centre concept. We have inner Canberra, the north and south sides; we have Belconnen; we will eventually have Gungahlin; and we have

Woden, Weston Creek and Tuggeranong. So, there is old Canberra, the three southern areas and the two northern areas; that is, six distinct entities. I think no-one here would dispute the fact that we need at least 17 members in this Assembly; that is a reasonable number. It is very difficult to get 17 distinct, logical groupings. We have six, but we do not have 17.

The Hare-Clark system is inherently fair. It is used successfully in Tasmania; funnily enough, it is also used in Ireland. Tasmania is not that much bigger than the ACT; its population is about 450,000. It has five electorates federally, and its State Parliament has 35 members of the lower house, based on the Hare-Clark system and having seven members in each of the Federal electorates. It is a system that works well there; it is certainly inherently fair. It does take into account the more significant minor parties and Independents, who at least can get a reasonable proportion of the vote.

The proposed scheme for Canberra would provide for one large electorate with seven members, which means that you would need about 12.5 per cent of the vote to get in, and two smaller ones with five members each, in which you would need about 16.5 per cent of the vote to get in. Based on first preference votes in the last Assembly election, the two major parties would certainly have got people in, in the large electorate, but only the Labor Party would have done so in the two smaller electorates. With preferences being distributed, I think only three parties would have got people in, in the two smaller electorates, and perhaps four parties would have people in, in the larger electorate of seven members. So, the argument that a lot of ratbag minority groups would be elected does not really apply when one looks at the Hare-Clark system, yet it does properly cater for Independents.

It also gets around the problem which, although the Labor Party says that it will not happen, will, and that is that, on current trends, they would be most likely to be elected in virtually all of the 17 seats. Look at what happens in the Northern Territory. There you have, I think, 25 seats now; but that parliament was established in 1978, and it is only now, some 13 or 14 years later, that the Labor Party is up to about 9 or 10 of those 25 seats. That is not necessarily a terribly satisfactory position for the Labor Party to be in up there.

Similarly, I do not think it would be a terribly satisfactory position for the Liberal Party or other parties in Canberra if the Labor Party were in the position of the Country-Liberal Party in the Northern Territory. One party holding virtually all the seats in a parliament is not desirable. A responsible No. 1 party should realise that it does need an opposition. I know that the Labor Party mouths that in its campaign for single-member electorates, but I wonder whether some of the apparatchiks really believe it. I am fairly hopeful that with this

referendum the Hare-Clark system will get up, because I have talked to a large number of ordinary members of the Labor Party and Labor supporters who prefer it as they see that it is inherently fairer than single-member electorates.

I stress that I think those two electoral systems are the appropriate ones between which a choice should be made within the ACT because they are readily understandable by the citizens of the ACT. But, when one does look at all the various equations in relation to both those electoral systems, I think the one which is fairer for the ACT, which would provide the best and fairest representation and which would best enable this little parliament to work properly would be the Hare-Clark system.

I would hate to see 16 or 17 Labor members breaking off into their factions and having open faction fights; you manage to keep it behind closed doors, which is to your credit. But I think having one faction that loses out becoming the effective opposition is not a terribly satisfactory situation. It is much better to have some other completely different grouping of people, be it the second party or the second party plus a couple of Independents or other parties, as the actual opposition.

So, in this discussion I think it is very important to look at what actually will be happening in February 1992. Michael, I would be delighted to get the Robson rotation in beforehand in any form, but I doubt it. I would personally prefer the Senate electoral system rather than the d'Hondt system, but I do not think the Federal Parliament is going to give us any joy there. We should have picked our proper electoral system earlier rather than have to wait for the referendum, but so be it - it is too late now; it is like crying over spilt milk. One looks forward with interest to what the ACT population will do with the referendum because either of the two systems is certainly preferable to the d'Hondt system, which I suppose has worked after a fashion but which, in many respects, has been discredited.

It is an interesting matter of public importance, and it is very relevant, especially when one considers the 15 February referendum, because that is one of the most relevant things that are going to happen to this Territory; it is going to set the format for this Assembly for decades to come.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.50): Madam Temporary Deputy Speaker, I am not impressed with Mr Moore's arguments. He stood up and claimed that, because the Commonwealth Electoral Commission argued in a submission to a Federal parliamentary inquiry that the Senate system be employed at the next election, that is sufficient ground so to do. The d'Hondt system certainly has been discredited, and the major factor for that discrediting is the sabotaging of that last election count

by the Electoral Commission. They did not like it when it was introduced. They said so often, and during the count they set out to prove their point. Admittedly, they were given, especially via the modifications, a difficult system; there is no question about that. But that count did not have to go on as long as it did.

Mr Moore commented that his wife had worked there and that the electoral officers whom she saw worked very hard. I know that that is the case, but I do not think they were required to work any overtime; they did not work at weekends; there were a number of holidays intervening in that period, and they were not rostered on for those. The fact is that the count went at about half the pace that it could have done.

Mr Duby: It is like Gallipoli - the soldiers did a good job, but the generals stuffed it up.

MR WOOD: I think that is a very accurate statement, Mr Duby, and they stuffed it up deliberately. So, I am not at all convinced by any recommendation of the Electoral Commission.

Mr Moore: Will they not do the same again?

MR WOOD: Will they not do the same again? I am concerned about that, yes. Since they have the responsibility in the forthcoming election, I hope that they do not do the same thing again.

Mr Moore did not really explain why he wanted the Senate system. He gave the d'Hondt system a fair shake - that is not difficult to do - but he did not particularly promote the Senate system. I was sitting here waiting for Mr Moore to tell us how the count is to go. The Senate count is no less complex than the d'Hondt count. The Senate count as applied to the ACT ballot would probably take as long as the d'Hondt count, especially as it has to fill 17 positions. I do not know that there is any advantage, in terms of time, in opting for the Senate system.

There certainly is one advantage, which Mr Moore failed to suggest, and that is that there is no cut-out point in the Senate count; you do not have to claw across that critical 5.6, or whatever, per cent. So, for Mr Moore, the Senate count would be a distinct advantage, and I suggest that this is the only reason that he has been promoting the Senate system.

The reference in the MPI is just a piece of political grandstanding because we all know that now it is too late to change the system that is to be used for the next election. If Mr Moore was serious, he could have proposed this at any time during the year, when there was some hope that influence could be brought to bear on the Federal Parliament. At this stage, it is clearly too late. I would point out to Mr Moore that a committee of this

Assembly and the Federal parliamentary committee to which the Electoral Commission had been responding recommended that a referendum be held to choose between single members and Hare-Clark.

I might mention another failure on the part of Mr Moore, and that is that, while it is a fact that the Chief Minister and the Leader of the Opposition have each vowed to respect the views of the citizens, whatever they say in this referendum, and to introduce a system that they may not prefer themselves, Mr Moore, though he had the opportunity, made no reference in his speech to that matter.

No-one else whom I have heard, other than the Electoral Commission and now Mr Moore, has ever suggested that we use that Senate system. I simply do not see any validity at all in this argument. It simply is one that advantages Mr Moore, and that is the reason for it. There are enough proposals for electoral systems - voting on this occasion under the d'Hondt system and then having to decide between single-member electorates and Hare-Clark - for us not to have any other systems thrown into the ring to add further confusion to what already is a pretty confused situation.

While I have some time available I would refute, not that it needs it, the spurious arguments of Mr Stefaniak and, on other occasions, Mr Humphries and the other Liberals, who try to run the claim that Labor would win all 17 seats in an election under the single-member system. It would be some reflection of what the Liberals are feeling, when they do their doorknocking, about the standing of Labor in this Territory; obviously, they are getting quite a deal of feedback that is supportive of the Labor Party. But, if one looks at votes at both Federal and local elections over the years, it is very hard to sustain that point of view. I have no doubt that the Labor Party will do very well, thank you; but I am not so optimistic as to think we could win up to 17 seats, even as high as 14 or so, as some people claim. One noted commentator said recently in a newspaper article that that would happen.

A clear pattern over the years, going back to the 1920s, I think, when you compare the results of local elections with those of Federal elections is that there is a very, very big difference. In my local election area in Lyneham and O'Connor, some of the best booths for Labor in Canberra at any time, I think the best vote that we obtained in the last Assembly election was 32 per cent. As one who has seen this situation before, I know that for a candidate to progress beyond that 32 per cent, to get 50 per cent plus one vote, there is a very, very long way to go. We are confident, but we are not convinced by the arguments of Messrs Humphries and Stefaniak. When the election comes, we will do well enough, thank you, and we will do well enough under any system.

MR HUMPHRIES (3.58): We have done the full turn now, Madam Temporary Deputy Speaker. There was a time when the Labor Party was very happy to portray the Liberal Party and probably also the others on this side of the house as the great friends of the d'Hondt system, the ones who held the d'Hondt system to our breast and secretly coveted its reassuring certainty of creating many non-Labor seats. I recall Mr Berry's accusation that I was a lover of the Hill amendment or something of that kind. It now turns out, apparently, that the real friend of the d'Hondt system - the "discredited d'Hondt" system, as this MPI refers to it - is the Labor Party. It is the party that is prepared to defend it in this Assembly.

Mr Kaine: I always said that they were the most conservative party in the Assembly.

MR HUMPHRIES: Indeed. The most conservative party in the Assembly apparently wants to keep things just the way they are, with the nice, satisfying d'Hondt system with its nice, protective 5.55 per cent threshold. I have to say, Madam Temporary Deputy Speaker, that I can well understand their caution, their conservatism, in this matter. They are facing a very difficult election; it is going to be a very, very tough election. Having taken government back prematurely, they are facing all sorts of problems. They are facing tremendous difficulties, and they know that they are going to miss out on many of the votes that they would have expected if they had not taken back government when they did. Nonetheless, that is their problem.

Mr Duby: Stolen.

MR HUMPHRIES: "Stolen", yes, is a much better word. They stole back government. But that is not a problem that I am going to mention today.

Mr Duby: They bought it with a bouncing cheque.

MR HUMPHRIES: Yes, I approve of that terminology. Labor bought government back with a bouncing cheque and are now caught holding the goods.

Mr Duby: Just ask the Rally.

MR HUMPHRIES: Indeed. Madam Temporary Deputy Speaker, I remind the Assembly, as if anyone would have forgotten, that the Labor Party introduced the whole concept of d'Hondt not only to this Assembly but also to this country in 1988. It was a relatively clever device that was introduced by the then Minister for Territories, Gary Punch, to break a longstanding deadlock.

I can recall meeting, in my capacity as the then president of the Liberal Party in the ACT, with the then president of the Labor Party in the ACT, one R. Follett, to discuss the question of what we could do to break the deadlock about self-government. Ms Follett was happy to discuss with me

the prospect of what electoral system we could choose which would overcome the difficulties associated with the proposals in 1986, I think it was, that had been sunk by the Democrats at that time. At that stage there was considerable difficulty with what system we would choose.

Labor was adamant about one thing, and that was that there would not be any system which did not include at least some single-member electorates. There must be some single-member electorates, I was told then by the then president of the ALP. Only a few months later we discovered that the Federal Labor Minister for Territories was quite happy to introduce into the Territory a system which did not include single-member electorates because of his desire to break the deadlock and give the ACT self-government.

The pros and cons for that having happened is a matter of history, and I will not comment on that; but I will remind the Assembly that the choice of the d'Hondt system was a very deliberate one taken by the then Federal Government to provide the Territory with self-government. It was a system which was not favoured by the Liberal Party at that time and, if the rhetoric is to be believed, not favoured by the ALP but which was still introduced by the Federal Labor Government with the acquiescence of the Territory Labor Party and which apparently, even today, holds some sway; apparently, even today, the local Labor Party would prefer the d'Hondt system to some of the alternatives.

Mr Kaine: They would certainly rather see that than single-member electorates.

MR HUMPHRIES: Absolutely. They would rather it than that, I think. Madam Temporary Deputy Speaker, there is a very strong argument for a better system than d'Hondt. Clearly, the Senate system has been used across this country; it has been used by every State and Territory; it is understood by the citizens of every State and Territory, at least as far as they need to know how to operate the system. I have to ask myself: What is the reluctance on the part of the ALP? What are they afraid of? Of course, as Mr Kaine intimates, they are afraid of change.

We have heard again from the Minister for Education that the idea that Labor would win all the seats under a single-member electorate system is false; it is a myth; really, they would not have any chance of winning all the seats; they would do very well, but they certainly would not win all the seats.

Mr Berry: It would be good for Canberra if we won them all.

MR HUMPHRIES: This is not really a matter which ought to be the subject of conjecture and debate. It is possible to prove this quite conclusively one way or the other. There have been a large number of elections in which the citizens of the Territory have participated over the last 10 years - a very large number of elections - and I throw down a

challenge to members of the Australian Labor Party in this place or elsewhere: If you are so sure that you would not win an election on those sorts of boundaries, I challenge you to draw your own boundaries - I understand that you have done that already - and then apply them to any election result in the last 10 years.

There has been one attempt to do that, I concede, by the ALP. Senator McMullan is purported to have drawn boundaries and then worked out what the result would be, based on single-member electorates, using the figures from the last ACT election, the 1989 one. We have tried to do the same thing, but we have not got anywhere with it. The simple reason is that you cannot make any hypothesis based on those figures because the information about the flow of preferences is not available. People did not cast preferences, and their preferences were not recorded in the way that they would be if we had single-member electorates. We cannot, therefore, factor that kind of result into those kinds of boundaries. We have tried, but we cannot do it.

Senator McMullan, I notice, argues that it would produce a large number of Residents Rally seats, using the 1989 results. I find it incredible that the Australian Labor Party would seriously advocate a system which they believe would consistently result in a large number of Residents Rally seats in the Territory. It is pretty hard to believe.

Mr Kaine: Heaven forbid; Bernard could be Chief Minister!

MR HUMPHRIES: It could result in Mr Collaery being Chief Minister of the Territory. I refrain from commenting on that, but I find it very hard to accept that the Australian Labor Party would seriously put that forward as a suggestion to the citizens of the Territory.

Madam Temporary Deputy Speaker, we all know that the 1989 result was highly atypical; that any other result in the last 10 years, either territorial or Federal, would be a much better template to use in assessing what the result might be under single-member electorates. Again, I invite those opposite to use any of those elections that they choose - any one at all; I do not mind which one it is - draw your single-member electorates and see what result you get. I guarantee you that you would win at least 15 of the 17 seats on each of those occasions. You might not get 15 to 17 with the 1975 or 1977 Federal election results. You would possibly get a different result there, but that was more than 10 years ago anyway, so it does not count. I guarantee you that with any result in the last 10 years you will not get single-member electorates to produce anything other than a clean sweep for Labor.

Mr Berry said - I think it is very good to have this on the record - in an aside in this debate, that it would be good for the Territory if Labor were to win all the seats in an election. That typifies the sort of attitude that we get

from the ALP. The sort of parliament in which there is no opposition, no-one to challenge their decisions, is just the sort of Territory parliament that this Government would like.

Mr Kaine: What you would get then is an opposition led by Terry Connolly.

MR HUMPHRIES: Indeed one might, Mr Opposition Leader, or Chief Minister or whatever Mr Berry calls you. It may well be that we would have Mr Connolly sitting over here where the present Leader of the Opposition sits and the Chief Minister over there.

Mr Duby: Yes, with the single Liberal on the crossbenches.

MR HUMPHRIES: It could be. Let us not get too close to the bone, Mr Duby; but it could well be, Madam Temporary Deputy Speaker. I, for one, reject that scenario, because I believe that this Territory needs an opposition, whatever government is in power; and it needs a balanced electoral system, which it would not have under single-member electorates. I think we all know what Labor is trying to hide, and I would certainly urge - - -

MADAM TEMPORARY DEPUTY SPEAKER (Mrs Grassby): Order! Your time has expired, Mr Humphries.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.09): The Labor Party can smell a stunt coming on here; we can smell a motion coming on about electoral systems, as a careful little dodge, to make it appear as though the Labor Party is a supporter of the d'Hondt system. We are not; we have always said that it is a silly system. What Mr Wood said, however, was that this is a stunt. It is clear that the time for a change in the electoral system for the February election has long passed. This is a waste of the Assembly's time, when we could be getting on with government business.

However, to make the position abundantly clear, on behalf of my party colleagues let me say that if you want to have a vote on this - we hope that we will not redebate it for another hour - we might have unanimity, because we all think the d'Hondt system is silly, and we will all back you in a vote. There can be no suggestion that Labor is an apologist for, or supporter of, or otherwise enthusiastic about the d'Hondt electoral system; any attempt to run that line out there will be greeted with ridicule. So, having got that clear, your attempted political stunt fails, and let us get on with business.

DR KINLOCH (4.10): It has been delightful to have this chat, and it was good of Mr Moore to initiate it. We all recognise that it is too late in the day; still, we have this delightful, quiet time in the afternoon to make these few comments.

I would draw everyone's attention to tables 7.1 and 7.2 in the report of the inquiry into the ACT election and electoral system. Table 7.1 shows the advantages of various systems. The Hare-Clark system gets a great deal of support; it is not at all attacked anywhere in table 7.2 - that is, no party, not even the Labor Party, attacks the Hare-Clark system. I am very pleased to have it on the record that the Labor Party does not oppose the Hare-Clark system. Is it not interesting that the Labor Party does not oppose the Hare-Clark system, as shown in table 7.2?

According to table 7.1, one other system that is not opposed by the Labor Party - I am intrigued by this - is the approval system. While we are talking about these matters, I think the approval system that is described in this booklet is very good, and I am very glad that the Labor Party has not opposed it. The approval system that was put up by Mr Lyall Gillespie, I take it, treats Canberra as a whole electorate, with 17 members; with this system each voter can vote for the 17 candidates whom they prefer; the 17 highest polling candidates are elected. I bet that if you put that system, among all these other systems, to the people of Canberra, it would seem the simplest, easiest and most direct.

Mr Kaine: That is the one that we used for the old House of Assembly.

DR KINLOCH: It is an excellent system. Of course, it would devastate the plans of the Labor Party for single-member electorates. However, I have to stress that, according to table 7.2, the Labor Party does not oppose the Gillespie approval system. So, I would like to suggest, along with Mr Moore's suggestion of using the Senate system - we are, after all, only chatting - that the approval system ought to be given another look and very formidable approval.

MR DUBY (4.13): This has proved to be an interesting discussion. There is no question that it is a matter of public importance; which form of electoral system will be used in the coming election is very important because certain people's futures depend upon it. That has become abundantly clear from what the various speakers have had to say.

At the outset, let me say that the modified, remodified, demodified d'Hondt system that is currently to be used in the 15 February election does not have my support. It clearly is a deficient system and will take a very great length of time to count. However, I also have grave doubts as to why Mr Moore, with his mentor, the learned psephologist Mr Malcolm Mackerras, would be trying to have

the members of the Senate and the House of Representatives change the legislation to have a Senate election system in place. One does not have to go too far to work out why. As was alluded to by Mr Wood, the simple fact is that the Senate system does not have that automatic hurdle of one-eighteenth of the valid vote being required before you are eligible to win a seat.

We have all heard of the famous story from New South Wales of a person - I cannot remember the gentleman's name, but I believe that he was an Independent Green or something along those lines - who was elected to the Senate some years ago with a primary vote of 1.5 per cent. A number of preferences flowed to him from a whole cacophony of other also-rans who got less than 1.5 per cent, and eventually he managed to sneak up and get over the quota.

Mr Humphries: Robert Wood was his name.

MR DUBY: He was Robert Wood, I am informed by Mr Humphries. He was able eventually to obtain a quota and become a senator, if only for a brief time.

It is not hard to see why Mr Moore, in particular, would be very, very concerned about running an election campaign which requires you to obtain 5.56 per cent of the vote on the first round. We all know - I am quietly confident and prepared to have a wager with Mr Moore now - that he will not achieve that quota. But he might have a measure of success under a Senate system, as would a whole lot of other players.

It is not just Mr Moore's interests that are being served by this debate; it is also the interests of the Labor Party. They are opposed to the introduction of a change from the d'Hondt system because they see just that - change. They are hoping that in the 15 February election there will be a series of minor parties which, in effect, will savage each other, with the result that none of them will achieve that magic 5.56 per cent vote. That would be a real tragedy for the Territory as well.

At the last count, I think there are going to be something like 10 minor parties. We have the Residents Rally, the Democrats, the Hare-Clark Independence Party, the Canberra Party, the Canberra Unity Party, the New Conservative party and the Harold Hird party. Listen to the names that are coming out of the woodwork. They go on and on. If each of them was to achieve, for example, only 4 or 5 per cent of the vote, none of them would have a candidate elected, no matter where their preferences flowed, and, as a result, the field would be left open to the two major parties, Labor and Liberal.

Dr Kinloch: Two of the three major parties.

