DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

27 November 1991

Wednesday, 27 November 1991

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

PUBLIC CORRUPTION BILL 1991

MR COLLAERY (10.31): Mr Speaker, pursuant to standing order 128, I seek the indulgence of the chamber to defer private members' business notice No. 1 - the Public Corruption Bill 1991 - for 30 minutes, that is, until 11 o'clock or until such time as the next speaker has finished his in-principle speech on the Prostitution Bill. My reason for seeking that indulgence of members is that I need a few more minutes to get my speech off my computer.

PROSTITUTION BILL 1991

[COGNATE BILL:

PROSTITUTION (CONSEQUENTIAL AMENDMENTS) BILL 1991]

Debate resumed from 25 November 1991, on motion by **Mr Moore**:

That this Bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Prostitution (Consequential Amendments) Bill 1991? There being no objection, that course will be followed. I remind members that in debating order of the day No. 1 they may also address their remarks to order of the day No. 2.

DR KINLOCH (10.32): This is a difficult issue. I have thought a great deal about it. I have written about it. During the past semester at St Mark's Institute I have been teaching a course, for two hours a week, on the subject of church and state. Here is a subject which enters into that arena. I immediately recognise that, for some people here for whom a particular set of religious values may be of no importance, what I say may be irrelevant; but I also believe that people who properly and freely have that stance in life also have a strong social ethic.

Beyond that, I believe that, even though there may be those who are not committed to any one particular faith or religious view, they will recognise that there are many people who are very strongly committed to that and for whom that point of view overrides anything else. That is, the

first loyalty of someone in a religious faith or with a religious view is to that faith. It is not to this Assembly. It is not to a particular person. It is to his or her basic and fundamental commitment. So, I recognise the difficulty of this situation, and I recognise that it is very difficult to know what to do and what to say.

In speaking to this Bill, I in no way want to be seen as being in some kind of self-righteous position. I assure you that I could beat my breast many times about many failures and faults in my life, and I am not trying to put forward some kind of perfect answer on this subject. I am especially aware of the health conditions that have been raised in connection with this subject and I would be the first to want to argue for an open, anonymous, available, first-class clinic and health facility for all people who are in any way involved with activities which could lead to the problems of AIDS or the problems of venereal diseases. That I think we should have. That should be open. That should be available.

On what basis should we act? I wrote directly to Archbishop Carroll and to Bishop Dowling some time ago, partly in response to letters I had received. I received back from them excellent statements, and I thank them for those statements. I do not necessarily agree with all that is said in them, but certainly much that is said I found extremely helpful. I wish that everyone could have these statements. Let me very quickly mention some of the things that Bishop Patrick Power has said on HIV, illegal drugs and prostitution - all three topics. This material was sent to me by Archbishop Carroll. Bishop Power says this:

> Respect for the dignity of the human person must be the primary consideration in the matter under discussion ... Governments have a duty to protect and promote the well-being of their citizens and of the environment in which they live.

Surely we would all agree with that. I am jumping over sections to another that states:

> Obviously it is not within the power of Governments to eliminate all forms of immoral behaviour but whatever steps are possible should be taken to discourage it and to reduce its impact on the community.

Bishop Power also says:

> Canberra would be done a great disservice if any legislation were to appear to be condoning prostitution and encouraging its spread.

He wishes to deny it any respectability which would lead to its spread. He quotes the New South Wales Catholic Social Welfare Committee as follows:

> Such legislation will institutionalise an area of social conduct that will bring with it increasing bureaucratic involvement and interference. The registration of prostitutes, restricted licensed premises and other controls will infringe on privacy and increase corruption.
>
> ... ...
>
> Legislating for prostitution will appear to many in this community that because it is legal it is right. We find this unacceptable.

I join with Patrick Power and the Catholic Church, whether here or elsewhere, in that.

Bishop Dowling wants it to be known that his views in writing to me are his personal views. He said that the Anglican Church, as a church, does not have a formal position on this matter. I understand that. He has certainly taken great trouble in sending Bishop George's statement to me. No doubt, he would send it to anyone else who asked him for it. Bishop George makes a reference to the strongest statement about prostitution in the New Testament:

> The strongest statement occurs in 1 Corinthians 6, where St Paul declares that "he who joins himself to a prostitute becomes one body with her". By inference then that person has excluded himself from membership in the Body of Christ, the community of Christian believers.
>
> It is upon this basis that the Christian Church (in all its manifestations) has not looked favourably upon the institution of prostitution from the outset.

Bishop George also recognises the reality of the problems of health related to prostitution and the reality of the problem of church vis-a-vis state. It is a very intelligent and perceptive comment. I thank both bishops.

But it seems to me that one should not rely on ecclesiastical authorities; one has to make one's own judgment. Certainly, within the Society of Friends I have no recourse but to act on my own judgment, not on the society itself, which does not lay down dogmas. Would you bear with me while I make it clear where I must personally stand on this issue? I hope that I do not sound as though I am speaking out of some sort of self-righteousness.

In the Gospel According to St John, in chapter 8, there is the story of the woman caught in adultery. It is a long and famous story. In the story this woman, who has had a whole series of men, you will recall, has been condemned to death by stoning. That is how seriously the community of

her day took the matter of individual immorality or corporate immorality, whether through adultery individually or prostitution in general. Jesus was asked his view of it:

> "Teacher", they said to Jesus, "this woman was caught in the very act of committing adultery. In our Law Moses commanded that such a woman should be stoned to death. Now, what do you say?".

Of course, they did that to trap him. What did he do? He made the famous statement:

> Whichever one of you has committed no sin may throw the first stone at her.

That is the attitude we must start out with here. We must not act self-righteously, because we have sins in ourselves that deserve stones. To anyone in the prostitution industry - whether a pimp, a procurer, a madam or an individual prostitute - we must say, from this particular faith point of view, "We are not in the stoning business. We are not in the business of incarcerating you and damaging you personally through the application of some kind of punitive law". Let us reject that. The terms "decriminalisation" and "legalisation" are very difficult.

I wish there were some beautiful word for when we say: "Look, we know that you have done these things, and you are not to be condemned for them". That is what Jesus said. Let me read the lead-up to the six absolutely crucial words he used:

> Jesus was left alone, with the woman still standing there. He straightened himself up and said to her, "Where are they? -

that is, "Where are the people who condemn you?" -

> Is there no one left to condemn you?"
>
> "No one, sir," she answered.
>
> "Well, then," Jesus said, "I do not condemn you either".

Then came the six crucial words:

> "Go, but do not sin again".

Someone in a Catholic tradition, an Anglican tradition or a general Christian tradition - I have a number of letters in relation to that - and certainly someone in the Society of Friends has to take those six words as the guide to action. That is, we cannot condone; we do not condemn. We can condemn ourselves for our sins; we do not condemn the sins of others. Judge not lest ye be judged.

But at the same time as we withhold judgment, we must also say to the people who are involved in prostitution, male and female, that although we love them - and that is our obligation - we have an obligation to be their friends in the same way that we are the friends of Jesus. That obligation is to love them as we feel they most need to be loved, not to love them by saying, "Please go ahead. You have not been stoned. You have not been condemned. Keep at it".

The obligation is to do something like Gladstone did. Much fun has been made of the fact that as Gladstone left the House of Commons he walked the streets of London trying to find prostitutes - if you like, pick up prostitutes - to take them home to his wife to try to do what he could for them. I know how difficult what I suggest is. I would not know how to begin to do it. But the Christian obligation is not to parcel people up in some kind of sanitised area and say, "Go for it out there. We will let you do that while the rest of us lead our pure and holy lives".

The obligation is to say to the equivalent of the woman who was not stoned, "We care for you. We want to do what we can for you". I believe that it is the obligation of the churches, all the churches, to do what they can to offer counselling, help, work and whatever they can to bring about some diminution of prostitution wherever it occurs.

I now turn very much more to the arena of the state. In particular, I would ask that we all be aware of the work done by Professor Eileen Byrne, the Professor of Education (Policy Studies) at the University of Queensland. Here I would recognise the move taken by the Queensland Labor Party. I do not want to make political points about this at all. Professor Byrne is the author of a paper entitled "Review of Prostitution-related Laws in Queensland: the Case against the Legalisation or the Decriminalisation of Prostitution".

I have only a short time; but I want to say to everyone here that this is a very powerful case indeed for not decriminalising prostitution, for not licensing brothels, for not producing some kind of sanitised area and saying, "It is not right for us, but it is all right for you". I find Eileen Byrne's recommendations, based on good evidence, persuasive. She worked for many years, certainly over a decade, in prostitution areas in the United Kingdom, especially in London, especially in slum and dockland areas. Some of you may have seen her on the recent *Couchman* program on prostitution. She has worked through her life with other women on the question of prostitution related laws.

I do not table this paper. I think it is too large a document. I shall provide a copy of it to the library. Anyone who is in any doubt about whether it is useful, proper, intelligent to legalise brothels should first of all look at Professor Byrne's study, her recommendations,

her comments in particular on the effects of legislation which decriminalises, particularly the effects on girls who are sought by procurers for the profession of prostitution, to use that old phrase.

I would like to quote her closing section, which certainly reflects the way I feel about the matter:

> In Australia in the 1990s we can, alas, no longer talk of "virtue".

People are made fun of for doing that. She says:

> Unfortunately it appears to have no public standing as a concept any longer.

I certainly regret that. I do not think Bishop Power or Bishop Dowling would say that. Professor Byrne continues:

> But we are talking of responsibility and restraint, of control by men who do not need to use prostitutes; and we are talking of direct action to prevent injury and harm which prostitution causes innocent children, girls and women and innocent families; and to society by providing a seedbed for organised crime.

She makes this connection between prostitution and organised crime. The crime connection is not limited to casinos. That is only a small part of it, and that is not what I am on about here. Professor Byrne goes on:

> And we are talking of the men who still predominate in government and in leadership positions, ceasing to condone through an inappropriate sense of "mateship", or to tolerate as a sign of "encouraging virility", the uncontrolled sexual behaviour of other men as natural, to be accepted with a blind eye, to be regarded as inevitable. This is wrong, by any standard. It is for men as well as women to act to cut back prostitution in Queensland as unacceptable, harmful, a social evil and a practice subject to severe legal penalties. To do otherwise, would be to push society to *amorality:* the absence of any recognition of right and wrong. It would be to create a society where the concept of public good, public health, public protection, no longer had currency. It is to be hoped that we do not see such a day.

(Extension of time granted) I will be opposing this Bill in any of its parts as presently put forward. I hope that Mr Moore, who I think has worked very hard on this matter, would welcome reading Professor Byrne's comments. I do believe that, having read them, he would change his Bill.

Mr Moore: I raise a point of order, Mr Speaker. Standing order 213 states:

> A document quoted from by a Member, may be ordered by the Assembly to be presented; the order may be made ... immediately upon the conclusion of the speech.

Now that Dr Kinloch has finished his speech, I would ask the Assembly to order him to table the two letters and to have them incorporated in *Hansard.*

Dr Kinloch: I would be very happy indeed to do that and I thank Mr Moore - - -

MR SPEAKER: Dr Kinloch, you do not have the floor.

Mr Moore: I believe that it is appropriate to seek leave to move that they be incorporated in *Hansard.*

MR SPEAKER: You do not have to seek leave; you just have to move the motion.

Mr Moore: I move that they be incorporated in *Hansard.*

MR SPEAKER: Move that they be tabled, then we will look at them and see whether they can be incorporated in *Hansard.*

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

> That the documents quoted from by Dr Kinloch be tabled and, with the exception of the submission from Professor Byrne, be incorporated in *Hansard.*

Documents incorporated at appendix 4.

MS MAHER (10.50): As others have said before me, prostitution is one of the oldest forms of employment, and I do not think it is going to disappear. Therefore, I think we need to protect everyone involved in the industry and those who do not want to be involved in the industry. It is also the only sexual activity between consenting adults in private which remains criminal. As the law currently stands, it makes criminals of prostitutes while the client gets off scot-free. It has been said that decriminalisation of prostitution will lead to an increase in this activity. However, the level of prostitution has always been determined by demand.

Mr Speaker, attempts to enforce the current law are a waste of valuable police resources. Mr Collaery has already expanded on this unsatisfactory situation. Escort agencies, because of the fact that they are a phone service and those involved meet in agreed places, are very difficult to control. This piece of legislation will decriminalise prostitution, putting in place legal requirements and protections which are already, to some degree, being enforced through self-regulation within the industry.

If this legislation is passed, it will protect young people from being exploited and induced into prostitution. It also makes it an offence for anyone to receive money resulting from prostitution of a child. It protects prostitutes from violence and intimidation by making it an offence to force anyone into prostitution. If you want to be a prostitute, you must do it of your own free will. It restricts and regulates advertisements for prostitution in both printed and electronic media, thus protecting our young people. It also puts in place the offence of soliciting, loitering and accosting a person for procuring commercial sexual service. At present the ACT has a low level of street prostitution. This legislation will ensure that that activity remains illegal.

One of the most important aspects of this Bill is the safety and protection of workers and clients and the issue of HIV and AIDS. Generally, you will find that those working in the sex industry are more health conscious than the general public, and this legislation ensures that precautions must be taken. Prophylactics must be used. The legislation makes it an offence for a client to demand sex without protection - a situation which could put the worker in an unsafe position. Also, a licensee shall not permit a prostitute who is infected with sexually transmitted diseases to provide a commercial sex service at a licensed premises. This will protect the client.

I agree with the setting up of a board, as this allows the appropriate Minister - and I presume that it would be the Minister for Health - to step back and not be labelled the Minister for Prostitution. It also takes the issue out of the political arena to a large extent. The membership of the board needs to be considered carefully. Certainly, I agree that at least one member should be a woman. Personally, I would prefer at least two members to be women.

In concluding I would like it to be noted that I will not be supporting Mrs Nolan's proposed amendment to the title, as I think the present title is appropriate. I notice that she has distributed other amendments, too, and that Mr Moore also proposes some amendments. I will be looking at those in more detail.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.54): Mr Speaker, the Labor Government's position in relation to the Prostitution Bill remains essentially that which was stated by Mr Berry a couple of days ago. While we commend the work of the committee that was looking at HIV, illegal drugs and prostitution and while we acknowledge the importance of the impartial and rational approach that that committee took to this often emotive and prejudice-ridden debate on the legalisation of prostitution, we are not in a position at the moment to support this Bill, because we think that the

recommendations made in the committee's report and attempted to be put into effect by this Bill now before the Assembly do not adequately deal with the many complex issues that are involved in proposals to license and regulate the prostitution industry.

