# DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

## HANSARD

25 November 1991

**Monday, 25 November 1991**

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**MR SPEAKER** (Mr Prowse) took the chair at 11.00 am and read the prayer.

## CRIMES (AMENDMENT) BILL (NO. 6) 1991

**MR COLLAERY** (11.01): I present the Crimes (Amendment) Bill (No. 6) 1991. I move:

> That this Bill be agreed to in principle.

The report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, known as the Fitzgerald report 1989, dealt at length with the conduct of officials and with apparent conflicts of interest between public duty and private interest. Mr Fitzgerald recommended that codes of conduct for officials be formulated.

Subsequently, the Queensland Electoral and Administrative Review Commission released an issues paper on the subject of codes of conduct for public officials. The issues paper was essentially about the conflict between public duty and the private activities of officials. It said:

> Ministers of the Crown who dishonestly misuse public money, policemen who take bribes, public officials who practise nepotism in employment, local government councillors who profit on the basis of a form of "inside trading" and public servants who exercise power selectively are not unique to Queensland, nor are they new features of the official landscape. However, the Fitzgerald Report 1989 inferred that they represent an unhealthy public administration and require remedy.

At the time of the last Assembly election, the Rally gave an election pledge to introduce measures to combat these concerns that had arisen in the context of land administration and government contracts in the ACT. Accordingly, the Rally pressed in government for the establishment of a public corruption committee. On 1 June 1989 the ACT Legislative Assembly agreed to a motion supporting the early establishment of an independent advisory committee against corruption.

The residents of this Territory are entitled to rely upon the Assembly's subsequent recommendation, through its Standing Committee on Public Accounts, which in November 1989 recommended that a public corruption committee be

established and that "public official" in the proposed legislation include "members of the ACT Legislative Assembly, all employees of the ACT Government Service, its agencies, authorities and boards and all public office-holders regardless of whether such persons receive salary, wages or expenses".

The Alliance left behind a fully prepared Bill which was on the draft orders of the day for 30 May 1991. Unfortunately, I was dismissed as Attorney a day earlier, so those recommendations have not been implemented - and they should have been. Admittedly, the Labor Party issued its legislative program some weeks later and included the Bill with its list. It is quite clear now that the Labor Party has no intention of introducing the Public Corruption Bill.

We remain concerned about certain matters, including John Haslem's claims in a pre-election campaign statement in 1989 about a Canberra Inc. In our view, there are continuing concerns, and with the threatened rise of Canberra Inc. again it is time to support our police and other investigative agencies in their work. Accordingly, the Crimes (Amendment) Bill (No. 6) 1991 deals with the needs identified by the Gibbs Committee in its July 1990 interim report, Review of Commonwealth Criminal Law. Chapter 22 of that report dealt with official misconduct and, among other matters, abuses of power, excessive official authority and wilful neglect of duty.

We have spoken on several occasions in this Assembly about whether a conniving failure to take into account, for example, the cost to the community of infrastructure support of a development where proper inquiry should have been undertaken may well amount to corruption. We firmly believe that there should be an offence on the statute books for this type of conduct. It is now time for cupidity in government decision making, which leaves the community burdened with unrecoverable costs, to be marked by criminal sanction.

Likewise, nepotism in the appointment, on an acting or permanent basis, to a position paid by the taxpayer must be dealt with. We are concerned with any situation where a person who may not be regarded as a competent or efficient administrator periodically occupies a post of senior standing, depending upon whether a particular government is in power or not. As revealed in Queensland, ministerial nepotism is occasionally achieved by "wink wink, nod nod" subservience by other officials, who ostensibly make a public service decision to appoint a person close to a politician. In a society where there is increasing competition for jobs and an emphasis on merit, there is no place for the accommodation, at taxpayers' expense, of persons with an ill-defined superfluous role in the administration. Nepotism must have no place in the public service of this Territory.

Section 344A of the proposed new Part VIIA defines a government official as a person who holds or performs the duties of an office under a law of the Territory or a public servant. It can be seen that this is not Canberra-bashing and I have not selected out public servants as distinct from members of the ministry. This law applies to Ministers as well, who must set an example and be held accountable if they stray.

Proposed section 344B requires government officials not to act either dishonestly or for an improper motive in exercising a power or for similar improper motives or to dishonestly fail to perform a duty. A provision has been drawn to provide a defence in situations where a public servant could be deemed to be in technical breach of a law by virtue of a work stoppage or other conscientious situation. These amendments are not meant to be oppressive; they are meant to catch the oppressors.

The final provision, proposed section 344D, is meant to tidy up an area where there is a need to create a special offence for those who use an official position to practise some deception upon the public. The provision is in line with the Canadian code and provisions in the Commonwealth Crimes Act, the Secret Commissions Act and the Audit Act. There may be some overlap while the ACT public service continues to be mixed between those appointed under Federal legislation and those employed directly by the Territory. I commend the Bill to the house.

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

## AUDIT (AMENDMENT) BILL 1991

**MR COLLAERY** (11.08): I present the Audit (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

On 21 June 1991 the Residents Rally tabled in this Assembly its Self-Government Reform Group Charter. That provided in article 3 for full statutory independence for the Auditor-General, both by way of appropriation of funds and in terms of Executive independence. On 13 August 1991, Mr J.S. O'Neill, ACT Auditor-General, in his report No. 8 made a special report to this Assembly on his lack of independence. The Auditor-General said:

> The position of Auditor-General is a statutory one and the officer must have independence from the government he/she audits. This is a cornerstone of public accountability in any democracy in the Westminster tradition. Lack of such independence has caused a debilitating effect on audit activities since June 1991.

It is to the shame of this Assembly that the Auditor-General's report was not acted upon by the Government, which has the requisite powers to remedy the situation. In fact, the Labor Government did not seek even to debate the Auditor's claims. On 19 September 1991 the Auditor-General made a further report, No. 9, revealing that the Government had not handled the question of his reappointment in a straightforward manner.

This amendment seeks to fulfil the Auditor's aims with respect to independence from the Executive. As members are aware, section 65 of the self-government Act and the relevant standing order make it difficult for non-government initiatives in this Assembly to alter the appropriation of funds and deal with the Auditor's complaints that his office has been denied sufficient resources to undertake the audits he considers necessary, namely, generic drug use in ACT hospitals, the use of consultants in the ACT Government Service, the management of human resources in the ACT Government Service, and the enforcement of lease purposes and conditions.

Members are well aware how sensitive the Government is on the vexed question of how many public servants are on the payroll. We would have expected the Auditor-General to be able to undertake that inquiry if the Government was unable to do so itself. Were improper motive to be associated with a decision to deny funds to the Auditor, the provisions of the Crimes (Amendment) Bill (No. 6) 1991, which the Rally has just moved, would catch, in our opinion, any such abuse of power.

The new section 18A of the Audit Act will ensure that the Auditor-General is completely free from Executive instruction. The drafting has also taken into account section 39 of the self-government Act, which will allow the appointment of a Minister who is not a member of the Executive. The Rally also believes that, free from Executive direction, the Auditor-General should now take over line responsibility for the ACT Government fraud control unit, known as the Investigations Unit. This will overcome the present unacceptable "Caesar unto Caesar" situation within the Chief Minister's Department.

I remind members that the ACT Executive will not be subjected to Assembly scrutiny between the rising of the Assembly on or about 17 December 1991 and the declaration of the poll some four to five months later. I therefore commend this provision to the Assembly and trust that it will have swift passage.

Debate (on motion by **Ms Follett**) adjourned.

## INTERPRETATION (AMENDMENT) BILL 1991 [NO. 2]

**MR COLLAERY** (11.12): I present the Interpretation (Amendment) Bill 1991 [No. 2]. I move:

That this Bill be agreed to in principle.

The Interpretation Act 1967 provides that, when interpreting the provisions of an Act, a court or other party may have regard to, among other matters, a range of material originating from an Assembly committee, a law reform committee, an explanatory memorandum to a Bill or a presentation speech made to the Legislative Assembly. Section 11B of the Interpretation Act 1967 includes an amended provision allowing the presentation speech made to the Legislative Assembly by a member who introduced the Bill to be used as an extrinsic aid for interpretation in the future as to the background, origin and meaning of the legislation.

Members are fully aware of the introduction in this Assembly over the past two months of Bills originally prepared by the Alliance Government. Almost without exception, there has been reference to the fact that the Bill was prepared by the Alliance to deal with a jointly perceived situation. Unfortunately, that ethic was broken, in our view, by the Chief Minister in her presentation speech for the Human Rights and Equal Opportunity Bill 1991. In alluding to the Labor ethics behind the Bill and to certain other matters, including a statement that the Bill prepared by the Alliance Government had been amended to take account of Labor policies, the Chief Minister has not accurately reflected the development of the legislation or the motives behind it.

Accordingly, this Bill now before the house proposes that not only may the presentation speech made to a Bill be used as an extrinsic aid but any relevant speech may be an extrinsic aid if made to the Assembly. Given the nature of the ACT Legislative Assembly and the likelihood of there being minority governments, it seems appropriate to say that a speech in reply might well be as substantive a story about the origin of the Bill as the presentation speech.

The Human Rights and Equal Opportunity Bill was a stark example of that issue, and when the Bill is printed it should not simply carry at the foot the date of the presentation speech by the Chief Minister as a long-term aid to extrinsic interpretation by itself. It should accurately reflect the other speeches in reply by simply stating the date of introduction and the date of passage. I acknowledge that the *Hansard* may be an extrinsic aid; but the specific enjoinder in the Bill should be altered, in our view.

This is an appropriate Bill to be supported by the majority in this chamber, who should not be relegated, as we were, by a minority Chief Minister intent upon altering the political history behind legislation which she has introduced and which, ironically, will be administered by another Minister. Never again should the processes of this parliament be used for personalised grandstanding and the personal insult used by the Chief Minister. I commend the Bill to the house.

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

## BUILDINGS (DESIGN AND SITING) (AMENDMENT) BILL 1991

**MR COLLAERY** (11.16): I present the Buildings (Design and Siting) (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

Members will recall the design and siting dispute early this year between a builder with approved plans at McManus and Tuthill Places, Calwell, and other residents. Even though no appreciable work had taken place, it emerged that an approval given under section 6 of the Buildings (Design and Siting) Act 1964 was not able to be varied or revoked, even by a decision maker who may have erred. It further emerged that, even if the approval had been given contrary to any relevant NCDC policy, the Territory Planning Authority may not, in the absence of a court order setting aside the approval, treat it as a nullity.

This situation is not changed by the Interim Planning Act or by the Land (Planning and Environment) Bill 1991, as presented in this Assembly. At least this is the view adopted by successive governments. I do not, however, with respect, agree with this view. In my view, a combination of section 27 of the Interpretation Act 1967 and section 7 of the Buildings (Design and Siting) Act 1964 allows an approval to be revoked.

It is in the public interest, however, that this disagreement of view be put beyond doubt. Accordingly, this amendment will create a situation where approvals can be revoked. Obviously, no government facing a potential compensation claim would consider acting capriciously to revoke an approval on technical grounds or any other grounds after a party has acted to his or her detriment. I stress that the law surrounding section 27 of the Interpretation Act 1967 effectively says that the power to make includes the power to unmake or revoke, unless a statute expressly says otherwise. This Bill simply clarifies the law in an important aspect and will cover the significant period before the new Territory Plan and the new planning legislation are implemented. I commend the Bill to the house.

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

## LIQUOR (AMENDMENT) BILL 1991

Debate resumed from 11 September 1991, on motion by **Mr Stefaniak**:

That this Bill be agreed to in principle.

**MR CONNOLLY** (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.18): The Labor Government does not support this Bill, because it believes that the Bill is unnecessary. Interestingly enough, the view of the Labor Government that this Bill is unnecessary reflects squarely the views - the unanimous views, I would say - of the Standing Committee on Social Policy in its public behaviour inquiry report of February 1990. That committee was chaired by Mr Wood, the deputy chair was Mrs Nolan, and it consisted also of Dr Kinloch, Ms Maher and Mr Stevenson.

The committee report was noted. I have read the statement and I see nothing in the additional comments to suggest that liquor consumption ought to be banned in public places. I see additional comments that there should be prohibition of advertising and that there should be some movement on licence hours, and there are some comments on move-on powers. But there is no suggestion anywhere in the report that the legislation Mr Stefaniak is proposing - and that was referred to the committee - should be supported.

The Government's view, I stress, is not a political stunt. The Government's view is consistent with the calm and dispassionate assessment of this Bill, or a Bill in almost identical terms, by a non-partisan committee of this Assembly some year-and-a-half ago. I would be disappointed if members who took part in this quite extensive inquiry have changed their minds purely as the result of a political stunt.

The Government's view has always been, in a sense, that to ban drinking in a public place will only push the problem somewhere else - to the extent that there is a problem with consumption of alcohol in a public place. The original Bill proposed by Mr Stefaniak had some fairly absurd consequences. The most amusing consequence, in my view, was the provision which purported to ban the consumption of alcohol in a public place within 200 metres of a bus stop.

My residence has a bus stop diagonally across the road from it, and it is not uncommon on a warm afternoon, if I am out mowing the nature strip, which is a public place, for my spouse to produce a tinnie of cold beer when I have finished mowing the nature strip. For me to have a cold beer on the nature strip, while sweating after mowing the lawn, would have been rendered unlawful and I could have been arrested for such behaviour. I note that Mr Stefaniak has retreated somewhat from that absurd position.

**Mr Stefaniak**: I will come and have a beer with you too, Terry.

**MR CONNOLLY**: I would be quite happy to do that at any stage. Mr Stefaniak has removed that absurdly broad position and is bringing the Bill back to apply only to interchanges. I think that demonstrates the knee-jerk nature of this type of legislation. It is reactive legislation to force a problem elsewhere. When the legislation was considered by the Social Policy Committee, the committee saw no benefit in it.

The 1989 Bill, when it was circulated, was referred to a number of groups. It was referred to the ACT Criminal Law Consultative Committee, which is a forum that examines most government proposals for changes to the criminal law. There was a difference of opinion within that committee about the policy of the Bill, and the unanimous feeling was that, in its then form, it would operate too uncertainly to be enforceable. The committee took the view that further analysis was necessary of a policy treating public drinking in itself as so socially objectionable that it needed to be made a criminal offence. That is the essential problem here. It is treating public drinking merely by way of the criminal law rather than through more innovative approaches.

The then chair of the Gaming and Liquor Authority, Mr Terry Higgins, as he then was, stated at the time that, if it was only the objectionable public behaviour that alcohol consumption occasionally gave rise to that needed to be regulated, it may be more to the point to correct any deficiencies in the laws that deal with offensive behaviour. He made a suggestion that, if an offence was thought to be necessary, the offence should perhaps be limited to read, "No person who is behaving in a disorderly manner shall drink in a prescribed public place". Indeed, GALA took the view generally that it would create problems in its enforcement.

I note from the report that this bipartisan committee, which was looking at this legislation in a dispassionate manner, not in the heat of a political debate attempting to play a law and order card, was unable to find evidence to support the need for this type of legislation. The only support was a view from the Australian Federal Police that they would like this legislation. I respect the views of the Australian Federal Police; but I am not prepared to say that, whenever the AFP view is that the criminal law should be amended to introduce a new offence, government need automatically respond. I note that that was the precise view of the bipartisan committee.

At page 27 of this report the AFP view is considered; the view of GALA is considered. Interestingly, GALA took the view that in Adelaide's Hindley Street foot police had appeared to be far more effective as a deterrent than had

dry areas legislation, that is, policing the problem of disorderly behaviour, of - let us be frank - criminal conduct. If a person is abusing another, threatening to assault another, acting in the hooligan-like manner Mr Stefaniak is so fond of quoting, that person is committing an offence.

It is perfectly appropriate for the police, under their ordinary operational procedures, to deal with persons so committing an offence. You do not need a dry areas law to provide for that. The police in their ordinary duties of foot patrolling can deal with them. If a person is acting unlawfully and breaching the law now, he ought to be dealt with under the law. If a person is consuming a cold stubbie but is in no other way committing anti-social or offensive behaviour or threatening a person physically or verbally, if that person is sitting there quietly consuming the cold stubbie that I would consume on my nature strip, having mowed the lawn, why do we need to make that a criminal offence? We should focus on the objectionable behaviour, not on the mere fact of consuming alcohol.

This committee made a unanimous recommendation. Although Mrs Nolan, Dr Kinloch and Mr Stevenson felt it appropriate to make additional comments at the back of that report, none of them referred to this matter. So, nobody dissented from that view. The committee stated at page 27:

> The Committee discussed this recommendation at length -

that is the Stefaniak recommendation for dry areas legislation -

> but drew the conclusion that it would not recommend such a change because of the difficulties inherent in defining and setting the limits of non-drinking areas. It did not, therefore, support this proposal.

I think that is an eminently sensible view. The committee took evidence on behavioural problems and, in respect of the issue of alcohol, was looking for evidence that, for example, bus interchanges were such a problem that it warranted action.

At pages 7 and 8 of the report the committee goes on to discuss the problem of public behaviour at bus interchanges. Does it find that there is a need for dry areas legislation at the bus interchanges? Does it find that there is a need for significant amendment to the criminal law because of behaviour at bus interchanges? It does not, and I stress again that that is the dispassionate finding of a bipartisan Assembly committee.

Woden interchange is often cited as the area of most difficulty. I find it pleasing that in the design of the Tuggeranong interchange, and that project has spanned three governments, so it is a project we can all take some pleasure in - - -

**Mrs Nolan**: It is certainly an improvement on the other two.

**MR CONNOLLY**: Mrs Nolan says that it is an improvement on the other two, and so it is. The designers of that interchange adopted the approach that has been adopted in some other States, which, interestingly enough, at a national meeting of police Ministers on Friday was endorsed nationally - that is, the goal of crime prevention as the best way to deal with anti-social behaviour, rather than further additions to the criminal law. Crime prevention as a national strategy now has the endorsement of all police Ministers, Liberal and Labor, as the way to go.

The designers of the bus interchange at Tuggeranong, being aware of the problems that occur at Belconnen but particularly at Woden, which is a dark, dank sort of environment with lots of nasty little corners and hiding places where people can lurk and get up to mischief, have designed a bus interchange which is very light and airy. The controller of the interchange sitting in his control booth - the senior ACTION supervisor - has an uninterrupted view of the whole of the interchange and its precincts. We have created at the Tuggeranong interchange a safe and non-threatening environment, not by amending the criminal law, not by providing - - -

**Mrs Nolan**: What about the snakepit at Woden?

**MR CONNOLLY**: Mrs Nolan asks, "What about the snakepit at Woden?". She is certainly right in saying that that is an area of some concern. Within a couple of weeks of the change of government I was down there inspecting the Woden interchange area and looking in particular at what is known as the snakepit, which is a wasteland area under the concrete overbridge. It is not possible to see it from the controller's booth or from the shopping centre, and it is not uncommon to find broken bottles or needles or worse. It is a very troublesome little spot because it is so badly designed. From discussions with ACTION it is clear that work is being done on a potential redesign of that area to do away with that spot.

The absurdity is that the so-called snakepit is a wasteland of concrete next to a prime commercial property, and with some intelligent redevelopment what is now a problem for government, a problem for authorities, could be turned into an asset. But you do that, I would suggest, by sensible urban design rather than by necessarily changing the criminal law. Returning to Woden and the impartial finding of this bipartisan committee, they have taken the views of young people, who have said that often youths hang out around shopping centres and interchanges.

The committee states at page 7:

> Some people felt that there was cause for concern about behaviour at the interchanges, especially that at Woden. However, a number of people argued, either in submissions or in evidence, that while there are groups of youths who "hang around" shopping centres and bus interchanges, on closer examination these groups can be found to be socialising or waiting for buses and generally their behaviour is not a problem. A submission argued that the current concern by certain members of society about the nature and intentions of these groups was based on prejudice and misunderstanding.
>
> Interchanges are not simply a "place to hang out" for most people although naturally they serve as meeting places because they are central. Colleges, primary and high schools tend to finish at the same time causing a "peak hour" of young people at the interchanges. Because there are so many young people there is a lot of noise and activity -

that is certainly a common finding when you get a lot of young people together -

> but this does not mean anyone is doing anything wrong.

Then we have the views of the ACT Workers with Youth Network. A young person is quoted as saying:

> The police have moved us a few times, even when we were waiting for a bus. It meant we missed our bus. We would like ordinary unlicensed cafes or coffee bars where we could have a coffee and something to eat and sit and talk.

In other words, they want better design of the interchanges to give people something to do. On the central question of conduct at Woden - and I certainly have no reason to believe that conduct at Woden, 18 months after this committee reported, is any different from what it was at the time the committee closely examined it - the committee said at page 8:

> In evidence to the Committee, however, the AFP reported that the Woden interchange is currently generating less of a public behaviour problem than it did because of measures taken by the police. They did comment that the problem appeared to have moved. Other problems of public behaviour were now occurring at Weston, where some licensed premises remain open until 8 or 9 am and become the focus of people who have already been drinking at other premises which closed at 4 am.

The committee accepts that there are some problems, but not at the interchange. While I acknowledged, in response to Mrs Nolan's interjection, that the snakepit is an area where unpleasant things are often found in the early morning, I am not aware of complaints of ordinary citizens going about their business being harassed there now any more than at the time of that committee report. Certainly, in the early hours of the morning it would appear to be a place where under-age drinkers congregate. It is so isolated that it is difficult for police to do anything about that. You can keep a pretty good lookout, and by the time an officer comes around one corner anybody who is sitting there drinking would have well and truly scarpered.