MR DUBY: If you want to get into bed and call yourself a major party, feel free, Dr Kinloch, because they would have scorn heaped upon them by most thinking people. As a result, we would wind up with nothing but the two old guard parties left in this Assembly, and that would be a real shame for the ACT electorate. That is what the Labor Party is hoping for.

If that were to happen, it would mean that the Labor Party might well pull - let us pick a figure - 35 per cent or 30 per cent of the valid vote but still wind up electing nine, 10 or even 11 if they have them - do they have 11 candidates? I cannot remember - members elected. The Liberal Party, with an abysmal showing of 20 to 25 per cent of the vote, would probably wind up getting six or seven members elected. That would suit the major parties entirely. I am pleased to see that Mr Humphries and Mr Stefaniak are taking the big picture approach and supporting the change from the d'Hondt system when it probably is, in all honesty, to the disadvantage of their party to do so. I commend the Liberal Party for doing that.

The debate is then switched onto the coming referendum. We have heard the protagonists for and against both the single-member and Hare-Clark systems. I shall not get into that debate because, as a representative of the Hare-Clark Independence Party, I think it is fairly apparent which way I would go. I just suggest that, of all people, they could not have picked a worse person than Mr Wood to argue the point for single-member electorates because Mr Wood, as you know, is non-factioned. It means that if there were single-member electorates Mr Wood would not be in this Assembly because he would not have the numbers to control a branch and as a result he would not get the nomination from a branch for a seat.

It would be interesting to see what would happen under those circumstances: We would wind up with a parliament of 17, as has been suggested already, with perhaps 11 or 12 from the Left and maybe five or six from the Right. People like Mr Wood, who may represent a faction that is different from the two majors, would be left out in the cold. I would not be at all surprised if, when people like Bill Wood and other like-minded members of the Labor Party cast their vote in the referendum on 15 February, the party coordinators, such as Mr Berry, insist that a scrutineer go into the box with them to make sure that they do cast a vote for single-member electorates and follow the party line.

Mr Connolly: On a point of order: Mr Duby would be aware that he is suggesting that the Deputy Chief Minister would in some way breach the Commonwealth Electoral Act in respect of electoral referendum voting. It is a really appalling suggestion to make.

MR DUBY: I withdraw any such accusation or imputation. But I can well imagine the dreams at night with Mr Berry saying, "If but I could"; that may well be the way it should go. That would be very interesting, as I said, and I wonder how many of the party faithful who do not come from those two factions will rat on the party. All in all, I think this is a matter of interest; I do not know whether it is a matter of importance.

The fact remains that, no matter what this Assembly does, the Federal Parliament is locked into a battle between the two parties. They would not agree to bring in the Senate system, for various reasons - primarily because, in my view, they can see the facts, just as Mr Moore and the great psephologist himself can see, that a Senate system would definitely provide non-party people with the possibility of getting into this Assembly, and that would not be in the interests of the major parties. But I guess I would call on them to do so. I would like members to know that as I was coming into the Assembly this afternoon I met Mr Mackerras in the foyer.

Mr Berry: He did not say that you are going to win, did he? Did he say that you were going to get up? You are in trouble.

MR DUBY: I am very, very disturbed. Mr Berry is alluding to what I am about to come to. Mr Mackerras asked my view on how the referendum would go. I said, "Well, contrary to what a lot of people around town feel, I think it is going to be a close referendum on the electoral issue; but in the long term I feel that the Hare-Clark system will win but not by a great margin". Mr Mackerras upset me - he made me visibly go white - by saying "The Hare-Clark system will win in a landslide". I am worried, ladies and gentlemen, because, whilst Mr Mackerras may well be good on clocks and pendulums, my goodness gracious he cannot tell which way the pendulum will swing, worse luck, and he has invariably got it wrong. So, I hope he changes his opinion. I would love to hear him go public saying, "Single-member electorates will win hands down". I would certainly sleep a lot better at night if he were to do that.

MR BERRY (Minister for Health and Minister for Sport) (4.23): I do not intend to say much, mainly because there is not much time. This issue is not a matter of public importance; it is a matter of drivel. It is really a silly matter; it is not going to have any impact; it has wasted a whole hour of the Assembly's time when we could have been dealing with government business. It is not going to change a thing - it will not change a thing on the hill; it will not change a vote. It will not do anything; I think it is a pointless exercise. But I have to say that, if it becomes a motion, I will move an amendment that includes in it the provision of single-member electorates, because that is the only way to go.

As Mr Humphries said, I said that if single-member electorates got up it would be good for Canberra. A win in all 17 seats, impossible as it is, would be better for Canberra than the system which elected the people in this Assembly. I do not wish to offend anybody, but I could run through a list of people who would not be elected under a single-member electorate system, and that would please the people of the ACT no end.

I think this is a waste of time. I do not think it ought to be considered in the form of a motion, but if it is put in that form I will be moving an amendment to it because it is obviously silly to suggest that there ought to be a Senate electoral system. It will never happen; it is a crazy motion; it ought not to have been brought before this house. It does Mr Moore no good; in fact, it discredits him to bring this matter before this Assembly. I think it is a silly thing to do, and I just do not see any positive outcome from it.

In my view, now the way forward for this Assembly is that it has been set in concrete, as far as can be made out, that there will be a referendum. Whether or not single-member electorates are decided upon is another matter. We feel confident that they will get up because we feel that the thinking people of the ACT will go for an electoral system which is best for them and the ACT. They will not support an electoral system that will allow fringe dwellers to be elected again. After all, that is why the fringe dwellers of this Assembly support the Hare-Clark system. No greater support has been given to that than has been given by the greatest fringe dweller of all, Craig Duby, by naming his own party after it.

The Labor Party supports a system of local-member electorates in which people would have access to their local members. There will, I am confident, be a system of local-member electorates after the next election, and they will have one Labor person in each of them because Labor has satisfied the interests of the people of the ACT. Labor is the only party that is able to develop policies which are consistent with the social needs of the Territory; it is the only party which will develop policies to which it will adhere; it is the only party which develops the sorts of policies which the people of the ACT want and will vote for. People voted for the Labor Party because of its commitment to education and health and all of those important social benefits.

MADAM TEMPORARY DEPUTY SPEAKER: Order! The time for this discussion has expired.

ELECTORAL SYSTEM
Motion

MR MOORE (4.26): Madam Temporary Deputy Speaker, I seek leave to move the motion in the same wording, and I foreshadow that I will then immediately move that the motion be put.

Leave not granted.

MR MOORE: Madam Temporary Deputy Speaker, I move:

> That so much of standing and temporary orders be suspended as would prevent - - -

Mr Wood: Come on, let us not go down these paths.

MR MOORE: Why did you fail to give leave?

Mr Connolly: We offered to do this half an hour ago.

MR MOORE: It will take no time. I indicated that I would move the motion. I made it quite clear that I would move that the motion be put straightaway, so it will take no further time. Do I have leave?

Mr Berry: No.

MR MOORE: I move:

> That so much of standing and temporary orders be suspended as would prevent Mr Moore from moving a motion.

I move:

> That the question be now put.

Question resolved in the affirmative.

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

MR MOORE (4.28): I move:

> That this Assembly calls on the Federal Parliament to discard the discredited d'Hondt and to provide the Senate electoral system for the 1992 ACT Legislative Assembly elections as recommended by the Australian Electoral Commission to the Electoral Matters Committee of the Federal Parliament.

Madam Temporary Deputy Speaker, do you want me to move that the question be now put?

MR BERRY (Minister for Health and Minister for Sport) (4.29): No, I move the following amendment, which is about to be circulated in my name:

> Omit "the Senate", substitute "a single member".

The motion will then read:

> That this Assembly calls on the Federal Parliament to discard the discredited d'Hondt system and to provide a single member electoral system for the 1992 ACT Legislative Assembly elections as recommended by the Australian Electoral Commission - - -

Mr Moore: I move that that amendment be put - - -

MR BERRY: I am still speaking.

Mr Moore: I know. I have interrupted you.

MR BERRY: You cannot do two things. One is goaded to submit this amendment to ensure that the record shows that the Labor Party - - -

Mr Moore: On a point of order: I move that the amendment be put.

MR BERRY: Good on you; you have interrupted the speaker.

Debate interrupted.

ADJOURNMENT

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

> That the Assembly do now adjourn.

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

Question resolved in the negative.

ELECTORAL SYSTEM
Motion

Debate resumed.

Mr Moore: Now that we have dealt with the adjournment, the point of order that I raise is under standing order 70. I move: That the amendment that Mr Berry has moved be now put.

MADAM TEMPORARY DEPUTY SPEAKER: Has the Deputy Chief Minister, Mr Berry, finished speaking?

Mr Berry: No, I have not.

Mr Moore: He does not have to.

MADAM TEMPORARY DEPUTY SPEAKER: Could I have a little order, please? Can I have a little order in the house. Deputy Chief Minister, Mr Berry, please?

Mr Berry: I think Mr Moore is probably right.

Mr Moore: Point of order - - -

MADAM TEMPORARY DEPUTY SPEAKER: I am sorry, Mr Moore; I do not have to accept it, if you read standing order 70**.**

MR BERRY: It appears that he is probably wrong. In that case, Madam Temporary Deputy Speaker, I will not take any more than a couple of minutes. The issue that is before the place is a silly motion - - -

Mr Moore: On a point of order: Are you telling me that moving the gag now is an abuse of the standing orders?

MR BERRY: While I was speaking.

MADAM TEMPORARY DEPUTY SPEAKER: Would you like to read standing order 70 on closure.

Mr Moore: The only way the Speaker has power to override that is "that such motion is an abuse of the rules of the Assembly, or an infringement of Members' rights". There is no infringement of rights or abuse of the rules. Could you clarify them for me, Madam Temporary Deputy Speaker?

MADAM TEMPORARY DEPUTY SPEAKER: He has not finished speaking to his amendment.

Mr Kaine: He does not have to. A gag can be put at any time.

MADAM TEMPORARY DEPUTY SPEAKER: I am proposing to let him finish speaking to his amendment. Can I have a bit of order in the house, please, so that Mr Berry can finish speaking to his amendment.

MR BERRY: It will take only a minute. This is a silly motion. It has no effect. The Labor Party has moved to amend this motion to give it some sense, so that it will reflect a position and ensure that the record shows that the Labor Party is in support of single-member electorates - nothing more than that. I do not expect that it will survive a vote in this house. That is to be expected; but the survival rate, I think, is about the same as that of many of the members of this Assembly at the next election.

Amendment negatived.

Original question resolved in the affirmative.

Mr Moore: On a point of order, Mr Speaker: Is there a way within the standing orders in which we could point out that that motion was passed without dissent?

Mr Connolly: You just have; it is in the *Hansard*.

LAND (PLANNING AND ENVIRONMENT) BILL 1991

[COGNATE MOTION, BILL AND REPORT:

PROPOSED ENVIRONMENTAL ADVISORY COUNCIL
HERITAGE OBJECTS BILL 1991
PLANNING, DEVELOPMENT AND INFRASTRUCTURE AND CONSERVATION, HERITAGE AND ENVIRONMENT - STANDING COMMITTEES - JOINT REPORT ON PLANNING LEGISLATION]

Debate resumed.

MRS NOLAN (4.34): Mr Speaker, when Mr Wood introduced this historic legislation for the ACT community into the Assembly on 19 September, he stated that it is the most far-reaching package of legislation that has come before the Assembly so far. I must agree with him. While it has been a long time coming, it is important that it be right, as it will guide our city's growth and development and preserve our heritage for a long time to come.

As a member of the joint committees that reported on this legislation in April this year, I spent considerable time perusing, discussing and debating the legislation. Legislation of this significance will need extensive promotion in the community, and this must be done before the commencement date, which I understand may be in April next year. That was the date that the Minister indicated to me this morning as the likely commencement date of this legislation.

Mr Wood: We still want July. We would still like July.

MRS NOLAN: It is still 1 July. A major concern expressed by many in the community constantly is that legislation is often passed without the community being aware of the impact that legislation may have or when the commencement of the new legislation will be. I would like to take this opportunity to urge that better information regarding the commencement date of all legislation be given by the Government to the community. I will, however, elaborate on that aspect of passing legislation at another time.

Mr Speaker, for this Assembly to pass this legislation and then see the enactment actually take place immediately could abrogate its significance, even though many urge it to be done fairly quickly. The draft Territory Plan should be finalised, in my view, at approximately the same time. I must also, at this juncture, commend the Minister for allowing a longer consultative period regarding the draft Territory Plan, and I am sure many in the community are also appreciative of the longer timeframe. I will return to the discussion regarding the plan a little later. Mr Speaker, I recall during the committees' deliberations much discussion regarding the size of a planning advisory committee and requests for minutes of meetings, among other issues. I must say that the removal of that body is a laudable move.

Balanced legislation ensuring the interests of all in our community is no easy task. The new legislation will be a huge improvement on the array of comparable legislation currently here in the ACT, in the States and in the Northern Territory; but, of course, the States and the Northern Territory also have the third or council tier of government to contend with.

Mr Speaker, most of us in this Assembly have already had fairly close involvement with the legislation. It has been looked at by the present and the two previous Cabinets and by a committee which consisted of, I think, seven members. A quick addition of numbers would indicate that that does not exclude too many in a chamber of only 17.

I continue to support the views I expressed in the committees' report. In particular, I must mention the section of the report on the renewal of residential and commercial leases. But I am also a realist and recognise the numbers in this chamber. I support the statement made by CARD - or the Business Council, as it is now known - to the committees that the matter of revenue should be addressed by betterment, land taxes, rates and stamp duty and not by the expropriation of property.

I would now like to refer to the draft Territory Plan, particularly those areas identified as investigation areas. I would urge the Minister to address these areas. Much has been said; but, with the Territory Plan finally in place, much more certainly would be established. It appears to me, however, that the reverse has happened, particularly regarding the investigation areas. The Canberra community feels very strongly about the removal of green space, and rightly so. More and more resident groups are forming to fight for their green space. I am surprised that many in this chamber are just not listening to the community. The community want to retain their green space. That is really what stands our city head and shoulders over many other cities in Australia and the world. What does the community have to do to get that view across?

Just over two weeks ago I attended a meeting where 100 South Arawang residents formed a residents group to ensure that the proposed investigation area near Mount Arawang will be retained. Last Sunday those residents invited the planners to meet with them. Officers from the Planning Authority attended a meeting comprising some 100 residents and, I am told, a meeting which also saw some 70-plus apologies recorded. Unfortunately, planning officers indicated that they would be reluctant to meet with residents if the meeting involved or gave any indication that it involved ACT politicians. Mr Wood, I urge that this issue be addressed immediately - - -

Mr Jensen: I was there.

MRS NOLAN: I know, but I am just saying that that view was put across by the planning officers. I believe that that is totally inappropriate and that that should not have been indicated to residents. I am calling on the Minister to immediately address that issue and ensure that public meetings can be attended by any member of this chamber without residents receiving any such threats.

Each of those residents made a major purchase on the basis that property backed onto open space. It is a bit like commencing a game of rugby in which the goalposts are moved halfway through the game. I support growth and development but not at the cost of the community's open space or at the expense of our city's heritage. More consideration must be given to the community's views. As long as all the issues, including transport, are considered and the majority of the community is supportive, then the green light can be given.

I believe that the investigation areas must be reviewed before the final plan is issued. Judging by the level of debate since the draft plan was released, considerable work and attention still needs to be given by the planners and by Government. Mr Speaker, I will contain my remarks until the detail stage debate of this legislation before us today, but in closing I seek the Minister's assurance that those areas designated as investigation areas on the plan will be reviewed and, as I mentioned earlier, that resident groups will be able to have a public meeting and invite any members of the Assembly without receiving the sorts of threats that are around in Canberra at the moment.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.41), in reply: Mr Speaker, I thank members for the contributions they have made to this debate. Most members have spoken. That is a reflection, as Mrs Nolan and others have said, of the importance of the legislation. All members have expressed a variety of views reflecting where they come from in the community and their political philosophies. Mr Kaine, who was first to respond after I spoke, agreed that this was landmark legislation. He claimed, of course - and I do not dispute this - some credit, since the Bill was prepared, in considerable part, when he was Chief Minister and Minister

responsible for planning. We also note - and I am sure Mr Kaine does - that the early steps were taken when the first Labor Government was in power. Today Mr Collaery, in his historical dissertation, went back to 1987 and claimed fatherhood of the Bill.

Everybody is claiming ownership of the Bill. I am quite happy about that. It suits me because I think it is a pretty clear indication that the Bill has been well and truly debated. It has been around the traps and, by this time, is fairly substantially a consensus document. I am awaiting some further proposals for amendments from the Residents Rally, and I have noted, although not yet accepted, the amendments that Mr Moore proposes to move. I recognise that some other amendments may be proposed from the floor.

This Bill has the approval of the Assembly, though some criticisms have been voiced. I will address some of the detailed points that members have raised. Mr Kaine expressed some concerns about the provision for renewal of non-residential leases. I would point out that the clause he referred to, clause 171, as tabled, very closely resembles that clause which was developed by the Alliance Government. Specifically, Mr Kaine has raised concerns in relation to paragraphs 171(a), (d), (e) and (g). I recognise not only the contribution of the Alliance Government to the development of clause 171 but also Mr Kaine's remark that his concerns do not reflect merely the ideological differences between the Government and the Liberal Party.

That said, I would address Mr Kaine's concerns in the following way. Paragraph 171(a) contains a 30-year provision. This period provides a decision making buffer in two ways. Firstly, a financier will not be discouraged from advancing funds on a conveyance of a lease because the future of that lease during the term of the security is uncertain. This concern has been raised on many occasions in recent years, and clauses 170 and 171 address that concern. Secondly, paragraph (a) allows the Government to indicate to lessees with some certainty whether a lease will be renewable, or whether it will be required for some government purpose.

Paragraph 171(d) allows the Executive to resist a lease renewal where there is presently a proposal before the Government to vary the Territory Plan and that variation would make the renewal insupportable by reason of the plan. Paragraph 171(e) enables the Government to resist a lease renewal where the lessee has failed to meet obligations referred to in regulations under the legislation, thus negating the right to a further grant. Presently there are no proposed regulations setting out obligations which apply to a lease renewal under paragraph 171(e). If any are proposed, they will be subject to disallowance by the Assembly. Paragraph 171(g) provides for the payment of a determined fee for renewal. Any such fee will be subject to review by the Assembly.

Mr Kaine has expressed reservations about the discretion afforded to the Minister under subclause 18(2). I believe that I should point out that the discretionary power to direct an assessment is consistent with the principle that assessments are directed only after consideration of, and public consultation on, a preliminary assessment. The power to direct an inquiry does not necessarily stem from a preliminary assessment and is, as specified in subclause 134(1), a discretionary power of the relevant Minister.

Therefore, the discretion in subclause 18(2) is consistent with the framework and function of the declaration of assessments and inquiries. Not only would mandatory requirements be inconsistent with the body of the Bill, but they would also lead to the preparation of expensive and time consuming processes where no environmental impacts stem from a plan variation.

Mr Moore made some rather harsh remarks about the planning legislation and, I think, overstated the situation. Mr Moore wants this legislation to be seen as a zoning system, and so maintains that it is. But in so doing he misrepresents it entirely and neglects the degree of strategic planning that continues to be fundamental to the legislation. I believe that Mr Moore commented on the draft Territory Plan, even though he only had it in his hands, rather than on the Bill. But, given the relationship between the two documents, it is appropriate to respond at this time.

Firstly, the draft plan does not reflect the elements of a traditional zoning system. It does not bestow land use rights on lessees. Those are found, as before, in the Crown lease document. So, control of land use remains with the Government. Further, for the same reason, the plan will not permit speculative or windfall gain. There is a metropolitan strategy in the National Capital Plan and in some parts of the Metropolitan Policy Plan and Metropolitan Development Plan which were not revoked. Accordingly, there certainly is an existing metropolitan strategy.

The Australian Capital Territory Planning Authority is a statutory office under the Bill. The authority is constituted by the Territory Chief Planner. The position, clearly, has statutory independence as an authority established by the Bill. In fact, the authority, in some respects, is independent of the Minister as far as statutory powers are concerned. The location of the authority within the administrative structures of the Department of the Environment, Land and Planning is merely to provide administrative support to the authority and to locate it in a department with relevant functions to assist in coordination.

To suggest any sinister motive, or that the location of the authority within DELP allows undue influence, from either land development or environmental influences, is to misunderstand the clearly independent role of the authority. I note what members are saying about the location of the authority, and I will be talking further to them.

Mr Moore raised concerns about the issue of betterment. These are concerns that the Assembly has addressed in a number of previous debates. I would just like to add that, where a lease purpose clause is varied in accordance with the plan, a lessee will be required to pay betterment in respect of that variation at a rate determined by the scale which was introduced on 22 February 1990.