It is obvious from debate around the country that the highly regulatory model that was favoured in Victoria is now meeting with a degree of criticism. There are allegations that it has allowed, in effect, centralisation of the industry in a few hands in Victoria and that there remains a substantial underground industry. There is a debate in Queensland, where there are suggestions that a totally decriminalised open market approach is better.

Mr Speaker, in effect, the Government says that we should not accept this Bill now as an appropriate answer. The Government believes that there are so many difficult and complex matters that still need to be looked at that we are not really in a position to proceed now with this Bill. We think that it is of the utmost importance that action on prostitution be taken wisely, particularly given the important issues relating to the spread of life-threatening diseases.

I am not going to express at this stage a clear option as to whether the Government should or should not support licensing of operators of brothels or escort agencies or whether it should or should not support the concept of a licensing authority. What I can say is that, if such a body were to be set up, there would need to be much more detailed information than is currently provided on how it should work, what its powers would be and what the effect of its decisions would be.

I wonder whether there are not alternative approaches to a licensing system. If there is to be a licensing system, what would be its cost? It would be an unfortunate outcome if the regulatory structure were so costly and the resultant licensing fees so high that operators were discouraged from establishing themselves legally. Thus we might potentially see the growth of an unlicensed underground industry alongside the legal industry. We certainly would not want to see hasty legislative action in this area lead to the growth of unlicensed brothels and escort agencies in the ACT. That is a criticism that one hears from time to time in Victoria.

Assuming, as the report does, that a licensing system is the approach we should follow, I believe that further thought is required as to the most effective ways of administering such a system. The report and the Bill envisage a licensing authority with a broad range of functions, including inspecting premises to check compliance with health and safety provisions. Again the Government wonders why existing occupational health and safety officials could not carry out this function. Why do we need to create a new regulatory regime?

Mr Speaker, I give another example of our concerns. The Prostitution Bill creates offences relating to unsafe sex practices in brothels, such as knowingly infecting another person with a sexually transmitted disease or failing to use condoms. There are potential problems arising from such a move. For example, such offences may give rise to a flood of criminal injury compensation claims. There are likely to be problems of proof. Such provisions may prove to be difficult, if not impossible, to enforce. I repeat that the Government does not believe that it can responsibly give support to the laws proposed in the Prostitution Bill, because we believe that we do not yet have enough information to fully address the issue involved, and the report does not give us that information.

Mr Speaker, I wish to alert the Assembly to another legal issue which I do not think the report has covered at all but which probably does need to be addressed. That issue is the legal classification of prostitutes. The Bill simply seems to assume that they will be employees, but that merely glosses over a fairly difficult issue. It appears that there is a wide range of practices and approaches in the industry and that many prostitutes may be in the nature more of independent contractors rather than employees. My department advises me that there are indications that significant sections of the industry would resist classification as employees. This classification issue is not merely a legal technicality. It has significant implications for the purposes of workers' compensation, insurance and taxation.

Mr Speaker, the position that Mr Berry stated the other day is essentially still the Government's position. While we think that it is appropriate to move for reform in this area and while clearly the prohibitory approach that the law has somewhat hypocritically taken for thousands of years is inappropriate, we do not think we are in a position yet to support this Bill. Although a decision in principle has been made to support law reform and no longer to deal with prostitution as an offence per se, we do not think that sufficient attention has been given to the appropriate legal regime that ought to be adopted.

Our favoured position would be to adjourn debate on this Bill and to let a body such as the Community Law Reform Committee focus on a legislative model that might be appropriate for the ACT, given a decision to move for decriminalisation. In effect, we are issuing a word of caution. Let us not proceed on this Bill and the flood of amendments that seem to be circulating. It is an important issue. Let us get the community, through the Community Law Reform Committee process, to look at the best legal regime to achieve the goal, given that we seem to have broad agreement that prostitution as an offence per se should not remain the law. There ought to be reform, but let us give more attention to the detail of the reform.

MR HUMPHRIES (11.00): Mr Speaker, I have heard what the Attorney and other speakers have had to say. I am not convinced that my friends opposite are anxious to adjourn this matter mainly because they believe that there are fundamental issues of detail to be resolved. I think we can say with considerable certainty that the Labor Party is very anxious to avoid the potential loss of votes that would occur from their supporting a Bill of this kind at this time.

The other day I looked through the policy of the ALP in the ACT. It is a very amusing document worthy of a few good chuckles. A paragraph in their law reform and civil rights policy - this is a reference to what the Labor Government would do - reads:

> Reform the law relating to sexual offences so that sexual acts in private between consenting adults, or consenting minors above the age of 13 where both were of similar age, whether of the same or different gender, are not contrary to criminal law.

That is a very progressive statement, if I may say so. But when it actually comes to putting that part of Labor Party policy into practice through the opportunity presented admirably by Mr Moore's Bill, which has been on the table now for well over a month, we see a bad case of cold feet. It says, "This is too difficult. There are problems which we need to resolve. Details need to be worked out. There is some problem with regulation". Whatever comes to hand is grabbed by the Labor Party and put up as an excuse. I think we are going to see every effort made by those opposite to make sure that this issue is not dealt with before the life of this Assembly expires.

Mr Berry: There will be regulation of prostitution. There will be proper regulation.

MR HUMPHRIES: There is no point in pleading and making excuses, Mr Berry. We know what you are up to. You are afraid of losing votes. You are paranoid about throwing any votes away and you want to make sure that you do not do so. Therefore, you are stalling by treading water on this Prostitution Bill.

My party also has a policy of supporting decriminalisation of prostitution. I can indicate that we will support this Bill in principle. Unless there are insurmountable problems, we are anxious to deal with this Bill before the life of this Assembly expires. I understand that the next sitting Wednesday is the only day we have to deal with it, subject of course to what the Administration and Procedures Committee might say.

Mr Speaker, the issues presented in this Bill are difficult. As I think Dr Kinloch said, they present a number of moral and administrative problems, and a large number of amendments have been brought forward to deal with some of those problems. Of course, we will have to consider those very carefully. We are getting into extremely difficult territory. We need to be sure that we can draw on the experience of other States in establishing a valid and workable regime in the ACT for the regulation of prostitution.

My party is opposed, as a principle, to excessive intrusion by government into areas of human trade and intercourse, if I might put it in those terms. We therefore would treat an intrusion by government into the regulation of this area with some suspicion. However, we have always acknowledged - and we do so again today - that the regulation of activities toward the protection of health is a particularly important area where that principle has to be put second to other important principles and, in this case, the health of individuals in the community. We see the danger presented by HIV and AIDS as being a very compelling reason to provide for some measure of government control to ensure that there is a retardation of the spread of this pernicious disease. As a result I believe, as I said, that we can broadly support the objects of this Bill.

We will be examining with interest the amendments put forward, but we certainly will not be pretending that these issues are too hard to deal with in the life of this Assembly. We certainly will not be pretending that this needs to be referred to some extra-parliamentary body to resolve in our place. We are the parliament; we have examined this issue over a long period of time; we have within our power, I believe, the means to resolve these outstanding issues and there is no reason why we should not do so in the next few weeks.

MR JENSEN (11.05): Mr Speaker, I wish to speak very briefly and to put a couple of matters on the record. In voting in principle for this Bill, the Rally supports the decriminalisation of prostitution. We are doing this to avoid having stones being cast upon us. However, let me put it firmly and clearly on the record that the Rally does not support the establishment of a brothel and escort agency licensing board or similar organisation. The Rally policy on this issue is quite clear, and for the record I would like to indicate what that policy is. We are prepared to support the following policy:

(1) remove prostitution as far as possible from the ambit of the criminal law while retaining provisions against the exploitation of minors and illegal immigrants; and

(2) attempt to reduce levels of demand for, and recruitment into, prostitution through social welfare reform.

That is the policy which we apply. I wish to have that on the record to clearly indicate that we do not support the establishment of a brothel and escort agency licensing board.

MR MOORE (11.07), in reply: Mr Speaker, in listening to the debate, I think it is quite clear that there are four major areas of concern. The first area of concern, I believe, is a need for more time, as Mr Berry said. Mr Berry's comment that there was no protection for workers is the second issue. The third issue that Mr Berry raised was that there were no occupational health and safety provisions in the legislation. The fourth area of concern, and the one that has become much clearer today, is the concern over the licensing board. Mr Speaker, I shall just take each of these areas of concern in turn.

The first issue is a need for more time. Mr Berry, in particular, and Mr Connolly again today expressed a need to go slow on this Bill and to refer it to the Community Law Reform Committee. The report on which this legislation was drawn was tabled in April 1991. This Government and members of the Assembly have had nearly eight months to table a response to the committee's report, thus expressing their concerns, to speak to me or to refer the matter to the Community Law Reform Committee.

It was quite clear - and I have made it clear to all members - that my methodology in drawing this Bill was to hand the committee report, with its compromises, to the Parliamentary Counsel and say, "Please draft the Bill according to this committee report". So, it was never a Michael Moore Prostitution Bill; it was a Bill prepared directly from the committee report, with its compromises.

The Labor Party has neither tabled a response to our report of eight months ago nor suggested, until this close to an election, that this Bill should be referred to the Community Law Reform Committee. This is a very late idea. It is a straw which they are grasping at simply to avoid having to deal with any of the hard issues. This is a "do nothing" Labor Government frightened of losing even one or two votes. It has put votes above what is clearly the greater good of the community.

Mrs Grassby: You do not know the Goss story, obviously.

MR MOORE: Mrs Grassby interjects something about the Goss story. I am quite happy to talk about Mr Goss. While his own review committee, the Criminal Justice Commission, was looking into prostitution, and long before he had all the information before him, Mr Goss said, "I do not care what they say. I do not care what the information is. I do not care what this report might say. We are not going to have any decriminalisation of prostitution in Queensland". What a great intellect that is! If you want to model your approach on him, good on you; give it a try. In dealing with the law reform and the Community Law Reform Committee,

I think it is important to emphasise that, in the preparation of our committee report, we took into account all views and all publications that came out on law reform with reference to prostitution. I will come back to that later.

The second point that Mr Berry raised is that there is no protection for workers. What absolute nonsense! Mr Berry claims that the legislation does nothing to protect workers. I do not know who his advisers are, but they obviously can neither read nor interpret legislation. I make some simple points for the education of the Minister and his advisers. **S**ubclause 38(1) of the Prostitution Bill makes it an offence for an owner to insist on a worker providing unprotected sex. That is a measure designed to protect the worker. Subclause 38(3) makes it an offence for a client to insist on a worker providing unprotected sex. That is another measure designed to protect the worker. Subclause 8(3) of the Prostitution (Consequential Amendments) Bill makes it an offence for a client to knowingly infect a worker with an STD. That is yet another measure designed to protect the worker.

Provisions of these Bills were specifically designed to do two major things for workers, as was clearly set out in our committee report - to protect workers' health while they are working and to empower workers with controls over their working environment. To suggest that this Bill does not protect the worker is absolute nonsense. Of course, my point was validated this morning by Fiona Patten of Workers in Sex Employment in the ACT. She said that she supported this Bill. Naturally, WISE, like the brothel owners, would like some amendments moved to get everything their way. We as legislators have to consider what we think is best, and the priority must go to what is best for all citizens in the ACT.

Mr Berry also implied that these Bills do nothing for the occupational health and safety of workers. Again, I can only assume that the Minister and his advisers are ignorant of the law and particularly of their own legislation. I must remind the Minister that one of the first pieces of legislation passed by this house in 1989 was the Labor Government's own Occupational Health and Safety Act, which applies to all workers in the Territory. Perhaps, Mr Berry, you should either change your advisers or start listening to them.

Mr Berry: There are occupational health and safety matters other than those concerned with the groin.

MR MOORE: Mr Berry interjects that there are occupational health and safety issues other than those affecting the groin. That is exactly the point I have just made, as he would have known had he been listening. Ordinary occupational health and safety legislation would apply to all sex workers in the ACT, as indeed would other provisions of normal legislation.

A number of members, most recently Mr Jensen, raised concerns about the establishment of the licensing board. The committee concluded that the best way to exercise control over prostitution was by regulatory means. It can take three forms. The first is direct ministerial control. That was the course favoured by Mrs Nolan, in her additional comments to the committee's report. Direct ministerial control, as proposed in the amendments by Mrs Nolan circulated this morning, would make Mr Berry, as Minister for Health, also Minister for Brothels. I think that being known as the "Minister for Brothels" is hardly something that any Minister would take to. Under Mrs Nolan's amendments he would probably be known as "Minister for Brothels and Escort Agencies".

The Minister who took this responsibility would certainly very soon be known as the Minister for Brothels. I really do not think that that suits anybody at all, and I would speak strongly against direct ministerial control. However, I do accept, as Mrs Nolan wrote in her additional comments to the report, that the licensing body that has been proposed would have a minimal amount of work.

Self-regulation, I gather, is Mr Collaery's option. Certainly, in our discussion, that is what he put to us. It seems to me that the self-regulation of prostitution has very little chance of working. More importantly, it would fail to do the very thing that we set out to do, and that is to protect the rights and the health of workers. I know that anybody who has looked at this issue very closely, as indeed we have, would agree that the power is much more with the brothel owners than it is with the workers.

Therefore, self-regulation really needs rethinking. It has been agreed that this debate will be adjourned. I will be delighted to have the opportunity to discuss with members what that will mean in terms of the dynamics of the relationship between the prostitutes and the brothel owners that was clearly demonstrated through the way we have been lobbied.

I think it is very important for members to understand that an arm's length licensing board as recommended by the majority of the committee is an option that has been recommended by every committee of inquiry into prostitution since Marcia Neaves' Victorian report in 1985. It was recommended by a New South Wales report in 1986, a Western Australian report in 1990 and the report of Queensland's Criminal Justice Commission this year. Every single one of those reports has recommended an arm's length licensing body. I would urge members to reconsider their position on this. The other options are fraught with problems. The committee spent so much time on it and took into account the views of various law reform bodies around Australia.

A licensing board is not a new wheel. We have such boards for nurses, lawyers, doctors, dentists, veterinarians and gasfitters. All this legislation does is extend that administrative principle of regulation to licensing brothels and escort agencies - - -

Mr Collaery: Yes, but they are self-regulatory.