Changing the criminal law is not going to help there. Indeed, needles have from time to time been a problem; but, although the use of heroin is a major criminal offence carrying substantial penalties, it still happens because of the bad urban design of the interchange. If the snakepit at Woden is seen as the problem, this law is not the appropriate response. That is not simply the Labor Party's view; that is the view of the bipartisan committee.

**Mr Duby**: When are you going to fix it?

**MR CONNOLLY**: Funds are at something of a premium. The problem remained unfixed and unattended during Mr Duby's period of administration, and I have been here somewhat less than that time.

**Mr Duby**: This will fix it.

**MR CONNOLLY**: It will not fix it because, as I have indicated, to the extent that there is a problem with needles, that is already a substantial offence and yet it is clearly not fixed. This bipartisan committee, looking at this issue without the heat of an election about to occur, without any eye to making political points, without attempting a political stunt, took the unanimous view that such legislation was unnecessary.

The Labor Government endorses the finding of this committee, and I will be interested today to see whether members of this committee, who took part in an extensive inquiry into this subject and concluded that the amendments proposed by Mr Stefaniak were unnecessary, change their minds and on what basis they change their minds, other than playing politics because we are getting close to an election. The Government will not be supporting this proposed law.

**DR KINLOCH** (11.35): I have no wish whatever to play politics with this Bill. I recall the long and useful inquiries of the committee to which Mr Connolly referred. I especially recall that we were very concerned indeed about all manner of problems relating to liquor. Indeed, Mr Stevenson and I put in a report which worried a great

deal about licensing hours, and there is no doubt that I would still like to see limitation of licensing hours. We were not being draconian; we were arguing only for a limitation in the early hours of the morning - up to breakfast-time.

I would support now any reasonable, careful, thoughtful legislation which does try to get at the very great problems related to liquor in the Territory. We have already asked that a liquor inquiry be pursued. I notice that the Labor Government, usefully, has produced a little program that gets at some of the more superficial aspects of liquor.

I want to mention another inquiry of the Social Policy Committee that is also related to the problems of liquor. Given that that report is still being discussed and has not been finalised, I am limited in what I can say. However, in response to Mr Connolly, given what we have heard, given the places we have been to, given the very great worry about the extent of liquor problems, given all we have learned since that last report, I have no hesitation in supporting Mr Stefaniak's Bill.

**MR JENSEN** (11.38): In relation to the issue of interchanges and people travelling through interchanges, quite a number of the complaints and concerns that have been expressed to me during my period in the Assembly have related to the behaviour of some of the younger members of our community. This concern has been expressed to me particularly by elderly people, who feel threatened by and are concerned about the behaviour of some of the less fortunate people who congregate in these areas.

One of the problems is that the police have limited opportunities to stop this sort of behaviour because it falls just short of actual physical violence, and there are some problems associated with that. It is not so much a case of being touched or assaulted by one of these people, who often are under the influence of alcohol and are quite young; it is the fear of what could happen. It is for this reason that I think it is appropriate that some changes be made to the law in relation to drinking in certain areas.

Over the years, restrictions have been placed on drinking in certain public places, and for good reasons. The Rally was not really prepared to support the original proposal put forward by Mr Stefaniak, because of the all-encompassing coverage proposed. I note that the very sensible amendment Mr Stefaniak is proposing will reduce the distance to 50 metres, which will more than cover the sorts of issues Mr Connolly was concerned about.

I do not believe that Mr Connolly mows his lawn at the bus interchange, and it will not be a problem for Mr Connolly because the bus stop that is near his place will not be covered by the amendment. I wonder why Mr Connolly chose to refer to it in the first place. Talk about

grandstanding and flippant comments! That is the sort of thing we expect from someone across the road. I think it was very early in the piece that Mr Stefaniak proposed these amendments. I am not sure whether I can work out the code on the bottom in relation to times, but it would appear to me that those amendments were drafted very quickly after the original Bill was brought down.

The sensible amendments that have been moved should meet the concerns that have been expressed by people in relation to their safety. That includes some of the younger people as well as the elderly people. There seems to be an element within our community who prey on the weak and the small. Some people who partake of alcohol in public places, because that is effectively what they are, do get out of hand and seek to impose their will, in a drunken state, on people who are less fortunate and much smaller than themselves. When a group of these people gather together and are involved in the same sort of activity it is quite frightening for a younger person of 12 or 13 years of age to be confronted by a group of three or four people who are under the influence of alcohol and have been there for some time. It causes considerable concern. I know of people who have refused to use the bus service for that very reason.

If I may speak on a related issue, I note that Mr Connolly referred to the issue of broken glass and syringes in the area of the Woden bus interchange commonly known as the snakepit. There is legislation in place in this Assembly that will provide quite severe penalties for people breaking glass and leaving syringes around the area. To my mind, that constitutes aggravated littering.

**Mr Connolly**: But the use of syringes is already illegal.

**MR JENSEN**: They are being left around, Mr Connolly. It is littering, as far as I am concerned, and it is dangerous littering, because it is likely to cause injury to people. There are a number of issues in relation to that. We do not have any problem with the amendments Mr Stefaniak proposes, and we will be supporting the Bill with the amendments.

**MR COLLAERY** (11.44): This is a case of Mr Stefaniak looming too large at 200 metres but being reasonably acceptable at 50 metres. He has compromised in his Bill, which is more than the Labor Party has done. There was a Labor Party chairperson of the Assembly's Standing Committee on Social Policy, which in February 1990 issued its report on public behaviour. Bill Wood, as chairperson, said in what is in effect a personal preface to the report:

> Our personal safety and that of those close to us is, understandably, a matter of great importance. We must be able confidently to exercise our right to move freely, but sensibly, around our city.

> By any standard Canberra is a safe city. The Committee accepts this view which was clearly expressed to it.
>
> That is not to deny that there is a measure of violence in Canberra and the Committee acknowledges that the community must take every measure to prevent violence and unacceptable behaviours and the conditions which contribute to them.
>
> Almost universally, where there are problems, they can be attributed to the consequences of the abuse of alcohol. Accordingly, the Committee's attention has substantially focused on the role that alcohol plays in promoting undesirable behaviours and means by which the problem may be diminished.

I would have thought that Mr Stefaniak's legislation was consistent with the concerns identified by that all-party committee. The Rally made its own inquiry. We checked on the Woden bus interchange. A reliable, credible member of our staff indicated to us that, yes, people are boozing, lying about and harassing people. Some of us are not easily intimidated - I do not imagine that Bill Stefaniak is easily intimidated - but other citizens are, and some citizens are affronted by what some of us could quite easily encompass. We are a male-dominated Assembly, and we must consider that women may feel vulnerable in the dark hours in and about those interchanges, even though those drinkers are doing no more than squabbling among themselves and chiacking and skylarking.

The question is whether we can assure the comfort of ACTION's patrons. Again, I express concern that Mr Connolly has not leant towards the comfort of the people within ACTION, which he administers. This is not an oppressive measure. Some months ago I did a quick review of the laws around the country in this regard. For a number of cultural reasons, there are restricted areas in the north of Australia, in Western Australia and in South Australia. In the Northern Territory legislation there is a provision that allows the making of restricted areas. That is done by the registrar or the deputy registrar signing a certificate. I am not sure whether that is a disallowable instrument in the Northern Territory Assembly.

We are not doing anything extreme by national standards in this Bill introduced by Mr Stefaniak. I think it is fair to say that we should be very careful not to view all legislation that Mr Stefaniak introduces to this chamber as extreme. Mr Stefaniak puts his views over very forcefully, but those of us who were in this chamber the other day debating the human rights legislation and those who care to look at *Hansard* will see a most moving passage by Mr Stefaniak about himself, his parents and his upbringing, about discrimination and how he feels about oppression.

He has stood with me on many occasions at human rights and civil rights gatherings, which is more than can be said for the protesters I saw outside Natex on the weekend. I have not seen many of them at the real human rights demonstrations; nor have I seen a lot of other people.

I want to take this opportunity, as the Assembly winds down, to say in relation to the 50 metres that the closer you get to Mr Stefaniak the more likable he becomes. I put that on the record for the last three years. I warn members that we should look at this legislation free of Mr Stefaniak's somewhat political grandstanding statements at times about law and order. The fact is that this is not an extreme proposal. It does not affect civil liberties or rights.

**Mr Berry**: Oh, cut it out. Come on!

**MR COLLAERY**: Mr Berry says, "Oh, come on!". Try to restrict the sale of alcohol at a firepersons union banquet and you would see a huge reaction.

The Rally has no trouble about the bus interchange dry areas. We will watch carefully to see how this provision works - because it will surely be passed today - around shops and licensed premises. Those of us who go past the Sydney Building at late hours or go to Manuka, where we used to go after the theatre, will see people drinking all over the footpath. When you come out of a coffee lounge you stumble over the empty stubbies that are all over the footpath. If you go down in the early mornings to some of these areas, you see what they leave behind on the seats: The glass, the litter and all the rest.

Some of that stems from drinking right outside the doors of these taverns and discos. If there is no furniture and the licence does not permit it, what is wrong with Mr Stefaniak enforcing it a little further? Do not forget that what Mr Stefaniak is trying to do here is already reinforced to some extent, although Mr Connolly did not take the point, within the Liquor Act 1975. There are already laws about liquor being served outside the door of licensed premises that do not have a licence for outdoor seating and the rest.

What is extraordinary about giving a 50-metre zone around the front and back of the Private Bin, for instance? I could not support more the need for more security around that dreadful precinct, with the numbers of violent attacks there are on innocent people around it. Go to the Magistrates Court and you will hear the Private Bin mentioned just about every morning. It is time we looked at things, tintacks, and decided on a bit of public safety around that place.

People have heard about the youngster who was made a quadriplegic outside the Private Bin. I cannot comment further because the matter is before the courts, but I was astounded to learn from a legal colleague on Friday that there has been another such incident involving the Private Bin. This time it was a broken neck - someone was thrown out. This is just not on, and I am happy to support Mr Stefaniak providing some measure of security around these places.

**MR WOOD** (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.52): Mr Collaery used the words of the report of the Social Policy Committee to support this amendment. We have come full circle. This was one of the first matters to take up the interest of this Assembly. Mr Stefaniak and others raised the question of drinking around the bus interchanges and the Social Policy Committee was given the task of looking into those matters and reporting to this Assembly.

The committee did so and it made some recommendations. In one matter at least, the trading hours for serving alcohol, Dr Kinloch and Mr Stevenson had a contrary point of view. The committee made no recommendation about bus interchanges. The committee, looking at the problem, noting the problem, made no recommendation. Do not use the words of the report to support this proposal now. That report said nothing in respect of bus interchanges.

Having said that, I am one member who over a long period has said that we must do a lot to change our attitude to alcohol. That is where we need to take steps. It is a most difficult task; but we need to do something to change the perception of young people that alcohol is a good and fine thing although it can be well and truly abused, that you need alcohol if you are to be socially successful, if you are to be commercially successful, and even if you are to have any sort of reasonable lifestyle. The Australian tradition that we may partake fairly heavily is something that needs to be overturned. It is not a job for the ACT alone. It is a mammoth task to change those perceptions, but we must join with other States and instrumentalities across Australia in trying to do so.

**MR KAINE** (Leader of the Opposition) (11.54): The case for the amendments proposed by Mr Stefaniak has been well and truly made, and it has not been made on the floor of this house. Mr Wood finally got around to alluding to it in the last words of his speech. Alcoholism and the overconsumption of alcohol is a problem right across Australia. It is not unique to Canberra, and we as a community need to do something about it.

It is all very well to duck away every time somebody comes forward with a proposition that clamps down on it in some fashion. We get the civil righters out there saying, "You cannot do that because that is an invasion of civil rights.

You cannot do that because it is an infringement of somebody's civil rights". The argument has to be reversed. The civil rights that ought to be on people's minds are those of the elderly and others who are afraid to use our public facilities because these drunken louts - let us put the words on the table - seem to think they have a right to invade these public places, to terrorise people, to turn public places into places where nobody feels they can safely go. That is not acceptable in this community.

**Mr Berry**: That is rubbish.

**MR KAINE**: It is not rubbish.

**Mr Berry**: You spend thousands of dollars on a committee report and then you reckon it is rubbish.

**MR KAINE**: Now we are hiding behind a committee report that decided that there was not a problem. There is a problem. You talk to the elderly people who have no option but to use our public transport system. Ask them what they think about the interchange at Woden. Ask them what they think about the interchange at Civic. You will find that your assertion that there is no problem does not stand up.

You are all right; you travel around in your car and you never go near a bus interchange. Nor, in Mr Berry's case, I submit, does he ever go near the Private Bin or any of the other drinking places in town, because he does not drink, and that is fine. You are entitled to that sort of lifestyle, but to draw on your personal experience of life and say "Because I do not see it, there is no problem" is not acceptable.

There is a problem. It has to be addressed, and it has to be addressed in more ways than just the behaviour of people within 50 yards or 200 yards or metres, or however you are going to describe it, of a public bus interchange point or something else. The problem is much wider than that, but if we do not start somewhere we will never address the problem. We have to begin to attack the problem of alcoholism and overdrinking, overconsumption, and the effect that has on our society. It reflects in the consequences for our health delivery system and for our policing services. Everywhere you look there is an influence from the overconsumption of alcohol. For that reason alone, I support Mr Stefaniak.

I do not hang around bus interchanges either; I do not find it necessary to do so. But I do know that people have come to me and said that they have felt threatened. When they have had to travel on a bus and go through a bus terminal they have felt personally threatened by the situation there. That is not acceptable. We have to start doing something about it, and I think the case is made.

Mr Wood, although he skirted around this issue, did get down to it towards the end of his speech when he said that it is not peculiar to Canberra, it is a national problem; and so it is. We cannot shirk our responsibilities because of that, and I suggest that just for once the members of this Assembly should face up to the issue and agree to do something about it. Mr Stefaniak has taken the initiative. He has put a proposal on the table. It cannot be regarded in any way as being an objectionable proposal, depending on whose viewpoint you are looking at, of course. But I do not believe that it is in the interests of the average person in this community that this proposal should in any way be regarded as objectionable. Its effects can only be beneficial.

We should stop this political grandstanding, which people often refer to. A lot of it goes on in this place, and I think we would do better to address the issue. One of our better known journalists has commented about the absolute ineffectiveness of this place last week. We did nothing; the debate was diverted from the real issues.

**Mr Connolly**: You should have been here on Thursday night.

**MR KAINE**: You can point at somebody else, Mr Connolly. You are a member of the Executive in this place. We allowed ourselves to be diverted from the issues that are important. Let us not do that this week. We are running short of sitting time. The Government is going to be asking for extra sitting time any tick of the clock, to get their business finished before this house dissolves. Yet we sit around beating our gums instead of dealing with the issues. This is an issue that needs to be dealt with. It needs to be dealt with now. For heaven's sake, let us vote on it and deal with the problem.

**MR MOORE** (11.59): A great deal of the work I have done recently with reference to drugs has been done on the principle of harm minimisation - that it is appropriate to minimise the harm associated with illegal drugs. I have also argued constantly that it is appropriate to minimise the harm associated with the use of legal drugs, which includes tobacco and alcohol. I believe that the Bill presented by Mr Stefaniak, especially with the stopping places deleted and that amendment carried, would reduce the harm associated with alcohol by establishing the bus interchanges as prescribed places.

The other thing I find ironic is that the provision to establish any other place as a prescribed place is clearly a great worry to Labor. They must perceive that they are not going to be in power next time, because if they were confident about that they would also be confident that they will be the ones that could prescribe the places. So, there is obviously a great worry for them there, which I can understand. That being the case, and having made my point in about one minute, I make it clear that I support this Bill with its amendment.

**MR BERRY** (Minister for Health and Minister for Sport) (12.01): This is really about a bunch of people trying to share out the law and order vote on the basis of anecdotal evidence about what might or might not happen in relation to alcohol consumption around bus interchanges. Opposition members have decided that the punitive model - penalties and prohibition - is the answer as far as law and order zealots are concerned. This is not evident from the report of the committee that looked into this matter. For example, GALA - the then Gaming and Liquor Authority - put the view:

> ... similar legislation in South Australia and Western Australia did not work because, as with move-on powers, the result tends to be that people simply move somewhere else to drink.

People say that it gets them away from interchanges. We are about fixing the problem, not shifting it somewhere else. That is the difference between us and you people. The report goes on:

> GALA indicated that in Adelaide's Hindley Street, foot police had appeared to be far more effective as a deterrent than had "dry areas" legislation.

The police just go out and arrest people for hoon behaviour and control it. It is not about prohibition and punitive measures. That is not what control is. Labor moved to do something about it. That is what is burning these people opposite.

We understand that you have to start in the school system to make sure that something is done about the consumption of alcohol amongst our young people. We are not going to discriminate against our young people because of the images and models that society demonstrates to young people as being appropriate. We are going to fix the problem. Unlike the people opposite, we are not going to sit around. We are not going to go for the punitive model; we are not going to go for prohibition. We are going to end up fixing the problem.

Dr Kinloch talked about our efforts thus far as marginal issues. They are not marginal at all. What we are doing is dealing with the problem at its root. Clearly, the indications are that 40 per cent of young people from 12 to 16 years of age - young men, at least - had been involved in binge drinking, in the course of a survey that was conducted by the Government. Something has to be done about that. There is no point going into the bus interchanges and proposing prohibition and punitive measures. You have to get to the problem at its root cause. You have to get to them within their peer groups, in the education system, and so on. You have to provide money for educative programs, and that is what Labor is doing. We are about fixing the problem.

**Mr Kaine**: Do that too. Has it occurred to you to do that as well?

**MR BERRY**: We are doing it. We are not going to adopt the punitive approach. We are not all rushing around trying to grab the law and order vote. We are about fixing the problem and creating a just society, not a punitive society. That is the difference between Labor and the conservative members opposite. Every one of them sees that there are a couple of votes amongst people who are alleged to be frightened. They even stir up a scare campaign themselves, trying to whip up a bit of fear in the community from anecdotal evidence, which has not been accepted even by a very expensive committee of this Assembly that looked at the issue.

Let us be fair dinkum about this. This is discrimination against our young people, our juveniles. They are the people who will be affected by this. It will always be the young people who are affected by it. It is similar to the approach we have heard from Mr Stefaniak on so many other occasions. It is the old "Lock 'em up and Break Their Skateboards" Bill Stefaniak. That is what Bill Stefaniak is about: The punitive approach and prohibition. It died in the Depression in 1932. It is finished.

We are certainly more modern in our approach these days. Everybody is more modern in their approach, except the people in this Assembly who see that they can rake a few law and order votes out of the community in the lead-up to an election. This is election time. We talk about this season of the year as the silly season, but it is doubly bad in this place because we have an election coming up in February. All these law and order issues will now be raked out by the people opposite in order to grab those few very important votes to get them past the threshold. This is no more than a political stunt and ought to be treated as such by the responsible members of this Assembly. Labor will be opposing this Bill.

**MR STEVENSON** (12.06): This Bill is about making certain areas of Canberra safer, and I commend Mr Stefaniak for introducing the amendment. Mr Connolly said that it was reactive legislation, as though there was something wrong with reacting to a call from people. It would be far better if members of this Assembly, and any other parliament in Australia, reacted more readily to a call by a majority of people in their community to take action. It would be far better than politicians thinking up what they would like to do - unfortunately, all too often aligned to their ideological desires.

Mr Connolly also mentioned at length, as did other Labor members, the public behaviour report of the Standing Committee on Social Policy, of which I was a member. Mr Connolly suggested that the members had concluded that the amendments Bill Stefaniak now proposes were unnecessary.

That is absolutely not the case. Dr Kinloch and I felt that they were a very good idea. Unfortunately, the majority of the committee did not feel the same way at the time.

One of the steps we felt it was absolutely necessary to take was a restriction in the licensing hours. Indeed, on that point we put in additional comments. Of the recommendations the committee made - there were 23 in all - 14 related to alcohol. It was an amazing situation. Well over half of the recommendations we made related to alcohol or the problems it caused. Something should be done about alcohol in the ACT and other places, and Bill Stefaniak's amendment will do something about that. This amendment is not about prohibition. That is a nonsense. It is not about making the drinking of alcohol in a public place illegal.

**Mr Berry**: It is a $400 fine. Haven't you read through the Bill?

**MR STEVENSON**: Mr Berry says that it is a $400 fine, but he did not hear what I said. It is not about making the drinking of alcohol in a public place illegal. It is about making the drinking of alcohol in certain public places illegal.

**Mr Berry**: Oh, that's it.

**MR STEVENSON**: Yes, and there is a vast difference. There is no doubt whatsoever that there are certain places in Canberra where the drinking of alcohol is a problem. One is Garema Place. I have spoken often of the problems that occur because people become intoxicated in that area and are found in the early morning, during shopping hours, getting mixed up with the shoppers.

We are all well aware that there have been problems in bus interchanges. We should make bus interchanges safe places. This is where you have to wait if you want to catch a bus. Mr Connolly mentioned that some young people who had been moved on said that they were just waiting for their bus. There are many thousands of people who every day wait for buses at bus interchanges, and they should have the right to do that without people drinking alcohol nearby. A percentage of those people, granted, cause problems for people who are waiting.