Mr Moore, like others in the chamber - not too many others, I think - supports the creation of an environmental advisory council. There is a great deal I could say about that, but I will take that matter up on another occasion. Mr Moore claimed that we were going to put on another tier of government.

Mr Moore: "Bureaucracy", I believe, is the term I used.

MR WOOD: Another tier on the bureaucracy. I do not believe that we are doing this, Mr Moore. However, if some of the proposals that I have heard foreshadowed were to be incorporated in the amendments, we would certainly be adding to the bureaucracy. I think you would recognise that if we went down the path of unlimited appeals or very wide ranging appeals, which I believe are not necessary, we would have to add most substantially to the bureaucracy. So, I do not know how, in logic, Mr Moore could claim that the sensible measures in this Bill would add another tier to the bureaucracy.

Mr Humphries restated his longstanding criticism, that the Bill is complex and difficult to read. The relative complexity of the Bill is acknowledged. It deals with a number of complex issues, some of which have not been dealt with in our legislation before. The contributions of this Government and the former Alliance Government in consolidating and streamlining the Bill have already been spoken of, and I am confident that, given the nature of the subject matter, we have gone a long way in simplifying the Bill. The Government intends to issue a plain English user guide to the legislation prior to its commencement. This should assist in introducing the community to this large and comprehensive legislation package.

Mr Humphries asserted that the Bill contains too many administrative provisions. It is acknowledged that there are a large number of such provisions, but it must be accepted that this is a concession which needs to be made in order to provide clarity and certainty to the processes involved under the Bill.

Mr Humphries raised the issue of compensation for heritage listing. The Government believes that the impact of heritage listing is a matter of considerable complexity. It is not correct to assume that a heritage listing will reduce the value of a property. In many instances a property's value may well be enhanced. The legislation also provides that, where a place is proposed for listing on the Heritage Places Register, the lessee and the wider community will be given the opportunity to comment. The Government intends to review the operation of this part of the legislation and look at the compensation issue in three years' time. It certainly is one that we are not prepared simply to bypass, but I do not believe that it should hold up the progress of this Bill.

Mr Jensen today added to comments he has made during the last week or so about the difficulty of some groups in purchasing copies of the draft Territory Plan at $10 a volume. In response, I think, to a request from Mr Moore, or it may have been Mr Jensen, the Government agreed to provide copies to major groups who had shown an interest over the years in community matters or in environmental matters. I thought it was a good suggestion, and we were happy to comply with that; but I do not know how far Mr Jensen wants to extend this.

I suppose I do know how far he wants to extend it. Maybe he wants me to mail a copy to every resident of Canberra. We do have some respect for costs. The launch, the various consultations and the displays have already imposed considerable expenditure on a government which is facing financial constraints, and I believe that there is a reasonable limit that we must observe. The matter has been well publicised, and people who inquire should have no difficulty in finding out what this is about. *(Extension of time granted)*

I do not think that we can ever satisfy Mr Moore on the question of community consultation. That is not to say that the Labor Party is any less concerned about community consultation. Since long before the Residents Rally was born, Mr Collaery, as recently as 1987, the Labor Party has been very much in tune with the grassroots of the community. We have extensive links into the community. Consultation, for us, is very important.

Mr Jensen is disappointed that the proposed planning advisory committee does not appear in this Bill. He is disappointed that the Executive will not forward the planners' recommendations on the variation to the ACT Assembly's Planning Committee. I think that if we followed the paths that Mr Jensen suggested we would have a - - -

Mr Jensen: It would save you a lot of time.

MR WOOD: I cannot see that. We would have a process that would go on for ever and ever. I think there is a pattern of mind. I can understand it and in some ways respect it, given that the birth of the Rally was based very much around the conflict at Rocky Knoll. I believe that there is an inordinate suspicion about matters. But let us make this clear: I am delighted as a member of this Assembly, and as a person with close links to the community, that in all these matters it is the Assembly that ultimately is the decider of what occurs. For me, and I am sure for most of my colleagues in this place, that is the important feature. This legislation carries on and expands the tradition of openness of government. I had hoped that that would be recognised.

Mr Jensen made some comment about appeal provisions, but did not develop it. I expect that we will hear more about that matter in the detail stage. He was not happy with the detail that is not required in draft variations as they are being considered. He made comment on the need to get traffic safety issues appraised by the Department of Urban Services, and for ACTEW to advise on various matters. I think this is the same matter as he is proposing in a private member's Bill he has before the Assembly. In fact, the effect of what he proposes would be to limit consultation. The Planning Authority automatically consults other government agencies that would be affected. That consultation proceeds. It would appear that Mr Jensen wants to restrict that consultation to just two agencies. I can assure you, Mr Jensen, that consultation happens. I believe that it happens thoroughly. There is no need to write this into a Bill.

I have already commented privately to Mr Jensen, as I have in this Assembly, that I do not think that another of his suggestions - that is, that the Executive should forward the draft variations to the Planning Committee before they are agreed and before they come to the Assembly - is an appropriate course for the type of parliament that we run.

My colleagues Mr Connolly and Mrs Grassby commented favourably on the Bill. I suppose that is not surprising. I know that Mr Connolly paid very close attention to the Bill during the time he was the responsible shadow Minister. As a civil libertarian, he is only too interested to ensure openness of government. I thank them for their remarks. I think they appreciate the value of the Bill.

Mr Stefaniak raised the question of heritage referred to also by Mr Humphries, and of course admitted that there would be a philosophical difference between the Government and the Liberal Opposition on the renewal of commercial leases.

Mr Collaery gave us a very interesting historical overview to the Bill. That is what he claimed it was going to be, but it was more a history of a sort of the Residents Rally. I would have been happy to respond to Mr Collaery, but in fact he made very little comment at all about the planning legislation. I do not intend to get into historical debate about the Rally, so I will pass to the last speaker, Mrs Nolan.

Mrs Nolan also conceded that this was far-reaching and important legislation and an improvement on what we have at the present. She is concerned about the investigation areas, feeling, as we all do, very strongly about green space in Canberra, the future of Canberra and the need to protect our environment. She raised the question of a meeting at South Arawang recently. I do not know any of the details, although I did inquire just as she was finishing her speech. I understand that a meeting was called and that politicians who approached the organisers, suggesting that they would like to attend, were told, politely and pleasantly, that really at that stage the people did not want members of the Assembly or politicians there; that it was a community meeting. They were told, "Please, could you leave us alone at this stage?".

Mr Jensen: No, they never quite said that. They said that we could attend as long as we did not say anything.

MR WOOD: Mr Jensen, to whom I am thankful for this information, tells me that members were welcome to be present if they sat and observed.

Mr Jensen: They were told that.

MR WOOD: They were told that. I do not know whether that is the matter to which Mrs Nolan was referring. If a community group wants it that way, that is the way it ought to be. I can see no reason to argue about that matter. Mr Speaker, I thank members for their comments at the in-principle stage of this Bill. I look forward now to getting involved this afternoon and tonight in the detail stage.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1

MR MOORE (5.05): Mr Speaker, I have circulated some amendments that have been prepared in my name. I move:

> Page 1, line 5, omit *"Environment"*, substitute *"Management"*.

The effect of this, Mr Speaker, is to change the title from the "Land (Planning and Environment) Bill" to the "Land (Planning and Management) Bill". The reason for this is not that this Bill has nothing to do with the environment. This Bill is absolutely critical to the environment, as planning issues have a major impact on every part of our environment. Our notion of environment is clearly set out in the Bill. The Bill deals with environmental impact assessments and it runs through a series of environmental matters.

However, should a lay person - a lay person being somebody who is not part of the legal fraternity - be seeking to find a Bill on the environment, he or she may well turn to this Bill and waste a great deal of time. This Bill is not specifically about the environment; it is specifically about land management.

Mr Jensen: Do you want to bet?

MR MOORE: Mr Jensen interjects; he obviously was not listening to the lead-up. I said that this Bill deals entirely with the environment but not specifically. It is about land management, and land management in turn, of course, deals with many aspects of the environment. It will be self-evident to anybody who is looking at land planning and management that they are dealing with environmental issues. So, to save confusion for people not involved in legalities and who are reaching for a Bill, trying to look up what is the appropriate Bill, it would be appropriate for them to turn to the "Land (Planning and Management) Bill".

Mr Speaker, I could use this opportunity to rip apart the bureaucratic replies of Mr Bill Wood to comments made in this Assembly. Quite clearly, instead of preparing them himself, his department prepared the responses for him. They came out not as words from Mr Wood's mind, as we would have expected when we knew him in opposition, but as responses that we would expect from the Planning Authority.

The most obvious of those was the response to the comment I made that the Chief Planner should have direct responsibility to the Minister. Those looking through my amendments will see that that is one of my amendments. The response that Mr Wood made to that point - and I will speak to it further - was just the response that we would expect from a bureaucrat who felt under threat. I urge Mr Wood, when he looks at that, to take a very sensible approach and to ensure that we do accept that it is appropriate for a Chief Planner of this Territory to have direct responsibility to the Minister and not to have to answer through a chain of command, through other bureaucrats.

Mr Jensen: Which amendment are you talking to now?

MR MOORE: We will get to that point again in a little while, Mr Jensen, when we debate a different clause. For the moment the amendment that I have moved is that the name be changed to the "Land (Planning and Management) Bill".

MR JENSEN (5.09): I listened reasonably carefully to what Mr Moore had to say. I seem to recall having this discussion some time ago in relation to the title of the Bill. While it is true that the Bill relates to the planning and management of the ACT and its environs - that, effectively, is what it is about - the first part of this title is "Land". The Bill is talking about land and planning. One could argue, if you wanted to go that way, that it could be the "Land (Planning, Management and Environment) Bill" because, as we all know, the whole of Part IV talks about environmental assessments and inquiries, which are tied up inextricably with the Territory Plan. So, one could argue that, rather than be called the "Land (Planning and Management) Bill", it should be called the "Land (Planning, Management and Environment) Bill". That might be a more appropriate term to pick up all those views.

I seem to recall that, during the discussions that went on over the title of the Bill, it was decided to stick with the title "Land (Planning and Environment) Bill" because of the very important aspects related to environmental assessments and inquiries. As we know, most States around Australia have some form of planning legislation and some form of legislation relating to environmental impact assessments and statements. I suggest that, if people were looking for any legislation that relates to environmental impacts and assessments in the ACT legislative package, the only way they could find that would be through the title of this Bill, because it is in no other Act except, of course, the Federal legislation that we have used in the past.

On that basis I think "Land" is fine. It indicates what we are really talking about; that is, the whole of the ACT. The Bill talks about planning, which is something that legislators throughout Australia are familiar with. They will know that if they want to find out anything about planning matters within the ACT they will have to go to this Bill. Of course, if they want to find out anything about environment matters, they will need to go to this Bill.

If we take out the word "Environment" we would lose track of the fact that one very important part of this legislation is the factor relating to environmental assessments and inquiries. Another problem that we have, I suppose, is that the title becomes too long. The preamble to the Bill says:

> An Act relating to the use of land in the Territory, and for related purposes.

You could almost argue that it needs to include "Heritage" as well. I would suggest that, with a view to keeping the title reasonably tight and concise, it is not inappropriate to leave it as it is. We would not have too much of a problem if Mr Moore wanted to change it to retain "Environment", but include "Management" as well.

MR KAINE (Leader of the Opposition) (5.13): Mr Speaker, the time that we spend debating semantics sometimes confounds me. Having heard a speaker for and against this amendment, I would have to say that on balance I favour Mr Moore's approach.

Essentially, this Bill is about planning and the management of land. It is only incidentally relevant to the environment. The only aspect of environment that this Bill deals with is that of environmental impact statements, which are part of the management process. I support Mr Moore. If we must debate the words, we could take them all out and just call it the "Land Bill" and be done with it.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.13): I had not expected to get involved in a debate on this. I really think that it is an attempt by Mr Moore for a bit point scoring, maybe to show how pure and holy he is in these matters.

There are ample provisions in this Bill, may I remind members, specifically dealing with the environment. I do not propose that we want to put a Bill up and always find a shorthand version of it for a title, and list the six or seven different names that we could incorporate. I think that is probably the best idea, except that I have had no more to do with it personally than many other members.

I do not think that we need to remove "Environment". For heaven's sake, the Bill says a great deal about the environment. A fundamental part of the Bill is to ensure that there is sufficient environmental protection as the planning measures are put into place. I do not think it is worth a long debate.

If you want to give a true reflection to the Bill, I suggest that you keep that environmental reference, because it is important. If you want to put in a management reference, I believe that it is already there in the planning component of it. Of course, planning is rather more comparable with management and I think the word "Planning" should stay there. If you approve Mr Moore's amendment, maybe someone will stand up and say, "Well, it is less about planning. Let us take that out. Maybe it does not refer to land either". Let us get down to the serious part of the Bill and stop this nonsense about the title.

MR COLLAERY (5.15): Mr Speaker, I agree completely with what Mr Wood said. Part IV is headed "Environmental Assessments and Inquiries". There is reference elsewhere in the Bill, at page 52, to the "Environment Minister" - that is, Mr Wood, as he will be with his new title. It states:

> "Environment Minister" means the Minister administering this Part;

I can recall lots of discussions, as can Mr Kaine, about how we would name this legislation. There were preferences expressed by Parliamentary Counsel, by the Law Office, by different members of the Government and so on, and I think it does hang in the balance.

My view is that, given the atmosphere and culture from which we come, which has not been the best management of our Territory's leasehold system, we should give that signal to the population, at least at this stage, because this Bill is not immutable, and use the term "Environment". I must say that I am quite surprised, and I am not making a personal attack, that Mr Moore would want to put "Management" in when that dreaded word was the sort of culture over which we all joined together originally and opposed.

I am not diminishing in any way the concept that the custodian of this Bill, that is, the Minister, has the environment in his or her stewardship and that management, with the inference of money and gain, is not the primary consideration of this Bill. Of course, Mr Wood's title is Minister for the Environment, Land and Planning. It seems wholly correct that the little crown we will bestow on him - not too soon, of course - will reflect the major part of his ministerial responsibility.

Mr Speaker, if you turn to Part V, at page 71, it is headed "Land Administration". You only get the term "management" when you get to clause 193, which says, "An area of public land shall be managed in accordance with the management objectives", et cetera.

I would think that, on balance, the emphasis in the Bill is more on the environment, more on the bush capital nature from where we come and more on the Territory Plan, than on the managerial aspects of the leases. It may well be that a future government may separate land administration and leases out into a separate Bill. There was considerable debate about that, although I agreed with Mr Kaine that we should get a compendium at this stage. In due course, if this legislation is passed, no doubt some industrious legal publisher will produce a loose leaf, annotated Land, (Planning and Environment) Act.

MRS NOLAN (5.19): Mr Speaker, who would have thought, starting off this afternoon on the detail stage, that we would spend quite so much time debating the title of the Bill. I was a member of the joint committees that looked into this legislation and reported back in April. We went through the same debate at length. I recall that the title at that stage was the "Land (Planning and Administration) Bill". I see very little difference between the word "administration" and the word "management".

Mr Kaine: There is a big difference, I can tell you.

MRS NOLAN: Well, I am sure that there is; but in terms of the title of the Bill I would much prefer to see the word "Environment". I have to say that when the title was changed as a reflection of the committees' report, I think it was probably a more appropriate title without the word "Administration", and I think it is a more appropriate title without the word "Management". I would prefer to see the Bill remain as it is titled. I hope that we are not going to end up with another untitled piece of legislation. I would urge members to get on with the debate and at least pass clause 1. There is a long way to go.

MR MOORE (5.20): I want to make a couple of comments. I am certainly not going to die, with my leg in the air, over this amendment; but I do believe that the concept of management does take into account the environment. Planning and managing our environment is very different from the sort of concept that was put across in terms of administration, and some of the issues that Mr Collaery raised.

I made it quite clear that I saw this simply as a matter of indexing, more than anything, rather than the arguments that people have put, which I largely agree with, conceptually, about dealing with the environment. It seems to me that management of our environment, of our heritage and of our land is an important part of what this Bill is about; but as I say, Mr Speaker, it is not one of those issues that I think are of such great importance that I am going to suffer a great deal of anguish over it.

Amendment negatived.

Clause agreed to.

Clause 2

MR KAINE (Leader of the Opposition) (5.22): I move:

> Page 1, line 11, subsection 2(2), after *"Gazette"* add the following words "but not later than 1 March 1993".

I think I have adequately foreshadowed in earlier debates in the Assembly that I would move to put this Act into effect as quickly as possible. That flowed from the real community concern that was expressed, particularly during

the inquiry into the Forrest bowling club site, that this Bill was not already in place. The community out there sees great benefit in the advantages that flow from this Bill, and I would like to see it in place as quickly as possible.

I know that the Government has an intention of not putting it into effect until July next year, and I have some understanding of their position. There is a budgetary problem, and the minute this Bill becomes an Act and is put into effect they are going to have to find money to fund it. I can only say, however, that I have no sympathy for their position. The Alliance Government knew that this Bill would require funding and we had made financial provision in our forward estimates and in our budget for this year.

I can only conclude that this Government took the money out because they were having trouble funding some of their other projects that they thought took precedence over this. Well, I do not happen to agree with them. Although I understand their view, I do not support their decision to take the money out of the budget and delay this.

The Government has consistently agreed with the Liberals and, indeed, with the Rally that this Bill is an important Bill. They continue to say that. Yet, when it comes to putting it into effect, they say, "Well, it is not so important that we should provide funds for it". I do not accept that argument.

My original intention was to move that this Bill become effective from 1 January, but yesterday someone, I am not sure whether it was the Minister or another member of the Government, gave me a short paper that explains the difficulties from the Government's viewpoint of putting it into effect from 1 January. There are things that have to be done to make it possible to implement the Bill. I accept that, so I concede the need to put it into effect on some date later than 1 January.

I think that 1 March is three months from now. That does give the Government plenty of time to put into effect the administrative arrangements that need to be put in place, in my view; to conduct seminars, to explain to people how it all works, to get forms printed and to establish computer software packages and the like. So, I am prepared to move back to 1 March; but it would be difficult to persuade me that the implementation of this important Bill, this important Act, should be delayed beyond 1 March. So, Mr Speaker, I ask members of the Assembly, in the interests of the community, to put this provision into the Bill - that the Act should become effective not later than 1 March 1992.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.25): Mr Speaker, the Government opposes this amendment. I think it is still clearly the case that the Government could not meet that deadline. There were enormous difficulties some months ago, it was pointed out to me, in meeting the deadline had we established a 1 January start date. The reason the Government proposed a 1 July start date was so that everything could be ready for that time.

Mr Kaine: It was because you did not have any money in your budget, Bill. Come clean.

MR WOOD: No. I will concede that there was a side factor; but the predominant factor was simply that we did not think it could be done. There is a great amount of work to be done, as you would imagine.

Mr Kaine: Your professional public servants are capable of small miracles. We all know that.

MR WOOD: I realise that. But the major miracle that you are talking about is a little more difficult. As you would expect, it is the case that when we announced that it would commence from 1 July the intense pressure went off the department. All of that activity that was designed to have things ready for 1 January steadied quite a deal. If you now impose this on us - we had notice only yesterday that it might occur - every activity of the department will have to be intensely accelerated. I think that it is simply too much to ask to advance that date from 1 July. I do not believe that it can be done.

Mr Kaine: You want to be careful, Bill, because Norm is going to move for 1 January if you are not careful.

Mr Jensen: Will you pass my Bill, Bill?

MR WOOD: Well, you are asking too much. Let me point out that the new Assembly will not be meeting in February. It probably will have a first formal meeting at the very end of February, although the count will probably take us through - - -

Mr Kaine: You are an optimist.

Mr Humphries: About the end of April is more likely.

MR WOOD: Let me concede; I have my months mixed up.

Mr Kaine: You cannot put this Bill into effect until July, but you expect the Electoral Commission to fix it in a month.

MR WOOD: The Assembly will not meet by 1 March; so I am not sure what the benefit would be. Why have this up and running before the new Assembly is also up and running? It does not seem to make sense to me - not that the two have to be timed for the same occasion. I think that, at the very most, some time after the commencement of the new Assembly would be a better proposition. Really, to impose this matter on us I think is impossible. Are you speaking, Mr Jensen?

Mr Jensen: I will have a quick chat, yes.

MR WOOD: All right. Well, I would ask for your support and the support of your group on this very sensible opposition to this extraordinarily early commencement date.

MR JENSEN (5.29): There are a couple of issues related to this, I think, and they relate to the ability to bring in a proper and appropriate appeal system, which we do not have at the moment. That is one of the reasons why the Rally proposed some amendments to the interim planning legislation, which we expected would be long gone by now. We expected that this legislation would be up and running; but, of course, circumstances prevented that from actually taking place.