MR MOORE: Mr Collaery interjects that they are self-regulatory. As I have said from the time I tabled this Bill and the time I signed the committee report, I am prepared to accept amendments. I am still prepared to talk about how we can adapt to meet Mr Collaery's requirements and indeed other members' requirements. I do not believe that we will be able to reach Mrs Nolan's preferred position because I think that would cause more problems than it would resolve. That is very much my personal opinion.

Mr Speaker, I think it is very important to take up a couple of the points that Dr Kinloch raised. He was moved, in his next best thing to a sermon, to read about the woman caught in adultery and about Christ's response to those wishing to stone her. My immediate reaction to this story - which, of course, is familiar to all of us - is: What happened to all those men that Dr Kinloch referred to? Why were they not stoned? Our morality has moved and changed substantially since the time of Christ.

However, I think it is important for us to understand the basic values - and I think this is really what Dr Kinloch was referring to - that Christ always espoused: Compassion, understanding and tolerance. We do not necessarily have to condone. I am not saying that. As I read it, the philosophy behind Christianity is tolerance, understanding, compassion. The word that Christ himself used was "love", which is often translated as "charity". The intolerant bigots in our society prefer to quote the Old Testament and the laws that Christ supposedly came to replace. When it suits them, they forget what Christ said.

It is important for us to understand that if religious bodies wish to influence their members - and Dr Kinloch made this point - of course they have the right and the responsibility to do that. We as legislators should allow them to influence their members. But we as legislators should also take action to protect any individual within our society. It is quite clear that the rights of workers, in this case prostitutes, are infringed. That is clearly set out in the committee report.

Dr Kinloch started by saying that this is such a difficult issue to deal with. I really do not accept that it is a difficult issue. I think the issue is quite clear. It is inappropriate for legislators to legislate in respect of prostitution. I think almost all speakers have agreed that it is appropriate to decriminalise prostitution. If people

supported the view of the two bishops on this point, it would be appropriate for them to support the Prostitution (Consequential Amendments) Bill, which totally removes all the laws relating to prostitution. *(Extension of time granted)*

I think it is appropriate for us to understand that this is not a difficult and complex subject to deal with in principle. Certainly, the proposed amendments that have been passed around are also not particularly difficult to understand. Those circulated by Mrs Nolan go to a single principle, with one exception. There appears to be a great raft of them, but the real purpose is simply to remove the board and to replace it with ministerial control.

I have circulated a couple of amendments that I propose to move in the detail stage. I think it is appropriate that I mention those amendments now. The first one restricts brothels to Fyshwick, Mitchell and Hume, as was recommended by our committee. The original Bill was drawn up in the light of the current planning legislation. As we got closer to debating the Land (Planning and Environment) Bill, it seemed to me appropriate that we try to separate this legislation from that Bill so that we would not have to change it when we had just passed it. Therefore, the amendment simply sets out that restriction and makes it possible for the Minister to prescribe any other area. That, of course, would be a disallowable instrument.

My second amendment is to delete subclause 36(2), which reads:

> A prostitute shall not provide commercial sexual services if he or she knows, or could reasonably be expected to have known, that he or she is infected with a sexually transmitted disease.

It was always the intention of the committee to ensure that any penalty that applied to a worker should also apply to the client. That subclause can be deleted because subclause 8(3) of the Prostitution (Consequential Amendments) Bill makes it an offence for a client as well as a worker to knowingly infect somebody else with an STD. That was an oversight on my part in the original drafting of the Bill and something that I have therefore moved to correct.

A number of other issues have been raised, particularly by the Victorian Prostitutes Collective. I have gone through those proposed amendments and criticisms of the Victorians. Some of their proposals indicate that they do not really understand the size of Canberra and the scale of prostitution here and also that they had some difficulty in reading parts of the legislation. A quite large number of the things they proposed were already in the legislation.

I have gone through those proposals in detail with the spokesperson for the local prostitutes collective, Fiona Patten, who has worked very hard on this legislation. I have satisfied her that we have taken into account the main areas of concern for prostitutes. That was confirmed, as I said earlier, by her statements on the radio this morning. I think members will have received a letter from WISE in the last couple of days. Certainly, if they have not, I am prepared to share my copy with them. It sets out some of the concerns that they have. I am happy to talk to any members about the concerns and how we have handled them. I think that is an important thing to do prior to the detail stage.

I said to members when I tabled the Bill and when I tabled the committee's report that I am open to discussion. Compromises were made in the committee report. I believe that, by and large, we still have the most appropriate legislation; but I am happy to entertain amendments in the detail stage and I am happy to discuss further any modifications that members may wish to make to the licensing board.

Madam Temporary Deputy Speaker, as we move to the end of the in-principle stage of the Bill, and understanding that most members support this legislation, I must say that I am delighted that the Assembly is prepared to make this important social move to decriminalise and regulate prostitution in the ACT.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1

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

POSTPONEMENT OF ORDER OF THE DAY

MADAM TEMPORARY DEPUTY SPEAKER (Mrs Grassby): Mr Moore, do you wish to move the postponement of the next order of the day?

MR MOORE (11.29): Madam Temporary Deputy Speaker, as we have agreed to the Prostitution Bill 1991 in principle, I believe that it would be appropriate now to vote on the agreement in principle to the Prostitution (Consequential Amendments) Bill 1991.

Mr Collaery: Madam Temporary Deputy Speaker, I am seeking to clarify whether those consequential amendments anticipate detailed agreements. I think it would be more appropriate for us to deal with them at the detail stage. They assume agreement to some of the details in the Prostitution Bill to which some of us do not agree.

MR MOORE: Madam Temporary Deputy Speaker, I appreciate the concerns that Mr Collaery raises and therefore I move:

> That order of the day No. 2, private members' business, be postponed until a later hour this day.

Question resolved in the affirmative.

PUBLIC CORRUPTION BILL 1991

MR COLLAERY (11.31): I present the Public Corruption Bill 1991. I move:

> That this Bill be agreed to in principle.

Against a background of growing community concern over leasehold administration and government contracting, the Residents Rally gave an election pledge in 1988 that a corruption monitoring mechanism would be introduced in the Territory. Following that election pledge, the Rally introduced a motion in this Assembly on 1 June 1989 which resulted in a referral to the Public Accounts Committee of consideration of the composition, terms of reference and powers of an independent advisory committee against corruption.

In November 1989, the Standing Committee on Public Accounts recommended that a body be established to have specific functions to receive allegations or complaints of corrupt conduct involving ACT public officials, to determine which agency is the most appropriate to investigate and act on the complaint or allegation or on-forward the complaint or allegation, and to receive reports from those agencies and to monitor the type and resolution of complaints and allegations. On 27 May 1991, the Alliance Cabinet finally approved a public corruption Bill to give effect to the committee's recommendations.

Members will recall that when the Labor Government issued its legislative program it listed the Public Corruption Bill in its second priority listing - in other words, as we now realise, not to be reached, given the Labor priorities. On Monday last, the Rally introduced correlative reforms to the Crimes Act and, in introducing that Bill, the Rally stated that the Labor Party had no intention of introducing the Public Corruption Bill. No denial, as yet, has been

received from the Labor Party. Accordingly, the Bill before the house today is, except for a series of modifications which I will detail, the same as the Bill approved by the Alliance Cabinet.

The principal difference between the Bill approved by the Alliance Government and the Bill before the house arises from the need to delete those provisions which may offend the provisions of section 65 of the self-government Act, namely, those provisions which prevent the Opposition from dealing with public moneys. Accordingly, we have deleted the provisions relating to the remuneration and allowances of members of the Public Corruption Committee. I shall make those provisions available to the Government so that, if the Government is minded to support this Bill, it can introduce those provisions without any delay whatsoever because they are drafted in the standard form which all governments in this chamber have utilised.

A consequential amendment to the Bill also relates to staffing of the committee. Any provision that such staff be public servants would, of course, offend section 65. In any event, the Rally believes that the staff of the committee should not be public servants made available to the committee by the Head of Administration.

Accordingly, unless the Government wishes to intervene and provide for staff to be recruited and appointed and to hold office under this statute independent from the administration, the only alternative for the Opposition in moving this Bill is to provide that the staff shall consist of persons selected by the committee from applicants in response to an advertisement for members of the staff of the committee published in a newspaper circulating in the Territory. The Bill, as circulated, provides for the staff to consist of no more than three persons. In the detail stage the Rally will move to delete that figure and leave the size of the staff to the discretion of the committee.

The Rally believes that it is entirely appropriate in a city with such significant highly skilled retired or semi-occupied persons to recruit an independent body of this nature as volunteers. We believe that there will be no shortage of quality volunteers and that they would be persons who could be properly assessed and screened for appointment. It could not then be alleged in any way that they are compromised by direct employment and reporting under the Head of Administration. Likewise, the committee itself would, of course, subject to government decision, be unpaid and be selected from the community. The mechanism for selection of the committee is set out in the Bill and provides for a balanced, non-political framework of selection.

This Bill was drafted whilst I was Attorney-General. In that role, I took the opportunity whilst at a ministerial conference in Perth to visit the Western Australian Corruption Commission, which was referred to in the committee's report recommending the establishment of a

similar body in this Territory. My conversations with committee staff in Perth and my perusal of their legislation indicated that the Western Australian legislation was considerably weaker than the Bill now before the house. The Western Australian commission appeared to be a mere clearing house for complaints, with no effective capacity to ensure that matters requiring investigation would be actively pursued. I need not dwell on subsequent events in Western Australia to indicate how woefully inadequate that commission was in getting into the inner reaches of the Western Australian Government.

I shall cite examples of where we have strengthened the role in the ACT. Unlike the Western Australian counterpart, the ACT Bill has a definition of corrupt conduct. The Bill defines that conduct at clause 6. It refers to conduct that adversely affects or could adversely affect either directly or indirectly the honest or impartial performance of official functions by a public official or public authority. It also relates to conduct of a public official which amounts to performance of any of his or her official functions dishonestly or with partiality or in breach of public trust or in a situation which amounts to misuse of information or material acquired in the performance of official functions.

Of course, the traditional offence of conspiracy or an attempt to engage in conduct of the nature just described is embraced. The general benchmark for this conduct is that it needs either to constitute a criminal or disciplinary offence or to constitute reasonable grounds for dismissing or dispensing with or otherwise terminating the services of a public official who is engaged in it. In this sense the core of this Bill produces a living provision in the legislation. It provides for the values to be adopted for conduct by public officials, including Ministers, to be capable of adjustment against community demands.

In that respect I have already referred members this week to the 1989 Fitzgerald report presented to the Queensland Parliament and a subsequently published issues paper dealing with the question of the conduct of public officials. I refer members to the introduction speech for the Crimes (Amendment) Bill (No. 6) earlier this week. There has been, then, an attempt in this Territory to reach right into the Fitzgerald and WA Inc. experience and build on the recommendations of the committee whilst sticking to the parameters set by the Assembly.

I continue the comparison with the Western Australian Bill. That Bill has no power, for example, to demand the production of documents or to apply for a search warrant to seize documents in exceptional cases - including, for example, in a Minister's office. The ACT Bill provides such a power. The Western Australian Bill is silent on what action can be taken if the Western Australian

commission is dissatisfied with the investigation of a complaint, whereas the ACT committee may report to the Public Accounts Committee or submit a report to the Assembly.

The experience in Western Australia indicates how dangerous it is to introduce a body without teeth. A cosmetic device called a corruption commission which has no powers is more dangerous than none at all because it may lull the community, as seems to have occurred in Western Australia, into a false sense of security. Unlike the Western Australian situation, the ACT committee will be overseen by a committee of this parliament.

Finally, and most importantly, the ACT Bill has extensive whistle blower protection which we believe is essential, together with a free and confident media to encourage people to come forward with information regarding corruption.

I now need to acknowledge that the New South Wales Independent Committee Against Corruption Act 1988 has far more powers than the ACT Bill provides. It has a wide investigative scope and can conduct hearings, summon witnesses and fine persons for contempt. There has been recent litigation in the New South Wales Court of Appeal setting limits and parameters to this power. I draw members' attention to that. I also draw members' attention to the first and second reports in November 1990 and February 1991 by the committee of the New South Wales Parliament overseeing the ICAC. Its process was to conduct an inquiry into commission procedures and the rights of witnesses following concerns expressed about that issue. At this juncture, it is important to acknowledge the civil liberty issues that always have to be balanced in the establishment of committees of this nature.

Whilst the concerns raised and the balancing required at law are not as acute under the ACT legislation as they were in New South Wales, there are some similarities between the New South Wales Act and the ACT Bill which I should allude to. Firstly, our definitions of corrupt conduct and public officials are very similar. I accept that both those terms are evolving through litigation, hearings and community consciousness.

Both New South Wales and the ACT have offences of knowingly giving false or misleading evidence; but they do not have offences of malicious or vexatious allegations, such offences being deemed to unnecessarily deter whistle blowers and those persons with allegations which they themselves are unable to fully document. The ACT protection for whistle blowers goes further than the New South Wales legislation as it includes threatened as well as actual dismissal and includes such action not only where a person has actually given information but also where he or she has proposed to give information.

I now turn to investigation issues. Clause 10 of the Bill allows the committee to refer complaints to an appropriate agency or, on its own initiative, refer a matter for investigation. Clause 15 obliges the director of the ACT Government Investigations Unit to comply with a direction or request from the Auditor-General. Clearly, as the Rally has asked, if this Bill is passed it will be imperative that that unit be brought out from under the Head of Administration and be obliged to report directly to an independent authority - preferably, in the Rally's view, the Auditor-General.

Clause 16 of the Bill allows the committee to refer matters directly to the Director of Public Prosecutions. I believe that that is an appropriate power and is probably, in many cases, the way that committee should operate. It will overcome the problems of WA Inc. and the toothless tiger that existed in Western Australia. If not satisfied with an investigation, the committee may refer its report and dissatisfaction to the Public Accounts Committee of this Assembly. Fundamentally, we are enshrining the doctrine of parliamentary review and parliamentary supervision of issues of public accountability stemming from public administration.

Madam Temporary Deputy Speaker, corruption is socially unjust. It often amounts to unjust enrichment at the expense of others and at the expense of the community. I commend the Bill to the house.

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

CRIMES (AMENDMENT) BILL (NO. 4) 1991

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

That this Bill be agreed to in principle.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.43): Madam Temporary Deputy Speaker, this Bill proposes two things in its current form. I understand that there are some amendments that Mr Collaery intends to move and has circulated which will refine somewhat the substance of the Bill before the house; but, essentially, again it will focus on two things.