**Mr Berry**: You were on the committee. What doublespeak!

**MR STEVENSON**: Mr Berry says that I was on the committee. Indeed I was, and we made many recommendations, 14 in all, relating to alcohol. Dr Kinloch and I recommended that licensing hours be changed. We did not recommend in our additional comments that the matter Bill Stefaniak now addresses be included. Dr Kinloch and I both think that would have been a good idea. We did not go with the majority, but I do agree that when one attaches dissenting

comments to a report perhaps it is a better idea to get stuck right into it and put them all in there. Of course, in the next Social Policy Committee inquiry I was on - fluoride - I did just that. The committee wrote 120 pages and I put in 177.

**Mr Berry**: You photocopied 177 pages.

**MR STEVENSON**: Mr Berry shows what I have known all along - that he did not read the report. He just said that I photocopied 177 pages. That confirms absolutely and totally what I said in this parliament - that he had not read the report. If he had, he would know that they were not photocopied.

**MR SPEAKER**: Order! Relevance, please, Mr Stevenson.

**MR STEVENSON**: One of the marvellous advantages of this Bill is that it will allow prescribed places to be nominated. Commonwealth Park, when there are celebrations there, starts off wonderfully. Later on during those events many people become inebriated, drunk - "intoxicated" is sometimes not the right word; it does not go far enough. There are many times when people who are inebriated cause problems with family groups, and this causes some family groups not to want to go to these events.

I think it makes eminent sense to separate areas at this type of function, to be able to say to family groups, "Everywhere west of the streets or the pathways, you can sit with your family and you will not be bothered by other people drinking". That fact will keep the vast majority of the drinkers away because they have not the slightest concern about going anywhere where they cannot drink, and drink a lot.

I agree with the amendments Mr Stefaniak has suggested. They make the Bill far more sensible. Indeed, it is something this Assembly will be able to do towards handling the many problems caused by alcohol in the ACT, rather than just talking about it.

**MR HUMPHRIES** (12.14): I want to put on the record my support for Mr Stefaniak's Bill. With some amendments I believe that it is a responsible and responsive piece of legislation. I mean by "responsive" that it is an item of law which very directly reflects the views of many people in the ACT. I also have had the same concerns, the same complaints, the same fears, put to me about behaviour in our bus interchanges and other places. I do not treat them as the rantings of the lunatic fringe, as the views of extremists. The people who have spoken to me about these sorts of things are far from extremist in their attitude. In fact, they are often elderly people, and I do not think there are too many elderly extremists around Canberra - at least, not on this issue.

I see legislation such as this as in many ways being more relevant to the lives of ordinary Canberrans than some of the more complicated and highfalutin legislation which comes before this Assembly from time to time. Complex legislation often is very important, but Bills such as this often have a very much greater impact on the lives of ordinary people. I believe that this legislation will see a dramatic change in the way in which certain people's lives are affected, and that is a very positive and dramatic change.

I do not believe that we can be accused of putting this Bill forward in a desire to posture and pose before an election. Mr Stefaniak has expressed views of this kind for many years, and his efforts to have this part of the statute book predate self-government. I think it is quite wrong to attribute this to some desire to pose or posture before an election.

I also reject the assertion that this is an attack on the young, on the high-spirited. There is no question of this legislation attacking young people. What we attack through this Bill is behaviour that is unacceptable. Whether it is by people who are young or old, by those who are sober or intoxicated, matters not. This legislation covers circumstances where people behave in an improper, anti-social way in our bus interchanges and other public places and, as such, it seems to me unobjectionable.

Mr Connolly was at great pains to describe the excellence of the Tuggeranong bus interchange, and I concur in that view. I have not looked at it closely, but I have certainly seen it and I think it is an excellent piece of architecture. It deals with problems to do with behaviour through the very broad scope for supervision incorporated in the design.

It needs to be noted that it is not the job of the supervisor of buses, as he sits in his booth, to supervise the behaviour of young people or anybody else in the interchange. He may be able to make contact with others as a result of seeing things there - I assume that there is a telephone or some other communication device in the booth - but it is not his job to go out and break up fights or shoo away people who are harassing elderly citizens. That is the job of other people in the community. It would be a much easier job if legislation such as this were in place, as I am sure it will be in the next few minutes.

Mr Berry made reference to Hindley Street in Adelaide. He talked about the effectiveness of police patrols there. I cannot let that pass without comment.

**Mr Connolly**: He was quoting the committee.

**MR HUMPHRIES**: He may have been quoting the committee, but he was obviously quoting it with approval. First of all, I used to work in Hindley Street, and I can assure you that the problem of people drinking there is a very real one. Police patrols are relatively ineffective in dealing with that. On a great many occasions I would come to work in the morning and I would find - - -

**Mr Kaine**: The residue at 6 o'clock in the morning.

**MR HUMPHRIES**: I would find the residue; very much so. I often had to clean it up, unfortunately; so I know that it was there.

**Mr Kaine**: You worked for the council, did you?

**MR HUMPHRIES**: No, I did not work for the council. I worked for a senator who insisted on having a clean front office. It was rather unfortunate that she chose to have her office in Hindley Street. Certainly, there was quite a lot of vandalism in that street, and the shop owners of Hindley Street organised a cooperative in order to deal with issues such as that. I am sure that at one time or another they would have petitioned the Labor Government of South Australia to extend its concept of dry areas into an area such as Hindley Street. That would not be terribly practical, I suspect; but they would certainly have considered it at some stage.

That brings me to the point that the Labor Government of South Australia not only has used the concept of dry areas in its own program for dealing with problems of law and order; it has also extended the concept. I understand that five new dry areas were gazetted only this year. They are used extensively in conjunction, for example, with the Adelaide Grand Prix. If it is good enough for the Labor Party of South Australia, I wonder what bee in the bonnet the Labor Party of the Australian Capital Territory has?

I also think it is worth noting that the Minister is decrying this measure and saying that police patrols would be more effective, when it is his Government that has done so much to cut back the effectiveness of police in this Territory by quite severe and unbalanced cuts on the ACT police force. Fancy saying that the police patrols can deal with them when they have been cut back by this Government. What a cheek!

**Mr Kaine**: This is part of their comprehensive strategy.

**MR HUMPHRIES**: This is obviously part of their comprehensive strategy. Cut back police numbers, reduce the effectiveness of police patrols, reduce the number of police cars, get rid of the police motorcycle squad altogether - I think that is still on the books - and complain when others in the Assembly try to do something about the problems that that kind of issue brings up.

Where is Labor's strategy? I have not seen it yet. We do not know what it is. We know that already this year in the Assembly they have refused an inquiry into the liquor industry. Apparently it is too hard to consider the issues to do with the supply of alcohol in the Territory. They are rejecting this Bill. They are cutting back police numbers and resources. What exactly is Labor's strategy? It seems to me to be a strategy designed to enhance and increase alcohol consumption in this community, not reduce it. For goodness sake, let us get real.

This bleating about the committee report is entirely subjective and, I think, ought to be put to rest straightaway. There have been plenty of committee reports in this Assembly, all of them expensive, all of them carefully conducted on a bipartisan basis, which this Government has completely and utterly rejected. Can I remind the Assembly that there is before it at the moment a report by the Estimates Committee that was much more expensive than the Social Policy Committee report on young people's behaviour and which recommended that there be an increase in funding for non-government schools. That falls on totally deaf ears across the way.

Let us not pretend that the expense of an inquiry report, the number of words in it or the number of people who sat on the committee has any bearing at all on its acceptability to the Australian Labor Party. The basic criterion as far as those opposite are concerned is: Does it accord with Labor Party policy? If it does, it is a wonderful piece of foresight that we are all mugs not to accept. If it does not, it is partisan, it is wrong, it has been conceived for political reasons, it is just one of those things used by the conservatives to rip the heart out of the people of Canberra. That is basically the dichotomy we are faced with in this place.

Finally, I point out that this Bill does not entail automatic fines of $400. That is rubbish. It entails a maximum penalty of $400 for consumption of liquor in prescribed public places. Those sorts of powers, I think, we can expect our police force to exercise responsibly. We are not going to see people hauled in for first offences. I think we are going to see some care exercised by police. Even when people do come before the courts, they are rarely going to incur fines of anything like $400. That is the maximum penalty, and only offenders who consistently transgress will face penalties of that kind, I suspect.

For all those reasons, I believe that we have before us far-sighted legislation highly deserving of passage. I will be supporting it, and I believe that most in this Assembly will. I think it is a matter we can all be proud about. We are responding directly to the concerns of the people of Canberra. It is probably one of those few things we will do in this session of the Assembly that we can proudly point to and say, "This is serving the needs of our community and this is how we are doing it. We believe that we can stand up with pride on this matter".

**MRS NOLAN** (12.24): I will be supporting this Bill in principle and the amendment, which Mr Stefaniak has indicated will reduce the provision for 200 metres from a shop or licensed premises to a more appropriate 50 metres. The principal concept this Bill sets out to achieve is a sound one. In my view, there should be other ways of achieving the same result, in particular by making our interchanges safer; but there just are not. There is no other way. It is unfortunate; but we will have to look at banning alcohol, particularly at bus interchanges, as the only way of solving the problem.

Often groups of bored young people - it is peer pressure working to the full - make bus interchanges, and in particular Woden, very unsafe. It is not only unsafe; sometimes it is dangerous for the majority of people travelling through it. School students and particularly the elderly should not have to put up with that sort of behaviour. For many shopping centres where there are problems, this piece of legislation will help alleviate the problem. However, there are some shopping centres where there is no problem at all, and banning drinking in these areas, if there was another way, certainly would be unfortunate. But there seems to be no other way the problem can be solved.

Other areas come to mind that have not been addressed. Woden Town Park is one that comes to mind. In my view, it is because the park is opposite the bus interchange and next door to the Woden Youth Centre. Certain elements hang about drinking in the town park and the young people visiting the youth centre are often hassled. Similar problems occur outside the Tuggeranong Youth Centre, where there have been at times, I am told, groups of young people hassling young people going into and coming out of the youth centre.

**Mr Jensen**: And the skating rink.

**MRS NOLAN**: Also the skating rink. These are problem areas and they should be able to be proclaimed dry areas. I would have preferred to see the legislation allow for certain areas to be determined by the community and the people involved. However, unfortunately, I do not think that is able to happen. This morning I had a long discussion with David Hunt, QC, about that very point, and his advice to me was that regulation appears to be the best way this can be done. There probably is no other way to solve the problem. However, I hope that any government will recognise problem areas if they arise and determine the dry area by regulation.

Any legislation which assists the police in carrying out their duties, any legislation which will assist in allowing people to travel safely on public transport, should be supported. I remind members that the original legislation

Mr Stefaniak proposed back in 1989 was very different from the Bill proposed today. That legislation included all sorts of other areas, including school ovals.

Referring back to interchanges and in particular the Woden interchange, I am aware that for some time Marist College has sent brothers down to that interchange to monitor the students travelling through the interchange on their way home from school. That should not have to happen. Those boys should be able to travel through the interchange without any problems or harassment. I was advised only this morning that that is still occurring and that it happens each afternoon.

I have not even discussed the problems of the elderly, not only at interchanges but also at shopping centres. It has been brought to my attention on several occasions that elderly women, in particular, go into their local shopping centre and are being knocked over or their shopping is being knocked over as they come out of a shop. That is an area that needs to be addressed, and I think this Bill goes some way towards doing that. Other States have dry areas. South Australia, as Mr Humphries stated, is one such State. It is unfortunate, but it is necessary for the ACT also to have them now.

**MS MAHER** (12.28): I also will be supporting this legislation, which will restrict the consumption of alcohol in certain places. As have many other members, I have been approached by many constituents, including shopkeepers, about people, especially young people, consuming alcohol and behaving in an inappropriate manner.

Mr Connolly raised a couple of points with regard to the committee report on the public behaviour inquiry. He said that the committee believed that this sort of legislation was unnecessary, and he referred to page 27. The committee actually said that, from the conclusions, it did not recommend such a change because of the difficulties inherent in defining and setting the limits of non- drinking areas. The committee said that they had difficulty in defining those areas, not that the legislation was not necessary. The committee had a lot of discussion in this area and recognised that alcohol and drinking in public places was a major problem. We could only go on the evidence presented to the committee, and in some cases it was very difficult to make recommendations with regard to this legislation.

Mr Connolly also referred to foot patrols by police. With the Government cutting back in this area, the situation of foot patrols is not going to improve; it is going to get worse. This legislation is therefore all the more appropriate in protecting people. People should be free to move around this city safely, especially the elderly and young people. Often you hear from elderly people about how they are afraid to come out. Also parents will not let their children catch buses; they drive them around because of the situation in bus centres and around shopping areas.

The committee looked at the problems in relation to areas around licensed premises, especially a couple of locations in the ACT where people would continue drinking once they had left those premises. That was seen as a major problem. Mr Berry also raised the issue of education programs within our schools. Certainly, there is a need for education programs on the problem of alcohol and changing community attitudes. But it will be quite a while before those attitude changes come through. This legislation allows for immediate action to make the ACT a safer place for people to walk around in. I will be supporting the legislation and the amendments Mr Stefaniak will be putting forward.

**MR STEFANIAK** (12.32), in reply: I thank members very much for their comments. I am pleased that all members of this Assembly except Labor Party members will be supporting this very commonsense piece of legislation. I commend them for their commonsense and their intelligence. I think it is absolutely obvious how important this legislation is. Last Monday I was asked to go on an ABC talkback program, which I was delighted to do, in relation to the question of dry areas. The funny thing about these talkback programs is that you often get very familiar voices ringing up and expressing concern. It seems to be fair game for a number of political groups. I suppose I have heard familiar Liberal voices as well as familiar Labor voices on some of those shows. It was interesting that in the move-on debate there was a similar phone-in, and there was only one person supporting that. There were six or seven people supporting the Labor line there.

I was fascinated, in this talkback show I went on, that four people rang up and were all very much in favour of the dry areas Bill. In fact, many wanted the law to go a hell of a lot further; they wanted additional laws to combat liquor abuse. It seems that this Bill is probably even more popular in the community than the very popular move-on Bill. That is indicated by the very sensible attitude taken by all members today, with the unfortunate exception of the Australian Labor Party.

I should like to deal with a few points Mr Connolly raised. I remind Mr Connolly that there is similar legislation in other States, including his own State of South Australia - legislation that the South Australian Government, which is a Labor Government, has no problems with. In fact, in the course of the last year, they have extended their legislation to introduce a few more dry areas. Various New South Wales councils are introducing similar dry areas. Mittagong has done so, and I believe that the Queanbeyan Council is looking at it as well.

Mr Jensen made some very valid comments, especially in relation to the people who use our bus interchanges - the young and the old, people who are defenceless, who feel intimidated by, as Mr Kaine quite rightly put it, drunken louts hanging around those bus interchanges. These are the

people, the ordinary people of Canberra, this Bill is designed to protect. A lot of people in Canberra might not see the things ordinary people see. A lot of people do not use the bus interchanges. To correct Mr Berry, I make a deliberate point of using bus interchanges now and again.

**Mr Berry**: How many times have you been intimidated?

**MR STEFANIAK**: Once I felt a little uneasy at about 9 o'clock on a Friday night at Woden, when there were about eight or nine fairly tough looking young blokes who were quite inebriated.

**Mr Berry**: Did they work out who you were?

**MR STEFANIAK**: I felt a little bit uneasy, Mr Berry. Normally I am not terribly concerned about that, but there were quite a few of them and I felt a slight twinge. I thought, "This is interesting"; but nothing happened, thank God. So, it can be intimidating even to people such as me, and I can feel for the elderly people Mr Kaine spoke of and for the young people Mr Jensen spoke of and to whom I have spoken over the years.

I can assure the Labor Party that this is not grandstanding. This is something that has been required for a number of years now. It is something I pushed when we were in the consultative committee stage in about April 1989, even before we were sworn in. It is certainly something I personally believe in very much and have done since the laws were amended to allow open slather drinking in Canberra.

Some sensible amendments have been put forward. The Bar Association initially suggested the distance of 200 metres. That proved to be a little excessive, as was quite rightly pointed out by a number of people, including the liquor authority. It stated that that would infringe on certain ovals and areas where people legitimately might want to enjoy a drink.

I had no hesitation, after consultation with the professionals in the legislative drafting area, about reducing that to 50 metres. That still covers the problem but ensures that areas that at this stage do not need to be covered are not covered.

Similarly, Mr Connolly and other members have mentioned - I thank Mr Duby for it - the problem of bus stops in toto. The bus interchanges are basically where the problem is. I do not think anyone has a problem with Mr Connolly's wife taking out a beer to him when he is mowing the lawn.

**Mrs Nolan**: I have. He should get it himself.

**MR STEFANIAK**: Perhaps he should get it himself, in this day and age. Maybe that is a bit sexist. But I am quite happy to take him up on his offer to have a beer with him. I am quite happy to go to the fridge and get it, to save his wife the trouble. There is no real problem there and, accordingly, when that problem was raised by Mr Duby and a couple of others, I had no hesitation in altering it.

One of the other planks of this legislation is that, even though people will not be able to hoon around and drink in Garema Place, if someone wants to hold the Oktoberfest, for example, there is nothing to stop them from simply taking out a permit and doing so. There is ample provision to look after the legitimate rights of all concerned. It is moderate legislation, it is sensible legislation, and it is legislation that I think has the support of a vast majority of Canberra citizens. Legitimate civil liberties concerns have been taken into account and the real civil liberties rights of ordinary Canberra citizens to use their bus interchanges and shopping centres without being harassed are taken into account.

I never fail to be amazed and, indeed, dismayed at the attitude of the ALP to some of these things. I thought for a while that they might support this, especially with the Attorney-General being a South Australian. Whatever happened in the Labor caucus, the majority simply was not there. I listened with interest to Mr Berry's speech because Mr Berry of all people, being a traditional unionist and being a member of the Left of the Labor Party, surely must have concern for the underprivileged of our community. They are the elderly and the very young who take the buses.

I am reminded of the words - I am not too sure whether it was Comrade Lenin, but it was certainly in the early days of the Bolshevik Revolution - about hooligan acts. Perhaps the acts committed against ordinary citizens of Canberra who use the buses, especially the elderly and the young, fall into line with the old communist adage about acts of petty hooliganism. Mr Berry, such petty bourgeois behaviour really is incompatible with socialist reality. I have problems seeing why you cannot support this legislation, even on an ideological ground. It is aimed at protecting the people I would have thought you would want to see protected most.

The fine is a very low one. It is lower than most of our traffic infringement fines. But that is not the point. The main point is doing something against the excessive drinking we have in our community. This is one small step but a significant step, in that it will stop drinking in certain of the identified problem areas. The power in the legislation to enable the government of the day to proclaim other areas as dry areas ensures that from time to time any other problem spots can be addressed. That gives the legislation a lot of flexibility.

I am delighted at the support I have received from members in relation to this legislation. I thank Mr Collaery for some of his kind comments. I think 50 metres away is enough. You probably do not need to go too much closer or further away. I commend the Bill to the house. Let us get on with the detail stage.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

| *AYES, 12* | *NOES, 5* |
|---|---|
| Mr Collaery | Mr Berry |
| Mr Duby | Mr Connolly |
| Mr Humphries | Ms Follett |
| Mr Jensen | Mrs Grassby |
| Mr Kaine | Mr Wood |
| Dr Kinloch | |
| Ms Maher | |
| Mr Moore | |
| Mrs Nolan | |
| Mr Prowse | |
| Mr Stefaniak | |
| Mr Stevenson | |

Question so resolved in the affirmative.

Bill agreed to in principle.

**Detail Stage**

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

Clause 3

Amendments (by **Mr Stefaniak**), by leave, proposed:

Page 2, line 3, proposed paragraph 84(2)(a), omit "200", substitute "50".
Page 2, line 9, paragraph (a) of definition of "prescribed public place" in proposed subsection 84(3), omit all words after "interchange".
Page 2, line 9, paragraphs (a) and (b) of definition of "prescribed public place" in proposed subsection 84(3), omit "200" (wherever occurring), substitute "50".

**MR COLLAERY** (12.46): The Rally asked Mr Stefaniak to move those amendments and we are pleased to say that he agreed. We are also pleased to say that this is a good example of political compromise.

Amendments agreed to.

Clause, as amended, agreed to.

Title agreed to.

Bill, as amended, agreed to.

**Sitting suspended from 12.48 to 2.30 pm**

## INTERIM PLANNING (AMENDMENT) BILL (NO. 2) 1991

Debate resumed from 23 October 1991, on motion by **Mr Jensen**:

That this Bill be agreed to in principle.

**MR WOOD** (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (2.30): Mr Speaker, Mr Jensen's Bill, presented on 23 October, raises a number of issues and I will address those. The approach the Government is taking on this matter is that we should be consistent with such provisions as are provided in the planning legislation also before the house at the moment. In respect of clauses 3 and 6 of Mr Jensen's Bill, I should say that the effect of those clauses is that the Planning Authority must consider the recommendations of the Minister for Urban Services and of ACTEW in preparing a draft plan. He has been quite specific that such reports should be available.

My concern is not that Mr Jensen sees the recommendations of these organisations as being relevant and essential to the preparation of the plan; he simply does not recognise the normal consultative role of the Planning Authority. Indeed, his amendment can become a restriction on what happens. It is the standard practice of this authority, and it will continue under the new legislation, to have regard to the views and requirements of various organisations and government bodies. Depending on the planning issue at hand, this consultation would not be limited to Urban Services and ACTEW, but would include any organisation which the authority considered could add balance to the views on a particular proposal.