I suppose the point that I am really trying to make in this matter is that if Mr Wood seeks to have this legislation commence on 1 July, as is currently proposed, I think some changes will have to be made to the Interim Planning Act. On that basis I would seek some sort of indication of support from the Minister in relation to the Interim Planning Act amendments tabled in this place by the Rally, particularly in relation to the disallowance provisions.

It is quite possible to go through this legislation and make it operate on 1 January, and that would be by dealing with some of the areas where it refers to the "Plan" here. I refer, for example, to clause 113, where it says:

> Where a defined decision is of a class prescribed by the Plan, the relevant Minister shall, within the period ...

There are ways, of course, whereby that can be done. I think members of this place and members of the bureaucracy are well aware of my views in relation to the use of regulations as opposed to schedules for this sort of thing. It would be quite possible to provide, as an amendment to this legislation, a schedule and to say: "Where a defined decision is of a class prescribed by the schedule X, Y, Z, the relevant Minister shall", et cetera. That, of course, is my preference and the preference of the Rally for that issue. So, it would be quite possible, if we wanted this legislation to commence on 1 January, to move that particular amendment. That was the process that the Rally was working towards in the drafting and preparation of its various amendments.

I would be interested, however, before we formulate our final position on this matter, to hear what the attitude of the Government is going to be to the passage of the interim planning legislation, which we believe will provide some very important constraints over the appeals process. At the moment we effectively do not have an appeals process. The Rally's amendment to the Interim Planning Act was going to provide some form of appeals process via this Assembly.

I know that there are some people who think this is not an appropriate place for that sort of appeal to take place. But might I suggest to you that in a house of Assembly with only 17 members, and without any house of review, we believe, and always have believed, that it is appropriate for a committee like the Standing Committee on Planning, Development and Infrastructure to provide that element of review before final decisions are taken in relation to planning matters. That is why the amendment that we put forward required the Planning Authority to provide the committee with information which would enable it to look at all the issues; maybe give the proposal a tick; maybe seek further consultation with the community if it felt that it was necessary, and then enable a recommendation to go to the Government prior to the Government making its decision.

If I were the appropriate Minister I would be quite happy to wait for and listen to the recommendations of a committee in relation to planning issues, particularly where there was considerable community concern, as there has been in the case of the Forrest bowling club, as there has been in the case of the proposal for the development at Griffith, as there has been for the Gungahlin development and as there has been for West Belconnen. I think it is a very appropriate way for this Assembly to operate.

We all know that the committee chaired by John Langmore has that as one of its tasks. One of its tasks is to look at changes and variations to the National Capital Plan and to report to the responsible Minister. Action is then taken accordingly. I think it is totally appropriate for that to happen and that is why we believe that those amendments are very important. I will be interested to hear what the Minister has to say about the proposal to ensure that there is some form of reasonable appeal process in the period between now and when this legislation comes into force as currently proposed in clause 2(3).

MR MOORE (5.34): Mr Speaker, I have some difficulty with the amendment. The main difficulty I have, I suppose, is this: If this is going to be implemented by no later than 1 March, and that gives a quite reasonable time, why is it that we are rushing with the Bill in the first place? I presume, after a very brief discussion with Mr Wood, that the answer will be: Well, the effect of the Bill is so broad that it will require a great deal of time to get the administration in place. I accept that to a certain extent.

The problem I have is that we still have a series of appeal protections that are not in place. Those have been drawn to the attention of the Assembly by the tabling by Mr Jensen of an amendment Bill which is on the notice paper. It would seem to me that with those protections in place we would not have had the problems that we have had over the Forrest bowling club, and it would be reasonable to change the date. With that in mind, having had a discussion with Mr Wood, and with that in place, I would feel much more relaxed about the date that Mr Kaine has suggested. Being aware also of the commitment in the budget as far as this goes - and it is not very great - perhaps it would be more sensible to actually set a date, as Mr Kaine has. Perhaps we could move that date to 2 April.

Mr Kaine: Not 1 April?

MR MOORE: No, 2 April is a far better day than 1 April, Mr Kaine, or, indeed, 31 March. The reason I favour both 31 March and 2 April is that my son was born on 31 March and I was born on 2 April. I think that 2 April is the ideal day. It just misses out on being foolish, and I think that is an appropriate position to be in. I speak on that with some authority. So, Mr Speaker, I move as an amendment to Mr Kaine's amendment:

Omit "1 March", substitute "2 April".

Sitting suspended from 5.38 to 8.00 pm

(Quorum formed)

MR MOORE: Mr Deputy Speaker, just prior to dinner I pointed out the advantage of 2 April over many other dates - it is the date of dates.

Mr Humphries: What is wrong with 1 April?

MR MOORE: Mr Humphries interjects "What is wrong with 1 April?". Had he been here just prior to the dinner break he would have heard me point out that it is a foolish date, and since my son has his birthday on 31 March and I have mine on 2 April we actually have it surrounded. Those in the house who know my Brenton and who know me well would understand the significance of this. Thank you, members, for not interjecting about that. I think this is a quite reasonable amendment, a good compromise, and I urge members to accept it. The amendment has been circulated.

Amendment (**Mr Moore's**) agreed to.

MR DEPUTY SPEAKER: The question now is: That Mr Kaine's amendment, as amended by Mr Moore's amendment, be agreed to.

MR COLLAERY (8.05): I want the record to show that the Alliance Cabinet had discussed the need to make provision for the Administrative Appeals Tribunal sustenance for the implementation of this Act. My documentation, which I have retained from that period - I will stick to convention and not produce it - reveals that we left for the incoming Government a well-prepared analysis of the costs required to augment the Administrative Appeals Tribunal and to commence the proper appeal and review processes of this package of laws. That, I am sure, was one costing that would have survived the red pen of our then Treasurer.

It must be stressed that this Follett Government, in their desire to allegedly balance their allegedly balanced budget, simply shaved that allocation of funds and have now left the people of the Territory in a situation where there is not going to be an effective appellate structure in this Territory until well after 2 April 1992. The Rally wants to point out that there is an Interim Planning Act amendment proposed that will provide - - -

Mr Moore: It is a good amendment too.

MR COLLAERY: Yes, as Mr Moore says, it is a good amendment. That will provide better access by the community to express their views on draft variations to the plan. So, in any event, the Treasurer may well have to use her advance in this situation. It does not really make that much sense that the time sought by the Government is to enable it to tune up the Administrative Appeals Tribunal structure.

The real reason why the Minister wants further time clearly is so that he can get the machinery of this Bill operational. In other words, assuming that this Bill is passed in the next week or two, he wants four months to get the advisory committees appointed under the Act, to get the Chief Planner appointed and to get certain structures going. But the fact is that the Act is not operable effectively until the Territory Plan is down. Because consultation closes on 20 March, there is a great question in my mind as to the utility of what we are all about tonight. Why are we rushing this legislation through tonight, in this fashion, and in any subsequent days that will follow?

The only conclusion that we can draw is that this Government wants to be seen to have some runs on the board. They are anxious to get the passage of this legislation for political purposes. It is very clear to us in the Rally, given the very long gestation period of this type of legislation, going back to 1987, that the Labor Party has chosen, in its typical, superficial, opportunistic way, to press this Bill through in the next few days without there having been adequate time for us to consider a number of amendments stemming from a decision by the Liberal Party to see earlier implementation of the Bill.

Also, Mr Wood has extended the time for consultation on the Territory Plan. This lessens the degree of urgency about this Bill. We believe that the Government should be sensible; it should provide adequate scope, now that there have been two significant changes to the procedures and processes and the timing of this legislation, and the Rally, in particular, should be allowed to go and produce the transitional amendments we seek to make to take account of the flurry of green papers that are now coming down under this Government.

This amendment has the support of the Rally because it will provide more time for this Government to get its act together, it having had sufficient time to work out the implementation phase of the Bill.

We have quite a number of amendments to introduce tonight; in fact, many pages of them. The Minister will have to make a choice as to whether they are introduced and processed tonight. The wording of some of them will commend them to the majority of this house - we have drafted them in the Rally, with our resources - and that will be a decision that the Minister will have to take in a short time.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (8.10): I want to respond briefly. I emphasise that I will be brief because I really want to concentrate on the clauses, on the important debate at the detail stage. Mr Collaery seemed to be complaining, in the last minute or two of his speech, that there has not been time to prepare for tonight's proceedings, for the detailed debate. I heard Mr Collaery, at an earlier stage, claim ownership of this Bill. Indeed, in a speech in the in-principle stage earlier tonight, Mr Collaery seemed to be claiming that this Bill started on a ping-pong table in 1987.

I freely concede that he was part of a government that had a substantial role in the drafting of this Bill, so he well knew what was going on. Mr Jensen, his close colleague, was the Executive Deputy who had a continuing, close and detailed knowledge of and interest in this Bill. Before the Bill was introduced on 19 September, over two months ago, there was consultation with other parties in this chamber and it was pointed out that it was coming down.

We said, "Look, let us keep talking about this; we do not want to get fouled up at the last minute when we are on the detail stage". We introduced the Bill, as I said, on 19 September. We delayed it for a time to allow people, once they saw the final product, to propose amendments. We allowed a further delay when the draft Territory Plan was tabled for further consideration.

The plain fact is that I do not think Mr Collaery would ever be ready. There is no question that he and Mr Jensen between them have a most thorough knowledge of this. It should have been no trouble at all for them simply to come up with a list of amendments, even though it may be a relatively complex Bill, and for us to have discussions about those amendments, as I have been doing with Mr Moore.

I do not know whether the Rally, as usual, cannot make up its mind, as Mr Kaine complained so much in the former Alliance Government. I do now know whether they argue amongst themselves. I do not know why it is. I will continue, Mr Collaery, to be patient and to listen to your proposals; but I do not think it does you any good to gripe about the time. You have had more time than enough. If we introduced this in three years' time you would still be saying, "I need more time".

Mr Berry: And more staff, as well.

MR WOOD: And more staff. Nevertheless, we will listen to your amendments in the very short and difficult timeframe you now give us. We will attend to them as well as we can.

MR JENSEN (8.13): Mr Speaker, let me put straight on the record the fact that we are not claiming that this legislation started off on a ping-pong table in Narrabundah or anywhere else. In fact, it could be argued that the basis for this legislation started as far back as 25 March 1988 at the City Gate Motel at a Metropolitan Policy Plan Review Seminar on Public Consultation put on by the then National Capital Development Commission. You could probably argue that that is when it was. That is what this whole thing goes back to.

The program for that meeting is dated 25 March 1988. People like Lyndsay Neilson and Julia Lansley were at that meeting. This document contains reports on public consultation in Canberra and excerpts from the NCDC Business Plan. There is a section entitled "Public Participation in Australia". There is a section there on public participation in the United States, and so on. It could be argued, Mr Speaker, that that is probably the genesis of all this legislation that we have before us.

Mr Wood seems to think that the only thing that the Rally has had to worry about in this Assembly has been this document, the Land (Planning and Environment) Bill. Mr Wood seems to think that that is the only Bill that we have to worry about. Let us get the time factor in relation to this Bill into perspective. Nine draft variations have been put down at once, every one of them development driven. We had to have some input and had to give consideration to that. There has been the proposal for the Manuka development; there has been the proposal for the Canberra Bowling Club. There have been all these issues. There has been the Territory Plan.

Mr Wood: What is this for?

MR JENSEN: I am trying to give you an indication, Mr Wood, that we have been doing other things as well as preparing amendments for the Territory Plan. You are the one who brought it up, Mr Wood. You suggested that we have ample time to do this. I am suggesting to you, Mr Wood, that it has been necessary for us to concentrate on some very important issues that had timescales attached to them - the Forrest bowling club, for example. I was involved quite heavily in the Planning Committee.

MR SPEAKER: Order! Mr Jensen, relevance, please.

MR JENSEN: I am talking about the time, Mr Speaker.

MR SPEAKER: I know that, Mr Jensen, but please be relevant. You can make a statement before the house at a later stage. Come back to the clause that we are discussing, if you would not mind.

MR JENSEN: I understand that there is a slight problem with the photocopier. So, we are now going to argue about - - -

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

MR JENSEN: Let us now consider whether this should be 2 April.

MR SPEAKER: Order, Mr Jensen!

MR JENSEN: I am sorry, Mr Speaker. I did not hear the point of order from Mr "L plates" over there.

Mr Connolly: Mr Speaker, relevance is, of course, a requirement of the standing orders, and there are a number of arguments as to why an issue is relevant. I wonder whether you can explain why "the photocopier is broken" is a sufficient answer to a point of relevance.

Mr Collaery: I wish to address that point of order, Mr Speaker. I am not sure what photocopier is not working in this building. The one on our floor is a large one. It has a series of buttons, Mr Speaker, and most of us know how to use it.

MR SPEAKER: Order, members, please. We have a lot of work to do. This frivolous approach to the start of the session is hardly worth the effort. Let us get on with the issue. Please proceed, Mr Jensen.

MR JENSEN: I am seeking to address the issue of whether it should be 2 April, whether it should be 1 January or whether it should be 1 July.

Mr Moore: We have already passed that.

MR JENSEN: No, we have not.

Mr Moore: We passed that amendment. Are you going to move another amendment?

MR JENSEN: I thought we were still talking about Mr Kaine's amendment and your amendment.

Mr Moore: Indeed, as amended by me.

MR JENSEN: Of course.

MR SPEAKER: Order, Mr Moore!

MR JENSEN: Thank you. It could be argued that this legislation could be started on 1 January. That would require considerable amendment to this legislation because unfortunately the plan is not ready. As we look at it, there are a number of issues, as I have already indicated before. I probably need to reiterate them because some people may have forgotten them. In some areas there is direct reference to the plan and there is a need to say that certain things will take place in accordance with the plan. As we know, the period for consultation on the plan does not finish until 20 March. We are talking about a very short period before this planning legislation is going to take effect if this particular amendment goes ahead.

I would suggest that Mr Wood's department is going to have some difficulty in producing for us a Territory Plan that is going to be able to run off this legislation even if it starts on 2 April or 1 January. Whether it is 1 January, or 2 April, or 1 July, I think that Mr Wood and his department are going to have some difficulties in relating this legislation to the plan because the plan, which is a very important part of the legislation, in fact will not be ready. We do not have the time, I believe, to make the necessary changes to the legislation here tonight that would enable that to take place.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (8.21): Mr Speaker, I think Mr Jensen's filibuster has now been cleared up in that a point of procedure was overlooked, perhaps. I understand that the Rally was expecting me to indicate that we would observe standing order 187, which allows us, I believe, to come back to clauses once we have been through them. Understanding that, I expect that the members of the Rally will not stall, as they appear to be doing. We will certainly come back to your amendments.
Amendment (**Mr Kaine's**), as amended, agreed to.

Clause, as amended, agreed to.

Clause 3

MR MOORE (8.22): I move:

> Page 2, lines 7 and 8, subclause (2), omit the subclause.

The subclause that I am referring to states:

> Nothing in this Act renders the Crown liable to be prosecuted for an offence.

I believe that that protection for the Crown in a planning area is entirely inappropriate. It seems to me that when we are dealing with planning the Crown should be liable for prosecution in the same way as a natural person should be liable for prosecution for an offence. I think it is inappropriate for us to provide that protection. The Minister tells me that he is prepared to accept this amendment. I must say that I am very pleased that that is the case. I hope that other members will join us in supporting that amendment.

MR JENSEN (8.23): The Rally will support this amendment, Mr Speaker.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (8.23): Mr Speaker, that amendment is acceptable to the Government.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 4

MR MOORE (8.24): I will take just a minute or two to speak to this clause. In my original instructions to the parliamentary draftspeople I had provided that we should add a new definition of "environment" here and that the definition should be "any part or the whole of the living or non-living surrounds of any group or individuals, human or non-human, and includes biological, ecological, social, economic, geological and aesthetic aspects". I did that, Mr Speaker, because I believe that when people are reading this legislation, to the extent that it is a piece of environmental legislation, it would be appropriate for them to have in here a definition that sets out exactly what we mean by "environment".

In my discussions with the parliamentary draftsmen I was convinced that the adding of a definition here would not be effective because this legislation takes its authority from a higher piece of legislation, namely, the Australian Capital Territory (Self-Government) Act, which provides a requirement for us to establish this piece of legislation,

and therefore it would be subject to the definition of "environment" as it would be in that Act. I have taken that advice. I withdrew that amendment from my final set of amendments that was distributed to members.

But I do think that it is very important for us to establish what we mean by "environment". I suppose that the way we are going to have to do that is actually to produce some specific environmental legislation over the next year perhaps. I am aware that in clause 110, under "environmental impact", there is a series of definitions that cover the areas that I had referred to in my own definition. Therefore, to a certain extent it is covered. Nevertheless, Mr Speaker, I did wish to add that I felt that it would be appropriate to have that definition.

As far as legislation of this nature goes, it is also my personal opinion that all definitions used throughout the legislation ought to be in the front. Many lay people will want to read this planning legislation as time goes on. I will continue to use the term "lay people" to denote those of us who do not have formal legal training at a university. A lay person who picks up a document like this would look at the definitions. When we are going through the legislation we think, "Ah, what is controlled activity?". I flick it open and I look for "controlled activity". I go to the front of it and see that that is one of the terms defined.

That is an important factor in making legislation easy to read and making it user friendly. I leave those thoughts with you. I am delighted to see that the head of our Parliamentary Counsel's Office, who does such a good job, is here to take in my good advice, for what it is worth.

Clause agreed to.

Clause 5

MR JENSEN (8.28): Mr Speaker, are we going to deal with our amendments now or later?

MR SPEAKER: I believe that your amendments are being circulated.

Mr Moore: Yes, indeed.

MR SPEAKER: Please proceed.

MR JENSEN: Mr Speaker, I move:

Page 4, line 12, add the following subparagraphs:

"(vii) any documentation used by an inter or intra departmental planning committee or similar group in preparing its recommendations for the Plan or a draft plan variation and shall specify the reasons for any recommendations;

(viii) any documents relating to the preparation of requirements for design and siting approvals resulting from the planning principles identified in the draft variation to include a summary of any concept diagrams available;

(ix) an urban design impact statement; and

(x) infrastructure augmentation statements.".

Mr Speaker, I shall speak briefly to these. The Rally has always maintained that it is most important that this sort of information be available to those people who are seeking to assess whether the draft variations that have been provided for consideration by the community have, in fact, covered all the angles. For example, the draft variation papers often have just a statement about the fact that there are no traffic problems associated with a particular proposal.

My understanding is that all these issues are actually discussed at a reasonably high level within the Department of the Environment, Land and Planning, or by interdepartmental planning committees. These recommendations are then put forward for inclusion in the draft plan variation. The Rally has always maintained that it is important not only to specify this information and make it available for people to see whether, in fact, proper processes have been followed, but also to consider the reasons for any recommendations that have been made by any of those committees. So, that is the basis for the first one, Mr Speaker.

The second one is a little more complex because it relates to the "requirements for design and siting approvals resulting from the planning principles identified in the draft variation to include a summary of any concept diagrams available". We have always maintained, Mr Speaker, that this sort of information is most important when people are considering the implementation policy and the draft plan variation. Without this information it is almost impossible to find out what in fact is in the minds of people when they are proposing some form of change. I will give you one example, the recent proposal for Manuka. All we received was a green piece of paper without any indication as to what sort of proposals were going to be put in regard to that site. That is the sort of information we had.

Mr Wood: I thought we had agreed five minutes ago that we would come back to your amendments. We will reject every one of these outright. It is as simple as that.

MR JENSEN: Do you want us to withdraw them, Mr Wood, and come back later on?

Mr Wood: I thought we said 10 minutes ago - - -

Mr Connolly: We cannot take expert advice when you come up with - - -

MR JENSEN: Do you want us to withdraw these for the moment, Mr Wood?

Mr Connolly: Yes, that would be really sensible.

MR JENSEN: I am happy to withdraw this amendment at this time and come back at a later stage. Mr Speaker, as we have already indicated, we got Mr Moore's amendments only this afternoon.

Mr Wood: We have had a bit of time to look at them.

MR JENSEN: Okay. I am quite happy, Mr Speaker, to withdraw this amendment at this stage, if that is the wish of the Assembly, provided that we can bring them forward at a later date.

MR SPEAKER: Yes, thank you, Mr Jensen.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (8.33): Mr Speaker, I regret the confusion that has again crept into the chamber tonight. I misinterpreted an earlier statement that caused the filibuster over there. I thought I had then given an assurance that we would come back to your amendments. Suddenly, these arrive under our noses. In wanting to do the best thing we can for you, I appreciate now that you will come back to these at a later stage and give us time to go on with Mr Moore's amendments and work through those. Under standing order 187, we will come back.