The Government's position is that, while it can support Mr Collaery on one aspect of this Bill, it has severe reservations and cannot support his second aspect. In short, Madam Temporary Deputy Speaker, and to dispense with the legal technicalities which Mr Collaery can explain when he puts forward his amendments, the Bill seeks to do two things. First, it seeks to make the possession of child

pornography in this Territory an offence. That is something of a departure from the existing controls on such publications contained in the ACT's main censorship law, the Publications Control Act of 1989.

The scheme of that Act is more specific, being an attack essentially on the trade in pornographic material, a fairly severe ban on the sale, distribution and hire of unclassified publications. It is abundantly clear that any publication which depicts in pictorial form a child who is apparently under the age of 16 engaging in sexual activity or otherwise in a manner that is likely to cause offence to a person is an unclassifiable publication. So, child pornography is currently dealt with quite severely by the law in the ACT. The current provisions carry a penalty of $2,000 or imprisonment for 12 months.

Mr Humphries: It is for selling, though, is it not?

MR CONNOLLY: It is for selling or distributing. This Bill goes somewhat further and bans possession. I am advised that it is not entirely necessary to do that; but, on the other hand, given the general community abhorrence of child pornography, and given particularly some of the refinements that Mr Collaery is proposing in his amendments, I can see no reason why this Assembly ought not pass such a law.

I note that in the Classification of Films and Publications Act of Victoria, the Video Tapes Classification and Control Act of Western Australia and the Censorship of Films Act of Queensland, in each of those three jurisdictions, the mere possession of what is loosely called child pornography is made an offence. So, I see no difficulty in our going down that path.

The Bill in its original form was fraught with a number of potential problems because of the likelihood of a person being innocently in possession - the postal worker who is distributing a brown paper package, transport workers, persons who obtain a lawful publication which may depict persons whose age is indeterminate, and the like. They were some potential difficulties with the original proposal; but I note that Mr Collaery, in the amendments that he proposes to move and has circulated, has provided that a person must be knowingly in possession. That covers the innocent possession of the postal worker or the transport worker position.

He is providing a proposed defence to a prosecution that the defendant reasonably believed that the person depicted or otherwise represented as a young person was not under the age of 16 years. He is picking up there on the objection that a person could be in some confusion and reasonably believe that it was an adult or a lawful publication. So, Madam Temporary Deputy Speaker, on this question of possession of child pornography, the Government sees no reason to oppose Mr Collaery's suggestion in its amended and refined form.

The other aspect of Mr Collaery's Bill is fraught with more difficulty because what he is proposing to do is to make conduct that is lawful in the ACT unlawful depending on the criminal law of another State. His original proposal was extraordinarily broad-ranging in that it would have made it an offence to aid and abet in the ACT the commission of a criminal offence in another State. We had some very fundamental problems with that because, in particular, in a context that is close to the Labor Party's consciousness, in New South Wales Nick Greiner has introduced industrial legislation that we find abhorrent.

There is a potential for activities that we say are perfectly lawful and appropriate organising activities or agitating activities of a trade union activist to be unlawful. We would have been horrified at the proposal of a trade unionist's engaging in lawful political activity in the ACT being made a criminal offence because it was aiding and abetting what would be unlawful across the border.

I am pleased that Mr Collaery has retreated from that broad position of making it an offence in the ACT to aid and abet an offence in another State. We all must bear in mind that it is perfectly competent for a State in Australia to make conduct in another State unlawful if it has a sufficient nexus with the home State. States do have the power to legislate for what lawyers call extra-territorial effects. So, it is within the competence of any sovereign State to control what occurs outside its borders if it is impacting adversely within its territory. The problem we have is that Mr Collaery is reversing that and saying that what is criminal in the ACT, what is within the law or outside of the law under ACT law, will depend on the vagaries of what is criminal or not criminal in every other jurisdiction in Australia.

As I say, he has pulled right back from that extraordinarily broad proposal and is coming up with a much more limited proposal in his circulated but not yet moved amendment, to simply provide that it will be an offence in the ACT to transmit an article or substance to a person in another State or Territory if you know - he does say "knowingly" - that that article or substance is illegal in the other State or Territory. It is made a fairly substantial offence, with a two-year imprisonment. Again, the difficulty we have with that in principle is that what is or is not criminal conduct in the ACT should be provided by ACT law.

Mr Humphries: I think he has fixed this with these amendments.

MR CONNOLLY: No, I do not think he has, Mr Humphries. He is still providing in principle that the lawfulness or otherwise of your conduct here depends upon the state of the criminal law in another jurisdiction. We think that in principle that is inappropriate. If another State, for

example, wishes to pursue the issue of X-rated videos and wishes to create that it is an offence to possess X-rated videos, other States can do that. Some have, but they seem to have no particular interest in prosecuting for those offences.

If other States wish to make it an offence for persons to aid and abet the breach of their criminal law by sending material into their States, they no doubt could, and they could take action against the distribution networks here. No State has chosen to do this. The path that Mr Collaery is proposing, of making it an offence in the ACT to send material interstate if the possession of that material interstate is an offence, is a path that no other State or Territory has taken in Australia. This would be a unique proposal where we are really saying to the rest of Australia - - -

Members interjected.

MADAM TEMPORARY DEPUTY SPEAKER: Order, please! Could I have a little more silence. The Minister is trying to make a speech.

MR CONNOLLY: Thank you. The proposal that is before the chamber is a departure from ordinary standards of criminal law throughout Australia. It is a radical proposal to, in a sense, abdicate our responsibility of saying what is or is not lawful in this Territory and to create this strange omnibus offence where it is unlawful to send something out of this Territory, even though it is perfectly lawful to have and possess it here, if another State or Territory chooses to change the law and make that unlawful.

It is a fairly substantial penalty of two years' imprisonment, whereas the actual substantive illegality in another State or Territory may carry a very minor penalty but nonetheless be unlawful. A suggested example that was given to me was sending a vehicle with bald tyres into Queanbeyan. It is an offence under New South Wales law to have a vehicle with bald tyres, but it is an offence that would be dealt with under an on-the-spot - - -

Mr Jensen: Do not waste time; read the amendment.

MR CONNOLLY: Mr Jensen, this is slapdashery. We have a Bill and we have a circulated amendment. Is there an amendment to the amendment, or is the amendment what I am looking at?

Mr Jensen: Yes, there are both.

MR CONNOLLY: Is there an amendment to the amendment?

Mr Jensen: Read the papers on your desk.

MR CONNOLLY: Mr Jensen, I have an amendment to the Bill. If there is an amendment to the amendment, I would be interested to see it.

Mr Jensen: Yes. It should be on your desk, Mr Connolly.

MR CONNOLLY: I have not seen it. I now see something scribbled out here - "omit 'article or substance'.". I see, it now relates purely to an X-rated film. People have a good idea in the bath or shower, they propose it in private members' business and we are supposed to legislate on it. It is really a very unsatisfactory way of going about government business.

Mr Jensen: Nearly as good as your penalties that first day.

MADAM TEMPORARY DEPUTY SPEAKER: Mr Jensen, order, please! Mr Jensen, would you please stop doing that. Also, when a member or a Minister is on his feet while papers are being delivered it is a bit hard to read them, Mr Jensen. I think you should think a little bit about that before you make those comments.

Mr Jensen: I will remember that, Mrs Grassby, when you are interjecting.

MR CONNOLLY: In fact, I seem to have two pieces of paper on my desk. So, we have the Bill, we have the amendment to the Bill, we have the amendment to the amendment to the Bill, and we seem to have the amendment to the amendment to the amendment to the Bill - a very logical way to go about legislating!

Madam Temporary Deputy Speaker, it now seems that we have retreated one step further from that original all-encompassing provision to the amendment which was the general prohibition of transmitting articles generally interstate to a scribbled out amendment. We are not quite to the back of an envelope stage, but we have two scribbled out amendments which seem to retreat yet further to limit this simply to X-rated videos. If a State wishes to ban the possession of X-rated videos within its borders, any State parliament can do that. We have no difficulty with that.

Mr Duby: The X-rated business here is 90 per cent selling through the mail.

MR CONNOLLY: The X-rated business is 90 per cent selling here. I do not see why we ought to prohibit a person from sending out of this Territory something that is lawful here. That is a matter for other States to legislate on. The principal objection that we have remains. Our criminal law, what is criminal or not criminal in this Territory, should not depend on the state of the law beyond our borders.

If it is the wish of the Assembly to ban X-rated videos, it should do so. We have debated that ad infinitum. If we are proposing this purely to the X-rated video approach, it is a real cop-out. It is saying, "I really want to ban them, but I will not vote to ban them". In that case it is really deserving of some contempt because it is a sort of attempt to curry favour with two lobbies at the same time, to pretend that you are a civil libertarian while pandering to a sector which wishes to ban that particular industry which the Assembly has voted on.

Our objection in principle remains. What is lawful or not lawful in this Territory ought to be clearly specified in the law of this Territory; it ought not to depend on the laws beyond our borders. For that reason, while we do not oppose Mr Collaery's first proposal to make the possession of child pornography an offence within this Territory - I think that is something where there would be general support throughout the chamber because there is general abhorrence of child pornography - we cannot support the second proposal to create this omnibus offence, dependent upon the state of the law beyond our borders.

MR STEFANIAK (11.57): Mr Collaery's Bill came in on 16 October with a series of Bills. I sent them off to a number of people, including Ken Crispin, QC, a very learned criminal lawyer with heaps of experience as a defence counsel and more recently as Director of Public Prosecutions. He has provided me with an advice, and I understand that Mr Connolly and Mr Collaery have the same advice.

After looking at Mr Collaery's original Bill, whilst I had a considerable amount of sympathy for his proposed new section 92NB, I wondered, in relation to clauses 4, 5 and 6: What on earth is he doing? I had a look through the Crimes Act. Those clauses, if they were left in, would merely confuse the situation. In some cases they would provide a maximum penalty which would be too low in the circumstances and would be quite different from what has been in the Crimes Act before. Really, when one looks at all the provisions, they would not be of any great assistance to the criminal law and probably would not really do what Mr Collaery hoped they would do. Therefore, I was delighted to see Mr Collaery today circulate some amendments, and Mr Jensen a further amendment, which I think make the task of looking at this Bill a hell of a lot simpler.

Mr Crispin, in his detailed, very learned and sensible advice on this Bill, notes the various problems with clauses 4, 5 and 6 which, quite sensibly, are to be deleted by Mr Collaery. Mr Connolly raised a point, though, in relation to one proposed amendment about transmitting articles interstate. Effectively, we are talking about X-rated articles. Mr Crispin, at page 4 of his advice to me, says this:

> The amendment to section 348 was presumably intended to cover the situation where a person produces X rated videos for the express purpose of exporting them to other States and/or Territories. There is no readily apparent reason why that amendment should not be made. Indeed, it would seem to me that if section 348 were to be further amended to encompass the actual distribution of such material to other States and/or territories in contravention of a local statute that it may be unnecessary to rely upon section 345A for the purpose of limiting the distribution of X rated videos.

He goes on to make some other points. Whilst Mr Crispin, I think, rightly points to a lot of problems in Mr Collaery's original Bill, perhaps he would have a different view, it would seem to me, of Mr Jensen's proposed amendment to Mr Collaery's further proposed amendment to create a new section 151A. I do not really know whether 151A is the ideal place to put that particular section. But it probably does not matter; it is fairly close to section 345.

The Crimes Act, as indicated by the Attorney-General, I think last week, has been so substantially amended that it bears very little resemblance, in many parts, to the New South Wales Crimes Act which was its parent. We do have a large swag of old sections which simply are not there any more. From about section 150 something up to about section 340 something there is just nothing. So, that probably does not matter.

Ken Crispin, QC, also indicated initial problems with Mr Collaery's proposed new subsection 92NB(1). He was effectively making it an absolute offence and there was no defence there for someone who might have a reasonable belief that the person depicted was not under the age of 16 years. He suggested putting in the word "knowingly".

Mr Collaery, in his proposed amendment, has amply covered that situation because he has now created a defence to a prosecution for that absolute offence by ensuring that, if the defendant reasonably believed the person depicted or otherwise represented as a young person was not under the age of 16 years, that would be a defence. That is entirely appropriate with other forms of criminal legislation and that is a necessary amendment. We accordingly have no problem with that. I note also that he proposes to insert the word "knowingly" on page 1 at line 13.

I do not think members should be in any doubt as to what Mr Collaery is attempting to do in relation to his proposed new section 151A. He is attempting, by Mr Jensen's amendment specifically, to make it illegal for anyone in the Territory to transmit X-rated films interstate.

The Liberal Party has had for some time now a policy to ban the sale and distribution of X-rated videos in the ACT. We have attempted, when this debate has come up in the past in the Assembly, to be consistent in voting in accordance with that policy. I would think that to be consistent with that policy we would be required to vote for Mr Jensen's circulated amendment to Mr Collaery's circulated amendment to his proposed new section 151A.

I am pleased to see, in relation to that particular amendment again, that some of the points made by Mr Crispin, among others, have been taken into account; that is, a person has to knowingly be conscious of an act. It is not an absolute offence. I think that is absolutely essential when one takes into account civil liberty requirements. I think that, as a result of the amendments circulated by Mr Collaery, the major problems we had with this Bill, especially clauses 4, 5 and 6, to a large degree have been allayed.

MR JENSEN (12.03): I rise just briefly to formally move my amendment to the Bill. I will read it for the record. It proposes a new clause on page 199.

MADAM TEMPORARY DEPUTY SPEAKER: We are not in the detail stage. I thought you wanted to speak on it in principle.

MR JENSEN: I apologise. While I am on my feet, let me say that in the detail stage I propose to move an amendment which has been circulated in my name. Basically, it provides for no doubt as to what we are talking about in my amendment to Mr Collaery's proposed amendment when it is moved. I will move that we omit "article or substance" and substitute "an X-film".

To make sure that there is no doubt as to what we mean by "X-film", the amendment that I will be moving in the detail stage proposes a new clause which provides a clear definition of what we mean by an "X-film". It will have the same meaning as defined in the Publications Control Act 1989. I will be doing that by amending clause 4 of the Bill.

One of the reasons why my colleague Mr Collaery has introduced this Bill is that we have often heard many bleatings by people interstate and bleatings by various politicians in other States about the ACT being the porn capital of Australia and sending this material interstate. Concerns have been expressed by a number of groups. This legislation aims to make sure that child pornography, for example, is an offence in the ACT. I do not believe that anyone in this Assembly would disagree with that. I just want to make sure that that is quite clear. The other point is that we want to ensure that anyone who aids or abets interstate offences by an act in the ACT that results in an offence being committed in another State is committing an offence, and so on.