The proposed amendment could be seen to exclude this process, requiring that only two agencies be consulted, and would require agencies also to amend their comments in line with any agreement reached in order to avoid exposing the internal process of government to political debate. We will not be supporting that measure and we will not be supporting similar proposals in the planning legislation.

On examining clauses 4, 5 and 11 of the Bill, the Government notes that it seeks to remove the flexibility and adaptability of the Territory Plan in relation to defined land - that is, land defined in the plan as land leased for broad-acre development purposes. A number of observations should be made about this proposal.

Defined land, first of all, relates to undeveloped land; members should understand that. The land use for that land is resolved through the ordinary planning process. The declaration of an area as defined land is also a planning process. The processes include the usual public consultation, an environmental impact study and so on. The advantage of the existing process is to allow the detailed design to occur with the plan and the policies and principles established for the area. For instance, in the past a minor change to the subdivision pattern has required a full plan variation process in new urban areas. This has militated against more efficient and energy conscious design because of the likely delays in design change.

Under the current and proposed process the land can be detailed or can relate to the particular, to ensure environmental protection, infrastructure efficiency or any other specific concern. These plans, policies and principles are subject to full public consultation, acceptance by the Government and review by the Assembly. Mr Jensen simply wants to remove any flexibility there at all, and I do not think that this and his other proposals can be accepted - save one. It does really reflect the inordinate suspicion that the Residents Rally has about the usual processes that apply in the ACT.

It is not really possible to expect land development to proceed in any efficient and cost-effective manner if the rules require another full public consultation process when the detailed subdivision is in place or each time any amendments are proposed to the subdivision plan. Do not forget that the development has to comply with not only the land use policy and the area's planning principles and policies but also the Territory's guidelines and standards. These proposals are simply unrealistic. The policies as defined by the plan will be detailed, they will be comprehensive and they will accommodate the views and the impressions that the community wants. Bear that in mind. It is not, as Mr Jensen would seem to believe, that we give open slather to developers to do as they wish. That is simply not the case.

Mr Jensen also proposes, through clauses 7 and 8, that the draft plan should have an additional step in the process. He proposes that the Executive should give a copy of a draft plan, together with background papers and reports, to the Assembly, and have regard to any recommendation of an Assembly committee before approving the plan or giving a direction to the Planning Authority. I do not know why he raises this now. In the 18 months that he was the Executive Deputy in the Alliance Government, that did not happen.

**Mr Jensen**: That is not so. I raised it many times.

**MR WOOD**: Well, it did not happen under the Alliance Government, Mr Jensen, and that was, in my view, one of the sensible proposals, one of the machinery or operational matters that I would support that the Alliance Government did. There are simply so many processes in the steps that Mr Jensen wants that things would come to a complete halt.

Another matter not raised here but which he will seek to do in the legislation also in front of us is to establish a planning advisory committee. Once again we are getting steps put in the way that will simply stop everything. It will take forever for anything ever to happen.

**Mr Jensen**: Rubbish!

**MR WOOD**: I can assure you, Mr Jensen, that, under the Labor Government, change, progress, movement, call it what you wish, in the ACT - call it development, if you want to use that dreadful word - will proceed with the careful scrutiny of the Minister, of the Government, of the Assembly, and of the committees, all of which - - -

**Mr Collaery**: Just like the Forrest bowling club.

**MR WOOD**: Yes, exactly. All of them have to be consulted in the process. The Rally wants to send things backwards and forwards forever, completely to put a stop in proceedings.

**Mr Collaery**: We believe in community consultation.

**MR WOOD**: Well, Mr Collaery, you did not show much evidence of it. We do also and we back that up. There is, however, one matter in Mr Jensen's Bill that we will accept, and that is clause 9, the deemed disallowance provision. The reason we accept that is simply that it is in our Bill. We see it as a sensible proposal; one based, Mr Collaery, on the concept of allowing things to be debated. It was an oversight - no, it was not an oversight; it was a deliberate rejection when you were a Minister. At no time when these matters were being considered while you were in the government did the deemed disallowance provision apply. You did not go down that path when you were in government in respect of these matters; now you seek to do so.

We overcame that gap, if you like. We see the merits of this and I applaud Mr Jensen for accepting the leadership of the ALP and now proposing to correct the omission that was there when you were in government.

**Mr Jensen**: It was in the original Bill, Bill. Come on. It was in the Alliance draft.

**MR WOOD**: Well, it did not ever happen, Mr Jensen. We propose to see that the deemed disallowance provisions do apply - that is, if a draft variation comes to the Assembly, under the six-day rule it has to be debated or it fails, it is disallowed; in contrast with the provision at the moment whereby, if it is not debated in those six days, notwithstanding any objection to it, it is simply passed. So, we have taken a step, Mr Jensen and Mr Collaery, that you were not able to take. That is one of these proposals in your Bill that we will accept. The others, I believe, impose unworkable restrictions to normal processes.

**MR KAINE** (Leader of the Opposition) (2.40): The Liberals, in opposition, have some concern at the timing of the bringing forward of these amendments. After all, we have on the table the major Bill on which the debate has already begun. The very same amendments that Mr Jensen purports to include in this Interim Planning (Amendment) Bill (No. 2) are those that he intends to incorporate in the longer-term planning Bill.

There are a couple of considerations about that. One is that, to some degree today, we are anticipating the debate on the major Bill if we accept or reject or deal in any way with the amendments that Mr Jensen is proposing, as I have said, simultaneously with that Bill having been placed on the table and the debate having really begun.

The other thing is that the sorts of amendments that Mr Jensen is proposing appear to me to be ineffective in that, even if we agree today to the Interim Planning (Amendment) Bill, this Assembly goes into recess in two weeks' time. Under normal circumstances it will not meet again until the new Assembly is convened, after the next election, which is quite likely to be late April, or some time next year, by which time the new planning Bill will already be in place.

Particularly, with reference to the amendment that Mr Jensen has put forward that requires the involvement of Assembly committees in the process, there will be no Assembly committee in place or meeting at any time between now and the convening of the new Assembly when it could take on the responsibilities that Mr Jensen envisages. So, I have to wonder why it is that at this stage in the life of this Assembly, and given that the new planning Bill is on the table, Mr Jensen seeks to amend the Interim Planning Act, because this Bill can have little, if any, effect. So, I have some questions about that.

However, looking at the substance of the Bill, in many ways Mr Wood could have written my speech for me.

**Mr Wood**: I will continue to do so if you like, on various matters.

**MR KAINE**: Give us your notes in future, Bill. We have reservations about clause 6 as well. Mr Jensen has not explained to us why he thinks the opinion of the Minister for Urban Services or the board of ACTEW is relevant. If he can convince us that there is a good reason for this we may well be persuaded; but he has not.

As I have already pointed out to Mr Jensen, the form of his amending Bill could well be ineffective anyway because he specifies the Minister for Urban Services in certain connections. It is quite likely that when the new Assembly convenes next year there will not be a Minister for Urban Services. You cannot be as specific as that.

I have suggested to him already that, whether or not he can persuade us that this is a good amendment, he might want to change it to read "the Minister responsible for traffic management and safety", or some more general words, rather than specifying a Minister who may not exist. So, we have some reservations about clause 6.

As Mr Wood has suggested, the Government will accept the amendments proposed in clause 9, and so will we. It is a simple progression from what the current Act states and is in line with the Liberal Party's philosophy of giving the community, as was done in the Forrest bowling club case, another opportunity to express an opinion. However, I think it is appropriate that the Assembly's committee should have an opportunity to comment on these matters.

We cannot support the repeal of Division 4 of Part III of the principal Act, so that means that we reject clauses 4 and 11 of Mr Jensen's amending Bill. The simple fact is that the Government should be allowed as much flexibility as is possible to meet the needs and expectations of this community.

To exclude the possibility of broad-acre development within the general constraints of planning policy and within the constraints of design and siting regulations and standards and the like is, in my view, placing an unreasonable and unreal constraint on the ability of government to meet the needs of the community. We do not accept those two elements of his amendments, and we will vote accordingly.

Mr Speaker, I think that there appears to be some consensus, except for the proponent of these amendments, as to what the general outcome might be; but I would much prefer to be carrying on this debate in the context of the major Bill that is before the house and not duplicating it here to no effect.

**MR JENSEN** (2.46), in reply: I am wondering where members of the house are at the moment, but never mind. I will deal with the points that have been raised. If Mr Kaine had listened very carefully to the speech that I gave when this matter was introduced, particularly in relation to the requirements for the authority to consider recommendations submitted by the Conservator of Wildlife, the Minister for Urban Services, et cetera, he would recall that I indicated that we have long been unhappy with the degree of information provided by government agencies in response to a draft variation and the provision of information in draft proposals put out for public consultation.

Comments like "There are no traffic problems perceived in relation to this draft variation, full stop" have long been considered to be an issue from both the Rally's point of view and the community's point of view because there is no information and no detail to back that up.

I am quite happy to accept the comment made by Mr Kaine in relation to the need for "the Minister for Urban Services" to be changed to something along the lines of "the Minister responsible for matters concerning traffic management and safety". I am quite happy to move that amendment during the detail stage.

The other issue relates to the Australian Capital Territory Electricity and Water Authority. As we know, the Australian Capital Territory Electricity and Water Authority is responsible for sewerage and stormwater. The key point there is to make sure that there are no problems in the authority's area with any of these draft proposals. Once again, a simple comment that there are no problems is not considered sufficient. That is why we have the recommendation in proposed new subsection 12(2), which says:

> A recommendation referred to in subsection (1) shall specify the reasons for the recommendation.

In other words, this requires those people to justify why they make those comments.

Mr Wood seems to think, for some reason or other, that just because they say something they have looked at all the issues. I can assure Mr Wood that there are a number of situations around this Territory in respect of which those statements have been made in the past. In fact, they have been completely inadequate; they have allowed problems to go ahead. They have made those sorts of statements; but it has been proved that, in fact, they were wrong.

In the case of the Bateman Street issue, at least they are prepared to acknowledge now that there is a speeding problem and that something has to be done about it. In the past it was indicated to the community that there was no problem. It was only after considerable pressure on the part of the community, given a bit of a plug along by me,

that the relevant sections within the Department of Urban Services eventually conducted an assessment of the traffic management problems in the area and came up with the view that there was a speeding problem.

They are putting forward proposals to address that. In the past they did not accept that. It was only because of considerable pressure on the part of the community that they finally agreed that maybe there was a problem and that they should be doing something about it.

The other issue, the most recent one, is the Calwell Primary School. A number of proposals have been put forward and concerns have been expressed about traffic management issues in relation to that. I understand that finally some work has been done. But it seems to me that some of the work that is being done may well have been upset by a decision to put a bus shelter in a certain place, thus taking away all the options in relation to the future development of traffic management in that problem area.

Once again it would seem that there is a requirement for the reasons for these decisions to be included in the documentation so that when the community is looking at the green papers they are able to identify what the various authorities have said and why they have said it. If Mr Kaine will not move that amendment, I am quite happy to move it myself. I offer him that opportunity if he so wishes; if he does not, I might seek to do so.

The issue of defined land is a vexed one. We have seen the draft variation proposals that have come forward for Gungahlin and West Belconnen. You have to remember that those areas have been identified as defined land. Once that process is finished - only general planning principles have been identified - the community loses all involvement in the future development.

It may be, Mr Wood, that one way around the problem is to allow the authority to place a notice in the *Gazette* saying that detailed planning for an area previously identified as defined land has been completed and that details can be obtained from the authority.

Copies should also be sent to all those who participated in the public consultation process and the Legislative Assembly committees and they should be advised that, unless otherwise directed by the Minister or the Assembly, the changes will take effect 21 days after the notice in the *Gazette.* Then the Minister, on receipt of a report from the Assembly committee, has to make a final decision and either withdraw the proposal in whole, or in part, or authorise its promulgation.

That may be one way around the issue of defined land as it is currently applied at the moment. I am not quite sure what amendments would be required to do that. On this occasion we thought it more appropriate possibly to delete that section from the Act and seek to throw back, if you like, community involvement in the planning process as we have it at the moment. As we know, under the current arrangement for draft variations, there is a requirement for the Planning Authority to advise those people affected.

If Mr Wood has any reason to wonder why the community is concerned about some of the actions of the Planning Authority, we just have to refer him to the 232 proposals for policy plan variations in the planning statement attached to the planning legislation. What they are seeking to do, Mr Speaker - some of the changes are quite substantial - is to put these changes through and not advise the community directly that there is going to be a problem.

The story that has been put to us and at various meetings, and it was put again by the Chief Planner on the weekend, is that everybody got a document in their letter box that said that there is a new Territory Plan. That basically is all that document said. It did not tell people in Kambah that there is a proposal to knock down all those trees across the road from them - they are pretty heavily spaced along there - and to develop that as a residential area. It did not tell those people in that part of Kambah. That is the sort of issue that the people and the community are concerned about.

The Planning Authority is seeking to make those changes without directly involving the community, as is currently the case in relation to the proposals for draft variations. That is why the community is concerned, Mr Wood, and that is why the community will continue to be concerned until the Planning Authority and the Government seek to address those issues. You know that I have asked you questions about that in the Assembly, and I will continue to do so until I get an answer.

The community want to know what is going on. It is a bit too late, three months or six months down the track, when this has all gone through and the bulldozers turn up. The Planning Authority and the Minister can put their hands on their hearts and say, "Sorry, but it was in the Territory Plan and you knew all about it. You had all that time to look at it". There is not much point, Mr Wood, if you did not tell the people directly that there was going to be an issue.

I would put to you another example. The majority of people in Longmore Crescent do not know that there is a proposal for an existing area of open space across the road from them to be turned into residential land. They do not know

that because the Planning Authority has chosen not to tell them, as they were required to do in the past. That is why the community is concerned and that is why the community seeks to get itself involved.

That is why, Mr Speaker, there is a need for the Executive not to make any decisions on planning issues before they have been considered by a committee. This will maintain and strengthen the role of committees within our parliament. Mr Wood should know because during the early stages of this parliament he was the Labor Party's only representative on that committee system.

Mr Wood performed that job very well, I might add. He is aware of the importance of the committee system. That is why the proposal in clause 7 of my Bill is to require the Executive to pass all that information on to the Assembly committee so that it can do its job, and that is why it is important for the Executive not to make any final decisions until it receives a report.

Let me just correct one thing in relation to the claim that I have not raised this issue before. Let the record show, Mr Wood, that during the whole time I was chairman of the Planning Committee I raised that point with the Minister of the day, seeking to have followed the process that I have here in this legislation. As you may recall, it was also raised with you by the Planning Committee currently chaired by Mr Kaine.

We have a series of letters which, if Mr Wood feels it necessary, I am sure it will be possible to table; but I do not think that will be necessary. Suffice it to say that throughout my period in the Assembly I have sought to have Executive decisions of this nature properly put through and processed by the Planning Committee. I want to make sure, Mr Speaker, that the role of the parliament is effective and that committees do not just become rubber stamps of Executive decisions.

I am pleased to see that the Government is disposed to accept one of the amendments that was in the draft Land (Planning and Administration) Bill that was about to be brought down by the Alliance Government. It was considered by the committee. Those provisions were in the final stages of that Bill. I took that and put the disallowance provisions in because originally the planning legislation was not to take effect until 1 July. Now, of course, it is to take effect from 2 April, I believe.

Notwithstanding that, I think all aspects of these changes in the Interim Planning (Amendment) Bill (No. 2) should receive support from all sides of this parliament. I am disappointed that some have chosen not to support what I believe, and other members of the community believe, to be very important elements in relation to the overseeing of the Executive by the Assembly. On that basis I hope to get some of these issues finally through the parliament.

Question resolved in the affirmative.

Bill agreed to in principle.

**Detail Stage**

Clauses 1 to 5, by leave, taken together.

Question put:

That the clauses be agreed to.

The Assembly voted -

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

Question so resolved in the negative.

Clause 6

**MR JENSEN** (3.04): Mr Speaker, an amendment is being prepared for circulation in my name. The proposal basically is to delete "Minister for Urban Services in relation to matters concerning" and insert "Minister responsible for traffic and safety". The reason is to pick up the point raised by Mr Kaine in relation to whether there would be a Minister for Urban Services. I am seeking to make it the Minister responsible. This was the format that we agreed on in discussions with counsel. I think it is more appropriate to give ourselves a bit of a catch-all in that area, to make sure that the Minister responsible for traffic management and road safety is required to prepare recommendations for draft variations.

Members will recall that the Conservator of Wildlife is also required to submit this information. It is written into the draft planning legislation, and I note that Mr Wood is not too worried about that.

For some reason or other, he seems concerned about the very important issue of traffic management and safety being required to be included in draft variations. If the department responsible for traffic management and safety indicated that there was not a problem, they should include

in their recommendation the factors as to why there was not a problem. That would be necessary. They can say that there is not a problem for X, Y and Z reasons or there are no traffic issues related to a particular variation. On that basis, Mr Speaker, I think it is important to make sure that that stays there in the format that has been suggested by Mr Kaine.

In relation to the issue about Australian Capital Territory Electricity and Water, as I have already indicated, that often can be a very important factor in relation to whether a development should go ahead. In the draft series of amendments that I have prepared for the main legislation I am actually referring to the requirement for urban infrastructure statements; statements on the impact of a particular development on the infrastructure system that applies in a particular area at the time.

On that basis I think it is important to retain those sections. I will seek support from the members to retain that. I would hope that the members of the Liberal Party would assist in making sure that the community gets as much information in relation to these very important issues as is necessary to enable them to make their comments on draft planning variations in the future. I move:

> Page 2, line 17, omit "for Urban Services in relation to matters concerning", substitute "responsible for traffic and safety".

Amendment agreed to.

Clause, as amended, agreed to.

Clause 7

Question put:

> That the clause be agreed to.

The Assembly voted -

| *AYES, 11* | *NOES, 6* |
|---|---|
| Mr Collaery | Mr Berry |
| Mr Humphries | Mr Connolly |
| Mr Jensen | Mr Duby |
| Mr Kaine | Ms Follett |
| Dr Kinloch | Mrs Grassby |
| Ms Maher | Mr Wood |
| Mr Moore | |
| Mrs Nolan | |
| Mr Prowse | |
| Mr Stefaniak | |
| Mr Stevenson | |

Question so resolved in the affirmative.

Clause 8

**MR JENSEN** (3.10): Mr Speaker, I have an amendment. It has been signed and circulated. I move:

> Page 3, line 7, proposed subsection 19(1A), omit "it", substitute "the Executive".

The reason for this is that the Standing Committee on the Scrutiny of Bills and Subordinate Legislation, when it was considering this Bill, thought that there may be some confusion as to what I was referring to by using "it" in that clause. I was proposing that information submitted to the Executive under subsection 18(1) be required to be submitted to the committee. There was some confusion as to whether I was talking about the committee or the Executive in that context. In view of the comments made by the Scrutiny of Bills Committee, I thought it appropriate to make that amendment so that there is no doubt about what we are trying to achieve. I commend the amendment to members.

Amendment agreed to.

Clause, as amended, agreed to.

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

Clause 11

Question put:

> That the clause be agreed to.

The Assembly voted -

| *AYES, 6* | *NOES, 11* |
|---|---|
| Mr Collaery | Mr Berry |
| Mr Jensen | Mr Connolly |
| Dr Kinloch | Mr Duby |
| Ms Maher | Ms Follett |
| Mr Moore | Mrs Grassby |
| Mr Stevenson | Mr Humphries |
| | Mr Kaine |
| | Mrs Nolan |
| | Mr Prowse |
| | Mr Stefaniak |
| | Mr Wood |

Question so resolved in the negative.

Clause 12

Question put:

That the clause be agreed to.

The Assembly voted -

| *AYES, 11* | *NOES, 6* |
|---|---|
| Mr Collaery | Mr Berry |
| Mr Humphries | Mr Connolly |
| Mr Jensen | Mr Duby |
| Mr Kaine | Ms Follett |
| Dr Kinloch | Mrs Grassby |
| Ms Maher | Mr Wood |
| Mr Moore | |
| Mrs Nolan | |
| Mr Prowse | |
| Mr Stefaniak | |
| Mr Stevenson | |

Question so resolved in the affirmative.

Title

**MR KAINE** (Leader of the Opposition) (3.16): Mr Speaker, before you conclude the debate, I seek guidance. A few moments ago we rejected clause 11 of this amending Bill, which would have repealed Division 4 of Part III of the principal Act. If you go back to clause 4, it deals with a matter that relates directly to that part of the Bill. I wonder whether we should - - -

**Mr Wood**: We are going back to those.

**MR KAINE:** You are going to come back to that; okay.

Title agreed to.

Motion (by **Mr Collaery**) agreed to:
That, pursuant to standing order 187, clause 1 be reconsidered.

Clause 1 agreed to.

Motion (by **Mr Jensen**) agreed to:
That, pursuant to standing order 187, clause 2 be reconsidered.

Clause 2 agreed to.

Motion (by **Mr Jensen**) agreed to:
That, pursuant to standing order 187, clause 3 be reconsidered.

Clause 3

Question put:
That the clause be agreed to.

The Assembly voted -

| *AYES, 11* | *NOES, 6* |
|---|---|
| Mr Collaery | Mr Berry |
| Mr Humphries | Mr Connolly |
| Mr Jensen | Mr Duby |
| Mr Kaine | Ms Follett |
| Dr Kinloch | Mrs Grassby |
| Ms Maher | Mr Wood |
| Mr Moore | |
| Mrs Nolan | |
| Mr Prowse | |
| Mr Stefaniak | |
| Mr Stevenson | |

Question so resolved in the affirmative.