MR JENSEN (8.33): I seek leave to withdraw my amendment to clause 5, Mr Speaker.

Leave granted.

Amendment, by leave, withdrawn.

MR SPEAKER: Mr Jensen, I was under the impression that you had minor amendments, not major ones.

Clause agreed to.

Clause 6 agreed to.

Clause 7

MR MOORE (8.34): I move:

> Page 6, lines 17 to 22, paragraph 7(3)(c), omit the paragraph, substitute the following paragraph:

"(c) for the purposes of Part VI, specify controlled activities and authorities that are concurring authorities in relation to each controlled activity so specified;"

The effect of that, Mr Speaker, is to remove subparagraph (c)(ii), which simply provides for a restriction of appeals. Removing this will allow appeal right across the system on any planning decision. It is a quite simple move. It is not all that important to many people here. It would be a very sensible thing to remove those two lines. It would be relatively painless and it would be a major contribution to our society.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (8.36): Mr Speaker, Mr Moore must think we are simple. He suggests that this is a rather small matter. I acknowledge that it is a key issue in many areas. Many people would like a much wider range of appeals, something that would absolutely bog down the system and make it quite unworkable. The Government has a policy principle that the Territory Plan will specify the classes of applications relating to land use excluded from third-party appeals. We intend to hold to that, and we will oppose this amendment.

MRS NOLAN (8.37): Mr Speaker, I am going to be very brief. I will oppose Mr Moore's amendment.

MR COLLAERY (8.37): Mr Moore is proposing an open, reviewable planning system. That is what the Labor Government has promised us, and that is what a Labor Government is now resiling from. Clearly, they are not going to support it. Let the record show that the Labor Party needs to understand the significance of what Mr Moore is suggesting. Mr Moore is suggesting that the Bill allow the full range of decision making to be reviewed.

Whilst we do have wide third-party appeals structures in the Bill, Mr Moore is proposing that those matters, so specified, not be limited, and that all decisions referred to in Part VI of the Bill, namely, all those provisions relating to approvals and orders, controlled activities and concurring authorities, be open to review. The fact is that when people apply to have controlled activities, sometimes in their homes, as I well know, a full range of people are circularised by the authorities - not just the immediate neighbours - but people in the vicinity. So, it is broadly cast on that basis.

Mr Moore is attempting to reflect what the practice of the department has been. When people ring in and say, "Is X conducting a legal practice from that house?", the department will usually send out to that interested person the relevant details. It is passive. Nevertheless, people at the end of the street may have an interest in it; they may be affected by the traffic generated and the rest. As one person who has had to run the gauntlet of that system - successfully, I might say - surely this should not attempt to limit the rights of residents in relation to whether a panelbeating shop or the like is conducted within that suburb, not only that street.

The Rally supports this attempt to widen the scope and the Rally draws attention to the fact that the Administrative Appeals Tribunal will retain the filtering right against vexatious and frivolous complaints. As my colleague Mr Stefaniak well appreciates, it is the AAT which acts as a filter, not unknown public servants who are fearful of having a piece of legislation that will allow too much scrutiny of their actions.

The Administrative Appeals Tribunal was set up after the legislation in 1975. I came back to this country from France and I watched a process whereby a full range of another government agency's activities in the deportation area were subjected to review by the Administrative Appeals Tribunal. Many senior bureaucrats and politicians were saying, "It is impossible; you will never get anyone out of the country, you will never deport any criminals because they are all going to be reviewable".

The fact is that the then president of the AAT, now Sir Gerard Brennan, set down guidelines for dealing with the nature of the applications. He asked the authorities to provide an effective scheme and a statement of reasons and policies and objectives for deportation matters. There is no reason why a reasoned statement of aims and objectives to deal with controlled activities could not be issued to the Administrative Appeals Tribunal here, the ACT one.

I am hoping to get Mr Stefaniak's attention because I am pleading a cause and we need some votes on it. I trust that he, as a lawyer in the chamber, will understand that what is being proposed here is quite reasonable. What is being proposed is the presumption that the filter should be applied by the legislature, us - effectively, by the public servants - and not by the Administrative Appeals Tribunal, which has proven that it will not let these review processes run out of control. It does not occur.

Despite the registry and procedural arrangements at the tribunal, the standards set by the presiding members following the tremendous example set by Sir Gerard Brennan when he was appointed president at the inception of the AAT, the vestigial fears still linger on in that most conservative of bureaucracies, the land planning area of this Territory. They have been conservative for years on

openness and review. It does not behove the Labor Party, particularly those who supported the Rally in the early days, including people like Charles McDonald who came to the big rally and spoke with us on 13 November about the need for openness and review rights.

We are kicking off early in this debate. The question is: Does the Labor Party want to stick to what it said years back? There was a developer push in the Labor Party. We have never seen any openness from them. But, of course, it depends upon Mr Wood, the current Minister. I believe that he will show in tonight's debate that he is open, that he can influence his caucus and that he can explain to them later why he has supported this amendment.

Mr Stefaniak is much freer than those in the Labor caucus. The Liberal Party can vote basically any way they like these days. Naturally, we are hoping for some degree of flexibility tonight from the Liberal Party on all of these matters, as they have shown on many other matters in the chamber. At least Mr Stefaniak is now listening.

Mr Stefaniak: Yes, I am listening.

MR COLLAERY: I will sum up briefly by saying that the filter provided by the Administrative Appeals Tribunal is proven; it is established in this country. When people want to conduct small business in their neighbourhoods, we should allow the Liberal ethic behind the rights of small business - I am down on my knees, Mr Speaker - to flow through in the vote on this. We should ensure that we do not overcircumscribe the rights of people to conduct controlled activities; yet at the same time give the community the scope to comment when they wish to.

MR MOORE (8.45): I spoke briefly at the introduction of this amendment in the hope that nobody would notice what I was doing and that we would have this through in no time at all. But it would appear that Mr Wood noted what I was trying to achieve. No doubt his good advisers there also made it clear to him, as is right and proper.

What we are dealing with is not a very simple matter; it goes to the very heart of planning and to the very heart of conflict in our society. It goes back to the meetings that Mr Collaery spoke of, to 1987 or maybe a bit earlier. It goes back to those meetings. It is about saying to residents of this city that they can know what is going on and that they can have some say in what is going on.

Let me give you an example by referring to the draft Territory Plan, Mr Speaker. Look at the residential PLUZ - predominant land use zone. Everybody who goes out and gets this particular document should read it very thoroughly and then make cross-references. For example, what is meant by "apartment"? By starting at page 63 and then flicking back

to page 22, they will realise that "apartment" means "a dwelling located within a building which contains two or more residences". Apartments are also known as flats or home units. Of course, they would also allow a basement.

Mr Speaker, the astute person who goes out and looks at this plan and then provides information to the Planning Authority which may or may not be agreed to - certainly, we know that they must take it into account - may well feel that they have contributed to the policy. Therefore, they will understand that there will be no appeal whatsoever when somebody comes along and builds a two-storey set of flats next door to them, or next door to their neighbour or next door to their friends.

We have seen what that has done. Mr Connolly and I would draw your attention to places like St Peters in Adelaide, where I stayed only a matter of a month ago in my brother's house. There is a two-storey set of flats - you will recognise the style in Adelaide - right next door. That is what we are going to have in Canberra and there is going to be no appeal whatsoever, under those circumstances, provided they fit into the natural landscape, and so on. There is going to be no appeal. The reality is that that is going to put a lot of angst into our society. A lot of people are going to get up in arms and they will not take it lightly.

Let me draw an example to your attention. I am sure Mr Connolly remembers the people from Calwell. It is the same example. It is the same situation. People, when the reality hits them, are going to feel disempowered. When they feel disempowered I will bring them back to the night of 21 November, tonight, and I will point out how the Labor Party responded to their right to appeal this sort of decision, to have the right just to appeal. That does not mean to say that the appeal is going to be successful, because the planners will be able to come into the AAT and say, "Look, we have a document, we have our Territory Plan now, and it allows this and allows that". But people will be able to appeal in broad terms. When the Planning Authority has a strategy that provides that it is appropriate that that remain, that is fine; but when there is no appeal people will feel disempowered.

If you vote against this amendment you are taking away the power of people over what goes on in their neighbourhood. Let me warn you that it is a very dangerous thing to do. You have seen how people react. You are aware of the Calwell situation. You have seen the same situation over neighbourhood schools. You have seen how people are already beginning to react. Look at the *Real Estate Times* of today. People in Curtin believe that there is some risk that they might lose an open space in their area. This is what you are doing.

Do not disempower them. Give them somewhere to take their complaints. Let them act quickly; indeed, the schedules provide a proposal for a set of times. Give certainty by the developer knowing that he has to wait only 28 days, or something to that effect, to get a decision on his proposal, but allow appeals. It is a much better way to deal with it. The situation is often raised by developers and was raised by a good friend, Bob Winnel, back in those early days.

Mrs Grassby: What? A good friend?

MR MOORE: I have got my tongue out of my cheek. Mr Winnel and I have been sparring for many years, but never on a personal level - well, not often anyway. Let me point out, Mr Speaker, that in those days what he was talking about was certainty. But, in fact, you will not achieve what you are trying to achieve. Give the developers their certainty; give them their certainty by giving them a particular time by which the appeal has to be completed. That is the appropriate method.

By disempowering people, all you will do is get a reaction such as we have had at Calwell. Except, beware; unlike what happened at Calwell, which was an isolated incident, because of the way this Territory Plan is framed, there will not be an isolated incident; it will grow all over this city, particularly in the areas closest to the town centres, the areas where the most active residents associations already exist. So, be aware of what you are doing. I urge members now to reconsider their position and to vote for this amendment.

MR JENSEN (8.52): Mr Speaker, I want to follow up a little bit on some of the points that Mr Moore has made. It is very important that members have a very careful look at those sections of the Territory Plan, the Written Statement, that relate to the third-party review of decisions.

I accept the fact that there are going to be some situations where it is probably appropriate, if certain criteria are followed, that there be no appeal. Let us have a look at some of the sections of this Territory Plan. Take, for example, the predominant land use zone policies related to major roads. On page 339 of the document we see that, if this goes through, it provides for no appeal against new roads, road widenings, intersection improvements, major public utilities, floodways and above ground electricity supply lines and substations which comply with an implementation plan which has been approved in writing by the authority.

I would suggest to you, Mr Speaker, and other members, that there may be some problems with that. What we are really doing is providing no appeal whatsoever for the building of something like, say, the Monash Freeway or the Eastern Freeway or the Tuggeranong Parkway. There is no appeal whatsoever. That is it - finished, bust, the end.

Going up a little further on that page, it is very interesting to see that in relation to the design and siting of buildings in that area, which is the controlled activity referred to, there are no exemptions. In other words, there are total appeal rights for buildings in that area. It is also interesting to note that in that same section - just as there is, I think you will find, in almost every schedule that is related to every PLUZ in relation to heritage - the controlled activity is work affecting the requirements for the conservation of the heritage significance of places listed in the Heritage Places Register. There are no exemptions provided for that. That means that every decision in relation to a controlled activity there is fully appealable.

On those bases, just on that particular one, I think it is important to see what this particular document is allowed to do and what this legislation allows this document to do. I think this is the point that my colleague Mr Moore and my colleague Mr Collaery were referring to as well.

One of the other areas where I think it is important to note that there is no appeal relates to the residential planning land use areas. As we know, in the ACT, for a number of years, businesses have been operating in residential areas. That has generally been known to the community out there as a section 10 approval. This planning document, on page 67, provides the various performance policies and criteria related to the operation of a business within a home.

What happens if someone wants to open up a business next door to you? You do not know anything about the Territory Plan; you do not have a clue about it; you were out of town when all of this happened. You came back to the ACT, came back to your home, if you like, after a period of two years away, and all of a sudden someone wants to open up a business next door to you and operate out of their home.

Because these criteria have been approved, the Territory Plan has been approved - all that sort of stuff - you, as a resident near that business, in fact have no right of appeal. You have no rights whatsoever. I suggest, Mr Speaker, that the least one could expect in this situation, if someone is going to open up a business next door to you, is some right of appeal, some right of involvement in relation to whether that business should go ahead and whether it is appropriate.

We even note, Mr Speaker, that there have been some changes made to this part of the draft Territory Plan. There are already policies in relation to the operation of businesses from the home; but as I understand it - you need to be very familiar with the policies - there have been some changes. For example, the rules in relation to parking are slightly different; the number of people who can be employed on the site has also been changed slightly.

It would have been very nice if the Planning Authority, when it was preparing these documents, particularly things like this schedule on page 67, had indicated where the changes were. A little bit of side-lighting would have helped, I think; the community would have known what the issues were. But in fact that was not to be.

On page 64 we see these words:

> The use of residential land -

which is the controlled activity we are talking about -

> for carrying on a profession, trade, occupation or calling, et cetera.

If we look over to the specified circumstances, it says:

> Where proposals meet all relevant criteria in the Home Occupation Land Use Specific Performance Policy Schedule in clause C1.6.

In that case you have no right of appeal. That is the point that I am trying to make. We find as well, of course, that in respect of the public works section there is no appeal against any proposals for new roads and road widenings that have been approved by the Planning Authority.

Nowhere does it say that the authority has gone through any process of consultation or consideration. It says here, as I read it, and the Minister may like to correct me, that once the authority has written a document that approves a new road or a road widening, you have no right of appeal - sorry about that. I think that is most important.

In this area, Mr Speaker, like my colleague Mr Collaery, I support the amendment proposed by Mr Moore. As I said, these things are right throughout the document, and I think it is most important that we remove them from the Territory Plan and put them into a system like the one outlined by my colleague Mr Collaery. I hope against hope, Mr Speaker, that the members present in the chamber will support the amendment moved by Mr Moore.

Question put:

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

The Assembly voted -

AYES, 5	*NOES, 8*
Mr Collaery	Mr Berry
Mr Jensen	Mr Connolly
Dr Kinloch	Mrs Grassby
Mr Moore	Mr Humphries
Mr Stevenson	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

Clause agreed to.

Clause 8

MR MOORE (9.05): Mr Speaker, I rise to speak to clause 8 just to draw attention to part of the impact of what we did when we agreed to delete subclause 3(2). Clause 8 states:

> The Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, that is inconsistent with the Plan.

Whilst the Act binds the Crown, we no longer have a case where the Crown can be exempted from prosecution. Here is an example which illustrates, on my reading of the legislation as it is now, that, if an act by the Territory Executive or a Minister is inconsistent with the plan, then in fact a prosecution is allowable.

Clause agreed to.
Clause 9 agreed to.
Clauses 10 to 14, by leave, taken together, and agreed to.
Clause 15

MR MOORE (9.07): Mr Speaker, I move:

> Page 8, line 36, add the following subclause:

"(3) All variations to the Plan prepared by the Authority shall be in accordance with the document known as the Metropolitan Policy Plan (1984) until that policy plan is replaced by a further comprehensive strategy for the long term development of land in the Territory.".

What I propose is to add a new subclause (3) to clause 15 with reference to the preparation of variations to the plan. This proposed subclause (3) is a very sensible thing indeed. I believe that every member of this Assembly would like to be seen to take a long-term view of planning in the Territory. It is absolutely critical and absolutely basic that we have a long-term view of the Territory in our planning, of all things. Yet, on page 73 of the draft Territory Plan's Planning Report there are these words:

> ... pending proposed joint studies with the NCPA, the Territory Plan cannot at this stage incorporate a comprehensive strategy for the ACT's longer-term development.

It has not been done; it is not part of this new Territory Plan. The only sensible thing for us to do is to retain what we have as the long-term strategy and make sure that our planning is consistent with that long-term strategy until a new strategy is developed.

If the Territory planners decide that this is a terrible thing and we cannot possibly go ahead with it, then let them develop a long-term strategy for the development of Canberra. I will quote further from that same page. It continues:

> This is not to say that the Territory Plan will be devoid of strategic content.

I accept that. It is an argument that Mr Tomlins has used. When I have said that the Territory Plan is a zoning plan, he has said that it is not devoid of strategic content, and that is true. It is not one of those easy, black-and-white arguments. But the emphasis is, of course, on a zoning plan rather than a strategic plan. What is identified here is that the long-term strategies are simply not in place. By their own admission, there is no long-term planning incorporated into the Territory Plan. I must say, in the first place, that I think it is disgraceful. But, getting over the disgraceful thing, it is the responsibility of this Assembly to ensure that the community is protected by a long-term view.

The longest-term view that we have is the 1984 Metropolitan Policy Plan, which provides for the development of the Territory beyond the year 2000. That is a long-term, strategic plan. Therefore, it is appropriate that at this stage we retain that plan as our strategic development plan until such time as the Territory Planning Authority gets off its seat and develops that strategic plan - which, of course, would have to be consistent with the National Capital Plan produced by the National Capital Planning Authority.

So, the situation is that, "pending proposed joint studies with the NCPA", the Territory Plan does not have such a strategy plan. I suggest that, if we incorporate this amendment in the legislation, we will see a great deal of activity on the part of the Planning Authority here to ensure that it does develop a long-term strategy plan, which other plans will have to be consistent with. Therefore, my amendment would provide that:

> All variations to the Plan prepared by the Authority shall be in accordance with the document known as the Metropolitan Policy Plan (1984) until that policy plan is replaced by a further comprehensive strategy for the long term development of land in the Territory.

I do not know how any individual member of this Assembly could wear the responsibility of voting against this amendment in the face of the evidence that I have presented from the Government's own documents. Let me read it again:

> ... the Territory Plan cannot at this stage incorporate a comprehensive strategy for the ACT's longer-term development.

We are all aware of the tremendous amount of work that the Territory Planning Authority has done not only in preparing this plan but also in preparing this legislation, both of which we have before us today. This issue that I raise now, on its own, clearly justifies the fact that we were not prepared to debate this legislation until we had this plan. I must say that it makes me feel refreshed that people like me, and those in the Residents Rally, stood out and said that we would refuse to debate it. I see that Mr Jensen, displaying his normal rapid ability, has in front of him the very document that I refer to - the Metropolitan Policy Plan of 1984 - which has on its front the Y plan.

I would not claim that the Metropolitan Policy Plan is a perfect document, but it certainly does provide a long-term strategy. It sets out a strategic plan. It is consistent with what the planning Ministers from around Australia agreed to only a matter of two months ago. If we were to vote for this amendment, we would be consistent with what the planning Ministers from around Australia agreed to. This Territory Plan is not a strategic plan; yet Ministers around Australia have agreed that they will adopt strategic plans as part of the better cities project.

You cannot have short-term planning and strategic planning; the two are incongruous with one another. We need a strategic plan, and we have a strategic plan. Until that plan is replaced, we, as members, should take control and say, "Yes, we will have a strategic plan before this Territory Plan is adopted, and the two must be consistent". As long as this Territory Plan is consistent with the long-term plans, we have no problems. But, at the moment, I would argue that it is not consistent with them, and it

will require some adaptation. The Planning Authority will find that it cannot produce the plan that it wants. Let it come up with a strategic plan that we can debate in this house for the longer-term development of the Territory. We cannot allow a short-term view to prevail on planning.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (9.14): Mr Speaker, Mr Moore proposes that the Metropolitan Policy Plan should be the strategy establishing the principles governing our long-term planning and development of Canberra, at least until a new strategy plan is developed. But I am afraid that it will not work like that. Substantially, the Metropolitan Policy Plan has been revoked. It is not operative. It has been largely overtaken by the National Capital Plan, and other elements have been incorporated in the draft Territory Plan in a series of strategic instruments.

Mr Jensen: Is that right?

Mr Moore: No.

MR WOOD: It is right. So, there is no point in proposing this amendment.

Mr Moore: It would be the case if we adopted the Territory Plan; but we have not adopted the draft Territory Plan, so what you are saying is rubbish.

MR WOOD: That is not so.

Mr Moore: You have just been given bad advice.

MR WOOD: Mr Moore, the draft Territory Plan has been prepared under the strategic umbrella of the National Capital Plan, and, where that plan does not contain the strategic controls which were considered necessary, they are incorporated into the Territory Plan. For example, the general performance policies for Civic Centre contain the objective of encouraging an equitable distribution of job opportunities for the work force of each residential district. As a criterion, Civic Centre employment is limited to 20 per cent of ACT total employment. That is just one example. So, Mr Moore, this amendment would achieve nothing.

MR COLLAERY (9.16): I, firstly, want to take up Mr Wood on his comment that the 1984 Metropolitan Policy Plan has been overtaken and effectively abrogated by further instruments. I am not aware of that and, if I was litigating in the Supreme Court at the moment on some planning matters, I would be using the 1984 plan and as much of the Civic Centre Policy Plan and other documentation that is pertinent to that as I could. The Minister needs to seek advice from his advisers on whether, during this hiatus or interregnum, we still rely upon these two documents. I am displaying to Mr Wood the Metropolitan Policy Plan of 1984 and a January 1989 Civic Centre plan.