I think my colleague Mr Collaery has already indicated that we propose to omit "article or substance" in order to clarify what we are proposing. On that basis, Madam Temporary Deputy Speaker, we commend the Bill to the Assembly and wish it a speedy passage together with the amendments that we will be moving during the detail stage.

MR STEVENSON (12.06): I, of course, support the Bill, though it is a convoluted way to handle the problem. Mr Jensen referred to bleatings from people in other States. I would not suggest for a moment that that is the correct term to use. There are grave concerns by people in other States, victims of crime and others, who have had major cause for concern for Canberra being the porn capital of Australia. Unfortunately, it looks like we are going to be the drug, prostitution and casino capital as well, if various things that have been suggested are pushed through this Assembly.

People in other States have every right, indeed, they have a responsibility and an obligation, to let members of this Assembly and relevant organisations in this community know that we are allowing their laws to be flouted by our laws.

If the situation was one that concerned the physical environment and not the moral environment, if you like, it would be a very clear issue. If we were doing something in the ACT that allowed pollution to pour across the borders or across Australia, fallout or whatever, there would be very swift concern from people in other States, and once again we would not think that was bleating. We would simply think it was their responsibility and obligation.

Mr Jensen: Politicians bleating.

MR STEVENSON: Well, politicians may bleat; but then again they have a responsibility to represent the constituents who, in the majority, want Canberra cleaned up. While it would be better to simply ban X-rated videos in Canberra, as my Publications Control (Amendment) Bill 1990 and my Bill this year sought to do, I care not how these things are achieved, provided that they are achieved. I am sure the people will not mind either, because there is increasing concern in this town for X-rated videos specifically to be banned.

Our last survey of some 600 people showed that 61 per cent of people now approve of us voting against X-rated videos. I think the other result was about 39 per cent. That would allow for them not saying that they agree with them, but a smaller percentage might allow them. So, I too commend the Bill to the house. Indeed, it would give us an opportunity, when passed, to do something useful in the ACT this year.

MR DUBY (12.09): Madam Chair, a psychoanalyst examining the work we undergo in this Assembly would, I am sure, have some very interesting comments to make about our deprived childhoods. For example, this morning is a good example. We spent our time talking about prostitution and now we are into X-rated videos. It seems that, no matter what we do, sex must rear its ugly head in this place.

This Crimes (Amendment) Bill is a jolly good idea. Everyone accepts the concept that nobody supports or endorses child pornography. I think that goes without saying. The intended result of some of the amendments that have been circulated by Mr Collaery and Mr Jensen, endorsed enthusiastically by Mr Stevenson, is that we clamp down on and in effect emasculate the X-rated video industry here in the ACT. Perhaps that was a clever use of words.

There is no question that child pornography is abhorrent and should be eradicated. There should be very stiff penalties for it. But, for the life of me, when I look at the various amendments which are to be proposed, I cannot support, in conscience, these backhanded attempts to close down the X-rated video industry in the ACT. I shall say that in principle I support the Bill. I shall save my further comments until later in the debate on the various amendments which are to be proposed by people who frankly, in my view, are nothing but bigoted fanatics.

MR HUMPHRIES (12.11): As a bigoted fanatic, I feel that I ought to say something about this Bill. There has been some confusion about the effect of this Bill and what it is intended to do and whether it would succeed in that intention. We initially rejected some provisions of this Bill before amendments were circulated, as Mr Stefaniak has indicated. We are more satisfied with the amendments put forward by Mr Collaery and the amendments to those amendments by Mr Jensen.

I might say at this stage, Madam Temporary Deputy Speaker, that it is a matter of concern to the Liberal Party that we do find ourselves not infrequently in the position of having a plethora of amendments, sometimes amendments on amendments, to complicated legislation - legislation which is sometimes very technical - and the expectation that we will deal with that here on the floor of the Assembly through the process of conferring with our colleagues and with such advices as may be available in the gallery at very short notice. That is not a desirable way of dealing with legislation generally and it is not a desirable way, I would think, in normal circumstances, for private members' business either.

But, Madam Temporary Deputy Speaker, we have considered, we believe comprehensively, the amendments put forward today. We believe that this will achieve desirable objectives. We have perused the eminent advice of Mr Crispin, the Director of Public Prosecutions. I believe that the case he makes for change is convincing and that argument has been addressed in the amendments.

The banning of transmission of X-rated videos is a matter that the Liberal Party has long supported and has argued for every time this issue has been raised in the Assembly. We will not resile from it now. We will support the amendments because we believe that they achieve that objective and are in accordance with the wishes of the majority of members of this community.

However, Madam Temporary Deputy Speaker, I indicate that in future we would wish to have a little more time to consider these matters properly. We will certainly not accept on a long-term basis, either from the Government or from members of other parties in the Assembly from time to time, a procedure whereby matters are put before us at very short notice and we are expected to consider things with possible long-term deleterious complications to the rights and position of citizens of this Territory.

MR MOORE (12.14): Madam Temporary Deputy Speaker, I have been sitting here wrestling with the newly circulated amendments and the other proposed amendments and changes to the Bill that Mr Collaery has put forward. I think this is what I would call an "each way bet" Bill. Perhaps I should clarify that first. There are some very important things about possession of child pornography which I accept. I think that is a quite sensible amendment to the Crimes Act. I support that wholeheartedly and I congratulate Mr Collaery for bringing that forward. I have no difficulty with that. I understand that all members here concur with that and are happy to congratulate Mr Collaery on bringing that forward.

The part that concerns me is the amendment whereby it will suddenly become an offence to send an X-rated movie interstate. At this stage I must say that it is difficult to tell just where that offence would occur as far as members are concerned, and I am not privy to that information. It seems to me, with the plethora of amendments and amendments to the amendments that we have had today, that it would be appropriate for us to agree in principle with what Mr Collaery is trying to do as far as the possession of child pornography is concerned. I am quite content in doing that. But I still have problems with what he is trying to do in terms of aiding and abetting interstate offences.

I think Mr Collaery is trying to get his each way bet this way. He can say to people, "Look, I am a great civil libertarian because I have ensured that people can read or see what they want to". However, he can then move to a different position. He can go to the people who are opposed to X-rated videos, who write to us constantly from Chinchilla and other places in Queensland, and say, "Look, it is a terrible thing that you are allowing people to see the sort of things they want to see in the privacy of their own bedroom". He can put several other arguments about the morality of the national capital and the fact that we are

the X-rated capital of Australia. As Mr Stevenson said a short while ago, we also are about to be the prostitution capital and the drug capital. He can use all these emotive phrases which are easy to throw off the tongue and which will influence a small number of people.

The reality is that not enough explanation has been given as to what this Bill will achieve, apart from the points that I have made quite clear that I am happy about, accept and agree with. These amendments upon amendments upon amendments that are being thrown around at the moment are entirely inappropriate and I think it is appropriate that this Bill be adjourned at the detail stage. It is very much a backdoor method of putting the X-rated video industry entirely out of business in the ACT and it is exactly - - -

Mr Stevenson: No, not in the ACT, throughout Australia.

MR MOORE: Mr Stevenson interjects, "No, not in the ACT, throughout Australia". I take his point that it may have an impact as far as the ACT goes, but it certainly will not have an impact in Australia. New South Wales has X-rated videos banned. If Mr Stevenson wants to understand what that means he should go to Kings Cross. He will find that he can buy an X-rated video at any stage. He will find not just X-rated videos but violent pornography.

Mr Duby: Child pornography.

MR MOORE: And child pornography. What he is doing and what Mr Collaery is doing by this move, as I read it, and as I understand his amendments upon the amendments, is pushing us to a position where X-rated movies will be pushed underground. As soon as they are underground we will have the same as they have in New South Wales. It is there to see; you only have to walk into Kings Cross and go into one of those shops.

I did it myself because I wanted to know whether it was true because I had heard stories. There was no difficulty whatsoever in walking straight into one of those shops and asking, "What do you have? Have you a catalogue?" getting the response, "Yes, I have a catalogue"; and saying, "Can I see what you have? I am not interested in this. I am interested in something with a bit more punch". Before you know it, bang, there we are.

It is not difficult to get other than non-violent pornography in New South Wales. You will find that exactly the same situation will arise here as a result of the sort of things that are being presented today. They are the sorts of matters that we have to consider. They are the sorts of matters upon which we should base this decision, not make a quick ad hoc decision on an amendment that has been written now and is going to have a major impact on the

spread of the very thing you are trying to stop. The very sensible thing you have in the first part of the Bill is going to be totally undermined. It is going to be totally undermined by what appears to me to be the prohibition stance in the rest of the Bill.

MR COLLAERY (12.20), in reply: Madam Temporary Deputy Speaker, I sympathise with Mr Moore and other speakers. The fact is that the procedures of this house are the ultimate cause of our problems at the moment. Members foreshadow detailed amendments after they have moved a Bill, and governments do so at the same time, and you are not allowed to speak to your detailed amendments until the in-principle stage is finished. If the amendments have been produced after the presentation speech you have to sit, like I do today, and go through the speculation on the floor because you are not able to explain the detailed issues and what is going on.

In future I will seek leave - I suggest this to other members; I have learnt from the Clerk - to make a statement so that I can explain what I am doing. I saw Mr Jensen attempt to give a detailed explanation of his amendment and he was put down because it was out of order. We need to look at the procedures of the house.

MADAM TEMPORARY DEPUTY SPEAKER: Just a moment, Mr Collaery; that is a reflection on the Chair. It was not the correct time to do it. I would like you to withdraw that.

MR COLLAERY: Madam Temporary Deputy Speaker, I mean no reflection on you, of course. What I am saying is that we need to look at the procedures of this house. It is certainly no reflection on your ruling, if there was a ruling.

Madam Temporary Deputy Speaker, it would have helped if members had had my presentation speech to hand because I said very clearly there that considerable difficulties had been involved in drawing the provision. I mentioned that the sale of videos interstate would in contract law apparently take place in the ACT where the act is not illegal. I mentioned the provisions of the Commonwealth Crimes Act. The problem, Madam Temporary Deputy Speaker, is that I want to explain it to members and I cannot see more than Mrs Nolan listening.

MADAM TEMPORARY DEPUTY SPEAKER: Order! Could I have a little bit more silence in the house. It is a bit difficult for Mr Collaery to be heard.

MR COLLAERY: Then people vote and they are not sure where they are.

Mr Kaine: It could be, Bernard, that we are already convinced and do not need to hear any more. Has that occurred to you?

MR COLLAERY: I accept Mr Kaine's comment. He wants to listen. I said in my introduction speech:

> Indeed, interstate banning laws presumably reflect a democratic vote and, accordingly, it is not appropriate for this Territory to undermine the will of our compatriot States.

If my colleague Dr Kinloch were here, he would surely support this, because he has often said it in our party room. The States have been critical of this jurisdiction; they have defamed us month in, month out nationally. I went on to say that it is now up to the States to bite the bullet, because none of them ban possession. This provision that is before you now will have no effect because it says:

> A person who transmits an article or substance to a person in a State or another Territory knowing that the possession of that article ... is prohibited.

To the best of my knowledge - we have oft stated it in this house and I have had advice from the Government Law Office - the only State that marginally bans possession is Western Australia. It certainly does not enforce that law and you can see the ads for X-rated movies on the "What's On in Perth" when you get to Perth Airport. It is time the States, who are wallowing in their hypocrisy, had the challenge and gauntlet put down to them. So, if members would listen they would know - Mr Moore in particular would know - that this will operate only if a State brings in a law banning possession.

MADAM TEMPORARY DEPUTY SPEAKER: Order, please, members! Could we just have a little quiet.

MR COLLAERY: Just go around the States, I invite my colleagues. Will Victoria ban possession of some of the 30 million X-rated videos? Will Tasmania? Will South Australia? Perhaps Queensland may.

Mrs Nolan: What about Western Australia?

MR COLLAERY: Western Australia has an ambiguous law which has not been enforced, on my advice, when I was formerly Attorney. I concede, and I am grateful to the Attorney for his comments, that the original draft of this was seriously awry. I am also grateful for the assistance of the Director of Public Prosecutions, who pointed out the large range of unintended effects the provision as originally drafted for me would have had.

This provision now has been narrowed right down and Mr Jensen, in his wisdom, has foreshadowed an amendment which narrows it right down to one article, an X-rated film. That is all he seeks to make this provision relate to. Therefore, it will not relate to drugs, as I wanted it to.

I wanted it to relate to interstate drug trafficking, although that may overlap with some other laws. I am not going to press the issue or go to the wall on it. I simply state that it is time the interstate critics of this Territory learnt that they have to bite the social bullet. Let us see whether those governments, who are constantly flicking this issue onto us, will ban the possession of millions of videos in their jurisdictions. Unless they do that, the offence is not caught up.

I trust that that explains the matter to Mr Moore's satisfaction. It certainly does not in any way force any articles underground. Any State that wants to ban possession of them will have to look at the consequences of that and attend to that issue themselves. Having responded to that, I thank members for their comments on the child pornography issue. As I indicated in my presentation speech, the advice available to me when I was Attorney was that there were paedophile networks in society and that Canberra was not excluded from it.

MR SPEAKER: Order! Members, this is getting ridiculous. There are more people standing than there are sitting. Would you please resume your seats.

Mr Moore: That is because of the way it has been done.

MR COLLAERY: Mr Moore says that it is because of the way it is being done. The fact is that there was a presentation speech that explained this issue quite explicitly. I explained that this would affect only those States that moved to ban possession, and I will wait to see those wallowing, hypocritical States move to ban possession of them.

I am a bit worried about Mr Goss, but we will see what happens there. When he bans possession he will have to go out through the suburbs, get into suburban homes and grab those X-rated videos, will he not? Quite frankly, this provision is here now to say to those States who have been defaming us month in, month out in the national press, "There now is scope for you to change your laws so that there is a law on the statute books". Until that happens, it is very difficult to see whether there could be a prosecution or any action under proposed section 151A.

MR SPEAKER: Mr Collaery, I just quickly comment on the fact that you challenged the procedures of this Assembly. It is quite open to members when they are suggesting amendments to caucus with other members before they present them on the floor, or provide a brief written explanation with the amendment. So, I do not take lightly that challenge that you issued.

Mr Collaery: Mr Speaker, it is news to me that one can circulate a brief written statement with amendments. I am pleased to hear that and I will do that in future.

MR SPEAKER: Of course, it is commonsense. That concludes the debate.