Motion (by **Mr Jensen**) agreed to:
That, pursuant to standing order 187, clause 4 be reconsidered.

Clause 4

Question put:
That the clause be agreed to.

The Assembly voted -

| *AYES, 6* | *NOES, 11* |
|---|---|
| Mr Collaery | Mr Berry |
| Mr Jensen | Mr Connolly |
| Dr Kinloch | Mr Duby |
| Ms Maher | Ms Follett |
| Mr Moore | Mrs Grassby |
| Mr Stevenson | Mr Humphries |
| | Mr Kaine |
| | Mrs Nolan |
| | Mr Prowse |
| | Mr Stefaniak |
| | Mr Wood |

Question so resolved in the negative.
Bill, as amended, agreed to.

## CRIMES (AMENDMENT) BILL (NO. 2) 1991

[COGNATE BILL:

MAGISTRATES COURT (AMENDMENT) BILL (NO. 2) 1991]

Debate resumed from 11 September 1991, on motion by **Mr Collaery**:

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 order of the day No. 4, Magistrates Court (Amendment) Bill (No. 2) 1991? There being no objection, that course will be followed. I remind members that in debating order of the day No. 3 they may also address their remarks to order of the day No. 4.

**MR CONNOLLY** (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.22): The Government will not be supporting these two Bills. It is the view of the Government that it is both unnecessary and premature to enact legislation along these lines. That is not to say that the Government is not sympathetic to the need for adequate interpreter services in the courts of the ACT and the need to do more in that provision.

The reason for the Government's opposition is that in May of this year a very substantial report from the Commonwealth Attorney-General's Department entitled "Access to Interpreters in the Australian Legal System", which I wave around, was tabled in the Federal Parliament. This very comprehensive report was the result of an extensive study, as part of the Prime Minister's national agenda for a multicultural Australia, on access to interpreters in the Australian legal system. The committee of inquiry that produced this report travelled the length and breadth of Australia, took submissions from organisations and individuals with an interest in the provision of interpreter services, and came down with a very comprehensive and well-researched report which recommends a national approach to the provision of interpreters in the Australian court system.

The Commonwealth Attorney-General, Mr Duffy, wrote to me in June of this year seeking the Government's views on this, as he did to all State and Territory Attorneys, and I, as a result of that, wrote to the Chief Justice, the Chief Magistrate, the Assistant Commissioner of the Australian Federal Police, and other interested bodies, including the legal aid authorities, to seek their views on this. There is general agreement amongst government agencies that this is the appropriate course to pursue.

The issue of uniform legislation to provide for interpreters in the Australian court system was placed on the agenda of the Standing Committee of Attorneys-General at its most recent meeting in Melbourne. So, things are moving, Mr Speaker, to produce a national system to

regulate interpreter services in the courts of Australia's States and Territories as well as the Commonwealth. Mr Speaker, the Government view is that it is better to go down that course than to have an attempt to reinvent the wheel and pass this legislation.

**Mr Collaery**: Oh, what a tag-along. What a stupid argument. What a crazy approach. This is the multicultural Labor Party.

**MR CONNOLLY**: I would note that this legislation was not introduced by the Alliance Government when this man was in power. This man who seeks to grandstand, who loves the stunts, who loves the froth and bubble but shies at the hard work, is in fact suggesting that this national multicultural agenda report is a waste of time, that we should thumb our nose at the process of the other States and Territories and go it alone. We say, Mr Speaker, that this is a stunt and it is unnecessary. The cackle opposite leads me to no other conclusion than that this is a political stunt. There are two Bills before us.

**Mr Collaery**: To give migrants rights.

**MR CONNOLLY**: He is bleating about migrants' rights, Mr Speaker. The Government is determined to progress a standard system which has been endorsed by the Attorneys-General of the other States and Territories, not a stunt like Mr Collaery's proposal. At the end of the day, if the Assembly wants to have its day and show who is boss, no doubt this will be passed. It will not cause any particular concerns until the Labor Government next year has to repeal it and replace it with legislation which will comply with the national system.

**Ms Maher**: At least we would have something in place in the meantime.

**MR CONNOLLY**: This suggests that there is nothing in place at the moment, which presumably is your view. These people have not even done their research. They do not know what the position is at the moment. They are probably unaware of Australian Federal Police general instruction No. 34, which presently requires a police officer to obtain the services of an interpreter when interviewing a person the officer has reasonable grounds for believing does not have an adequate command of English. The standing orders of the Australian Federal Police, as presently in force, make provision for an interpreter service. Did you know that? Of course you did not.

The Commonwealth has recently enacted the Crimes (Investigation of Commonwealth Offences) Amendment Act 1991, which commenced on 1 November 1991. Section 23N of that Act, now presently the law in force in this Territory, requires the use of an interpreter when the accused or suspect is unable to communicate orally with reasonable fluency in English.

I will not read the provision fully; but it requires the provision of interpreter services for Commonwealth offences, which are so defined, under that Commonwealth legislation, as to include an offence against the law of the ACT which is punishable by imprisonment for a period exceeding 12 months - that is, what is commonly known as an indictable offence. The definition of "investigating official" includes a member of the AFP. So, Commonwealth law presently in force makes provision for interpreters in the case of indictable offences. There is a slight gap with summary offences; but, again, police standing orders cover that.

The Magistrates Court (Amendment) Bill, which again makes certain requirements for the provision of interpreters, has certain difficulties with its inconsistency with the Evidence Bill of 1991 of the Commonwealth, which was introduced into the House of Representatives on 15 October just past. That Commonwealth law, when passed, will be binding on the courts of this Territory and it covers the provision of interpreter services in a court.

The Commonwealth Bill provides that a witness may give evidence about a fact through an interpreter, unless the witness can understand and speak the English language sufficiently to enable the witness to understand and to make an adequate reply to questions that may be put about a fact. That will apply to all provisions in the ACT.

The ACT Bill that Mr Collaery has put forward proposes that where a court is satisfied that the defendant does not have sufficient knowledge of English or is unable to hear or speak, so that the defendant cannot understand or participate in proceedings, it shall not hear or determine the proceedings unless there is an interpreter.

In short, the Evidence Bill 1991 of the Commonwealth provides for a right in a witness to give evidence through an interpreter, unless the witness can understand and speak English sufficiently. There is a somewhat different test in Mr Collaery's Bill. So, there is scope for confusion, although of course the Commonwealth law will prevail.

So, Mr Speaker, both of these Bills are unnecessary. We all would agree, I am sure, that the provision of interpreter services is essential in the courts, and the Government's commitment to that is clear by our support for the implementation of this report and the efforts that I have made. I would be quite happy, if anyone doubted that, to table the correspondence that I have had with the Chief Justice, the Chief Magistrate, the Assistant Commissioner of the Australian Federal Police and other relevant senior officials with a view to moving on national and uniform provisions for the provision of interpreter services in the courts.

It is unnecessary for us to move on this Bill at the moment. This Bill will be, in certain cases, inconsistent with Commonwealth legislation, so there will be one law that applies for certain offences and another law, that is the Collaery Bill, which will apply for others. It will lead to confusion for so long as there are two laws in force. It will certainly be inconsistent with the uniform approach that is recommended. For that reason, the Government is unable to support this measure because it is premature and runs contrary to the uniform agreement of the States and Territories of Australia and the Commonwealth to achieve a logical and rational approach to the provision of interpreter services. The Prime Minister's multicultural Australia initiative resulted in a lot of work - - -

**Mr Collaery**: It is premature - 30 years after we start migration!

**MR CONNOLLY**: Mr Collaery is muttering away about it being premature and 30 years too late. Again, it is the usual story. Mr Collaery, the great gunna, the great artillery man, is going to do it all when he is in opposition. What happened when he was in government? What was happening while he was in government, as was happening while other people were in government, was that a lot of work was being done. A considerable body of research was compiled. Persons with an interest in this area, ethnic communities councils and others, put a lot of effort into submissions to this national inquiry. It came out with a clear recommendation.

The Government thinks that is the way to go. Mr Collaery, instead, wants his hour in the sun, wants to strut around Canberra and pretend that he is the only person who is interested in multicultural affairs. I can see the press release now which will be saying that Labor rejects interpreter services.

**Mr Collaery**: I am not doing one. I already did it at 2 o'clock.

**MR CONNOLLY**: Well, there you go. See, he has already done it.

**Mr Collaery**: Right. I was on the radio after you.

**MR CONNOLLY**: He has already had his little stunt. The Government sees this as a stunt. It does not support it, because it believes that there is an active process under way now to achieve national uniformity in this important area. Interpreters are currently required to be used under the Australian Federal Police standing instructions. There are provisions in existing new Commonwealth legislation and legislation about to be in force - that is, the new Evidence Act which also governs this area.

If this law is going to be passed by the Assembly, if you want to have your day and pass this law, you are creating a confused hotchpotch of rights and obligations in this area; but I can assure the Assembly that the Labor Government, re-elected by an increasingly large majority at the next election, the way you people are carrying on, will give effect to this important document, will give effect to the considered and well-researched views of the Australian community on access to interpreters in the Australian legal system, and will not rely on this knee-jerk stunt.

Mr Temporary Deputy Speaker, I suspect that it is the will of the Assembly that it pass this and the Government, of course, will implement the law as passed by the Assembly. But if you really were serious about this issue, if you really wanted to progress the cause of access to justice, and access to interpreters, you would be supporting the moves around this country to give effect to this well-researched document supported by the communities, rather than this stunt.

**MR DUBY** (3.34): Mr Temporary Deputy Speaker, the Minister who has just spoken is already well known around the city as the "Minister for Silly Walks"; he now certainly is the "Minister for Silly Talks" because what we just heard was an load of absolute waffle. He did not address in any way the issue that is the root cause of these Bills being presented. The simple fact is that members of our community are currently disadvantaged because of their failure to comprehend and adequately communicate in English, and these Bills address that issue here in the Territory.

The simple fact is that that matter has been identified nationally, as the Minister so ineloquently pointed out, by the report that he referred to. Nationally, there is going to be a movement to allow for recognition of the fact that Australia is a multicultural society. But there is no reason whatsoever for the Minister to wait for the rest of the States to get in step with the ACT. Here we have a prime example of a social reform which we can initiate very simply.

I am amazed that the Labor Government opposite does not wish to join with the other members of this Assembly in introducing this reform. If it turns out that there are some measures in these two Bills which are inadequate or at odds with the agreed final position to be adopted by all the States and the Commonwealth, any future government can introduce an amendment. That is the simple truth of it.

If we were to follow Mr Connolly's arguments it would mean that this Assembly would never have introduced legislation concerning, for example, the control of firearms. He is proud to shout from the rooftops that the gun control legislation in this Territory is the model for Australia

and when will the rest of the country introduce legislation along the lines of what we, the brave social pioneers here in the ACT, have done. No, we do not hear any response like that in terms of this matter.

It makes me wonder just what is the reason behind the Minister's apparent reluctance to introduce this social reform. Could it be that Mr Connolly is simply adopting a dog in the manger attitude; that, whilst it could well be a social reform, he, or the Labor Government in general, did not introduce it, and as a result he does not want to have the kudos for that reform to go anywhere else?

I do not regard this as Mr Collaery's Bill. I know for a fact that this Bill was being looked at and would have been introduced by the Alliance Government. The simple fact is - this is one of the few things on which I do agree with Mr Stevenson - that at the end of the day this will be an ACT Assembly Bill when passed in this Assembly. Whilst there will be some brownie points for the person who introduced it, we can all share in saying that a long overdue reform is now in place.

I notice that the two Bills contain, in clause 2, what is known as the Macklin provision. Mr Connolly says that the Government will accept the will of the Assembly to introduce the measures. It will be interesting to see whether he will show such a dog in the manger attitude as to do nothing and let the Bills automatically come into place after six months.

The arguments put up by the Government are, frankly, very spurious. This is an overdue reform. It is something which I would have imagined that the Labor Government opposite, who continually prattle on about social justice and social equity and the rights of the socially disadvantaged, would have grabbed with both arms instead of taking the attitude that they have adopted. I think they will find that, at the end of the day, they will be soundly berated by the other speakers in this Assembly. I, personally, am looking forward to the final vote to see just where they do stand on this important social issue.

**MR STEFANIAK** (3.38): The Liberal Party will be supporting Mr Collaery's two Bills. I think there is a fair amount of force in what members have said in relation to a national approach. Whilst I agree with Mr Connolly that it is desirable to have a fully national approach, I would agree with other members that often it is very difficult to get one in practice. I recall the number of meetings I have seen where it is difficult even to agree on some small points. There is a lot of force in introducing sensible legislation now. If need be, amendments can be made if and when there is a fully national approach.

One also has to look at the current situation. The current situation in the ACT, basically, is that if a defendant in the Magistrates Court does not have a knowledge of the English language that is sufficient to enable that person to participate in the proceedings, or is someone who has a hearing problem or a speaking problem, the court invariably makes arrangements to assist that person. As a practitioner, I have been involved in a number of cases where proceedings have been stopped and an interpreter has been found. This does occur and this legislation merely enhances and provides legislative backing for what has been a practice.

Secondly, in relation to Mr Collaery's Crimes (Amendment) Bill, I am indebted to Mr Connolly for showing me his advice from the Law Office because that, indeed, makes mention of the fact that it is police practice and in accordance with police instructions for a person who cannot speak English properly to be provided with an interpreter. In the Crimes (Investigation of Commonwealth Offences) Amendment Act 1991, which came into force on 1 November, there are some detailed provisions in relation to indictable offences and the provision of interpreters, and they may well in fact go a little bit further than Mr Collaery's Bill.

That Act is of particular concern because it also introduced the nefarious four-hour rule which has been shown to be totally inappropriate in the State of Victoria where it was introduced and only serves to hinder police investigation of serious offences. I certainly hope that the Commonwealth ultimately will see sense there before we have a lot of problems, both in the ACT, in terms of major fraud and especially major crime, and the other States, in terms of the investigation of Commonwealth offences. At any rate, there is provision there in the case of indictable offences, and that applies to the ACT, for an interpreter to have to be present.

Mr Collaery's Crimes (Amendment) Bill deals also with the situation of persons in custody. I think some of the concerns shown by the Government lawyers can be allayed, to an extent, in that that means that for most summary offences, and certainly most offences under such things as the Motor Traffic Act and other more minor Acts, persons are not in custody and the provisions of this Bill will not apply. However, if a course of conduct is serious enough for a person to be placed in custody - that has to be pretty serious in the ACT - and that person cannot speak English, there is a great necessity for an interpreter to be present to enable the police to go about their investigation and the charging of that particular person. That is commonsense; that is basically how the police operate.

When we received these Bills I made some inquiries of the police and the prosecution branch in relation to the matters and I was advised that there is certainly no harm in Mr Collaery's Crimes (Amendment) Bill being accepted, because it will have the effect of ensuring, in all cases, that an interpreter is present when the police have to investigate a matter. A number of matters, unfortunately, have been thrown out of court simply because it has been shown, or suggested, that a defendant who had a reasonable command of the English language did not, for example, understand the caution. Whilst the questions were fairly simple and the answers simple, because the caution was a little bit more complex and was queried and apparently not understood, the whole case went out of court, and someone who probably should have been convicted was not.

The relevant prosecuting authorities see no problem with this Bill making it mandatory that an interpreter be present, because that ensures that the police investigation and the police record of interview and question and answer session are conducted entirely appropriately from the word go; and that saves a lot of problems later on. It is better to get it right to start with, rather than have problems later on.

Apart from the inherent fairness Mr Collaery is proposing - fairness from the civil libertarian aspect - at the other end of the spectrum, in terms of the pure administration of justice, in terms of even prosecutions, it will tend to make it a more effective system. So, we have no problems with these two Bills.

It would be nice if we had a national approach. I am pleased to see that the Attorney concedes that this really will not have any great effect in terms of any national approach; and if there have to be amendments when that happens, so be it. In the meantime this puts in legislative form what effectively, in most cases, has been the case in the ACT for a large number of years - certainly for about the last decade, as far as I am aware.

This legislation will not cause any harm. It certainly has been accepted as quite sensible legislation by both the Australian Federal Police Association and the DPP, with whom I spoke. I certainly take full regard of the learned opinions of persons as eminent as the current director, who is a queen's counsel and a very experienced man in the criminal law, mainly as a defence counsel but now also as a prosecutor, and of course the police themselves, when they say that they have no concerns with it. Accordingly, Mr Temporary Deputy Speaker, we have no problem in supporting this piece of legislation introduced by Mr Collaery.

**MRS GRASSBY** (3.45): Mr Temporary Deputy Speaker, in the time that I have been involved with many of the ethnic communities in Canberra I have not yet had anybody complain that the interpreter services of the courts were inadequate. However, I cannot be absolutely sure of that.

I find it absolutely ridiculous that we are making decisions about something in respect of which there is a review under way. To start making decisions about the ACT courts when there is a national review under way is rather ridiculous. Mr Collaery makes the mistake of taking on too many issues that are Federal issues and which have nothing to do with the ACT. There are no votes really, if that is what he is thinking of, in an issue like this.

Interpreting in a court is important. I would agree with that. It is important also in hospitals. We all understand what happened in the early years of migrants coming to this country. A cook would be dragged out of the kitchen to speak to a patient and translate what the doctor was saying to the patient. We all know what absolute disasters occurred. It caused many a problem. The cook found it difficult to put medical terms into his language and the patient's language. He did not have that knowledge and therefore could not do it.

Thank goodness that today there is an interpreter service in the health area. It is an excellent interpreter service. There is also the telephone service. If people have problems they can go to a phone and ring up an interpreter service and immediately contact somebody who is able to speak to them. Interpreters in this city are already doing a great job at the moment.

Why do we need this legislation at this particular moment? I cannot see any benefit from it. As I say, with a review going on, I feel that it is an absolute waste of time and money to do it. Why cannot we wait and see what the national review reveals about it and then take it on? I just think it is a bit of grandstanding. I do not think it is going to pick up any votes in the ethnic community.

The other thing I cannot understand is this: If Mr Collaery really thought this was such an important thing to do, why did he not do it when he was Attorney-General? He certainly had plenty of time to do it. It was well over six months; yet nothing was done. Why, at this particular moment, does Mr Bernard Collaery think that this is the time to jump on the band wagon and raise the banner? Does he believe that this is going to get him lots of votes in the ethnic community?

I can tell him right now that it is not going to have that effect, because I have spoken to them about this. The Ethnic Communities Council is very interested and is waiting to see what comes out of this national review. They want to know what is absolutely necessary in this sort of thing. We might find, when the review comes out, that we need more than just court interpreters who speak many languages; we may need a lot better service than what we are looking at in this Bill. It may not be good enough.

We are rushing to the end of this parliament, rushing toward an election, and, as I say, it is just grandstanding, in the belief that it will gain votes. As I said before, I do not think that it will gain any votes. I think people will see through this. They will realise that it is not what is important. We should be waiting to find out exactly what this review will bring out. I think Mr Collaery will find that what he is doing now will be only part of what needs to be done. We could bring in a far better Bill that would cover all the area. Maybe we would bring in something that would be better than anybody else has.

Patching up things is never good enough. We need to do exactly what is the important thing. We, the ACT, can be the leaders in the community, the leaders in Australia doing much better than anybody else, not just patching up something by saying, "We need this; so let us throw it into the ring now. Let us decide that we will do this. This is important. Yes, that is fine". I always believe that if there is a national review under way we should see exactly what that national review has to say.

We do not need to put something like this into operation. Let us wait and see what the national review says. When it comes down, let us pick the eyes out of it and get the very best; not part of a bad bunch, not part of a pie, but the best part, so that the ethnic communities in this city can say, "We do have the best of interpreter services; we do have the best care of people in courts and elsewhere; not just a hotchpotch put together by somebody on the run, because the house is closing down and we are going into an election, in order to be able to say, 'I did that; I got that for you'.".

Half a job is just not good enough. A job done on the run is never good. Time needs to be spent on it. Time is needed to sort it out. This is an important thing, particularly as, on a population basis, this city has the largest number of ethnic groups of any city in Australia. We should be giving it a lot of care. We should be consulting with these people.

I do not think there has been any consultation about this with the people. As far as I can understand from the groups I have talked to, they have heard nothing of it. They do not know anything about it. They are very interested in this national review that is under way, particularly the Ethnic Communities Council. They want to see what comes out of that and then they want to fight the cause.

It is no good throwing something into the ring now and saying, "This is good enough; this will do; yes, we will do it, and then we will be able to go out and say at election time, 'We got this for you. This is what we did'.". If it is not good enough, then it is not good enough; it should be the best. Rushing into something like this is a mistake and I cannot support it.

**MR MOORE** (3.52): These two Bills we are debating cognately really demonstrate how desperate Labor are to do absolutely nothing. All the arguments about national strategies and so forth are important; they are sensible and they are rational; but that does not prevent us from doing something now. It may well be that in six months' time there may need to be some modifications to the Bills put up by Mr Collaery.

Here is a case where Labor are keen to ensure that nobody else has done anything. The arguments that I heard ring hollow, particularly those from Mrs Grassby. To say that we have to put things off to somebody else and that we cannot make decisions ourselves just at the moment is nonsense. We can proceed. We can deal with this situation now.