In addition, since those plans were enunciated, the National Capital Plan has come down.

Mr Moore: I will add that as an amendment, Bernard.

MR COLLAERY: Mr Moore has foreshadowed the fact that he will take that into account. Mr Wood also said - and he will correct me if I am wrong - that the National Capital Plan did not operate in the Territory sense. Perhaps Mr Wood, in reply, will assist us, and I will come back to that. I have quite forgotten his exact words. But the fact is that the object of the National Capital Plan is, to quote section 9 of the legislation:

> ... to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.

In introducing the National Capital Plan, the then Minister for the Arts and Territories in the House of Representatives said, in his second reading speech on 19 October 1988, that the National Capital Planning Authority was to prepare:

> ... a National Capital Plan which will define the policies, aesthetic principles and any development requirements required to maintain and enhance the character of the national capital.
>
> The ACT will be responsible for the normal range of State-type planning and development matters.

Further, the Minister stated:

> The purpose of the National Capital Plan is to ensure that the Commonwealth's national capital interests in the Territory are fully protected, without otherwise involving the Commonwealth in matters that should be the prerogative of the Canberra community.

The Minister concluded by stating that the new arrangements contained in the National Capital Plan would allow:

> ... the people of the Territory to control the day to day planning and development of their home.

Then we come to the principles enunciated in this Bill, and I draw this to Mr Moore's attention. Clause 7 of the Bill states that the object of the Territory Plan is:

> ... to ensure, in a manner not inconsistent with the National Capital Plan, that the planning and development of the Territory provides the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation.

Mr Moore's submission to us, with this amendment, is that there is not, at this stage, an approved strategic plan in the context of the Territory Plan, because the Territory Plan has not come down. Mr Moore may correct me, but I suggest that his further submission is that there is not a full strategy in the draft Territory Plan to replicate that strategy that was defined historically in the 1984 Metropolitan Policy Plan.

The general principles relating to the planning of the national and arterial road systems obviously affect the efficiency of the environment in which the people of the Territory live. So, there is a very broad overlap between the National Capital Plan and the Territory Plan; for example, the general and main road routes through the city. What is the strategy set out in the draft Territory Plan for transport? If one goes to that, one sees that there are some general statements on transport, but there is not the same detail that exists in the Metropolitan Policy Plan and the Civic Centre plan. So, I would enjoin Mr Wood, in his response, to indicate why he considers that this strategic plan has already has been displaced, whether we have a strategic plan, and, if we do have one, where it is. And, if we do not have one, is he saying that it will be in the incoming Territory Plan?

MR JENSEN (9.22): Mr Speaker, the issue really, I guess, concerns the broad strategies for development proposals within the ACT. As my colleagues Mr Moore and Mr Collaery have indicated, there is some suggestion of that within the Metropolitan Policy Plan and also in the National Capital Plan itself, I suppose, in some respects. Mr Wood indicated to us in debate that he believed that this document was no longer in force. I would be very interested to hear Mr Wood indicate whether or not that is the case. Unfortunately, I do not have with me the list of planning documents that were approved on 31 January 1990, I think, when all those various variations in policy plans that were still in force were actually approved as part of the plan.

In fact, I may be able to find it here because I happen to have the appendices to the National Capital Plan, the ones dated 19 December 1990. I am just having a look, and it does not appear to me to say that, as I look through the plan. It does say, in fact, that part of the Metropolitan Canberra Policy Plan Development Plan, July 1984, which is the document that we have been referring to, has been revoked. But it appears to say that only certain areas have been revoked. For example, page 23 of the appendices attached to the National Capital Plan refers to policies revoked in part. It states:

> General Policies of the Plan define urban areas and other major land uses on a pattern very similar to the MPP. The MPP is therefore revoked in respect of its broad policies of land use. The MPP is also revoked to the extent that it makes

> policy statements about the Parliamentary Zone, Diplomatic Missions and the Airport, all of which are within Designated Areas. Finally, the MPP is superseded by the National Capital Plan with respect to policies relating to the National Capital Open Space System, and is further revoked to that extent.

That is not a total revocation. Quite a lot of it, in fact, is still current, as I read this particular document. It seems to me that the broad policies that may have been in this document have been picked up by the National Capital Plan itself. As my colleague Mr Collaery has already indicated, clause 7 of the Bill says that the Territory Plan cannot do anything that is inconsistent with the National Capital Plan.

So, it would seem to me that, if, as Mr Moore has indicated, the Territory Planning Authority admits in its Planning Report that that particular document is not a strategic plan in any way, shape or form, it could be argued that what we have left, from a strategic planning point of view, is, in fact, the National Capital Plan dated December 1990 and those aspects of the Metropolitan Policy Development Plan dated July 1984 which in fact are still current. I think that to suggest, as Mr Wood has done, that this particular document has been revoked is not strictly accurate, and I draw that to Mr Wood's attention. I will be interested to hear his response both to my remarks and to those of Mr Collaery on this issue.

MR MOORE (9.27): Mr Speaker, I move:

> Omit "with the document known as", substitute "with the documents known as the National Capital Plan 1990 and".

This is an amendment to my own amendment. I take the point that Mr Wood raised, namely, that we ought also to include the National Capital Plan. Mr Collaery, in his speech, addressed the fact that the National Capital Plan is already referred to in the Bill in the following terms:

> The object of the Plan shall be to ensure, in a manner not inconsistent with the National Capital Plan, that the planning and development of the Territory provides the people of the Territory with an attractive, safe and efficient environment ...

Of course, those words come directly from one of the self-government Acts. Having read that, I felt at the time that it was appropriate simply to use the Metropolitan Policy Plan in terms of the strategy. But I take Mr Wood's point, which I think is a valid one, that, until a strategic document is prepared, the National Capital Plan is a relevant strategic planning document, and that we should

remain consistent with it. But we should not use that on its own because, of course, the strategic value of the Metropolitan Policy Plan still exists and is not inconsistent with the strategies of the National Capital Plan.

With that in mind, I urge members to ensure that we, as legislators, adopt this appropriate way of taking control of planning in the ACT until such a time as the long-term development of Canberra is undertaken by the Territory Planning Authority. I hope that members will support what is obviously a very sensible amendment to ensure that we are not giving carte blanche to people to go ahead with a short-term planning concept. Planning, by its nature, ought to be a long-term concept. It ought to be a concept that is based on a strategy.

I find it appalling that a strategy for planning is not set out first and foremost, with the techniques for handling those planning matters then being designed to fit in with the strategic plans. I think we must give credit to the Territory Planning Authority at least for making it clear to us - on page 73 of the draft Territory Plan Planning Report - that that is its position; that it does not have a long-term strategic plan on which to operate. We see that it is its intention to establish one, but until that happens we must remain with what we have.

There is no point in throwing out everything that we have and coming up with something that is based on short-term planning. We must ensure that this is consistent with what we are doing. If the amendment that I have moved to my earlier amendment is passed, the amendment will read:

> All variations to the Plan prepared by the Authority shall be in accordance with the documents known as the National Capital Plan 1990 and the Metropolitan Policy Plan (1984) until that Policy Plan is replaced by a further comprehensive strategy for the long term development of land in the Territory.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (9.31): Mr Speaker, I think there is a little more logic in what Mr Moore now proposes, but I remain unsure that there is all that much purpose to it. The fact is that the remnants of the Metropolitan Policy Plan, such as remain operative - those not taken over by the National Capital Plan - along with that latter document, pretty substantially cover planning matters for the period until the new plan comes into effect. So, I am not sure that there is any purpose in agreeing to this amendment.

MR COLLAERY (9.32): Mr Speaker, I thought Mr Moore made himself clear. He quoted from page 73 of the Planning Report of the draft Territory Plan. I hope Mr Wood has it before him.

Mr Wood: I have not, I am afraid.

MR COLLAERY: I cannot believe it. At page 73 of the draft Territory Plan it says this:

> the relevant provisions of both the ACT (Planning and Land Management) Act and the ACT Government's Land (Planning and Environment) Bill make it clear that the focus of the Plan's statutory role is to be land use, and the processing of proposals for buildings, works and subdivision.

These are the operative words, and I really enjoin Mr Wood to listen. It talks about the focus being on buildings, works and subdivision - that is, the more philistine aspects of our Canberra culture - and it says:

> pending proposed joint studies with the NCPA, the Territory Plan cannot at this stage incorporate a comprehensive strategy for the ACT's longer-term development.

It then goes on to say:

> This is not to say that the Territory Plan will be devoid of strategic content. As noted in section 4.7, it responds to and elaborates upon a number of significant proposals contained in the National Capital Plan, especially with regard to urban consolidation and energy efficiency.
>
> Nevertheless, the draft Plan is primarily concerned with drawing together, rationalising and updating numerous land use policies of the former NCDC to provide a basis for the new ACT planning and land management system.

So, the Authority clearly concedes that it, to use the words in the draft plan, "cannot at this stage incorporate a comprehensive strategy". Mr Moore is saying, "Let us preserve the strategic content of the residual strategy documents that control this great national capital". I remind Mr Wood that the words in the Territory Plan rely upon the quite significant proposals contained in the National Capital Plan. In other words, there is an inference there that the strategy can be found in the National Capital Plan. I remind Mr Wood of some aspects of the National Capital Plan. It says:

> The pattern of centres is an integral feature of Canberra's development and forms a basis for the location and distribution of employment, retailing, commercial and community facilities. The hierarchal arrangement of functions gives residents convenient and cost effective access to a range of facilities and services.

So, what the National Capital Plan is talking about is the linkages. It does not deal with an overall strategy. It deals with the impact of those matters that are perceived to be of national significance, and that term is not defined. So, it is apparent that we are not enforcing the regime - the inner planning discipline - of a broad strategic plan. I ask you: Would a general go to war without a broad strategic plan? I am certain that he or she would not. Would members suggest that a chief of staff would not have a broad strategic plan for running something as grandiose as this city, with the formerly enshrined dispersed city concept and the rest?

What we are doing, as conceded at page 73 of the Planning Report of the draft Territory Plan, is dropping the focus on a strategy and moving towards a focus in the following terms:

> ... the focus of the Plan's statutory role is to be land use, and the processing of proposals for buildings, works and subdivision.

Hence, the zonal system, which we will come to later in the debate on the plan. The fact is that the strategies worked out over the years by Sir John Overall and the great planners of the NCDC are now to be discarded, to be found again "pending proposed joint studies with the NCPA". The report says, further:

> ... the Territory Plan cannot at this stage incorporate a comprehensive strategy for the ACT's longer-term development.

Mr Moore is trying to preserve what strategy we have, at least until we find another strategy. I ask you: Would a chief of staff throw out a general strategy for conducting warfare, without having a replacement idea, and still commit the troops to battle? No, of course not.

Mrs Grassby: That is exactly what they do all the time.

MR COLLAERY: It may be what the Labor Party does, but it is certainly not what the Rally wants for our fair city. We do not want a developer-driven city. We do not mind development - - -

Mr Wood: You haven't got one, for heaven's sake.

Dr Kinloch: Forrest bowling club.

MR COLLAERY: Yes, hear, hear! My colleague Dr Kinloch cites the Forrest bowling club.

Mr Connolly: I wondered when that would come back - and Rocky Knoll.

MR COLLAERY: Some of our scars are recent; some of our scars will never fade. The fact is that this planning document, the Planning Report of the draft Territory Plan, concedes at page 73 that the new focus, at the moment, is to be on land use and the processing of proposals for buildings, works and subdivision, pending joint studies with the NCPA.

Why is it not reasonable to ask that the current strategies that the electors of this Territory have endorsed for years remain in place? They are not all strategies, I might add, that the Rally likes; but at least it is a strategic front for the continued management of the Territory's leasehold system. I really ask members to consider carefully how they will vote on this matter. We are simply saying, "Let us keep a strategy, for better or for worse. It is a strategy that we have". Otherwise, we will leave a vacuum, and I fear that that vacuum will see our city change.

There are urgent necessities about planning at the moment in terms of proposals for buildings, works, subdivision and land use. You have only to see the discos springing up all over the place - some of them in quite inappropriate places - to see what is happening under a scatter block system of planning in the city, whereby land use controls have again slipped as they did in 1980 and 1981.

We now have a rash of new discos in Manuka; we are getting them in the city. We are seeing the historic Sydney Building turn into some neon lit strip, and we saw yesterday the problems of violence and alcohol as a result of that concentration. Land use approvals are being given for sites next to laneways - next to all the wrong areas. I mention a particularly significant wooden structure in this city - I will not go any closer; I do not want to ruin any immediate business. Those approvals are wrong because the Metropolitan Policy Plan strategy has been ignored.

In 1979 it took me nearly nine months to get approval for a client to put a canvas awning up over the Croissant D'Or French patisserie. That is how strict the NCDC was about the heritage Sydney Building and the Melbourne Building. Look at the slide now. Look at what has happened to those two old colonnaded structures. And look at the risks to the youngsters who, at up to 700 at a time, pack into at least one of those buildings.

So, what we need to have is a return to the strategy. I am not saying that the strategy has been well enough observed. But at least it is there, and it has been formulated by the great planners - the late Peter Harrison and others.

MR MOORE (9.42): I might take time to speak to my amendment. We are at an absolutely critical stage. I think most of us have accepted that there is no long-term strategy. The criticisms that I have made of the draft Territory Plan are primarily based on the fact that it does not have a long-term strategy driving it. That is what has created the problems within the plan.

There is no doubt that the draft Territory Plan does have some strategic elements. There is no question about that; it does have strategic elements. But it is not driven by strategy. It has some strategic elements, but the zoning sections of the draft Territory Plan are largely devoid of those strategies. I say that because they fail to control how much development goes where, and when. That is what planning is about. That is what a strategy provides. A long-term strategy should provide a long-term vision of how much development will occur in any given place at any given time. Once we have a long-term strategy, we can plan within that framework. That is what is missing.

Mr Wood has been kind enough to indicate to me that some of his advice indicates that so much of the Metropolitan Policy Plan has been taken over by the National Capital Plan that this amendment will achieve nothing. If that really is the case, then it also will do no damage. If, as Mr Wood is suggesting, so much of the Metropolitan Policy Plan has been taken over by the draft Territory Plan and the National Capital Plan combined, then what is lost? I am arguing that that simply is not the case. There is enough still remaining in the Metropolitan Policy Plan that will govern the long-term strategy in Canberra.

Mr Collaery pointed out that, if someone was litigious in this matter and was prepared to take to court a variation to current policies, that person would rely heavily on the Metropolitan Policy Plan. Mr Collaery is quite right. Yesterday I lodged with the Supreme Court a notice of motion to object to a variation under section 11A of the City Area Leases Act, and in my objection I will rely heavily on the Metropolitan Policy Plan, which is part of the plan that, for the time being, governs the construction and development of Canberra.

I think that, if Mr Wood could understand that there is no risk in terms of damage, as far as the long term goes, in fact we would be right. With reference to the amendment - which, of course, is what I am actually speaking to, Mr Speaker - the point that Mr Wood raised about the National Capital Plan is valid. I pointed out before that I felt that it had already been covered. But the National Capital Plan, of course, is a general overall strategy for the areas that are covered in terms of national capital interests and national capital thinking.

But we need to go further than that. We need more than that, and it is appropriate for Mr Wood to see his way clear to support this very sensible amendment and to realise that his own documents tell him that there is no long-term strategy. I have not suggested for a minute that the Metropolitan Policy Plan and the National Capital Plan together will provide the best long-term strategy. I believe that it is quite correct that that strategy needs to be reviewed. By passing this amendment, we will ensure that that strategy will be reviewed rapidly, and we will

get a picture of what will be the long-term development of Canberra from the planners' perspective. That is what we need, and that is what is lacking in this city at the moment.

Question put:

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

The Assembly voted -

AYES, 4	*NOES, 8*
Mr Collaery	Mr Berry
Mr Jensen	Mr Connolly
Dr Kinloch	Mrs Grassby
Mr Moore	Mr Humphries
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

Question put:

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

The Assembly voted -

AYES, 5	*NOES, 8*
Mr Collaery	Mr Berry
Mr Jensen	Mr Connolly
Dr Kinloch	Mrs Grassby
Mr Moore	Mr Humphries
Mr Stevenson	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.
Clause agreed to.
Debate (on motion by **Mr Berry**) adjourned.

POSTPONEMENT OF BUSINESS

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

> That order of the day No. 2, Executive business, notice No. 19, private members' business, and order of the day No. 2, Assembly business, be postponed until a later hour this day.

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) (AMENDMENT) BILL 1991

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

> That this Bill be agreed to in principle.

MR SPEAKER: Does any member wish to speak, pending Mrs Nolan's return to the chamber?

Motion (by **Mr Jensen**) put:

> That the debate be now adjourned.

The Assembly proceeding to a vote and the bells being rung -

Mr Jensen: I seek leave to withdraw my motion.

Motion, by leave, withdrawn.

MRS NOLAN (10.04): Mr Speaker, first of all I apologise to the house. I had to race upstairs to find my papers, once I found that we were moving toward this Bill. I had not brought them down this evening because I did think we were going to be debating planning legislation for quite some time. However, there has been a change, and I understand that we are now debating in principle the Administrative Decisions (Judicial Review) (Amendment) Bill 1991. I do not consider that we should be passing this Bill this evening, not having passed the planning Bill. However, I have argued my case with both Mr Berry and Mr Connolly, and my understanding is that they are quite happy that this debate should go ahead, so I shall make a few brief comments.

This Bill was developed under the previous Government, and I understand that it has been reviewed and endorsed for introduction by this Government. I obviously did not see the previous draft Bill, so I am not sure whether there have been any changes; but I will be supporting this Bill. At this point, that is probably all the comment I need to make.

MR COLLAERY (10.06): I join with Mrs Nolan in supporting this Bill and in agreeing with the comments she made. This is a significant Bill. It widens the locus standi, or standing, of persons before the court under the Administrative Decisions (Judicial Review) Act 1989. As the Minister indicated in his presentation speech:

> The Bill will amend the judicial review Act to provide that a person who considers a decision, failure to make a decision or conduct under the Land (Planning and Environment) Bill 1991 and the

> Heritage Objects Bill 1991 to be contrary to law may apply for review of that decision, failure or conduct. This Bill will, in effect, remove the requirement that a person must be aggrieved by the decision, failure or conduct before that person is entitled to seek judicial review of matters arising under the new legislation.

I am absolutely delighted to see this Bill coming forward. It widens standing to apply for review. One must remember in all this that the Administrative Decisions (Judicial Review) Act does not provide scope, in its textual context, for merit review. As the decisions have evolved under that legislation in its parent Federal form, the courts have generally construed the applications before them on the grounds of unreasonableness, errors of law, or any other of the enumerated heads, as requiring that a question of law be resolved. At the moment, this legislation does not deal with merit review.

The doctrine of being affected has been well developed in the Federal Court in particular. An example of a wide construction was a finding by Mr Justice Wilcox, in the *Hail Mary* case, that clergymen could be affected by a film that portrayed a religious sentiment in a particular way. He said that they could be affected at large by a film and he gave them standing. We then go down to the narrow construction that has been more traditionally placed on it by Mr Justice Neaves in our court here and in the Federal Court, where His Honour has looked generally quite textually to the law, and I say that with great respect.

The passage of this Bill will mean that someone living at the end of Canberra, who believes that legal processes have not been properly fulfilled, can be joined in an action to review that decision. That will widen the scope for planning activists who see an error of law that needs to be approached and dealt with. I stress that it will not produce a new source of merit review.

I commend the Bill to the house. It is the outcome of the time I was in the Attorney's job and it is the outcome of lobbying I undertook within the Alliance Government to ensure that this legislation put us at the forefront in Australia in relation to locus standi.

MR MOORE (10.11): Mr Speaker, the introduction of this Bill at this stage is ironic for its inconsistency with what has gone on tonight. I congratulate the Attorney-General and the Government for introducing it and for widening the ability of people to carry out appeals. This form of appeal is being opened within the courts - a difficult area to access. For those of us who do not have legal training, it is a formidable exercise to go into a court; but at least here, appropriately, access is being broadened. Contrast that with the earlier debate, where there was an opportunity to broaden appeals so that ordinary people could have access, and look at the view of

Labor there. They are prepared to look after the people who can access the courts; but the party of the people, as they would have us believe they are, is not prepared to broaden appeal procedures for ordinary people.

It is a great inconsistency and reflects where the Labor Party has gone. It surprises me that the Labor Party in the ACT should go the same way as the Federal Labor Party - further and further to the Right, taking over the Liberals' home ground. As we saw earlier today, the Liberals are now forced to take a more and more conservative stance, with that incredibly conservative tax package they have said they are going to inflict upon the people of Australia, but with most impact, I presume, on the people of Canberra.