Question resolved in the affirmative.

Bill be agreed to in principle.

Detail Stage

Clauses 1 and 2, by leave, taken together

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

POSTPONEMENT OF ORDER OF THE DAY

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

> That order of the day No. 1, Executive business, be postponed until a later hour this day.

HUMAN RIGHTS AND EQUAL OPPORTUNITY BILL 1991
Detail Stage

Clause 2

Consideration resumed from 19 November 1991.

MR STEVENSON (12.30): Mr Speaker, I am scheduled to speak on this matter. The matter was scheduled for this afternoon and I do not have my papers here at the moment. Would someone else like to speak on the matter?

Mr Collaery: Mr Speaker, I, like Mr Stevenson, am caught out too. I again stress the difficulties at the moment in managing procedures in the chamber. I wish to comment throughout the detail stage on this Bill. I also am waiting for my papers to be brought down.

MR SPEAKER: Mr Berry, there seems to be a lack of advice in advance to members on this.

Mr Berry: No, they were aware that we were going this way.

MR STEVENSON: Mr Speaker, could I seek leave to extend private members' business until 1 o'clock?

MR SPEAKER: You may seek leave, but whether you will get it or not is another thing.

MR STEVENSON: If that is the case, I seek leave to extend private members' business until 1 o'clock.

Leave not granted.

MR STEVENSON: Mr Speaker, I move:

> That so much of standing and temporary orders be suspended as would prevent Mr Stevenson from moving a motion to extend private members' business.

Motion (by **Mr Berry**) agreed to:
That the question be now put.

Question resolved in the negative.

Question put:
That the clause be agreed to.

The Assembly voted -

AYES, 16	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.
Clause 3

MR COLLAERY (12.36): I think it is reprehensible to have a piece of legislation of this nature brought on at 30 minutes' notice when I am on my feet dealing with other business. It is totally inappropriate.

Mr Connolly: I take a point of order - relevance.

MR SPEAKER: If you would like to move a motion to suspend the sitting, Mr Collaery - - -

MR COLLAERY: What occurred today was endless caucusing, Mr Speaker.

MR SPEAKER: Mr Collaery, you need leave to speak, first off. Would you seek leave of the Assembly to make a statement.

MR COLLAERY: I am speaking to clause 3 and I am saying why clause 3 should not be discussed yet.

MR SPEAKER: Okay. Please proceed in that case.

MR COLLAERY: The fact is that this is a very large, compendious piece of legislation. Some whipping or caucusing was done on the floor whilst I was on my feet. In good faith, my colleague Mr Jensen agrees. I have not time, from the time Mr Berry puts the proposition on the floor, to effectively consider the implications of it. Here we have clause 3 being considered when I have not received my papers, organised to be prepared for the debate. I just heard criticisms of the fact that I have been doing the same thing on the floor with amendments which were circulated at least a half an hour or an hour in advance of when they were due to come on.

Mr Speaker, Mr Berry did speak to me about whether we would have what Mr Stevenson wanted or whether we would have the human rights Bill. I thought we were still pursuing the in-principle stage of that Bill. I believe that Mr Berry should do the right thing and let this matter go. You cannot ramrod this type of legislation through in this fashion.

MR KAINE (Leader of the Opposition) (12.38): Mr Speaker, in connection with the debate on clause 3, I am afraid that I have to agree with Mr Collaery. I was unaware that the Government intended at this time to continue with the debate on this Bill. The daily business paper is quite clear; it has a time on it. After 2.30 pm there will be questions; then we will do other business and then we will get onto this Bill.

It is unreasonable to expect people to come here and debate a Bill when they are not prepared for it, particularly a Bill which the Government has entitled the "Human Rights and Equal Opportunity Bill". If the Government intended to do this, then they should have made it quite clear to all members of the Assembly that that was their intention. I, for one, knew nothing of it. I believe that to proceed to debate this when members are not prepared to do so is unreasonable. It will do this Assembly and the community no service whatsoever. I suggest that if Mr Berry is serious about this he should move that the house adjourn until this afternoon's session.

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

Sitting suspended from 12.39 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Aidex - Costs

MR KAINE: I preface my question to Mr Connolly as the Attorney-General by saying that I have noted Mr Connolly's remarks in connection with what is happening at Aidex and this is not a politically biased question. Can the Minister tell us what it has cost for extra police to take care of the problem at Aidex? Secondly - and he may prefer to pass this on to somebody else - can he estimate the loss of revenue to the Territory through people being kept away from Aidex by the unruly element that is causing all the trouble out there? I know that there are some elements that are not unruly.

MR CONNOLLY: I think the events of the last few days have clearly vindicated the view the Labor Government put in the last debate on Aidex that Aidex does not generate revenue or income for this town, that in fact the holding of this arms exhibition in Canberra is a net cost to the revenue. The last estimation - and Mr Kaine would appreciate that it is very much an estimation - is that there will probably be a cost to the public purse of in the order of $250,000 to $300,000 in police resources and court resources. Police overtime is at a massive level because we have had to put every available police officer out there to keep the peace. We are in a situation where at the moment we have had 24 police members injured, seven of them having suffered broken bones.

It is a great disappointment to the Labor Government, which is committed to peaceful opposition to the arms exhibition, that a minority of individuals have chosen to act in a very violent fashion. We have expressed our abhorrence of the use of violence and the extreme hypocrisy of any individual who stands for peace but acts violently. There have been incidents such as the slashing of car tyres, which indicates that knives have been present, and the severing of a brake cable on a police vehicle. Had the police not noticed it and had someone got into the police van and attempted to move it, there would have been the predictable passive resistance in front of the van, possibly involving children, and there could have been loss of life.

I am told that only this afternoon there has been an attempt to tap into an ACTEW high voltage line and electrify the fence, which could have resulted in loss of life both to the protesters who were trying to do it and to security personnel.

It has been a massive cost to the Territory. Most of the businesses at Aidex are from out of the Territory. I reject claims that it would be a massive income earner for the Territory; rather, it is costing the public purse. I would like to say, though, as I have the opportunity, that on the brighter side at lunchtime today there was a

demonstration by a group calling themselves Women Against Aidex. They met by the War Memorial and paid their respects to women who lost their lives in war; they then marched into the city. That demonstration was supervised by the police, traffic arrangements were put into place, and the demonstration was peaceful and dignified. The organisers of the demonstration have publicly thanked Superintendent Rowley, the officer in charge of the particular AFP contingent.

We have seen a peaceful and dignified expression of opposition to the arms sales. The police have supervised the demonstration and have defended the rights of individuals to express their views. I am sure that Mr Kaine, even though he may disagree with the views being expressed, would also respect people's right to express them. That demonstration occurred peacefully, the police and demonstrators cooperated in a peaceful manner, and there has been a public appreciation of the police role by those demonstrators.

I can only implore anyone involved in the demonstrations to keep that peaceful approach. We can then have a peaceful exhibition of opposition to the arms sales and not the mindless violence that has so far marred the exhibition and cost the taxpayer of this Territory a significant amount.

MR KAINE: I ask a supplementary question. It has to do with the second part of my question. Whether one agrees with Aidex as an exhibition that we would like to have in Canberra or not, it has been said that there has been a considerable potential loss of revenue to our economy. That can come in two ways, of course: One is by people being frightened away and not coming in the first place; the second is that some element of that defence business is centred on Canberra. A figure of $10m has been placed on that. I wonder whether the Government has any indication as to whether that is a reasonable figure.

MR CONNOLLY: That $10m figure is not supported by the smallest shred of evidence available to the Government. It seems to be concocted simply for propaganda reasons. I think the most significant aspect of this is that, when we expressed the view that there would be no further Aidexes, it was said that other States would be falling over themselves to host a future Aidex. As far as I am aware, no other State or Territory has expressed any enthusiasm for hosting this type of event, because of the obvious massive cost of maintaining law and order. It is clearly a drain on the public purse of whatever jurisdiction chooses to hold it.

As to the Federal Government choosing to host a future Aidex on Defence property, which I have heard Sir William Keys suggest will be the way forward, I can only say that, if the Commonwealth Government wants to do that, let the Commonwealth Government pay the cost of maintaining public security and not make it a burden upon the ACT taxpayer.

Aidex - Sir William Keys' Comments

DR KINLOCH: My question follows along the same line. I thank Mr Connolly for what he has just said. In connection with the Aidex exhibition, there have been some very negative comments by Sir William Keys about the Assembly in general and the ALP Government in particular. Have you responded to Sir William Keys or are you planning to respond, and in what ways?

MR CONNOLLY: I must say at the outset that I have the highest respect for Sir William Keys and his efforts for many years as national president of the RSL and for the work he did for the veteran community in this country. However, I said yesterday to the ABC that I thought his comments were stupid, and I stand by that. They were provocative, they were not helpful, they were insulting to this Assembly.

It is significant to note that the view the Government took against the future use of ACT facilities for arms exhibitions was endorsed by all parties apart from the Liberal Party. So, it is not simply a Labor Government view; it is a view that was supported by the Residents Rally, by Mr Duby, by Ms Maher, and, of course, by Mr Moore. I am sorry; it is difficult sometimes to keep up with the groups in this chamber.

Mr Duby: You have never been good at numbers.

MR CONNOLLY: I will leave that comment, Mr Duby. Sir William Keys' statement that the ACT stands to lose a lot is just not borne out in view of the fact that nobody else wants this exhibition, the massive cost in maintaining security, and the fact that, I gather, it has simply not been as successful as he thought it was. I respect Sir William Keys' view; but on this he is simply wrong, and his comments attacking the ACT Government are simply silly. I am confident that the ACT Government's view, supported by a number of members of this Assembly - and, I note, by the *Canberra Times* in its editorial - that we want Canberra to be seen as a centre of learning, of excellence in aspects of administration and industry, and not as a centre for an international arms bazaar, is a view that is shared by the overwhelming majority of the Canberra community.

Health Budget - Monthly Reports

MRS NOLAN: My question is to Mr Berry in his capacity as Minister for Health. When will the October figures regarding the health budget be available to Assembly members? Have you instructed your departmental officers and the Board of Health to supply them forthwith?

MR BERRY: I answered this question yesterday.

Mr Humphries: You did not answer it yesterday; you have never answered it.

MR BERRY: I answered this question yesterday, before it was even asked. That is how far ahead of these people I am. If Mrs Nolan had been listening - I think she was listening, although it was late in the evening - she would know that I am mindful of the Assembly's motion in relation to this matter. I gave an undertaking to the Assembly that when I receive those figures I will supply them in accordance with the resolution.

I might just go over a couple of the issues that affect this matter. I said to the Assembly in the course of debate on this issue a few days ago that the Assembly's decision was a matter of gross interference in the management of the board. Board members have expressed concern to me. They have also, as I understand it, expressed some concern to other members of the Assembly about what they deem to be gross interference in the role that is laid down in the legislation passed by this Assembly and, incidentally, supported wholeheartedly by the members of the Alliance Government.

It was quite depressing to see this marvellous turnaround on a decision they had made not a year ago. They gave the board the right to manage our health system, and now they have started to take away that right. They have decided that they want to have a say in how the board manages its budget. They want to interfere in the way the board manages its budget.

Mr Jensen: Mr Speaker, I raise a point of order under standing order 118(a) or (b). I believe that the Minister is now debating the issue. In the interest of proceeding with question time, I hope that the Minister will draw his answer to a close in accordance with that standing order.

MR SPEAKER: Yes, thank you.

MR BERRY: I have finished.

MRS NOLAN: I have a supplementary question.

Mr Humphries: He has not answered the first one yet.

MRS NOLAN: That is right. The supplementary question is the second part of my question. Have you instructed your departmental officers and the Board of Health to supply them forthwith and, if not, why not?

MR BERRY: I chose to reduce the length of my answer before because after Mr Jensen's point of order there was a resounding "Hear, hear". I thought that meant that they did not want to hear any more about this issue.

Mrs Nolan asks whether I have directed my department to do anything about it. The answer is no. She asks me whether I have directed the board. I suspect that she means whether I have directed the board in accordance with the legislation. What I have done, which I am sure Mrs Nolan will appreciate as a manager, is that I have been in contact with the chairman of the board and I have informed him of this Assembly's views and my undertakings. He is aware of that position.

As I said last night, I am also very keen to ensure that this decision of the Assembly does not cause a riot among board members and a mass resignation. I am keen to ensure that at a critical period there is stable management of our health system. I have given the undertaking. I have said that the minute I receive those figures - or within 48 hours, I should say - I will supply the figures. I can do no more than that. What I will be doing is ensuring that at the same time I maintain the integrity of the board as a management body which was appointed by this Assembly. I think that is the responsible thing to do.

Tobacco Advertising

MR MOORE: My question is also to Mr Berry. I hope that we do not have a doublespeak answer. Quite clearly, Mr Berry has not asked the board to provide those figures. My question refers to a gazettal notice that was tabled yesterday, and I have given Mr Berry notice of it. Mr Berry has allowed an exemption to the tobacco legislation to allow product advertising of the John Player Special on a 1972 formula one Lotus motor vehicle for the National Capital Sprint. There are two concerns I wish to raise with Mr Berry. The first relates to the fact that he would allow the exemption. Secondly, the exemption was dated the twenty-second day of November, so Mr Berry signed it last week. The sprint was on 23 and 24 November and the exemption was not tabled until yesterday, 26 November, obviously not allowing the opportunity for this Assembly to move for disallowance. So, the first part of the question you understand. The next part of the question asks: Was that a deliberate move and are we going to see that approach again, where you allow the exemption without any time for us to debate whether it ought be disallowed or not?

MR BERRY: The vehicle Mr Moore refers to is a 1972 formula one Lotus 72. For those who do not know, that is a vehicle of historical importance and of international repute. I had a look at the vehicle when it was in Canberra. It is a fairly impressive vehicle and it has been lovingly looked after by its owner.

Mr Stefaniak: That is not the one you spun out in?

MR BERRY: No, that is not the one.

Mr Stefaniak: We did not drive that one, did we?

MR BERRY: No, that is not the one. You were not trying hard enough, Bill; that was your trouble. Its traditional colour and advertising scheme promote a particular brand of cigarettes - notice that I did not mention the name. It is in this form that the vehicle has raced in grand prix races around the world. The vehicle was brought to Canberra as part of the recent highly successful National Capital Sprint, and it was a major drawcard for the event, as those who went there would agree.