This is a quite sensible set of amendments, and the national perspective on the matter is also very important. The two are not mutually exclusive. You have tried to argue that the two are mutually exclusive. They simply are not. It is quite appropriate for us to move now with these quite sensible provisions that Mr Collaery has suggested and, if there is a variation that comes out of the national strategy, it will be quite appropriate for us also to move those amendments. *(Quorum formed)*

I had completed my speech just as the quorum was called.

**Ms Follett**: Do it again.

**MR MOORE**: I will not take the opportunity of speaking again, because we have further important legislation to consider. It is important to deal with it instead of adopting this practice of putting it off to someone else - the sort of approach that we seem to be seeing more and more often from the Labor benches.

**MR COLLAERY** (3.55), in reply: I rise more in sorrow than in anger. At about 2 o'clock today I heard the Attorney make on radio the most outrageous comment about the Alliance Government - that we had proposed, among other things, to amalgamate the Small Claims Court and the Supreme Court. That is a populist argument which is entirely incorrect and is not supported in any way by the documentation we left behind or by the proposals put forward. I used to say that we would see Mr Connolly back here as a Chief Minister one day. I found his speech today offensive and I am concerned that we lawyers, given our collegiate, have to say things like that.

I found the band wagon comments utterly offensive. If you go through this report entitled "Access to Interpreters in the Australian Legal System", the Commonwealth Attorney-General's report - I am not going to bore you with it - you will find it sprinkled with cases that I had a role in. I am certainly not on a band wagon. I believe that the Attorney knows that that was a cheap shot.

To start with, Mr Temporary Deputy Speaker, I do not believe that I have to wring any more votes out of the ethnic community. I have them, Mr Stefaniak has them, Mrs Grassby had them, and the Labor Party has some too; but they will come to terms with this vote today. I do not wish ill on them; I think it is very sad that we could not have had a bipartisan debate on this Bill.

I will answer the first taunt first, and that is: Why did I not do it as Attorney? I will tell you why I am bringing in about 20 Bills over the short timeframe. It is because I could not get the types of criminal law reform initiatives that I wanted when I was Attorney. Let us be quite frank about it. We were deluged with catch-up legislation following the self-government takeover. I am sure the Chief Minister understands exactly what I am saying. Both of our governments have been blunted by the need to deal with catch-up legislation that should have been passed before self-government or should have been left for us in better draft form.

Let us be quite frank about it. The lawyers in the Government Law Office working on criminal law reform have been largely deflected by the need to do catch-up legislation of the type they are all working on now, such as the recovery of proceeds of crime legislation and all the rest that we should have had done far earlier. National crimes legislation should have been drafted in readiness, and so on.

That does not exculpate those advisers to Mr Connolly who, somewhat ungraciously, I gather, have seen the need to put the boot into these two Bills. I will not forget that, of course, and I say that advisedly.

I remind Mr Connolly and his advisers that it was in April 1986 that the Standing Committee of Attorneys-General - the foremost lawyers, the first law officers in the land - got together and agreed that each jurisdiction should consider the adoption of guidelines governing the use of interpreters in the Australian legal system. It was so many years ago. In those intervening years I did not have the same confidence that Mrs Grassby had. I had to find interpreters at night. I had to find interpreters to take to the Belconnen Remand Centre at all hours of the day and night. I did not experience the same ease of access that Mrs Grassby speaks about; nor do I in any way level any criticism at the interpreters here. *(Quorum formed)*

I was referring to the parlous situation we have been in for so many years. Mr Connolly referred - and I referred to it earlier - to the report of April 1991 of the Commonwealth Attorney-General's Department. I stress that I had not seen that report when I gave drafting instructions for this matter; nor did I see it until I brought the Bill down. That is a fact. At paragraph 2.12.1, page 36, it concludes, on the situation of access and equity, that:

> New South Wales, Victoria and South Australia have in place well-established language organisations. In Western Australia, Tasmania and the ACT there are no State- or Territory-provided language services. In the Northern Territory and Queensland there are limited services. The Commonwealth Telephone Interpreter Service operates in all States and Territories.

Those of us who know about these matters know that the TIS, as it is known, does a great job; but it is not available to assist lawyers in the many exigent circumstances we have. The report goes on in that paragraph to say:

> The situation in those States which have well established State language service organisations is clearly superior to those in other States or Territories.

Just in terms of access and equity, we have to catch up on a vacuum in our situation. I simply do not accept Mrs Grassby's confidence that the situation is okay, or her statement that the Ethnic Communities Council in the ACT is content to await uniform legislation.

I now address myself to the uniform legislation aspect. Contrary to the stunt alleged to be before the house today, I said in my introductory speech on 11 September 1991 - it was a careful speech, I thought, and it was researched personally without the assistance of the staff that Mr Connolly has - that I had looked at comparative legislation in Australia and found that there was similar legislation in South Australia guaranteeing the right to an interpreter and that we had found legislation in Victoria.

I cannot see why it is a stunt for us to bring in legislation when other responsible jurisdictions have done it. I stress that the legislation that I have had drawn, with the competent assistance of our parliamentary drafting office, might well be the model, since it is the last cab off the rank. Why does Mr Connolly constantly feel so tag-along in his approach to his role as Attorney-General? Why cannot he be confident in the work of our draftspersons? I feel that he has fallen under the sway of that particular conservatism that inhibits government criminal law reform in the ACT. It is a worry. It is a worry that, if I am ever back in the job, I will attend to very promptly, I assure you.

A main conclusion of the Commonwealth inquiry, at paragraph 4.6.2, is that the Commonwealth should encourage the States to adopt uniform legislation. It is not put any higher than that - that the Commonwealth should encourage it. So, from April 1986 to now we get this marvellous statement that the Commonwealth should encourage the States to adopt uniform legislation. No working party came out of that recommendation and produced a draft uniform Bill. Go back

through the literature of law reform. As those who have worked in this area know, you can go back to the ALRC report - I think it is No. 38 - which says that a witness shall be entitled to an interpreter unless the court orders otherwise. This Federal report says, at page 62, paragraph 3.8.1:

> In 1982, the Commission -

the New South Wales Law Reform Commission -

> recommended that judicial reluctance to allow the use of an interpreter should be dealt with by ...

It gave the usual recommendations. How many voices does it take to get reform in this country? I am concerned that we have opposite us a Labor Party that has taken such an extraordinary attitude today.

This situation, as Mrs Grassby mentioned, does not affect only those who have come to us from other cultures. In my reform I am also talking about the situation of the deaf, the hearing impaired and others. We all know the statistic; we hear it all the time. One in ten of us in this community has some form of impairment of sight or hearing or speech. I bought a new pair of spectacles last week. We are deteriorating in the great faculties given us.

**Mrs Grassby**: That is for sure about you, Bernard.

**MR COLLAERY**: Yes, Mrs Grassby, I gave you that. I thought you would be the one who would recognise it first. We were attending to that circumstance; we have had the Year of the Disabled, and all those years of recognition. It is now past the stage where we should have indignation meetings and indignation speeches. I like to see action. If Mr Connolly calls that knee-jerk stunts, so be it.

I believe that the Labor Party is a disgrace. I could not think of anything worse today than to have seen what they have done on this issue. I am not, contrary to what Mr Connolly thinks, going to put out some mischievous press release, or go down to the Ethnic Communities Council and say, "Look at them". I do not do that, and Mrs Grassby knows that.

I went on radio today at the invitation of Elaine Harris, a marvellous journalist whom we appointed to the Parole Board in our time, a great journalist who does a great manner of things demanded of her in a most demanding profession. She was interested to hear our comments on this matter, and I made it as non-partisan as I could. That was following Mr Connolly's extraordinary and unpleasant allegations about the Alliance Government and our court reform attempts.

I am finding it quite unpleasant to work with Mr Connolly. I refer to the manner in which he is slipping briefs from his Government Law Office to Mr Stefaniak. When Mr Stefaniak attempted in this chamber to give me the copy so that I could read it, Mr Connolly somewhat sedulously slipped it away so that I did not read it.

**Mr Connolly**: That is not true, Bernard. I said that you could have a look at it. You withdraw that.

**MR COLLAERY**: Mr Temporary Deputy Speaker, Mr Connolly can explain himself later. I watched him do it. He did not give me the courtesy - - -

**Mr Connolly**: That is a lie, and you know it.

**MR TEMPORARY DEPUTY SPEAKER** (Mr Jensen): Order, Mr Connolly! Mr Collaery, resume your seat, please. Mr Connolly, you will have an opportunity to reply at the appropriate time.

**MR COLLAERY**: Mr Temporary Deputy Speaker, I take a point of order and ask Mr Connolly to withdraw the words "That is a lie". It was most unbecoming of an Attorney.

**MR TEMPORARY DEPUTY SPEAKER**: Yes. Mr Connolly, I request that you withdraw it. If you wish to pursue it, you can do it as a substantive motion.

**Mr Connolly**: Well, I withdraw it. It is an untrue statement.

**MR TEMPORARY DEPUTY SPEAKER**: Mr Connolly, will you please withdraw unqualifiedly.

**Mr Connolly**: I withdraw the word "lie" unqualifiedly.

**MR TEMPORARY DEPUTY SPEAKER**: Thank you.

**MR COLLAERY**: Thank you, Mr Temporary Deputy Speaker.

**MR TEMPORARY DEPUTY SPEAKER**: Mr Collaery, please resume your seat. Mr Connolly, you also said "an untrue statement".

**Mr Connolly**: It is an untrue statement, Mr Temporary Deputy Speaker. Yes, I did.

**MR TEMPORARY DEPUTY SPEAKER**: I want you to withdraw that as well.

**Mr Connolly**: Well, no; I think there is nothing wrong with it. "Untrue" is not an unparliamentary word.

**MR TEMPORARY DEPUTY SPEAKER**: Mr Connolly, as far as I am concerned, it is an implication that the member has told a lie, an untruth. I request that you withdraw it.

**Mr Connolly**: If you so direct me; but I will be interested to see where there has been a precedent for "untrue" being required to be withdrawn.

**MR TEMPORARY DEPUTY SPEAKER**: Mr Connolly, I request that it be withdrawn.

**Mr Connolly**: I withdraw it.

**MR TEMPORARY DEPUTY SPEAKER**: Thank you.

**MR COLLAERY**: Thank you, Mr Temporary Deputy Speaker. As I stood here in the chamber I thought perhaps he might be collegiate enough to allow me again just to read the brief so - - -

**Mr Connolly**: I offered it to you. This is outrageous.

**MR COLLAERY**: I am afraid, Mr Temporary Deputy Speaker, that it was not proffered to me. It was taken from Mr Stefaniak and it disappeared. It is as simple as that. Mr Stefaniak was in the process of asking Mr Connolly whether he minded if I read it. All I am getting to - I am sorry that this debate is degenerating - is the way Mr Connolly conducts himself at the moment. I find it unpleasant. I do not find it collegiate at all.

Mr Temporary Deputy Speaker, in 1989 the committee reviewing Commonwealth criminal law delivered its interim report, which I referred to this morning. It again recommended legislation giving an arrested person the right to communicate with a friend or relative or a legal practitioner, and conferred the right to an interpreter. So, there is a very sound basis for the Bill before the Assembly today. I commend it to the Assembly. I am saddened that it has turned into such a divisive and unpleasant issue.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

## MAGISTRATES COURT (AMENDMENT) BILL (NO. 2) 1991

Consideration resumed from 11 September 1991, on motion by **Mr Collaery**:

> 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.

**Mr Collaery**: Excuse me, Mr Temporary Deputy Speaker. I have a technical amendment to that Bill. I am indebted to Mr Moore. It was circulated with the Bill, in fact.

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

> That, pursuant to standing order 187, the Bill be reconsidered.

### Detail Stage

Clauses 1 to 4, by leave, taken together, and agreed to.

Clause 5

**MR COLLAERY** (4.13): I am indebted to Mr Moore and I thank him for his assistance. I move:

> Page 2, line 19. Before the definition of "interpreter", insert the following definition:
>
> "'defendant' includes a person in respect of whom an order is sought under the *Domestic Violence Act 1986*;".

I point out to members that it became clear after we drafted the Bill that someone in a domestic violence proceeding is not a defendant. They are either an applicant or a respondent. That is a technicality. I believe that we need to extend these protections to proceedings under the domestic violence legislation as well.

Amendment agreed to.

Clause, as amended, agreed to.

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

Bill, as amended, agreed to.

## PERSONAL EXPLANATIONS

**MR CONNOLLY** (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services): Mr Temporary Deputy Speaker, pursuant to standing order 46, I seek leave to make a personal explanation.

**MR TEMPORARY DEPUTY SPEAKER**: Do you claim to have been misrepresented, Mr Connolly?

**MR CONNOLLY**: I do, indeed.

**MR TEMPORARY DEPUTY SPEAKER**: Please proceed.

**MR CONNOLLY**: In Mr Collaery's concluding remarks on that Bill he launched into a diatribe of invective against me in which he accused me of somehow acting in an underhand fashion by scuttling away with a document and not letting him read it. To start with, the fact of the matter is that memos from a department to a Minister are confidential and need not be shown to anyone; but I did show Mr Stefaniak, from the Liberal Party, the document in order to explain to him, in effect, why the Government was taking the view that it did. I provided him with a copy of the document.

I discussed the matter with Mr Collaery. I said to Mr Collaery that the Government was opposing his Bill for the reasons essentially stated in my speech - that is, that we felt that it was unnecessary and that I had advice to this effect. Mr Collaery perused the document, certainly to the point of seeing the signature of the officer who wrote it, because he made some comments about the officer who wrote it. I said, "Do you want to have a look at the document?". Mr Collaery at no stage said that he wanted to have a look at it. If he had wanted to have a look at it, I would have given it to him.

As I understood the position, he understood what the Government's view was - that is, we were going to have a debate on the issue. Essentially, the issue of division between the Government and the Residents Rally on this was clear - that is, we thought it was unnecessary in advance of the national uniform approach, and Mr Collaery felt that it was appropriate for the ACT to, in his words, "give a lead". So, the points of difference were clear. He, I assumed, did not think it was necessary to go through the detail as we perused, very briefly, some of the detailed opposition in this. If he had wanted the document, if he had asked me for the document, I would have given it to him.

I was surprised and somewhat disappointed to hear a personal diatribe directed against me, suggesting that I had acted in some way in an underhand fashion. I reject that assertion. If he had wanted the document, I would have given it to him. I assumed from our brief discussion

that the respective positions of the parties were clear and understood and that we would have a debate about it. The document, which goes into the detail of our opposition, could have been made available. I think it was disappointing that Mr Collaery chose to direct a personal attack at me. I would say that anyone who reads the *Hansard* debate will make up their own mind as to who has been acting appropriately.

**MR COLLAERY**: I seek leave under standing order 46 to clarify that issue.

**MR TEMPORARY DEPUTY SPEAKER**: Do you claim to have been misrepresented?

**MR COLLAERY**: Yes.

**MR TEMPORARY DEPUTY SPEAKER**: Please proceed.

**MR COLLAERY**: I do not want to detain the house, other than to say that the record will show who made the first slight in today's proceedings. In any event, Mr Connolly did indeed have a document in his hand; he did indeed flick it. I did not read one word, other than recognise from a distance a signature of an officer, and there was a remark made about that. Mr Connolly did not proffer the document to me, as I said. There was a half-hearted attempt to get out of an embarrassing situation that I thought he was in because Mr Stefaniak was in the process of offering it to me.

**Mr Connolly**: Did you ask to read it?

**MR COLLAERY**: The point I made, not to labour it, is: If this Attorney had any collegiate regard, why would I have to be in a position of becoming a supplicant? He makes it available to Mr Stefaniak; why does he not make it available to me in a collegiate legal sense? That is the point I made. I do not believe that he has put the entire complexion to that incident.

## TRADING HOURS (AMENDMENT) BILL 1991

Debate resumed from 11 September 1989, on motion by **Mr Humphries**:

> That this Bill be agreed to in principle.

**MR BERRY** (Minister for Health and Minister for Sport) (4.18): I rise to speak in opposition to this Bill, Mr Temporary Deputy Speaker. Looking at the speech made by Mr Humphries in relation to the matter, I was particularly drawn to his comments, reported on page 3173 of *Hansard* of 11 September 1991, with reference to the ACIL report. He said:

> It also says that subsequently we should remove all hours restrictions on the period from midnight on Sundays to 6.00 pm on Saturdays, and abolish restrictions on Sunday trading as from 1 January 1992.

He then referred to option B of that report, saying that it is much simpler. He said:

> It simply says that we should scrap all trading hours legislation immediately. The report talks about the things that should accompany both those options.

Mr Humphries then went on to say:

> Mr Speaker, all I can say is, "Hear, hear!".

Mr Humphries, of course, clearly supports full deregulation of shopping hours in the Australian Capital Territory.

Mr Temporary Deputy Speaker, I would like to read into the transcript some comments from a submission that was made to me following the Government's release of the ACIL report for consultation. In the executive summary of that submission, it says:

> It is submitted that no changes be made to current Trading Hour Legislation before -

and then, among other things, it says:

> A social impact study has been done to assess what impact the demise of suburban and neighbourhood centres would have on local communities, in particular the elderly and disadvantaged;
>
> The impact that the reduction in full-time jobs and the further casualisation of the retail industry would have been established. This will obviously affect many retailers' ability to provide high levels of service and product knowledge;
>
> The effect of weekend work on our treasured "quality of life" (ie leisure and family time);
>
> The pressure that weekend work would place on people to whom religious observance is an important part of their lives, is measured;
>
> Public opinion has been accurately gauged. This can only be done after alerting the public to both the costs and benefits of longer trading hours.

The submission also refers to the retail climate. It says:

> Over recent years the environment of the retail industry has changed dramatically.
>
> Not too many years ago the industry was slower, more stable, less tigerishly competitive. There were the various levels of retailing of course; major corporate, smaller corporate and larger independent and then the smaller proprietor operated low staff stores.
>
> Along the line the big corporates, for whatever reason, entered into an era of competitive aggression and through take-over, merger and new development, the big began to get very big.
>
> The name of the game moved away from satisfying the needs of consumers to something more related to the building of monopoly type empires and a massive pursuit of market share.
>
> In the transition the grab for bigger and bigger turnover, the richer of the major corporates were able to use their huge wealth to manipulate their presence in the market place. Their enormous buying power was used to push suppliers into more favourable (to the corporates) trading terms.
>
> When competition in the market place was apparent, the majors were not averse to aggressively managing the market place through price 'cutting' and 'massive and expensive' promotional programmes to force the competitor from the scene.

This submission also says:

> It is essential that as part of any inquiry into the deregulation of shopping hours we assess the social and financial costs to the community of losing neighbourhood shopping centres. One of the more obvious costs would be the need to provide extra bus services, at expensive off-peak times, to allow our elderly and socially disadvantaged access to shopping centres. It would also seem contrary to current trends to encourage the development of a city that is more dependent on cars rather than less.

My last quote from this submission mentions:

> This doctrine of unrestricted freedom in commerce has been around since 1776. Through long experience, most governments and economists view it as simplistic and unworkable in the real world. The reasons are:-

1. The pursuit of ultimate efficiency in commerce conflicts with other social objectives of equal or higher ranking in the list of community priorities - weekend leisure, a shorter working week, social and sporting pursuits, full employment, etc.

Having heard all of those comments, one could be forgiven for expecting that the person that made that submission would fall into the category that the Liberal Opposition might describe as "leftist loony". But when we have a look at the front page of the submission we see that it is written by none other than Ms Kate Carnell, the ACT branch president of the Pharmacy Guild, and No. 2 - or is it No. 3? - on the Liberal ticket.

**Ms Follett**: It is No. 4, but she has a tick.

**MR BERRY**: She is No. 4. Very clearly, there is some conflict between Ms Carnell and Mr Humphries on the issue of deregulation of shopping hours. Of course, that suggests the sort of chaos that might exist in the Liberal camps when it comes to making a decision in relation to this matter.

Of course, the Labor Party has taken positive moves on the matter. That is why we are going to oppose the Bill which is before the house. Mr Humphries' Bill proposes to amend the Trading Hours Act 1962 to fix Saturday trading hours to 5 pm. Following strong support by ACT community and industry groups, Saturday trading to 5 pm has been allowed since 13 December 1989.

**Mr Humphries**: That is right - by the Alliance Government.

**MR BERRY**: Mr Humphries says correctly - for once - that this was done by the Alliance Government. Approval was given by ministerial declaration, without requiring any amendment to the Act.

**Mrs Nolan**: But Labor is still allowing it. You would not dare stop it. The people love it.

**MR BERRY**: Mrs Nolan screams out from the back benches, "And Labor is still allowing it". That is correct; Labor is still allowing it. And the minute that we received the ACIL report we put it out for public consultation because, like Ms Carnell, we believe that all those issues have to be examined, quite contrary to the position that has been adopted by Mr Humphries and the former Liberal member Mrs Nolan. The ministerial declaration was given only after amendments to the relevant award, under the structural efficiency principle, to make provision for all day Saturday trading.

Despite some opposition by small businesses, Saturday trading arrangements appear to be very popular.

**Mr Humphries**: That is right.

**MR BERRY**: Let us not forget the opposition from the small businesses. Of course, this popularity is with the ACT community. Families may shop together in a more leisurely fashion and traders may choose to open longer to satisfy demand in their particular trade. Not all traders stay open until 5.00 pm, as obviously the demand is not there.