With reference specifically to this Bill, and leaving aside the inconsistencies tonight in the stance of the Labor Party and their failure to hold to a set of principles, I think this is a very positive move, and I congratulate the Attorney-General for bringing it forward. Perhaps he will have the sense to convince his colleague the Minister for Planning that he should be making other decisions accessible to ordinary people when we have the opportunity to review what we have done tonight with reference to appeals under the planning Act.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.13), in reply: I am pleased that members generally are supportive of this package. This Bill is consequential, in a sense, on the planning package. It is the view of the Government that we will take the in-principle debate on this Bill and then accept an adjournment of the detail stage so that we can wrap it up later. I think all that needs to be said has been said. It is a provision which expands appeal rights. It is a sensible addition to the planning package now before the chamber. I commend the Bill to the house, certainly at its in-principle stage, and we can adjourn the detail stage.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1

Debate (on motion by **Mrs Nolan**) adjourned.

LAW REFORM (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL (NO. 2) 1991

[COGNATE BILL:

COMPENSATION (FATAL INJURIES) (AMENDMENT) BILL 1991]

Debate resumed from 17 October 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Compensation (Fatal Injuries) (Amendment) Bill 1991? There being no objection, that course will be followed. I remind members that, in debating order of the day No. 4, they may also address their remarks to order of the day No. 5.

MR STEFANIAK (10.15): I thank my two legal colleagues, former Judge Kelly and Peter Quinton, for a very lengthy and useful talk about these two Bills. The Liberal Party will be interested to see how they apply in practice. As a result of the discussions I have had with Judge Kelly and Mr Quinton, some of our fears have been allayed.

As the Attorney has stated, these Bills bring the ACT legislation into line with what occurs in practice and what has been occurring in our supreme courts in regard to contributory negligence in particular cases - certainly in cases of statutory liability since about the mid-1970s, effectively. It is worthwhile going into some of the history of this because some of our concerns were also expressed initially by the Law Society, which has a representative on the community consultative committee, and by the insurance companies. After further debate and reworking through this legislation, the fears of the Law Society have been overcome. The insurance companies were given further opportunities to put additional facts and figures, which I understand has not occurred.

Our concerns revolved around the fact that, if there were contributory negligence, that should be taken into account; but very good reasons are put forward as to why these Bills should be enacted to overcome that in certain circumstances. Indeed, there is a line of High Court authorities which was mentioned by the Attorney, the only hiccup being the case in 1943 of Piro v. W. Foster and Co. Ltd, which effectively is now mirrored by the ACT. I am told by Judge Kelly and Mr Quinton that the worst-case scenario cost to insurance companies as a result of this would be about $1m per annum. The judge thinks it is more likely to be about $100,000. He states that from his experience, and I am well aware of the very lengthy and detailed experience Judge Kelly has in this area of the law. He was a judge of the ACT Supreme Court for some 20 years and specialised in this type of law.

The rationale behind this Bill is commendable, and we will look with interest to see how it continues to apply in practice. I was talking earlier today to the Attorney, who indicated that the Government too would be looking at how the law applies in practice. If there are problems of the law applying in such a way that some sort of mischief occurs that is not really intended, this can be looked at again. Mr Connolly is confident that that will not happen in law and, more reassuringly as far as we are concerned - no offence to Mr Connolly - Judge Kelly and the Community Law Reform Committee are confident that there will be no problems. That includes the Law Society and the legal practitioners represented on that committee.

The Griffiths v. Kerkemeyer situation, which has effectively applied in the Territory since the 1970s, will now come into legislative force. Accordingly, these Bills are supported by the Liberal Party.

MR COLLAERY (10.20): I rise briefly to commend the Community Law Reform Committee, firstly, for the work it did in its report, which was commissioned following a reference I gave as Attorney on 21 September 1990. The committee's report is a good overview of the law as it now stands in this area. It is a very useful compendium of where the authorities are and what the comparative legislation is. I commend the relatively short but informative report of the committee.

In an appendix to the committee's report, as a draft prepared by the Parliamentary Counsel's Office, is the Bill before us today. My colleague Mr Stefaniak put the issues, and they were set out clearly by the Attorney in his introductory speech. I make one practical observation. This may seem to be a somewhat obscure issue, for the lay persons in our midst, as Mr Moore said earlier in the debate; but it is a Bill very much for the lay person. It is a Bill that rectifies the injustice and discrimination that some of us, particularly me, have seen in practice in the Territory.

I am very pleased to endorse this further process of law reform in the Territory. I think the cynics, particularly those in the Canberra legal fraternity, who are not always complimentary about the self-government process or about the workings of this Assembly and its parliamentarians, will note that within a relatively short time of self-government we have put an end to a long-running issue of concern to the community. Again, this is a gain for self-government, and I welcome the legislation.

MR HUMPHRIES (10.22): My party has decided to support these two Bills, and I will loyally support the view of my party. However, I must confess that I have serious reservations about the thrust of these two Bills, and I thought I might indicate the nature of my reservations. It is a matter that will not affect my vote, of course, because my party has decided to support these Bills.

With respect to the first Bill - the Law Reform (Miscellaneous Provisions) (Amendment) Bill - there is reference to - - -

Mr Moore: You should go Independent, Gary.

MR HUMPHRIES: That is a very tempting invitation, Mr Moore; but I think it involves too much work. You share the load more with a party. I will stick with that.

Mr Connolly: You could become an even newer conservative.

MR HUMPHRIES: I happen to have the *Oxford Dictionary* open at the page headed "conservative", as a matter of fact. I read the definition just a few moments ago, so I am qualified to comment on that; but I will not do so yet. Mrs Nolan is a member of the conservative party here. I am not a member of the conservative party, so I can only indicate my reservations about this.

Both this Bill and the Compensation (Fatal Injuries) (Amendment) Bill 1991 deal with the notion of fault. They provide that the notion of fault should be, if not removed, then seriously downgraded as an element in an action where injury or death has resulted. In the case where a statutory duty is imposed on a particular person - often it would be an employer - and an employee is injured as a result of a breach of that statutory duty, the thrust of this Bill is that the employee's own negligence does not constitute any offset that the employer might claim in the course of that action brought by the employee.

I refer to employer and employee here, although many other sorts of statutory duties are imposed. It may be that this applies in other circumstances, but I suspect that probably the most common form of this duty falls in employment cases. It then follows that the injury, or even death, I suppose, sustained by that employee is fully claimable; that is, the full compensation that might flow from an injury of that kind is payable to the employee. There is no offset; there is no reduction for the contributory negligence of the employee.

Certainly, that position makes life a little easier for lawyers. It certainly makes it easier for courts and insurance companies and others to reach agreement on the course of action to be adopted in particular claims or particular cases. It makes it easier for parties to come to a position where they understand very simply what the law is, but whether it is just or not is another matter.

The other side of the notion of fault - fault is a fairly unglamorous, unfashionable concept these days - is responsibility. One finds fault where another person has failed to observe his or her responsibilities. By passing this legislation, we are saying, in effect, that one's responsibilities are in some way diminished; one's

responsibilities to be careful, to take care, for example, in a workplace, are not so serious as they might have been before the passage of this legislation. If I am careless about the handling of a machine, it does not matter, because there is a statutory duty on the employer. Irrespective of how foolish I have been, I am entitled to compensation at the full amount of the damages that I have sustained through my action.

This can constitute a quite absurd set of affairs. The breach of duty can be very notional, almost of a technical kind, on the part of the employer. An employee could, under these arrangements, be grossly and, arguably, even wilfully negligent and still be entitled to compensation at a very high level. I recall, for example, a case, which is not quite analogous but is very near, in the United States, of a man who decided to commit suicide by throwing himself in front of a train. He was unsuccessful in committing suicide, but did succeed in losing all his arms and legs in the accident. Afterwards, he decided to sue the operator of the train on the basis that the driver of the train had not braked quickly enough when he saw the man fall in front of the train and, therefore, although the applicant was principally responsible for this incident and for his own loss, there was some element of contribution on the part of the driver of the train.

Because the measure of damage was so enormous in that case - losing both arms and legs would be a very large measure of damage - that element of contribution, small as it may have been, did result in a very substantial pay-out to the man. That strikes me as being wrong. I do not believe that in those circumstances a person who so wilfully or grossly negligently causes his own loss ought to be in the same position as a person who suffers a loss substantially or entirely without any fault of his own.

However, that is the position that this legislation puts forward. It may make it easier for courts and lawyers to deal with these matters because there is no notion of offset, and it appears that that is the case the Government puts before us. It has support in the house and from my party, and I will say no more about that aspect of it. Incidentally, the Compensation (Fatal Injuries) (Amendment) Bill takes that one step further and provides that where death results from an accident there is no offset, no contributory negligence element. I can understand that to some extent. The Attorney, in his second reading speech, said:

> 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.

It goes on to say, interestingly, that many practical difficulties bedevil this exercise in discovering what might have been the state of mind or actions of the person who has been killed. That indeed is very true, but that should not constitute the principal reason for moving legislation of this kind. Merely because it is difficult to decide who is responsible for the particular course of events, that should not absolve a court from deciding who may be at fault in those circumstances and who is entitled to damages of some kind.

I suspect that we have come to the stage where we treat insurance companies in particular and employers in general as milch cows, as people who may be tapped for damages in whatever circumstances injury or loss might arise in the conduct of their business. While there are insurance companies generally to meet the demands made on those employers, it is still regrettable that that state of affairs, where personal responsibility is no longer a very important factor, has arisen.

The other point I want to make about the first Bill - the Law Reform (Miscellaneous Provisions) (Amendment) Bill - relates to the notion of loss of consortium. I must say that I have always understood "consortium" to imply the notion of sexual contact or sexual relationships between husband and wife, although I see that the Attorney refers to consortium as the loss of society. The *Oxford Dictionary* to which I referred earlier - - -

Mr Connolly: It is just my genteel manner, Gary.

MR HUMPHRIES: Perhaps it is not; perhaps "consortium" does mean only right of association, as the *Oxford Dictionary* indicates. I always had some notion of the sexual relationship between a husband and wife in that context. Mr Connolly makes a very persuasive case for the archaic nature of the idea of suing and recovering for loss of consortium, this arising out of the notion that a wife was a man's chattel. This antique and outdated notion should be rapidly consigned to the history books, as I think the Attorney says.

I certainly think the notion as it operates one way - that is, that the husband's loss of consortium of his wife has been actionable up until now, but the reverse is not the case - is a very regrettable state of affairs. It seems to me that, if we consider this to be an antique and outdated provision, it would have made more sense to provide for an action for loss of consortium to a wife in respect of loss of her husband's company or sexual relationship. That surely would be a more equitable way of dealing with this matter. Is the Attorney saying - perhaps he can answer this when he rises to speak - that there is no value in consortium?

Mr Connolly: You cannot put a price on love, Gary.

MR HUMPHRIES: Mr Connolly says that we cannot put a price on love. These days we put a price on everything. If I were married, I am sure I would consider the loss of my wife's consortium a matter of enormous injury. I would feel that compensation was due, as I am sure my wife would were I to be lost and she to be deprived of my very valuable consortium.

However, that again is beside the point, since my party has decided to endorse this legislation. This obviously is the march of progress. I feel that we are entering a new era; so be it. I am sure we will be able to consider in due course the effect of legislation such as this on the nature of our society and the relationships in that society as they develop in future years.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.35), in reply: I thank everyone who spoke in this debate. Mr Stefaniak, Mr Collaery and Mr Humphries have all made valuable contributions. I detect in Mr Humphries' remarks - - -

Mr Wood: Typical legalistic contributions.

MR CONNOLLY: Mr Wood always mutters when one of these legal matters is being debated, and all the lawyers congratulate one another on their erudite remarks. I detected from Mr Humphries' remarks that he might have had a different view in the party room. He gave us a litany of the potential perils of abolishing the defence of contributory negligence and then said what the party view was. I must say that I thought, "There speaks the voice of a true conservative".

The history of this defence is fascinatingly laid out in the Law Reform Committee's report. The High Court in 1926, in the case of Bourke v. Butterfield and Lewis, decided as a matter of principle that the defence did not apply to statutory duty cases. There the position lay until 1940, when the House of Lords in England, in the case of Caswell v. Powell Duffryn Associated Collieries Ltd, came to the contrary view. I presume that some poor Welsh miner was negligent enough not to read the warning sign carefully or not to put his helmet on carefully and was seriously injured, and the colliery won against him. Interestingly, following a decision in 1943, the New South Wales Government in 1945 abolished the defence by statute. There the position lay in New South Wales until 1989, when along came Nick Greiner and replaced it. So, there is always an attempt to go back to the past.

The High Court, unfortunately, in the case of Piro v. W. Foster and Co. Ltd in 1943, followed the English House of Lords precedent instead of the earlier 1926 precedent. That was the view of the Australian High Court up until the last decade. It has almost slavishly followed English authorities because the English House of Lords was assumed

to be the ultimate learned court of the then empire, apart from strict Privy Council appeals, and Australian law followed English law. It is interesting that a New South Wales Labor Government in 1945 amended the law to do away with this injustice.

We certainly were mindful of some of the broader concerns Mr Humphries raised; and Mr Stefaniak also passed comment upon them. It is the floodgates argument that insurance companies often raise. It was certainly said, in the public consultation stage of the Law Reform Committee inquiry, that this would lead to vast expense; it would lead to problems for insurance companies. But at the hearings they were not able to substantiate that; nor have they been able to substantiate it in subsequent negotiation. I certainly can say to Mr Stefaniak that the concerns he raised have been noted. The view of the Law Reform Committee - a view the Government and, I note, the Liberal Party shares - is that the evidence really is not there. The concern has been raised but not substantiated. The Government will keep an eye on this, and if it is a problem it is likely to move.

I am pleased that there is general support for these proposals. It is a credit to the Community Law Reform Committee that these proposals have had such widespread support. Their report on loss of consortium in particular has received attention well beyond the borders of this Territory. It has received notice in the media across Australia. There has been some degree of incredulity in other States that the action for loss of consortium was still on the statute books in the ACT. It is a satisfying thing to be able tonight finally to consign that action to the dustbin of history.

I think Mr Humphries' suggestion that it would be better to reinstate the tort and apply it for females losing males as well as males losing females really is going in the wrong direction. It is based, as he said, on the loss of sexual congress, a loss of sexual favours, relating back to the idea of the woman as property and that with property went a right to sexual relationships. It really is an idea that is totally foreign and alien to modern thinking. It lies in the Middle Ages whence it came and should no longer have a place in the law of this Territory. I am pleased that from tonight, on the indication of the speeches of members, it will no longer have that place. I wish the Bill a speedy passage.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

COMPENSATION (FATAL INJURIES) (AMENDMENT) BILL 1991

Consideration resumed from 17 October 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.

NATIONAL CRIME AUTHORITY (TERRITORY PROVISIONS) BILL 1991
Detail Stage

Clause 29

Consideration resumed from 24 October 1991.

MR SPEAKER: The question is: That Mr Collaery's amendment be agreed to.

MR STEFANIAK (10.41): The Liberal Party has had the benefit of a three-week adjournment on this matter, which we were happy to give Mr Collaery so that further things could be done in relation to the Bill. We are satisfied, after consultation with the Attorney-General and the government law officers, that Mr Collaery's amendment is not appropriate. Accordingly, we will be voting against it.

MR COLLAERY (10.42): I have not had the benefit of being approached by Mr Stefaniak to discuss this. As we have witnessed tonight, Mr Stefaniak is heavily reliant upon the Government Law Office to determine a course of action. I do not think that is a healthy situation, and I will say no more about it. The fact is that he is supposed to be in opposition and I would have expected him to approach me before he reached an agreement with the Government. I regret that he did not do that and I regret that he has not spoken to his colleagues on the hill, who supported very strongly the notions I raised in this house on 24 October, particularly when I read into the record the concerns expressed by Senator Crichton-Browne.

Senator Crichton-Browne introduced a private member's Bill seeking to amend the parent National Crime Authority Act to ensure that the provision similar to this - section 51 of the parent Act - did not apply to committee hearings. The legislation I am putting forward is to give this Assembly the status it deserves. Clearly, we are entitled to know

what is going on. I shall give an example of what has gone on in the National Crime Authority. Since I last spoke, Mr John Phillips, the head of the National Crime Authority, has been appointed Chief Justice of the Victorian Supreme Court, and the NCA, to my knowledge, does not have a chairperson at this time.

I give an example of the sort of situation that a government will find itself funding. On 30 January 1990 the Hon. Chris Sumner, Attorney-General of South Australia, had a letter sent to him by the then chair of the National Crime Authority, Mr Peter Faris, of queen's counsel. Under that, following a request by the South Australian Attorney, internal documents of the authority relating to an Operation Noah were sent down. In explaining the documents, the then chairman of the authority said that the matter had been investigated by the previous chairman, Mr Justice Stewart, and the present chair of the authority had had a look at the work done under Mr Justice Stewart.

He indicated in the correspondence to the South Australian Attorney that the authority, as it was then constituted, rejected the proposed report on Operation Noah. It rejected it for a number of reasons, in particular because the proposed report dealt unfairly with a number of police officers; did not make any sufficient findings of fact; had conclusions and recommendations that often were not supported by the evidence; failed to accord natural justice to the persons it criticised; had a style of authorship that was offensive and sarcastic towards persons and lacked objectivity; and did not appear to apply the proper standard of proof. It went on and on.

I have commended in the past, privately, publicly and in this chamber, the South Australian Attorney, Mr Chris Sumner, for his attempts to ensure that the National Crime Authority is subject to proper parliamentary purview and certainly proper access by the Attorneys in whose jurisdiction it operates. I indicate to the Assembly that this authority has the power to enter premises and to authorise the installation of listening devices. It has the benefit of highly skilled technical people, and I will not go into detail. We do not have a listening devices Act in this Territory.

This authority can require information of the Commissioner of Taxation where it considers that the commissioner may have acquired particular information that is relevant to an investigation. It can require it by applying to a judge of the Federal Court. It has police powers by virtue of the special attachments it receives from the Australian Federal Police and police forces of the States and the Northern Territory. The National Crime Authority is invested with significant powers, and they are needed to combat organised criminal activity. I do not cavil at them, but I have been elected to this Assembly to ensure that the operations of any such investigative body in this Territory are properly under review.

The authority has a power to hold hearings. It can serve notices on people to attend and produce documents, and that power is used regularly. The very act of being subpoenaed to attend a National Crime Authority meeting, to be asked to produce documents, may have a significant effect on those persons compelled to attend before the authority. It is a very pervasive investigatory body in our society, and it is of great regret that the criminality within our community, and exterior to it, is such that we need to make these compromises with privacy issues and our civil liberties.

I believe that it is most unfortunate that the Liberal-Labor coalition, so evident for most of tonight, is at it again and that we are not going to see supported the very fine sentiments expressed by the Clerk of the Senate, Mr Harry Evans, and parliamentarians in the other house, who want to give the authority the scrutiny it deserves. I stress that it is not the type of scrutiny that would risk its operational activities, but the type of scrutiny that foreign affairs and defence and ASIO committees in the other house regularly exercise, to my knowledge.

It is all very easy for lay people who have never served in a quasi-intelligence network to think that all is well, that we can accept the assurances of senior public servants, advisers and political colleagues that it is okay. I am telling you in this chamber tonight that it would be right and proper for you to support this amendment. It will allow a properly constituted committee of this Assembly to conduct a constrained and appropriate inquiry.

Another risk that this Government has - that any government in the Territory has - is of being a tag-along government. We are new to the processes of parliament and it is very easy for us to be overawed and to say, "We will follow the other States" or "We are going to have a ministerial meeting". The fact is that the question of scrutiny of the NCA by parliamentary committees will never be resolved at the intergovernmental meeting. Mr Connolly mentioned that I had attended one; I can remember attending a couple. I attended meetings in November 1990 and in March this year, and I can assure Mr Connolly and this house that in the intergovernmental group there is not unanimity of outlook on a number of profound issues involving the management of the NCA.

Whilst those issues, which had almost come to breaking point following the departure of Mr Faris, QC, and the problems that afflicted the South Australian scene, have been quelled under the competent and prudent leadership of Mr Justice Phillips, he has gone and we are waiting on another appointment. I can assure you, from experience both nationally and internationally, that it would be a good step for this parliament to ensure that we had that power on our statute book. *(Extension of time granted)*

Whether we ever formed a select committee to look into the activities and operations of the NCA in a non-operational sense is another thing, but the fact that it is there is a caution for the authority itself. If it wanted to come into this Territory and conduct inquiries, then it would be aware that there is a parliament in this Territory that would probably not put up with any excesses of power.