I agreed to provide an exemption for the vehicle to allow its display at the event as, quite clearly, the advertising on the vehicle is there in order to complete an accurate historical representation of the vehicle as it was raced. It was in its original livery. I am advised that there is no current sponsorship arrangement involving tobacco companies in relation to this car, and if that were not the case my decision, I think, would have been quite different. As to the particular brand of cigarettes - notice that I did not mention the name - not having had a look at the shops in recent times, I went to a shop to see whether that particular brand of cigarettes was still available. And, to my horror, they were; but that could be coincidental.

To seek to enforce the tobacco advertising ban in such circumstances, even to me would have seemed overzealous. I am particularly zealous about this issue. But many products and events have been used over many years to advertise and promote tobacco products, and we cannot just rewrite history. Many of these products, referring to the car, have a value to the people who fanatically support motor racing. In my view, it would have been inappropriate to censor or hide them because of their past association with tobacco products. It was a good example of a past racing car in very nicely kept condition.

On 31 October 1991 I received a request from the organisers for an exemption. The late gazettal of this exemption for the car is regretted. I understand why Mr Moore is concerned about it, but it was partly the result of difficulties in clarifying some of the details necessary for the preparation of the exemption. I needed to be satisfied in my own mind that there was no current sponsorship for the vehicle. I have to say, too, that part of the delay was because of my own reluctance to sign the exemption. I regret this matter. The car was in town for two days and on display, and it has gone.

MR MOORE: I have a small supplementary question that ties in with this. With the New South Wales Parliament considering the legislation, and there is a great deal of talk about very tight laws there, if their laws are tighter than ours and they set a date in 1995, will you also support pulling in line with New South Wales?

MR BERRY: I would want to have a look at that. I would not want to be hypothetical about what we might do in relation to the New South Wales legislation. I would want to have a look at it before I make any commitment.

Urban Services Budget

MR HUMPHRIES: My question is to the Minister for Urban Services. How much has been spent by the Department of Urban Services in the first five months of the 1991-92 financial year? How much does that represent of the total appropriated for the department for this year in the Appropriation Act?

MR CONNOLLY: I cannot give the precise amount today. My last advice was that we were on target, but I can no doubt provide more detailed information to Mr Humphries at a later date.

Housing Trust Computer System

MR DUBY: My question is also addressed to Mr Connolly in his capacity as Minister for Housing. I refer to the article in today's newspaper headlined "Trust computer tries to evict hundreds of residents". The gist of the article is that there was a computer error and quite a number of tenants wrongly received notices saying that they owed rent, and they were threatened with eviction. I remember the Minister's recent launch of that system, which I believe is responsible for that error. I ask the Minister to explain why the trust, firstly, installed and, more particularly, commenced operations on a computer system that cannot accommodate tenants paying their rent through the payroll deduction system, that is, automatically having the required rent deducted from their fortnightly pay and forwarded to the trust - a system that I believe some 15 to 20 per cent of Housing Trust tenants utilise.

MR CONNOLLY: We referred to this item late yesterday evening, in response to a statement Mrs Nolan made in the debate on the Appropriation Bill. All I can say in relation to the computer error is, mea culpa. It is an appalling mistake and should not have occurred. The trust have purchased a computer program that has been up and running in Victoria and represents the state of the art in Australia in terms of more efficient management of the trust stock. That same program, as adopted for local conditions, is being looked at by the Queensland housing trust and by some other State housing trusts.

One of the advantages, I was advised, was that it would remedy one of the longstanding problems of houses that are vacant. Mr Duby would be aware of the problem that, when a tenancy ends and a house is vacant for many weeks, the community understandably gets upset. The computer system, I was told, would remedy that situation. But, apparently, yesterday this machine went berserk and spat out some hundreds of letters to tenants, saying that they were in arrears when clearly they were not.

I have asked for a full report on why that happened. I can only apologise very publicly for the error. The trust has written to all affected tenants. I noted the comments of one identified tenant in the newspaper this morning, who expressed his outrage at this occurring. He was quite right in expressing his outrage. Tenants who have paid on a regular basis should not receive such a letter. If the error was because of a programming fault - that direct source deductions were not being correctly tapped in - I am at a loss to understand how that happened. As Mr Duby says, that has been a long-established practice.

I have asked for a report and when I get it I will give it to Mr Duby. All I can say is that I apologise. It should not have happened. It was inexcusable.

MR DUBY: I ask a supplementary question. I must point out that the Minister in no way answered the question I asked. Why did the trust commence operations on the system when they knew that it could not handle this facility? That was known from day one. That was the question I asked. We all acknowledge that it was a computer error. Why did the trust commence operations on a system they know cannot handle the procedure that is appropriate in the ACT?

MR CONNOLLY: I have apologised fairly profusely. Short of producing a stick and self-flagellating, I do not know what more I can do. Mr Duby makes an assertion of fact. I do not know whether his "facts" are correct. As I said, I have called for a report from my officials. I have said that I find what happened unacceptable. I maintain that view. When I get the report, as I said in relation to the original question, I will make the contents available to Mr Duby and this Assembly. I can do no more.

Aidex - Demonstrations

MR COLLAERY: My question is to Mr Connolly, and I enjoin him to give somewhat specific answers to this. Knowing that the Aidex exhibition was to be held as a major perceived commercial activity in the Territory, and knowing that the peace movement had well and truly advertised its intention to stop the exhibition, I ask Mr Connolly these specific questions: Did he seek police intelligence advice as to how or what was intended by those protesters? If he did receive that advice, did it include any reference to a

Socialist Workers Alliance action group planning the protest? If he did not seek police intelligence from the excellent services available to him, why did he not do that and attempt to use the good offices of his left wing Government to negotiate a truce and an arrangement, as an open consultative government would? Further, has Mr Connolly - - -

MR SPEAKER: Mr Collaery, I believe that you are debating the issue.

MR COLLAERY: He likes big questions, Mr Speaker. He has not objected.

MR SPEAKER: I am. Please ask a precise question.

MR COLLAERY: I have noted your objection, Mr Speaker.

MR SPEAKER: I apologise, Mr Collaery! Please get on with it.

MR COLLAERY: Further, I ask Mr Connolly whether, unlike the instructions I gave the police, he authorised the use of police dogs this morning? Is he aware that at 0800 hours or thereabouts a person was bitten, on my advice? I assure the house that it was extremely painful.

Mrs Grassby: I will tell you what: If they were bitten by you they would need to go to the doctor straightaway.

MR COLLAERY: It depends on who bites you, Mrs Grassby. The person who took the bite, I am advised, is one Anthony Kelly. Will the Minister undertake to determine how, in this day and age, police dogs are biting citizens - peaceful protesters, as that person claims to have been - sitting on the road at the junction of Randwick and Flemington roads?

MR CONNOLLY: Mr Collaery made four points, I think. It is sometimes hard to tell. His first two points related to police intelligence. He would well understand that no government will confirm or deny any matters in relation to police intelligence passing between a police force and a Minister. That is a clearly established practice in all governments - State, Federal and territorial. I say no more on that.

He then asked questions about negotiations between the Government and the protesters. I can certainly confirm that, from the very outset of the planning for these demonstrations, there have been extensive discussions between the Government, my office in particular, the organisers of the protest movement and the Australian Federal Police. There has been an Australian Federal Police liaison operation ongoing for some time between the police and the protesters, and separately there have been discussions between my office and the protesters.

It has always been understood that the Government respects the right of people peacefully to express their dissent. The police respect the right of people peacefully to express their dissent, and I am sure that every member of this Assembly respects the right of people peacefully to express their dissent. In all the discussions that had been ongoing up until Sunday, the understanding was that the protesters would be afforded every opportunity to assemble on the roadway opposite the gates, to assemble in force, to chant, to express their views, to wave their placards, and to make their presence felt.

Moreover, the police had negotiated with the organisers of the demonstration that a picket would be allowed at the gate itself - a picket in reasonable numbers - so that people could peacefully say to persons choosing to come to the exhibition, "We would prefer that you not do this because we are opposed to the sale of arms". People could then peacefully decide whether to proceed or withdraw. Those were the negotiations; they have been going on for weeks.

Unfortunately, the organisers of the demonstration have not been able to control an extremist element. Unfortunately, violence has been shown. We have negotiated in good faith. The police have negotiated in good faith. A women's anti-arms fair demonstration this afternoon from the War Memorial to the city was very peaceful, very dignified. The police diverted traffic, and the organisers of that protest have publicly thanked the police officer in control.

Mr Collaery: Have you met with the Socialist Workers Alliance?

MR CONNOLLY: I have met and spoken with the organiser of the demonstration. This group Mr Collaery is bleating about I have not met. He then asked questions about a biting incident. I must say that the only biting incident I have been briefed on is the incident that occurred on Monday, I believe it was, when a female police officer was bitten by a demonstrator. I also understand that she had two ribs cracked. That situation is appalling. Seven police officers have required major medical attention; they have had limbs or bones broken. It is unacceptable in a civilised community that persons who are there to keep the peace and, fundamentally, to protect the right of citizens to dissent are being beaten up.

In relation to Mr Collaery's question about whether I have investigated this particular biting incident, my position has been consistently that, if there are complaints about the conduct of the Australian Federal Police in the handling of these demonstrations, there are mechanisms in place. There is the Ombudsman's office and people can complain through there.

The other position the Labor Government has maintained throughout is that it will not seek to interfere in the operational discretion, under the Act and under the agreement this gentleman negotiated with the Commonwealth, which provides that we cannot direct the police on operational matters. It will be a sad day when governments intervene on police operational matters. That is the path of Queensland.

I recall Mr Collaery bleating some weeks ago about getting the police to investigate some wild accusation against a member of the first Labor Government. This is the man who likes to use the police for political purposes when he can get away with it. It is improper. Throughout, we have taken the entirely proper approach of saying that we do not interfere in operational matters. If there are complaints about operational matters there are mechanisms to deal with them.

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

LEGISLATIVE PROCESS
Discussion of Matter of Public Importance

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

> That Bills are passed through the Assembly in such short time as to restrict or prevent fair democratic process, as evidenced by the fact that in the next 23 days there are approximately 60 Bills to be considered, including 30 Bills yet to be introduced.

MR STEVENSON (3.03): This Assembly is here supposedly to represent the people of Canberra. Leaving aside the fact of its being unconstitutional, how on earth is it able to represent the will of the people of Canberra and allow Canberrans the democratic right to know what is happening if Bills are ramrodded through this Assembly so fast that not even the members of the Assembly have time to read them?

The suggestion that we are going to pass another 60 or so Bills before Christmas is absolutely appalling. One wonders whether the Assembly would be prepared to move that extra sitting days be included, perhaps up to Christmas Eve. Who knows? We might pass No. 60 or whatever it is at 11 o'clock on the night before Christmas Day.

Ms Follett: I will be here.

MR STEVENSON: Rosemary Follett says that she will be here. The point is not so much whether members will be here when Bills are rammed through the Assembly, but whether the public have any notice of them or have the opportunity to seek notice of them. We well understand that the members of this Assembly do not know the names of all the Bills that are currently before the Assembly. What about the people in the community that have not the faintest understanding about most of what we do in this Assembly? That is why I think broadcasting the Assembly on the radio - for a start question time, but then expanding it - would be an excellent idea. People would have an opportunity to hear when Bills are introduced and so on.

How is it that we are prepared to force Bills through this Assembly without giving the people of Canberra an opportunity to know what is happening? I know that Mr Berry says that the Bills are urgent or something, but that is only in his consideration. I am sure that the majority of people do not believe that the Labor Bills are vital. After all, we have done without whatever they are for a great deal of time. Why is it supposedly necessary now that we force these Bills through by Christmas?

What about the opportunity for members of the Assembly to consult with members of the community and organisations and to let them know about Bills we think are important? Where does that opportunity go when Bills are rammed through at this speed? What about the opportunity for those groups and individuals to go along to their legal advisers, to their members, and ask what they feel about the proposed new laws that are before the Assembly?

The important thing about Bills is that once they are enacted they become law, and people are penalised regardless of whether they knew that that was a law or not. It has been held for a long time in Australia and England that ignorance of the law is no defence. Could it be that, because of the some three million laws that have been passed in Australia since Federation, that will become a defence? Will it be held, "If you did not know that it was there, how on earth could we charge you with an offence"?

After all, not even the members in parliaments in Australia know what Bills have gone through. In cases I have mentioned before in this house, not even the Minister signing the Bill knew what he had signed. There are other cases where Bills are drafted and not even the person drafting them understands fully what he has done. That may be an unusual case, but it has happened.

What about the opportunity for people to research the Bills that we let them know about, to go out and discover both sides of the argument? Where is the time for that when we ram through Bills in one day, two days, three, four, five, six, seven, and so on? As I have mentioned in this Assembly in the past, and we have surveyed it more than once, people in Canberra do not agree with Bills being passed unless there is a minimum of 30 days.

That is certainly not an extreme viewpoint by any means. I personally think it should be quite a lot longer. I would make it at least two months, perhaps three months, for most Bills, so that members, people in the community and others have an opportunity to know what is happening.

Nevertheless, the large majority of people in Canberra do not agree with what is being done at this precise time in this Assembly - that Bills are being rammed through. As I said, some 30 are yet to be introduced. If the members of the Labor Party have their way, and they are their Bills, they will all be passed before Christmas - or on 17 December, which I believe is our last sitting day.

In that short space of time members who do not even know what Bills are going to be proposed are supposedly going to represent the will of the people of this community and debate these issues intelligently. It is one thing standing up and saying a few words; it is entirely another being able to do the research, go through Federal *Hansards*, go through our earlier *Hansards*, research what people said on the same Bill when they were not in power. There are many times when people without power in this Assembly make certain statements, but when they have power you find that they make different statements.

It is fairly obvious that members of the Assembly do not have the time to read the Bills fully, to research the Bills fully, to consider them. The ALP members of the Assembly have advance notice of Bills that are going to be put through. They could have their staff research these things for months as part of their ideological program on what is going to be done with people in Canberra. But the other MLAs get these things sprung on them.

It is very common for the Labor Party, notwithstanding their repeated and false claim "We consult", to do things without any concern whatsoever for members of the Assembly. That was highlighted just before lunch when the Labor Party tried to bring on a Bill that is scheduled for this afternoon, the Human Rights and Equal Opportunity Bill 1991. Trevor Kaine said that he did not know anything about it. Mr Collaery said that he had heard about it only 30 minutes before the time the Labor Party was supposedly going to bring it on. I had been spoken to about three-quarters of an hour before that by Mr Berry, and I said that it certainly was not suitable for me; if we were going to have extra time, it should be for private members' business. After all, it is an extension of the morning.