Of course, on 9 September 1991, the Chief Minister released for public comment a report on trading hours in the ACT prepared by the consultancy firm ACIL Australia Pty Ltd. This is the ACIL report to which Ms Carnell was referring. The ACIL report recommends that shopping hours be further deregulated in the ACT, either immediately or through a staged process, commencing with the extension of hours on Thursday evenings and the early announcement of which public holidays will be shopping days. Acceptance of Mr Humphries' Bill would amend the Act and fix Saturday trading till 5.00 pm. However, I and my colleagues will not be supporting the Bill. There are two quite different positions within the Liberal camp.

**Mr Humphries**: No, there are not.

**MR BERRY**: Quite clearly, there are quite different positions.

**Mr Humphries**: She was talking about something quite different to that. That is total deregulation.

**MR BERRY**: She was talking about the ACIL report.

**Mr Humphries**: It was totally deregulated trading hours that she was talking about.

**MR BERRY**: She was talking about the ACIL report, and Mr Humphries supports totally deregulated trading hours. He said so in his speech. He should read his speech. You should read it in your speech. In any event, we will not be supporting this Bill, as it would be an unnecessary use of resources. Saturday trading to 5.00 pm is already provided for by the declaration of 13 September 1989. *(Quorum formed)*

Of course, we will not support the Bill, as I have said. It would be an unnecessary use of resources, as Saturday trading till 5.00 pm is already provided for. Amendment to the Act now would not achieve the purpose of enshrining all day Saturday trading. If an ACT government had a different policy on Saturday trading it could easily be introduced by way of another declaration. Most importantly, the ACIL report has only recently been released for public comment.

The report recommends deregulation of the Act which, if supported, would require significant amendments to the Act. If Saturday trading to 5.00 pm needed to be incorporated in the Act, it could be considered along with other amendments at the time.

So, essentially, what Mr Humphries has done is take advantage of what he sees as a populist move in the lead-up to an election. We have seen so many of them here today, and I guess we will see many more of them between now and the election - to the extent that it will become rather tiresome. Essentially, the proposed Bill represents minor and unnecessary tinkering with an Act which requires more fundamental overhaul. However, the extent and nature of the changes required can be properly assessed only in the light of the public's comments, in accordance with Labor's commitment to public consultation.

The ACIL report is an important report, though it is not agreed to by everybody. It is certainly not agreed to by some factions within the Liberal Party. And the concerns of those factions - even though they might exist within the Liberal Party - will be taken into account when the Government makes a decision in relation to this matter.

Debate interrupted.

## ADJOURNMENT

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

> That the Assembly do now adjourn.

**Mr Moore**: Mr Temporary Deputy Speaker, I will move the suspension of so much of the standing orders as would prevent me from moving the motion: That the question be put forthwith without debate.

**MR TEMPORARY DEPUTY SPEAKER**: Thank you, Mr Moore. All you would have to do is move the closure.

**Mr Kaine**: He can't.

**Mr Humphries**: Only a Minister can do that.

**MR TEMPORARY DEPUTY SPEAKER**: We are just trying to go through the automatic adjournment. The question is that standing orders be - - -

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

Question resolved in the negative.

## TRADING HOURS (AMENDMENT) BILL 1991

Debate resumed.

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

## PROSTITUTION BILL 1991

Debate resumed from 16 October 1991, on motion by **Mr Moore**:

That this Bill be agreed to in principle.

**MR WOOD** (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.32): Mr Deputy Speaker, the Opposition has some reservations about this Bill.

**Mr Humphries**: You are the Government, actually.

**MR WOOD**: Let me put it this way: The opposition to this Bill is due to the reservations that we have about it, while acknowledging that steps need to be taken because of the needs that were identified in the report that Mr Moore brought down. Those needs are well established through that report. Indeed, I was a member of that committee at that time, although I have subsequently moved off it.

I do not need to repeat all the arguments that were raised in that report, but I will emphasise again the different circumstances in which we now have to view prostitution because of the AIDS epidemic which continues to sweep the world. That epidemic is there; it is growing; it is not getting any better; and the fact that it sometimes slips from the public memory should not detract from the intense concern that we ought to have for it.

In my view, that epidemic has changed the view that we ought to hold towards the regularisation, or control in some measure, of that unfortunate trade of prostitution. The world has changed. Having said that, Australia, in some respects, leads the world - if they are the words that are to be used - in combating AIDS - - -

**Mr Moore**: A great deal of credit goes to Neal Blewett.

**MR WOOD**: Mr Moore says that it is a credit to Neal Blewett. This is due to the open attitude that Australian institutions have adopted towards the AIDS epidemic - the fact that public advertisements have been run and the fact that we can talk about the use of condoms now as a matter of course and feel no embarrassment about it. There is no shock or horror when we talk about such things - and things rather more explicit as well.

**Mr Moore**: It is only in legal terms that we need to call them prophylactics.

**MR WOOD**: That may be the case. So, Australia stands well in its attack on AIDS. Nevertheless, more and more AIDS cases are being reported in Australia. What can be said is that the rate of growth of AIDS is less in Australia than in other countries - and a good deal less than in many other countries. Certainly, we would not want to go down the path of America, for example, where a needle exchange would be considered completely out of the question. Here, while we acknowledge the undesirability of drug use, nevertheless, needle exchanges are now an established part of the attack on AIDS.

With that in mind, we look to the role of prostitution in expanding the incidence of AIDS. The committee found that brothels within the ACT - I emphasise "within the ACT" - are, in fact, safer than those in many other areas in terms of their sexual practices or habits. They are safer, but that is not to say that they are quite safe. Certainly, that is not to say that they are free from any danger. Therefore, we need to pay close attention to what happens in brothels.

I was interested to note news items, in only the last few days, reporting that Australians, at the younger age level, continue to be quite unaware of the real risk of infection through sexual activity. So, there is much that we need to do. But, again, in this debate we focus on brothels. There will be change to what governments do in regulating or controlling brothels.

Nevertheless, the Government has some concerns about this Bill. I note that Mr Moore has addressed some of those concerns. He has changed the original clauses, at about clause 16, relating to the manner of control through the lease system. He now has a further amendment that proposes to refer to the districts. I remind members that the committee proposed that brothels be confined to those so-called industrial areas in Canberra - Hume, Fyshwick and Mitchell.

Mr Moore, on advice, has changed his original wording to perhaps a more acceptable form, but I believe that it still falls short of what is desirable. A Bill that specifies, for example, the division of Hume takes no account of how things might change in Hume and what activities might come in there. It is rather too imprecise. Mr Moore might seek other ways to spell out what he requires in this respect.

Mr Berry will have some comments to make on this matter. It is one that, I believe, can be supported within the community; but the community needs to be sure that what this Assembly is doing is sound and is in keeping with what the community itself wants. For that reason, I believe that we ought to progress this matter but do so in the most careful and sensible way so that the community is not

alarmed, so that the community follows all the way through exactly what is happening, and so that, ultimately, as we do act, the community will support such proposals as this Assembly may bring forward.

**MR COLLAERY** (4.40): Mr Deputy Speaker, I think that the day has passed when prostitution could be described as the most ancient profession. The fact is that, when you meet with the - - -

**Mr Duby**: It ought to be lawyers.

**MR COLLAERY**: Mr Duby believes that that title now belongs to the lawyers. The fact is that, when you meet with the prostitutes collectives these days and their spokespersons, you meet articulate, informed people. They put forward well-researched and well-argued cases.

Some weeks ago, I went to a conference in Sydney which dealt with women and the law. There were representatives of prostitutes collectives there, and one such representative from Victoria was a trained and diplomaed community worker. She was not, as one might think, someone from the sex industry; but she had a very effective style of campaigning for the interests of sex workers in Victoria. In fact, her title was Community Development Officer. I leave you with that title.

At that conference there was an overview, as we have seen at other conferences, of the laws relating to prostitution in Australia and abroad. Mr Moore has alluded to some of the issues. I think it is important that we remind ourselves of just what the term "prostitution" means. I am reminded of a definition given in a decision of an English court that expressed the view that prostitution is proved when it is shown - and this is sexist, of course - that "a woman offers her body for purposes accounting to common lewdness in return for payment", and the expression "common lewdness" was further defined by the courts in England when - - -

**Mrs Nolan**: The common law has changed a bit, Bernard. There are plenty of men now.

**MR COLLAERY**: I acknowledged that this definition was sexist. I do not think Mrs Nolan heard me make that remark. That definition has now been extended to refer to - and this is important - a case where a woman offers herself as a participant in a physical act of indecency for the sexual gratification of men. So, in Britain, the law extends to cover the massage-type services that some of us do not construe as prostitution in that context. So, the committee that Mr Moore chairs has had to deal, as Mrs Nolan acknowledges, with some very difficult concepts of common law and the rest.

The prostitution laws in Australia vary, and I commend to members the Australian Institute of Criminology "Trends and Issues" paper No. 22, which contains the best summation of the situation of laws criminalising prostitution that I have seen in any document. There is a table there that sets out the laws punishing prostitutes for what they do. Shamefully, they punish those women, essentially, and not the men. It sets out in another table laws criminalising prostitution related activities.

The situation varies all over the country and the only place where the law is - if you will excuse the term, Mr Deputy Speaker - hardening is Queensland, where the Queensland Government is taking us back to the nineteenth century with its decision simply to eliminate prostitution. Surely, that must be one of the most retrograde steps, socially, that is happening in our country. It is also one of the most optimistic steps that one could imagine.

I will not go through that paper, but I believe that "Trends and Issues" No. 22 of the Institute of Criminology is an excellent document. It shows that some jurisdictions still punish prostitutes, who are mostly women, and that there are variations about escort agencies, massage parlours and the rest. It concludes with an enlightening section on prostitutes' perspectives. It is said that the problem in Victoria is that:

> ... legislation has forced many of the state's 4500 prostitutes to work in uncontrolled escort agencies or on the streets. Prior to 1984 there were about 150 brothels in Victoria. Currently there are 58, all with permits. The surplus -

that is the term used -

> of prostitutes created by this system have either had to retire or risk working in illegal prostitution.

The reports that I have received in conferences indicate, sadly, that the Victorian legislation has resulted in significant moves back to clandestine and, under those laws, illicit activity. The Victorian situation is seen as a noble experiment that has not worked; and, in fact, on the advice available to me, the Victorians have not even finished introducing the package of reforms that they originally set out to implement.

Of course, the Prostitution Regulation Act 1986 in Victoria was intended to bring in sweeping changes to regulate the sex industry. However, a large part of the Act has never been proclaimed and, among others - and this is significant - the provisions dealing with the establishment of a brothel licensing board have eluded the confidence of the legislators in Victoria and the Victorian Parliament was a game legislature for a long time. I believe that the

central debate today is the appropriateness of Mr Moore's licensing system. I will come back to that. The Victorian situation, therefore, has gone back to relying upon the technicalities of local zoning and planning laws.

Returning to the summation by the Institute of Criminology, we must bear in mind, as we have to in other debates, the difference between legalisation and decriminalisation. Briefly, to decriminalise is to take away the offence and often to, in this context, leave the activity in some limbo land. To legalise is for an official stamp of approval to be given to the activity by the state, and it is that quantum leap that will, of course, be a part of the vexed issue before us during this debate. I read from paper No. 22, which I have identified already, these words:

> Legalisation involves formal recognition and state sanctioning of the trade.

Mr Moore's Bill effectively provides for a state sanctioned activity through a registration board. In saying this, I acknowledge that the prostitutes collectives that I have spoken to recently, the one in Victoria notably, indicate that they would support - looking at my notes of the last conference - a mixture of decriminalisation with other controls, but they do not support legalisation. In fact, I was told that decriminalisation alone is very bad; that if we are going to take any steps - if we are going to bite the bullet in any way in this debate - we cannot simply decriminalise and walk away from it and hope that it will regulate itself; not with the HIV issue. So, quite properly, Mr Moore has looked towards a regulatory mechanism, and he proposes a board of a type.

I want to say that present at this conference were nuns and other community workers - people with a very wide and compassionate view of this industry. The view was that all the laws relating to street workers, escorts, vagrancy and consorting should be repealed; that is, control over these activities should not be by the police but should be by health and labour inspectors, and that offences for breaches of regulations would be offences under OH and S laws, not under criminal laws.

So, we are talking about laws relating to the non-use of condoms, for example. Also, the prostitutes collective very strongly recommended that there should be a further offence of removing or breaking a condom deliberately during service. As they said to me, that appears to have been a problem to them. Other offences should be ones relating to public health in an occupational safety sense - for example, here is someone risking a worker, and themselves, possibly.

In the Canberra context, it was also made clear to me by a spokeswoman here that the industry itself is very zealous, and very concerned about any sex worker who engages in unprotected services. There tends to be an ostracism process. This leads me to another recommendation of the

conference I attended - and this is where Mr Moore and I have to adjust our viewpoints. They believe that they should have a level of self-regulation. Whilst I believe that they support Mr Moore's Bill, it is not clear to me that a state sanctioned, state established board is exactly what the sex workers want. But they will settle for it to get out of the situation they are in.

It seemed to me, if I interpreted them correctly - and I accept that they may be giving different views around the place - that they might want to have a self-regulatory board of the type - and I am sure my colleagues will forgive me for associating them with this matter - that lawyers have for their disciplinary and regulatory procedures; arrangements of the type that the AMA and so on have. That is a view that I put forward at this stage. I do not know whether we are going to reach the detail stage today, but these are points that we have to discuss in the debate and work our way through.

I also want to allude to the completely unsatisfactory situation of the law in the Territory for the police. This pressure for reform is not coming just from sex workers. It is a most unsatisfactory situation for the police. When I was Attorney, one of the earliest submissions that I received from the Australian Federal Police was one expressing concern about that situation. Although the legislation was explicit in creating offences for managing or being knowingly concerned in the managing of brothels, or knowingly permitting or leasing premises to be a brothel, it was clear that, because of the public policy decision of the Director of Public Prosecutions at that time, Mr Temby, the police found themselves in a de facto regulatory role. In fact, I saw reports of inspections - and enlightening they were.

Members should be aware that some years ago the Director of Public Prosecutions issued a guideline that made clear the grounds upon which the director would want to prosecute a brothel in this Territory. Otherwise, they would be, as it were, not the subject of prosecution; that is, left in limbo. The grounds were: If they operated in or near a residential area, if drug trafficking was involved, if there was the presence of minors, if there was an involvement of organised crime or association with criminals, unruly behaviour, health considerations, or complaints from the public. *(Extension of time granted)*

I thank members. That DPP policy was communicated to the AFP as a confidential minute, and there was no point in the police bringing forward people for prosecution thereafter, considering that the DPP would not prosecute them. The police expressed to me a number of concerns about the operation of the law and the role that they played in enforcing it. The police expressed to me the view that they required support from the Government and the Director of Public Prosecutions if - I stress the word "if" - they were to combat prostitution.

Of course, that confidential memorandum from the Director of Public Prosecutions, of 1 November 1987, set out a policy of what boiled down to aggravating circumstances. It is under policies like that that the police and the leasing authorities of our lands branch have edged brothel keepers out of some of our near suburbs. Dr Kinloch is familiar with one establishment that became ambulatory during that period.

**Mr Stefaniak**: I prosecuted that one, Bernie.

**MR COLLAERY**: Mr Stefaniak interjects that he had the honour to prosecute it. I do not know where he took his instructions from, Mr Speaker. Nevertheless, the police's concerns could be summarised as: The fact that street prostitution is not adequately covered by legislation, and that the incidence of street prostitution will increase in the future, particularly in light of the casino. They were my comments. A Canberra sex worker at the conference I attended said to me, "But don't kid yourself. There are girls who go out and work. There are girls out on the street".

**Mr Moore**: They meet in the pubs. It is in the report.

**MR COLLAERY**: I do not know. I can make no comment on that. But they are probably enlightened meetings, and they are certainly not footpath workers, as Mr Moore says by way of interjection. I have no way of judging that. The other concern of the police was, of course, that we in fact have no effective laws against street prostitution - contrary, I think, to what some of the sex workers think. The biggest complaint that they had was that the current practice of police regularly investigating these premises to see whether any aggravated conduct was taking place made them de facto regulators and could lead - and this is my language - to assumptions that they were on the take in one way or another.

I have said before in this Assembly that I do not like the fact that young constables are detailed to this duty. I do not think it is appropriate. Temptations are great in life. I do not think that they fall prey to it, but they may be unmarried young men - I do not know. But I find it totally inappropriate that police are continuing to have to perform a role because we are shirking our responsibility as legislators or as a society to get the police out of the sandwich they have been jammed into.

I do not believe that we can go to the Victorian model. It has not worked. There, the prostitutes collective workers told me, there are brothel kings now. Brothel licences are worth an absolute fortune - millions. It is a restricted class. We all remember the old days of liquor licensing. When you were acting for a liquor licensee in New South Wales you were acting for gold. They had a licence to print money because objections could be made to anyone else

setting up licensed premises near you. That is the problem in Victoria. One of the prostitutes collective workers told me that there is a brothel owner in Victoria who "weighs in the girls" each morning - who weighs them for body weight - and their fingernails and toenails are inspected and so on. How demeaning. It is no wonder that there were well-founded allegations that they are going back to clandestine activity in the suburbs in Victoria.

People who read a very well-informed article in the Sunday *Age* on 7 April 1991 by Mark Forbes headed, "Legalising Brothels: Victoria's Failed Experiment", can take into account the quandary that the Victorian Government is in. We need to be very careful that we do not get into the same quandary. But, at the same time, we do not want a tag-along approach and we do not want the wimpish sort of behaviour that has stopped legislators from acting and doing the right thing by the police, the workers and other people who may be exposed to risks, because a lot of people associated with this industry have a double life. Men go to these places without adequately informing or communicating that to their other partners. That is an issue we cannot hide from.

We must face up to it in this Assembly. I am aware that there may be some reluctance somewhere, but we need to get through this debate - if we do not finish it tonight, then in the next day or two - and determine exactly where we are going. From my point of view, we must not allow a situation where any reactionary element can say that this new ACT Government - or this Assembly - is going off now about fluoride, prostitution and so on. I can see it now. It would be an irresponsible person who would argue that case. We are talking about lives; we are talking about an attempt to look at what has happened elsewhere in our country and to do better.

I conclude by saying that the prostitutes collectives in all States, according to the Institute of Criminology, have supported the introduction of a system of decriminalisation. The institute said that it generally agreed that this is the most workable, realistic and compassionate option. Prostitutes do not favour differentiation between brothels and other businesses. They believe that they should be permitted to operate with similar business regulations and so on.

In my view, there must be decriminalisation, because a law that is not observed is a law in disgrace and it brings us all into disgrace. Of course, additionally, we must decriminalise with controls. The next step is to determine whether it will be a voluntary registration board, with occupational health and safety provisions and withdrawal of the police from all but criminal behavioural issues to do with ancillary concerns associated with these places. I think that is very important, and I believe that it is very relevant to the casino debate as well.

**MR STEFANIAK** (5.02): Mr Speaker, there is much in what Mr Collaery has said that I would agree with. The Liberal Party formed a policy on prostitution on 1 June this year, and I will read it out. It is in our police and justice policy. It says:

An ACT Liberal Government will:

a) decriminalise prostitution in the ACT and regulate the activity within brothels and escort agencies which will only be sited within prescribed areas.

b) tighten the law in respect to the involvement of minors in prostitution.

c) ensure that street prostitution remains illegal and, where appropriate, strengthen the existing laws.

Basically, what that does - and I think what Mr Moore is seeking to do - is rationalise the status quo. Mr Collaery has spoken at some length about what has occurred in Canberra in relation to this issue. He is quite correct in saying that Ian Temby, QC, when he was Director of Public Prosecutions, issued guidelines in relation to the prosecution of prostitution offences.

Basically, if prostitution was conducted away from suburban shops in the suburban areas and within an industrial area of Canberra, and provided that children and drugs were not involved, a hands-off approach was taken. That was not perfect in that - as Mr Collaery correctly says - the police often were requested to adopt a quasi-regulatory role within that context. That certainly was not particularly satisfactory for them. I remember certain complaints being made in relation to that. There was initial uncertainty as to what the policy was; but, basically, it did settle down into a reasonably workable arrangement and we have effectively had de facto legalised prostitution here for a number of years.

There were very few prosecutions. Indeed, I can remember, over a five- or six-year period, about seven briefs being sent over, only one of which was prosecuted, which I did. That was in about 1988 and it related to a brothel being run above the Ainslie shops. The brothel owner was fined $1,000 and I was rather amazed at the ability of the police to actually get two prostitutes and, what is more, two clients to give evidence. That certainly established that case. But that, to my knowledge, was the only successful brothel prosecution we have had here for the last 10 years, and that case was prosecuted because it offended the guidelines laid down by Temby and was, in fact, in a residential area.

I note that a lot of what Mr Moore has included in his draft Bill would tend to cover the current de facto situation and legalise it. Looking through his Bill, we have a number of concerns. I understand that the Residents Rally also has a number of concerns. Just going through his Bill, I noticed a number of things that, certainly, I would suggest he should do differently, particularly in relation to his offences. He seems to have provided for some funny periods of years and some strange amounts for fines which seem to be different from what one normally would find in legislation.

Whilst I would agree with some of them, I think some are a bit unique. For example, I have never before seen a maximum imprisonment term of four months or three years in legislation. In some other areas I would suggest that he might like to increase the imprisonment term, certainly in the area of infected persons. That is certainly a very serious offence and, given that he has gaol provisions in some of his other areas, they should be certainly applied to that offence, because knowingly giving someone AIDS, for example, is almost akin to attempting to murder them, because AIDS can indeed be a death sentence as such. Other States have enacted similar legislation in relation to AIDS and deliberately giving people AIDS. I think it can quite properly be taken up in this type of legislation. So, perhaps some of his disciplinary procedures can be strengthened.