There is a parliament in this Territory which, though young, has established itself in law reform, in law-making, that could well be right up with the other parliaments in the British Commonwealth. We have done that in a short time and we have had fewer settlement problems than they did in Sydney with their Rum Rebellion and the rest of the putsches that afflicted the parliamentary process there in the early days. Certainly, we have none of what afflicted the Queensland Parliament right up until modern times, as I am sure Mr Wood appreciates, being a former member of that parliament.

This is a strong parliament. This parliament will grow and get better after the next election, I am sure. I seriously commend to the Liberal Party, with its liberal-democratic instincts - in the sense that it supports a free and confident nation, a liberal nation - that we provide this power to the Assembly. You are not doing anything to risk the operations of the National Crime Authority. You are going to hear, as you have probably heard already backstage, some platitudinous comments that have come out of certain government law advisers. I know their nature and genre from the direction from which they come on this issue.

I believe that the amendments I seek will resolve the serious questions that arose in the Federal Parliament, where experienced parliamentary officers indicated a very strong disagreement with the opinions provided to that parliament by both the Federal Attorney and the Solicitor-General. I believe that members should understand that the parliamentary powers and privileges of this Assembly are like those in other Westminster parliaments - unconstrained, save by the laws establishing them and the conventions applying.

Why, above all, should a National Crime Authority come in and find itself above parliamentary purview. If you are going to have a major National Crime Authority reference in the Territory - and I can tell you that you nearly had one when I was Attorney - we are going to foot the bill. We pay for it, under our arrangement. Why cannot a committee - not an estimates committee; it may be too broad - find out the general operating guidelines, the general practices, the general investigative craft of the National Crime Authority, by asking general questions, not to do with any current inquiry?

I believe that the Attorney is going to say, "This will all be resolved on the national stage. We will all get together at intergovernmental committee meetings and we will resolve this". Not many Attorneys in this country have had the background and access to the types of activities that agencies of this nature get into that I have had. I say no more. When I was Attorney, I watched very carefully how our involvement in the NCA evolved. I supported it; but my support was always predicated on the belief that when we brought our legislation in I would ensure that it avoided the sorts of debacles that occurred in South Australia, the gross travesties of justice that occurred there.

Amazingly, and paradoxically, these occurred to the Attorney-General himself, who was mistaken for someone who had been going to a brothel. Some sharp investigator put that together with knowledge that the Attorney happened to speak fluent Italian and came up with some utterly preposterous findings on the Attorney in the infamous Operation Hydra. If you want to vote against this, do so; but I am sure I will say to you in due course, "I told you so".

MR HUMPHRIES (10.57): I want to put on record fairly clearly that the Liberal Party has not chosen lightly to reject Mr Collaery's amendment. We have certainly considered carefully what he has had to say, both today and earlier, about the importance of scrutiny by parliament. I rose earlier today to emphasise how important the Liberals felt it was that there be scrutiny by the Assembly of the budgetary progress of the Department of Health, for example. So, I am certainly not opposed to parliamentary scrutiny.

I have to say that the information provided to us by the Attorney-General's Department on this subject was persuasive. I also point out that Mr Collaery was not able to provide information from any other source that clearly was a reference to the scrutiny of parliaments other than the Federal Parliament, of which the NCA is a creature. If there had been such information, I would have been very interested to read it and to compare that view with the view put forward by the Attorney in this parliament. But there was no such information and, regrettably, I felt that we had to accept that it was not appropriate for the ACT Legislative Assembly to play some role in being the repository of information about activities conducted by the NCA.

I also should point out that Mr Collaery made an inaccurate historical reference when he talked about the Rum Rebellion and other putsches against the New South Wales parliamentary process. Of course, the Rum Rebellion occurred some decades before New South Wales had any form of parliamentary democracy. That is not a compelling reason to vote against his amendment; it is merely incidental to that.

MR MOORE (10.59): When Mr Collaery indicated that he was going to put this amendment and I spoke at the in-principle stage, I made it quite clear that it seemed to me to be a reasonable thing. In making such an amendment, I think what Mr Collaery is looking for is openness in this sort of issue, to ensure that the Territory is appropriately protected and that members of this parliament have the right to ask questions of what is, in effect, an investigatory body operating within the Territory. Those things seem to me to be perfectly logical and rational.

I have discussed the issue briefly with our Attorney-General and he has raised some of the problems in this amendment. At this stage I must say that, much as I applaud Mr Collaery's intention, I wonder whether it will achieve what he is attempting to achieve. I agree with what he is trying to achieve; I make that very clear. I am now very interested in having Mr Connolly explain whether or not it will achieve it and why. He has begun to explain that to me in brief terms over the last few minutes, because I was not privy to the information the Liberals obviously had. I have asked Mr Connolly to ensure that that does not happen again, if he would be so kind. I am very interested to hear now what he sees as the difficulties with this amendment.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.01): In the earlier debate on this some weeks ago, when Mr Collaery first raised this amendment, I did indicate that, from the Government's perspective, we were not opposed to the principle he was espousing, which was more openness and more accountability, but that we saw real problems with the ACT attempting to go it alone and assert that we would have a greater ability to inquire into the activities of a national body, the National Crime Authority, than either the parliamentary joint committee of the Federal Parliament, which is the body that is charged generally with oversight of the NCA, or any other State parliament.

I said then that, while we had sympathy with the principle, it would be inappropriate for the ACT to try to assert a greater degree of accountability than any other parliament, State or Federal. Essentially, that is the argument I had put in discussions with Mr Stefaniak, as the Liberal Party spokesperson on this issue, and all the time I explained to Mr Collaery, both privately and in the chamber, that that was our view.

There is also a doubt that has been raised by my advisers, and I must say that I concur with that doubt, as to the effect Mr Collaery's amendment would have, if it were passed. The relevant Federal provisions make it an offence to disclose material; they preserve secrecy so that an NCA officer shall not disclose. Were this Assembly to pass a law saying, "You may disclose", and were this parliament to seek to

force disclosure, an obvious inconsistency issue would arise between a law of the Commonwealth forbidding disclosure and a law of this Territory purporting to authorise disclosure.

Members would be aware that the constitutional provision under our self-government Act is that, where there is an inconsistency between a Territory law and a Commonwealth law, the Commonwealth law prevails. It is somewhat stronger than even the general constitutional provision for the States. So, there would be some doubt as to whether we would have the power to do it. In any event, and absent that legal doubt, I would still say that we should not do it. For us to assert this far greater power than is given to any other State, or than is claimed by any other State parliament or by the Federal Parliament, would seem somewhat presumptuous for a small jurisdiction such as the Territory.

I stress that the remarks Mr Collaery was quoting in the earlier debate - the remarks of Mr Justice Phillips, who then was chair of the NCA and subsequently assumed the chief justiceship of Victoria, and the remarks of numerous members of the Federal Parliament, including members of the Federal Parliamentary Liberal Party - were addressed to the potential amendment to the Commonwealth law directed to the Commonwealth joint parliamentary committee's powers. It is a parliamentary committee of somewhat unique stature in that it is recognised in the Commonwealth Act that sets up the NCA. I would have some sympathy with expanding its powers and I would have some sympathy if its powers are expanded to give the States and Territories, who are also party to this scheme, a greater degree of accountability. But I think it is wrong for the Territory to assert that in advance of the general agreement across the Commonwealth and the States and Territories.

The NCA is a body supported by all the governments of Australia. Its governing body is the intergovernmental committee, which comprises Ministers of every government in Australia and of which, when we pass this law, the ACT will be a full member. That is the forum to resolve these secrecy issues, rather than trying to pass a law in this Territory which, even if it were valid - and I have doubts as to whether it would be valid - in my view would be wrong and presumptuous.

That essentially was the argument put when we last raised the issue. Mr Stefaniak then spoke to the issue and Mr Humphries formally moved the adjournment. Mr Stefaniak said that the Liberal Party had some sympathy with Mr Collaery's views but wanted to take its counsel, wanted to have a good think about this. As a result, I did have discussions with Mr Stefaniak.

I certainly found somewhat odd Mr Collaery's remarks directed at Mr Stefaniak, accusing him of being somehow under the sway of advice from the government law officers and not fulfilling his role as an opposition member. I think that both Mr Stefaniak and Mr Humphries made it abundantly clear that the Liberal Party had looked at this issue fairly carefully. I discussed it with them.

Mr Collaery: Yes, but they did not discuss it with me.

MR CONNOLLY: They had the benefit of your views in the chamber, Mr Collaery. If they wanted to get additional views from you, no doubt they could have spoken with you. They did seek some additional details from me, which I was happy to give them.

I must admit that there was a slight, if unintended, in that I did not approach Mr Moore, Mr Duby, Ms Maher, Mrs Nolan and Mr Stevenson - I think that is the total number of Independents we now have; it is always hard to tell - for similar discussions. In future I will seek to do that. If any Independent member or party has an issue to raise about government legislation, we are open to talk about it. While many members may have some sympathy with the concept of greater openness, I urge the Assembly to reject this amendment at this time because it is inappropriate.

MR COLLAERY, by leave: If I had had the courtesy of being given a copy of the opinion that was given to my Liberal colleagues, I might be able to respond; but I think I can glean from the Attorney's comments what the argument is. That is, that the provision in the National Crime Authority Act, section 51, says that it is an offence for an officer of the NCA to disclose information, under penalty. That provision is replicated in the Bill before us, so it would be an offence for an NCA official to give out information in an ACT context.

Mr Connolly is saying two things: One, the NCA is a national body and these initiatives need to repose there. I say to that that he overlooks the fact that when it operates within this Territory it comes within the peace, order and good government powers of the Attorney and this Assembly, in our ultimate responsibility. I reject the notion that a national body in this Territory somehow has a fiat that goes over our parliament. There are some serious implications in what Mr Connolly said that I cannot agree with, but at this late hour I will not go on with them. They paint us into a subordinate position.

The next point Mr Connolly makes is that, because of the inconsistency doctrine between Federal and Territory law, a law we passed that was inconsistent with the Federal law could be invalid. There is a very simple answer to that in the opinion provided to the other house by Mr Harry Evans, the Clerk of the Senate. It is an eminent opinion, and I will give a summary of it: Section 51 of the Federal Act could not be inconsistent with a request by a committee of

the Federal Parliament for an official of the NCA to attend before it to give evidence, simply because section 51 does not contain any express words excluding the power of the Federal Parliament to bring a public official before it. It is fundamental to our democracy that we can bring our own public officials before us. The Evans opinion states:

> It is a well-established principle that parliamentary powers, privileges and immunities are not affected by a statutory provision except by express words.

He goes on:

> ... section 51 of the National Crime Authority Act cannot be taken to be such a declaration.

To support that, he sets out the principles from a joint opinion in 1985 by the Federal Attorney and the then Solicitor-General. They said:

> Whatever may be the constitutional position, it is clear that parliamentary privilege is considered to be so valuable and essential to the workings of responsible government that express words in a statute are necessary before it may be taken away:

They cite some authorities and refer to the Federal Constitution. He goes on:

> This statement of the law was unanimously accepted by the Senate Standing Committee on Constitutional and Legal Affairs (as it then was) as correct (the judgment cited in the opinion is regarded as establishing the principle referred to -

that is, the standing committee's report No. 235 of 1985. Mr Evans goes on to state:

> Section 51 of the National Crime Authority Act therefore does not set aside the power of the Joint Committee to require a person to attend to give evidence and to produce documents.

I am at a loss to understand what the Attorney's argument is. We are not passing a law that is inconsistent with the Federal law, because the Federal law does not prevent an official from giving evidence before the Federal Parliament. So, if the Federal law does not prevent it, how could a law of ours be inconsistent with it? It is as simple as that.

I have not had the courtesy of being shown the advice. I suspect that, if that is the core of the advice, it is wrong. It is most unfortunate that I have not been given access to that opinion so that I could properly address the issue. This is a very important issue relating to the privileges of this parliament as well, and it is not an issue that has gone down well in the other house. It is not an issue that is at all resolved in the minds of a number of parliamentary officers.

Mr Berry appears to be amused by this debate. It is unfortunate and sad to see the way the Liberal-Labor coalition has worked tonight to exclude the rest of us from being able to argue correctly and properly the propositions that Mr Attorney here has before him from his government law officers. The same government law officers elsewhere in this Bill replicated a repealed section of the parent Act, and it took me to correct that for them.

We are talking about the powers and privileges and responsibilities of this parliament. That is an important role in a democracy. Those of us who have made considerable sacrifices to be in this place, who are not professional politicians and do not aspire to be, see it as most important that the power of the people comes right up through the power of this parliament to call people before it, particularly if there has been a pattern of miscreant activity and concerns, as there was as the time the Federal joint committee wanted to know something from the NCA about a number of issues of considerable concern.

I am talking only about that faint possibility, given that the NCA has learnt some hard lessons, that we could have similar concerns in the future. I would not like to see it; I am not suggesting a standing committee. I do not wish to intrude into the activities, the intelligence, and the rest, of the NCA. I simply want to stress the principle, having seen how these agencies work at home and abroad, that this new parliament, with a predominantly Left Labor Party, should have the guts to give us those powers. They have not. They are gutless.

Amendment negatived.

Clause agreed to.

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

Bill, as amended, agreed to.

ADJOURNMENT

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

That the Assembly do now adjourn.

Planning Legislation Debate

MR MOORE (11.15): I take this opportunity to say a couple of words about the state of the house tonight while we were debating the Land (Planning and Environment) Bill. It was noted in particular that throughout the debate the Leader of the Opposition was not in the chamber. The Chief Minister was away at a conference and has leave of the house, so that is a quite appropriate case. A number of other members were absent for most or all of the debate on that most important Bill, and I speak specifically of Mr Duby and Ms Maher.

It was an historic thing this evening when the right of ordinary citizens to appeal was stripped from them by this Assembly.

Mr Connolly: On a point of order, Mr Speaker: Mr Moore is reflecting on a vote of the house.

MR SPEAKER: Yes. Choose your words carefully, please, Mr Moore.

MR MOORE: Thank you, Mr Speaker. It seems to me - and it will be shown in the votes on those issues, which I will not reflect on - that people ought to have taken this Bill much more seriously. The public posturing we get from the Leader of the Opposition, as we can now see, is nothing more than hot air. His interest was demonstrated adequately by the amendments he drew to this Bill - a couple of scrappy amendments on a single page of paper, handwritten at the beginning of the debate.

I believe that that indicates how seriously the Liberals take the Bill, as demonstrated by the person who primarily speaks for them on this issue, although I recognise the other Liberals who were here tonight. Considering that this is probably the single most important piece of legislation in its impact on this Territory, I think that reflects very badly on this Assembly.

Planning Legislation Debate

MR COLLAERY (11.18): I rise to support the comments of Mr Moore, with regret. I believe that the comments extend to others who were not present in the chamber during substantial periods this evening, particularly during the last debate, when I believe all members should have been present.

Mr Wood: You would not call a vote. Where were your members?

MR COLLAERY: Clearly, the Labor and Liberal coalition have the numbers. I do not intend to disturb people for useless displays - - -

Mr Wood: Two of your colleagues have gone home.

MR COLLAERY: I am sure they are upstairs. I also join with Mr Moore and indicate how frivolously the important legislation that has been discussed tonight has been approached. If the taxpayers had been in the gallery tonight, we might have seen a better performance.

Yugoslavia : Cambodia

MR STEFANIAK (11.19): I am not going to talk about the events of tonight or the comments made by Mr Moore and Mr Collaery. I am going to talk about something that is rather tragic in that a lot of people have been killed recently in another part of the world. I refer to the very troubled state, if one can call it that, of Yugoslavia. We have seen recently a city fall to the Federal Army of Yugoslavia, at great loss to civilians and military alike defending that city. Despite some proud rhetoric after the recent Gulf war, where for the first time since the Korean war the United Nations fought with some teeth and put some teeth into the ideals of that body, it seems that any chance of that continuing has come to naught. The tragic events in Yugoslavia pinpoint that.

It must be painfully obvious to everyone except Blind Freddy, and certainly it should be obvious to the United States, to the European Community and, indeed, to our own Federal parliamentarians and Government, that the state of Yugoslavia, like a number of other states in this troubled world, is very much an artificial creation. The problems between some of the peoples who make up that state, and certainly between the Serbs and the Croats, are historic and go back centuries.

It would seem quite logical that, with the dismemberment of communism in eastern Europe, many independent republics in the former state of Yugoslavia would, and probably should, go their separate ways. Some sensible and hopefully peaceful solution could be worked out - some loose economic federation, or whatever. Unfortunately, the fact that the Western world was quite prepared to wash its hands of the

problem encouraged one of the remaining reasonably hardline communist regimes, the Federal regime in Yugoslavia, to intervene militarily. Had the West sent a different message early on, that could have been quite different.

Mr Berry: All they needed was a bit of oil. If they had had a bit of oil, there would have been some intervention.

MR STEFANIAK: Mr Berry mutters something about intervention. Unfortunately, there is cause, if one really does want world peace, for intervention. The intervention should be by the United Nations, because that is the body that was set up after the disastrous experience with the League of Nations, which was a toothless tiger. In fact, it probably was not even a tiger; it was completely toothless. The idea of the United Nations was to form a body where the nations of the world could band together and, if need be, as a last resort, intervene militarily to stop people getting at each other's throats.

I think it is tragic that no message was sent to the Yugoslav Government to prevent the tragedy we see unfolding before our very eyes, and have seen for some months in Croatia. I worry greatly about what will occur in that troubled part of the world. It brings home the fact that we still have a very long way to go before we get any sort of new world order or, indeed, before a body such as the United Nations is truly effective. The actions of some of the Western countries have been quite deplorable in terms of their basic gutlessness about getting involved.

I worry now about what might happen in Cambodia, for example, because it is much closer to home and Australian troops have been committed. We have a supposed settlement there, but one of the greatest monsters still alive in the world, Pol Pot, and the infamous Khmer Rouge are coming back into Phnom Penh, which terrifies the Kampuchean people. We have Australian troops involved there, among other peacekeeping forces - and not very many either. The situation there is potentially very dangerous too.

I hope that, should that develop into another bloodbath and the Khmer Rouge take over again, the Western world especially will get a little bit of backbone and stomach and intervene and do the job properly, getting rid of that monster and his monstrous supporters. The killing of so many people by so few in such a very short time is pretty well unparalleled in history, certainly in the history of the twentieth century.

Yugoslavia : Timor

MR JENSEN (11.24): Mr Speaker, while I was upstairs I heard some suggestion that I may not be in the building, so I thought I had better come down and make sure that I was available.

Mr Wood: I hope you are finally getting those amendments done.

MR JENSEN: I was up there working very hard, I can assure you. Mr Wood will see the fruits of that tomorrow.

I rise to endorse the comments made by Mr Stefaniak in relation to the unfortunate matters that are going on in the Balkans at the moment. Those of us who live in a country such as Australia and have not had the problem of seeing their country invaded by people seeking to obtain power and to take over the territory of another nation are very fortunate indeed. Unfortunately, there are people across the waters who seek to obtain power and territory by force.

I do not accept that the attacks by elements of the Yugoslav Army, particularly the artillery and the armour, and the air force, on the villages and cities of Croatia are an appropriate use of force. It is also very clear that the Red Cross organisation is experiencing increasing frustration in moving into those areas where people are suffering privation and hardship and being able to assist. As Mr Stefaniak has already indicated, there is a need for United Nations intervention. If United Nations intervention had happened some time ago and those European nations had had a little more backbone in seeking to resolve some of the problems that were clearly evident with the breakdown of law and order - - -

Mr Berry: Did you mention Timor?

MR JENSEN: I will get onto that, Mr Berry. The Rally, as I think is well known, has consistently provided support and assistance to those groups of Croatians in Australia who have expressed concern about the problems that are going on at the moment in their homeland. Although the majority of them are Australian citizens, I think it is not unreasonable to expect them to express concern about the future of their loved ones and the country that I am sure many of them wish to go back and visit.

I think it is appropriate also at this time to consider the recent events in Timor. Many of us have friends and relations who served with some distinction on that island and who were served greatly and mightily by the Timorese people. It is a sad state of affairs when we see the sort of carnage, killing and oppression that is taking place in that country. It is long past the time when politicians in

Australia, particularly Federal politicians, should step from behind the facade and offer support and succour to the people of Timor who are suffering under the tyranny of the Indonesian regime.

I heard someone indicate today that Australia is one of the few member nations of the United Nations that acknowledge Indonesia's sovereignty over that territory. It is long past time that the Australian Government reconsidered that position and joined the majority of the world in seeking to provide self-determination for the people of Timor in their struggle against that oppressive regime. I hope that other members of this Assembly will join me in that wish.

Question resolved in the affirmative.

Assembly adjourned at 11.29 pm until Monday, 25 November 1991, at 11.00 am