The Assembly had a committee which looked in great detail into prostitution. I understand that Mr Moore's Bill is basically a conglomerate of the views of that committee. He has attempted to put them into his Bill. There was a member of the Liberal Party on that committee, and, whilst I would certainly not agree with Mr Moore in other fields where he has propagated some views - in relation to heroin, for example; I would not agree with him on that - in relation to prostitution, I think a lot of commonsense came out of that committee and that is reflected in his Bill, which basically seeks to legislate for and rationalise what has been the status quo here in the ACT for very many years.

The regulation of prostitution has worked, I think, fairly well in certain parts of Australia, such as Kalgoorlie. It has had its ups and downs, so to speak, in Victoria. I was interested to hear Mr Collaery state how sought after some of the licences are. I could well imagine that because a prostitute can easily earn about $2,000 a week. Of that, $1,000 usually goes to the brothel, I understand, and the other $1,000 can be kept by the prostitute.

It is certainly a great cash in hand industry. Of course, a lot of students are involved in it, and a lot of housewives. It is amazing to see the types of people who are in fact involved in prostitution. It tends to be a cash industry and there is probably a lot of tax evasion as well. I think that, by regulating it, those problems can

be avoided. Certainly, as Mr Collaery states, the police are not the proper people to be forced to regulate prostitution. They should be called in when there are criminal breaches.

There are some very great health problems associated with prostitution. In relation to prostitution, it is essential to ensure - with punitive measures, if need be - that safe sex is practised. I think prostitution is meant to be the oldest profession. I cannot remember which is the second oldest. I always get them confused. Was it the law or something?

**Mr Humphries**: Being a soldier.

**MR STEFANIAK**: Being a soldier? I am not too sure whether it was being a lawyer or what. Whatever it was, certainly prostitution is either the first or the second oldest profession. It has been going since the dawn of time. It has been prohibited, but it has always been in the community. I can recall one old lawyer in Sydney - it might have been Clive Evatt; it was one of the Evatts anyway - who basically used to make a living out of his practice by appearing for all the prostitutes. They would turn up in court, be fined a pound, and that was it; off they would go, back to the streets to hawk their wares, as it were.

There has been a lot of hypocrisy associated with prostitution. It exists in every State of Australia. It exists everywhere throughout the world. There have been various attempts, some more successful than others, to regulate it. I think it would demonstrate a great degree of hypocrisy if this were attempted to be swept under the carpet. We have had this ridiculous situation in the ACT where prostitution has been effectively, de facto, legalised, certainly since about 1984, if not before.

So, I do not think that this is earth-shattering legislation. It merely tries to rationalise the status quo. We in the Liberal Party have seen some problems with some of the things that Mr Moore is attempting to bring in. We would have some amendments. We have also been approached by a couple of bodies who have some further suggestions on amendments and I would certainly want the Assembly to look at them; and I would talk to other parties in relation to the detail of this particular Bill. But this Bill does seem to be, at least in principle, in line with Liberal Party policy, which is really in line with exactly what is the current situation in the ACT - except that we would give legal force to what effectively has been the de facto legal situation now for some considerable period of time.

**MR BERRY** (Minister for Health and Minister for Sport) (5.11): Unquestionably, the Government endorses the review of the present inequitable laws concerning prostitution. This Government is also in favour of a well-planned reform of prostitution laws, if it is done, of course, to protect both public health and the health of sex workers in a viable manner. This Bill, while including some of these points, has many shortcomings, and for that reason I will be speaking against its passage in the course of debate.

**Mr Moore**: You have had months and months to tell us what those shortcomings are.

**MR BERRY**: Settle down. If prostitution laws are to be reformed in Canberra, it must be done with a view to the future. Rushing head on into something as complex and emotional as the sex industry can only lead to the creation of laws that are not in the best interests of, and do not cover the needs of, sex workers and Canberrans. That is why Labor will be moving today to adjourn this matter and refer it to the Community Law Reform Committee. The Community Law Reform Committee is made up of a retired judge, I think, a magistrate, some eminent lawyers, and some community representatives.

**Mr Moore**: Anything to put it off for the election.

**MR BERRY**: Mr Moore says, "Anything to put it off for the election". There is no question about it; if you want to talk about the Government's commitment to the review of the present inequitable laws concerning prostitution, you can say that the Labor Government supports that. You can say that the Government is also in favour of well-planned reform of prostitution laws, if done to protect both public health and the health of sex workers in a viable manner. Labor supports these changes. But we are not in a great big hurry about it; we need to get it done properly; it has to be considered by a proper process. To be quite frank, I do not think the people of the ACT would appreciate this Assembly, given its constituent members, rushing into important changes in laws which affect the people of the ACT. The Bill does - - -

**Mr Collaery**: I raise a point of order, Mr Speaker. I think that is a reflection on members. You are a constituent member. It is a reflection on the Chair and on the rest of us here. It is a snide comment, and a sly comment.

**MR BERRY**: It was a snide comment.

**Mr Collaery**: Perhaps the member will clarify his comments and say that he means no slight on the members. He is saying that these constituent members are not fit to legislate. That is what he is saying, Mr Speaker. He should withdraw it. It is a reflection on the house.

**MR SPEAKER**: Thank you, Mr Collaery. I uphold that objection. Mr Berry, will you just withdraw that, so that we can get on with it.

**MR BERRY**: It stings a bit, I suppose; but, yes, I will withdraw that.

**MR SPEAKER**: Thank you.

**MR BERRY**: But, Mr Speaker, the people of the ACT would not appreciate this Assembly passing a law of such significance. I think they would prefer to have the opportunity to vote in the next election and select people who might make responsible decisions. If this debate is about having this matter considered appropriately, the Government considers that appropriate consideration includes a review by the Community Law Reform Committee.

The Bill would protect the young against exploitation in the sex industry, and it would put responsibility on the workers and managers for health and safety. The compulsory use of prophylactics would also help fight HIV, AIDS and other sexually transmitted diseases. However, I believe that the proposed Bill considers only the role of workers and managers. It does not adequately protect the workers.

**Mr Moore**: The workers think it does.

**MR BERRY**: It does not adequately protect the workers, I said. I will go back to the previous paragraph so that you understand what I said.

However, I believe that the proposed Bill considers only the role of workers and managers. It does not adequately protect the workers. There are strict penalties where a prostitute knowingly infects a client or where a licensee knowingly employs an infected prostitute. Unfortunately, there are not similar laws relating to clients who knowingly infect a prostitute at a brothel or escort agency. This is discriminatory and does nothing to protect sex workers from such people.

**Mr Moore**: That is simply wrong - section 20A of the STD Act.

**MR BERRY**: Mr Moore will have his opportunity to speak, through the Speaker, in due course - the same as I have to. So, if he will just give me a go, we will be right.

As I stated, any legislation must be carefully considered before it is introduced. The Labor Party believes in protecting the rights and safety of workers. Workers in the sex industry are no exception. Any legislation must also include appropriate occupational health and safety measures.

The Bill also contemplates many regulatory measures. Unfortunately, how these will be enforced is not stated. I heard Mr Stefaniak going crook about some of the penalties. He called them "odd penalties". I would not like to be seen to be too far on side with Mr Stefaniak on many issues; but I did note that he had some concerns about the penalties.

**Mr Kaine**: You are stepping into deep water if you agree with him on penalties. We will be quoting you.

**MR BERRY**: Indeed, I would be. That is why I am not going to step into deep water. There would be a cost, whether it is to the police or ACT public health inspectors who enforce the regulations. Some sort of consumer representation will also be necessary. These issues are not dealt with in the Bill. Once again, this demonstrates that the Bill has not been considered with sufficient care. I emphasise that, in treating such a complex issue, any legislation must be well thought out, workable and aimed at protecting all parties. The appropriate consultation work, in terms of the functioning of the Bill, must be done before it is put before the Assembly - and that includes some contact with the community.

More importantly, all health aspects, in particular the health of the workers, must be taken into account with the legislation. To support incomplete legislation would threaten the safety of sex workers, and Canberrans; create a bureaucratic nightmare and a struggle over the regulatory process; and jeopardise future reform of prostitution laws. That is why Labor will be moving to adjourn debate on this issue. Labor supports positive moves to improve the situation in respect of prostitution in the ACT. There is no question about that. We are not walking away from that at all. But we will not grandstand on the issue; we will make sure that the process is completed properly. Referral of the matter to the Community Law Reform Committee is an appropriate course to be taken with this legislation.

Motion (by **Mr Connolly**) negatived:

> That the debate be now adjourned.

**MRS NOLAN** (5.19): Mr Speaker, I am not sure whether that motion was moved because it is that time of the day; but I thought that there was an agreement in relation to this particular Bill that we would pursue it through the in-principle stage, and perhaps then look at adjourning it before the detail stage came forward. I do not know; things must have changed. Can I just remind Mr Berry of the length of time that this debate in relation to prostitution has been around. It has been around for some considerable time. The committee was set up, as I recall, on 28 September 1989. In fact, it was 20 February 1991 that this Assembly authorised the committee to submit an interim report on prostitution in the ACT.

I was one of the members of that committee, and I have to say that an enormous amount of work went into that report - and an enormous amount of detailed discussion, not only here in the ACT but right around Australia. It is interesting to note that State jurisdictions right around Australia are making moves to reform prostitution. I think it was Mr Stefaniak who mentioned the fact that it has been around for a very, very long time. I think it was Mr Humphries who said that there may be other industries that have been around longer, but the reality is that it has been around for some considerable time.

I think it is highly appropriate that, as a result of that committee report, which was tabled in April 1991, Mr Moore, as chairman of that committee, has now decided to introduce this legislation into the Assembly. I support the legislation in principle. I have to say that during the committee's deliberations I had concerns which differed from those of Mr Moore, and I recall that Mr Wood also made additional comments. I am not sure whether he agrees with the comments that he made then or with the comments that he has just made, but they do seem to differ slightly.

However, my concerns are still the same, and I would like to see amendments made to the Bill so that in fact there is not such a licensing board. I do not think there should be a board with statutory power. I think that particular board should be within the Health Department and certainly should not have statutory power. That has been my position all the way along, and it is one that I will be articulating at the detail stage, when I will actually put forward amendments.

I need to make mention of a couple of other matters. Again nothing has changed. One relates to brothel ownership, if you like. I have always believed that we should not be able to restrict a business to being owned only by an ACT resident. I said in my additional comments that there may be some constitutional question relating to that. I still support that view, and I will put forward an amendment to delete that particular subclause.

I have had discussions with Brothel Owners Affiliation Pty Ltd, or the BOA. That organisation has submitted, I think to all members, some detailed concerns that it has. They are not concerns about the in-principle support for the Bill; they relate to specific clauses. Some of those I agree with; some I do not. However, even though I do not think this is an appropriate time to debate the matter, especially after the debate we had only a week ago on titles for Bills, I think that this Bill needs to be retitled. I would much prefer to see it called the Brothel Bill rather than the Prostitution Bill, because it really is about the licensing of brothels. I am sure that Mr Moore will indicate to me whether that is acceptable to him. I did mention that matter to him and, again, I will be putting forward an amendment to change the title to the Brothel Bill 1991.

If we, as members, reflect on this whole debate in relation to the health issues that come before us, we realise that it is very important that we move forward in law reform. Most people who have spoken to date have expressed their concerns in relation to that issue. That is the very significant one. I think it is high time that we talked about reform in this area. It has been out in the public arena for quite some time, during the life of the committee. Many people have come before us, including representatives of both the Anglican and Catholic churches, indicating their support for law reform. I think it is appropriate that this Bill be supported at this time. As I said, I will move some amendments, and I am sure that others will as well. Nevertheless, I think it deserves support.

**MR STEVENSON** (5.24): A professor of psychology, Dr John Court, wrote, this month, an article called, "Prostitution and the Cycle of Abuse". He wrote:

> For many years Australia's laws dealing with prostitution have been modelled on the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The emphasis of Australian laws has been to prohibit:
>
> having sexual intercourse with a person under the age of consent,
>
> ... ... ...
>
> exploiting for a profit the prostitution of another person, and
>
> offending the public through soliciting for the purpose of prostitution.
>
> However, in 1986 the Victorian government passed the Prostitution Regulation Act which abandoned former controls and allowed licensed brothels to operate.

Dr Court continued:

> Of course, advocates of changes in the laws on prostitution come at the issues quite differently. How are we to manage something that is going to happen anyway? Surely it is better to have things out in the open and legal than driven underground and criminal. Prostitution has always been around and laws against it solve nothing. What right have we to interfere in adults' personal choices? By legalising, we can control problems of sexually transmitted diseases. And then as a backdrop, the Kinseyan response is that prostitution is a victimless crime.

After referring to some of the books and articles relating to the failure of the Act in Victoria to control prostitution, though supposedly controlling prostitution, Dr Court said:

> The picture is a dark one, whatever the state of the law. Enabling the criminal element to exploit prostitution with less interference from the law will not change the essential elements of the trade.

He quoted these comments:

> The legislation that aimed to bring prostitution into the open has had the reverse effect. It is out of sight, out of mind; it is also out of control.

Dr Court continued:

> Before you become deceived that prostitution is a low risk activity, I urge a reading of the cautious sociological analysis from Los Angeles of the links between AIDS, prostitution and drugs by Berk. In spite of all the IV drug use in the city, he notes that the Department of Public Health reported 612 new cases by June 1990, of which only 10% were linked to IV drug use, and 60% with homosexual/bisexual contacts. The links are clearly with homosexual practices and multiple partner activity, with prostitutes a major group at risk themselves and a risk to others.
>
> I have deliberately linked the existence of prostitution to the world of drugs and crime, because that is the reality. I link it to the physical and sexual abuse of women and children because that is the background.
>
> I link it to changes in the laws on pornography, because so much of what is done, and demanded by customers, is influenced by pornography - as it becomes more exploitative and degrading, so the prostitutes experience more abuse and violence.

In a recent submission to the Criminal Justice Commission in Queensland by Professor Eileen Byrne, a professor of education at the University of Queensland - subtitled, "The case against the legalisation or the decriminalisation of prostitution" - Professor Byrne talks about four levels of activity in society and then relates them to prostitution. She writes, under the heading, "Immorality at the criminal level":

> Crime is distinguished from general wrongdoing in all of the definitions which have come down to us since its Middle English origin, by three elements: it is "injurious to the public welfare"; it is a wrongdoing of a "most grave and serious" character; and it is a violation of laws set up for the public good. The definition of acts as criminal has always therefore had two bases: the community belief that the practice is fundamentally morally wrong, and the community's expectation that it should be protected from such acts by serious penalties and sanctions under a Criminal Code. In this category, Australian society still believes that such acts as murder, violence against others, trafficking in drugs, theft, fraud and organised corruption, are both (i) immoral and wrong and (ii) so immoral and wrong and socially harmful as to warrant major penalty.

Professor Byrne goes on, under the heading, "Immorality at the illegal but not criminal level":

> Australian society still believes that such acts as cruelty to animals, lying and misrepresentation about other people in the context of slander and libel, unfair treatment of others to the point of discrimination, refusing to honour a contract, are both (i) an offence against the community standard of moral principles and therefore unacceptable and (ii) sufficiently harmful and anti-social as to warrant legal but not criminal penalties.

Professor Byrne continues, under the heading, "Anti-social behaviour which is not necessarily seen to have a moral/immoral base, but which is still illegal":

> We accept that some behaviour is sufficiently anti-social as to be either such a danger to others or such an unreasonable inconvenience, as to need legal regulation of some kind, but for reasons of practicality or consideration of reasonableness rather than a sense of community morality. It is illegal to drive on the wrong side of the road, to cause undue disturbance of neighbours at midnight, or to cause pollution. This behaviour carries a community stigma of unacceptability as well as sanctions and penalties; but only some in the wider community would also regard it as immoral.

The last area was described as, "Behaviour regarded as undesirable or not particularly moral, but on which no community sanction is (or could be) placed". She writes:

> There is a range of behaviour which may be regarded by most, but not all, as a breach of morality by our personal standards, but which is generally condoned because not legally forbidden. A casual regard for truth or habitual lying at the personal level; a generally light-fingered approach to the possessions of others; attempting to defraud the tax authorities but to stay "technically within the law"; obtaining promotion by unfair institutional politics at the direct and unfair expense of others; and so on. These practices are not regarded as desirable by most people, who would describe them as either generally immoral or unprincipled. But they lie in the arena of a public benchmark of morality from which private individuals may diverge. There is community pressure implicitly to regard them as unprincipled, but no legal penalty.

Professor Byrne says:

> We are being asked to move prostitution from the first category to this fourth. Succeeding sections set out why this would be wrong. Organised prostitution should remain in the first category as an immoral and criminal activity.

We often hear, as we have heard in the pornography debate, "You cannot really get rid of something, so we should legitimise it; we should license it; we should control it". Yet we see the example of prostitution in Victoria, where these activities have not worked. It is suggested that there are major differences between legalisation and decriminalisation; yet I suggest that there is no major difference because both give prostitution a stamp of approval by the government.

There are many ways in which prostitution and brothels could be handled under the law. Much concern has been shown because of police corruption in the area of prostitution. Indeed, the Fitzgerald inquiry has shown that that is the case. However, the suggestion that legalised brothels, or decriminalised brothels, would have no opportunity for the same problem is ridiculous. Who would suggest that police, who are selected for their honesty and for their standing in the community, would be less likely to be bribed than inspectors, who do not have such a high standard of criteria in their selection?

We all know that brothels are advertised in Canberra and other places under the euphemisms of "escort agencies", "massage parlours" and so on. Yet nothing has been done to handle the advertising of prostitution under those terms, even though it is well known that those terms are being used. The situation in Australia is that the law has not been used to carry out an organised, if you like, attempt to reduce prostitution. Let us look at why prostitution should be reduced.

We have heard a number of speakers here today talk about AIDS. Even without any other reason, AIDS is a most compelling reason to do all that we can to limit prostitution. The suggestion that health checks will handle the problem of AIDS and at least eleven other sexually transmitted diseases bears no practical adherence. The incubation period for AIDS can be, I believe, three months, although I have heard longer terms. Any health check would be useless immediately after it has been done. Even if it was worthwhile, how long would it last? It would last up to the next client that the prostitute saw. So, unless you checked out every prostitute after seeing every client, you certainly could not control it, even if there was not an incubation period. But there is.

Another suggestion is that condoms can prevent the spread of AIDS. There are a number of reasons why this does not seem valid. In the Strecker memorandum, Dr Strecker showed that the AIDS virus is not stopped by condoms. I have heard this from a number of sources that I have been looking at.

**Mr Connolly**: Nonsense, Dennis. That is dangerous nonsense.

**Mr Moore**: That is dangerous, Dennis. This is irresponsible, Dennis.

**MR STEVENSON**: Terry Connolly shakes his head. He thinks, indeed, that AIDS - - -

**Mr Connolly**: This is dangerous, irresponsible stuff you are saying. You are telling people not to use condoms. It is just madness.

**MR STEVENSON**: Mr Connolly shook his head. I do not know what he thinks. But both he and Michael Moore interjected. Would you repeat what you said, please?

**Mr Moore**: What you are saying is dangerous.

**Mr Connolly**: I said, "What you are saying is dangerous".

**MR STEVENSON**: They say that I made a "dangerous" statement; is that right? Yet, what we hear from the very people who say that I just made a dangerous statement is, "It is okay. A condom will protect you from AIDS". How dangerous a statement is that, if that is not correct? It is a great deal more dangerous than letting people know that there is evidence that shows that condoms will not prevent AIDS. It is that simple. Whether or not they have looked at it, is not necessarily relevant.

As we well know, condoms or not, there are other ways in which AIDS can be spread.

**Mrs Nolan**: Yes, we know that.

**MR STEVENSON**: The mere fact of having a condom will not make the difference. Mrs Nolan said, "We know that". Yet there is a suggestion to license prostitution and brothels, and thereby, as we have seen around the world over the last 100 years, encourage the process. It certainly will not discourage people from becoming prostitutes, or from setting up brothels.

**Mrs Nolan**: How are you going to get rid of them, Dennis?

**MR STEVENSON**: Mrs Nolan said, "How do you get rid of them, Dennis?". I thought I just spent about five minutes going through various ways that the law could be used, and the police forces could be used, to reduce the level of prostitution. But let me tell you how you do not get rid of them. You do not give it the imprimatur of government and say, "We think this is okay". You will never get rid of anything like that, be it brothels, X-rated videos or anything else. I have explained long and hard in this Assembly that we have seen around the world that, when one does clamp down on pornography, one reduces the level of violence against women and children. Who here would suggest that prostitution does not degrade women? In this day and age, with the concern for women's values, what could be more degrading than prostitution - unless it is pornography, or both of them together?

We hear the suggestion that women are voluntarily becoming prostitutes. That is one of the ways in which someone might become a prostitute. There are others. Some are driven to it, not only by greed or the desire for the high rewards that can be made, but because they come under dire financial stresses in recessions. This has been shown around the world. People then become prostitutes in order to make money to exist. Also, other people are coerced into the activity in one way or another; and no amount of denying that will refute the fact that history has shown us that.

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

## ADJOURNMENT

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

> That the Assembly do now adjourn.

**Assembly adjourned at 5.40 pm**