All too often, the Labor Party does not take any notice of the views of other people in this Assembly - if they consult with other people in the Assembly, which, unfortunately, often they do not. In the last few days we have had case after case where certain members of the Assembly did not know what the Labor Party had proposed, particularly when it went against what we had already agreed upon.

One of the other important things to do with any Bill that comes before the Assembly that we have done consistently - and when I refer to "we" I mean my party - is to ask the people of Canberra what they want done with that Bill. The most valid way to find that out is by asking the people. Once you ask some 600 or 1,000 people in Canberra whether they agree or disagree with a particular Bill, if the majority is in the high sixties or above, it is very easy to tell what people want done.

Ramming Bills through, as these Bills are being rammed through, does not allow time for members in this Assembly or for parties to poll the people of Canberra and ask them what they want. Indeed, it allows precious little time for anybody in the media to hold telephone polls, polls on the television or polls in the newspapers. There is no time to do that, yet I suggest that that is about the most important thing we should be doing in this Assembly: Representing the people of Canberra. But no, that does not happen. Once again, we need time to research amendments to the Bill.

Mr Berry: Which Bill? You do not even want to pass the equal opportunity Bill. You do not want to debate it.

MR STEVENSON: Mr Berry continually says that I do not want to debate what is called the Human Rights and Equal Opportunity Bill. I can assure you that I do want to debate it. I can assure you equally, as you well understand, that I will vote against it; but I will make my reasons well known at that time.

Mr Berry: The White Aryan Resistance would not want an equal opportunity Bill.

MR STEVENSON: Mr Berry makes a comment about White Aryan Resistance or something - and he had a smirk on his face at the time. Once again, I find it deplorable that any member in this Assembly, be he Labor or otherwise, makes such outlandish and untrue statements. What we find again and again, with members of the Labor Party particularly, is that they continually try to denigrate instead of debating the issues.

Mr Berry: What about the anti-treason corps?

MR STEVENSON: If you would like to debate, Mr Berry, in open forum on a particular subject before the Assembly, let me know.

Mr Berry: Does Dennis Stevenson have any connection with the White Aryan Resistance?

MR STEVENSON: Once again, what we have is statements by Mr Berry that are designed not to debate subjects before the house, not to debate anything - - -

Mr Berry: Have you any connections with them? Tell us whether you have any connections with them.

MR SPEAKER: Order, Mr Stevenson!

MR STEVENSON: Relevance?

MR SPEAKER: No; if you would stop for a moment, I will be able to be heard. Mr Berry, please desist. Mr Stevenson, proceed.

MR STEVENSON: Once again, I think it is deplorable. The more people know about what goes on in this Assembly, with people trying to denigrate by association, the better they will be able to understand what is truly happening in this Assembly and what the Labor Party are truly on about: ideological, not democratic, goals.

One other important aspect of any Bill that comes before this Assembly is that we have the opportunity for a briefing with the drafters of the legislation, an opportunity to gain assistance with amendments to the legislation. I think it would be ideal if we were able to have time to send the Bills out to all those in the community we felt were interested and ask them to suggest any amendments; or with our own amendments, if they are major, if we could send them out to people in the community and ask them whether they agree with them.

That is democracy. What we get in this Assembly again and again, ramming Bills through, is not democracy. It is not giving people in Canberra an opportunity for consultation. It is not giving members in this Assembly an opportunity to do their job correctly. It is not democratic. I have brought the matter up twice before in this Assembly because Bills were being rammed through, and I will continue to bring it up while ever Bills are rammed through. I will go further, perhaps, and make sure that we amend the legislation so that Bills cannot be rammed through the Assembly without fair and democratic consultation with the people in the community, whom we should represent but usually do not.

MR BERRY (Minister for Health and Minister for Sport) (3.18): I want to touch on a few things that will take me only a couple minutes. I do not want to avoid a discussion of the no-name Bill - the Bill that will eventually be named the Equal Opportunity Bill or something else. Mr Stevenson has introduced one private member's Bill a number of times. I will give some statistics on the Labor Party which demonstrate that what Mr Stevenson is on about is a lot of rubbish.

Between 13 February 1990 and 12 December 1990 the average time between introduction and date of passage was 21 days; between 13 December 1990 and 27 November 1991 the average time was 25 days. So, there is not much difference there. As for Bills introduced and passed in the same sitting

week, between 13 February 1990 and 12 December 1990 there were two; between 13 December 1990 and 27 November 1991 there were four - the Interim Planning (Amendment) Bill, which on my understanding was some sort of fix-it Bill to amend the interim planning legislation, the Rates and Land Tax (Amendment) Bill, the Rates and Land Tax (Amendment) Bill (No. 2), supported by members of this Assembly, and the Unlawful Games (Amendment) Bill introduced by Mr Jensen, which was basically about playing two-up on Anzac Day.

Those four Bills could be compressed into two minor ones and two Bills debated cognately. Using a Federal example, last week in the House of Representatives 22 Bills were guillotined in two days, one Bill receiving three minutes' consideration. Many exposure drafts have also been released.

Turning to Mr Stevenson's statistics, for the remainder of the year there are up to 46 government Bills, not all of which are considered essential; around 29 government Bills for introduction, 17 of which are being introduced this week. There are 10 in one package and two in others. So, there are 10 minor Bills in one package. Of those government Bills that are already before the Assembly, three packages of related legislation for cognate debate consist of seven Bills. Mr Stevenson has not complained significantly in the past. This is not a matter of public importance.

MR HUMPHRIES (3.21): I want to contribute briefly to this debate. It is quite clear that we have to be vigilant about the policies we adhere to when considering legislation and other business before the Assembly. I made comments about this this morning and I will not go over those comments again. I note that Mr Berry was comparing the ACT parliament's performance with the Federal Parliament's performance with respect to the time it took to consider Bills and the time it took to debate them. I was disturbed to hear that one Bill there received only three minutes' consideration. If the same party that did that in the Federal Parliament were to have a majority of members in this parliament, I wonder whether the same sorts of rorts would go on here. I sincerely hope not, but I do not express a view about whether it would happen or not.

I believe that the Assembly faces a major task with the many Bills that will come before it in the next few days. I give notice that the Liberal Party will not be considering Bills in haste. If it appears that more consideration is required, as happened twice today, when two Bills required more consideration than we had time to give them, we will be moving for the adjournment of those Bills or opposing them on the basis that they have not had the necessary time devoted to them to enable proper consideration by the Assembly.

Mr Stevenson has raised matters of concern which we all ought to be aware of. We ought to make sure that we are able to conduct ourselves properly as legislators, aware of the fact that there are only 17 of us and, therefore, fewer people to scrutinise individual Bills, and we are perhaps less interested than we would like to be, because of our greatly stretched commitments for time and other demands. It is essential that we be very careful of what we do in this place and ensure that there are no unjust or inefficient or inequitable laws passed because we have not had the time to consider them properly.

MR SPEAKER: There being no other speakers, the discussion is concluded.

SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION - STANDING COMMITTEE
Report and Statement

MRS GRASSBY: I present report No. 20 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. I seek leave to make a brief statement on this report.

Leave granted.

MRS GRASSBY: The report I have just tabled details the committee's comments on 10 pieces of subordinate legislation and 10 Bills and a government response. I commend the report to the Assembly.

TOURISM
Ministerial Statement

Debate resumed from 24 October 1991, on motion by **Ms Follett**:

That the Assembly takes note of the paper.

MRS NOLAN (3.25): At the outset I would like to endorse some of the comments Ms Follett made in her ministerial statement on tourism on 24 October and then use this opportunity to place on record some of my concerns regarding tourism in the Territory, in particular the question of funding, statements made by some aspiring politicians, and the lack of support by some others in this Assembly.

Referring to the ministerial statement, I was delighted to learn that the 1992 National Tourism Awards will be held in Canberra, and I support Ms Follett's statement that these awards should provide a significant boost to ACT tourism. I also place on record my congratulations and endorsement of the four commissioners newly appointed to the ACT Tourism Commission.

This is also an opportunity to endorse the Chief Minister's action in removing tourism from the Urban Services ministerial arrangements and placing the program with a more appropriate area of economic development. I have articulated that view and personally voiced my opinion on that issue to Ms Follett. I think it was a very sensible move and one that the industry rightly applauded. I recall articulating that view to the former Chief Minister back in December 1989, as a view that was representative of the tourism industry.

The success of the two local tourism businesses at the National Tourism Awards was a great achievement for both these attractions and the Territory. The ACT tourism industry has been particularly successful at the national awards for the last two years, and the industry as a whole is to be congratulated for its ongoing professional approach. The "Beyond the Triangle" promotion was a very good initiative by the Canberra Business Council tourism committee, and I particularly congratulate the executive director of the CVCB, Elizabeth Stewart. It was through her initiatives that that promotion got off the ground. It is a pity, though, that none of the members of the Assembly, with the exception of me, gave personal endorsement to the day and attended that very successful promotion.

At this point my accolades cease. I have on many occasions articulated grave concerns regarding the reduction of $1m in the tourism budget. I am also critical, and rightly so in my view, of the Alliance Government for not ensuring that the $1m was included in the tourism budget rather than remaining a one-off grant. I do not think that that did anything to endear it to the tourism industry either.

As a major employer of this Territory employing some 8,000 to 10,000 people, many of whom are young people, the industry should be given every encouragement, not see budget dollars removed, especially when other States and the Northern Territory are increasing their budgets. For example, South Australia received an increase in their tourism budget of almost $1.6m. I remind members that the South Australian tourism budget has gone from $15.8m in 1990-91 to almost $17.4m in 1991-92. That is a very big difference from the ACT tourism budget.

I am not going to speak at length on the funding issue. My views are well documented. However, I caution any political party or individual about doing what was recently announced in the *Canberra Times*, where a former tourism commissioner, no less, stated that his party would give the ACT Tourism Commission $5.1m a year between 1992 and 1995. That $5.1m, according to my calculations, is exactly what the commission received in the 1990-91 budget.

To lock the commission into the same funding for three years is ridiculous. It would be a considerable reduction in real terms and one the industry could not sustain. The commission must see increased levels of funding over the next few years. As I said previously, the industry is our major employer. It needs to be competitive with other States and the Northern Territory to attract additional visitors to our city, and reduced funding will not achieve this.

I have always supported a statutory authority for the Tourism Commission, similar to three that come to mind - the Western Australian commission, the Northern Territory commission and the New South Wales commission. It is unfortunate that when the commission was set up last year the industry's views were not considered. They also support a statutory authority. Although there are few sitting days left in this Assembly and drafting assistance is difficult to obtain, I hope that I will be able to introduce a Bill at the next sittings to give statutory power to the ACT Tourism Commission and accord our Tourism Commission the appropriate status. The commission must be given that appropriate recognition. As I said, the industry supports a statutory body. I hope that that will be achieved before the end of the year.

In concluding, there are a few other issues I could address, particularly in relation to the appropriateness of scarce marketing dollars. In particular, two campaigns come to mind, and they were referred to in Ms Follett's original statement. They are the Rupert Bunny exhibition and the dinosaurs exhibition. They are both brilliant exhibitions and are very successful and very popular. But they both visit Sydney and Melbourne, the catchment areas for a great number of our visitors. The Rupert Bunny exhibition came from Melbourne and goes to Sydney in February and the dinosaurs exhibition will visit nearly all the States, not only at a capital city level but also at a regional level, and also Auckland. It is my view that, when scarce marketing dollars are available, they could be better utilised promoting something that is unique to Canberra, not similar to what we can view in other cities.

I urge all to recognise the contribution the tourism industry makes, not only in industry payments but in kind. It is that kind that is very often forgotten. I believe that the ACT tourism industry has over many years made a significant contribution to marketing and promotion of this city. It has not always been an easy task for them, but in-kind payments have been quite considerable. Much more could also be said about closer links with sport, the arts and training. We have only to look at the enormous revenue Melbourne is currently raising from *Phantom of the Opera.*

My final words relate back to the commission and the announcement that at the next session of sittings I will be introducing a Bill that will give statutory power to the Tourism Commission. It will free the commission of bureaucratic control. That is not to say that I do not

recognise that staff in the commission are trying to do a good job, but I think it is very important that the industry's views are finally reflected in the appropriateness of that legislation. I urge all members to support the Bill when I introduce it at the next sittings.

MS FOLLETT (Chief Minister and Treasurer) (3.32), in reply: I would first like to thank Mrs Nolan for her very supportive remarks about the statement I made on the Tourism Commission. I think it is important that members express confidence in the Tourism Commission. It is a confidence that I certainly have. I believe that the commission and its staff are working extremely well to bring about the kind of efficiency and streamlining in their own operation that will be very much to the benefit of tourism in the ACT.

The newly appointed commission already have some runs on the board, and I think that is pretty impressive. For a body that had a pretty rough time when it came into being to achieve something early on indicates to me that they are working very well, and I thank Mrs Nolan for acknowledging that.

On the funding issue, we have been through that before. I simply remind members of what I said yesterday about the remarks of the chairman of the commission on marketing expenditure. Mr Brown said that the commission will spend a minimum of $1.6m on marketing this year. We have to bear in mind that $1.6m is what they spent last year, which indicates that they are making the efficiencies they need to make and obviously are managing to focus on their prime function - marketing the ACT.

I wonder whether Mrs Nolan has given any thought at all to the possible impact of Dr Hewson's GST package on the tourism industry. I wonder further whether that package has been in any way relevant to Mrs Nolan's desertion of the Liberal Party. If it was related, I would certainly forgive her for that. There is no doubt that Dr Hewson's package will be a disaster for the tourism industry, particularly in the ACT. If you look at just a few components of what he is offering, that becomes abundantly clear.

The most obvious impact is that all goods and services will have to pay a 15 per cent tax. In an industry such as tourism, which has a very high service component and a compounding service component, a 15 per cent impost would put a great many of the goods and services out of the reach of a large number of the prospective buyers. I think that is becoming more and more obvious to people within the tourism industry. Any advantage that they may get from the proposed abolition of payroll tax, which I remind you is only 7 per cent, would be very much outweighed by the imposition of the 15 per cent GST.

I remind members also that Dr Hewson intends abolishing the Federal tourism department and has made quite a feature of that in his statement. Again, not only will that mean a loss of jobs in Canberra, it will mean the loss of a major amount of money to the development of tourism in Australia, and I think that is a retrograde step. The only real concession I could find for the tourism industry in Dr Hewson's package was his promise of cheaper petrol prices. As we know, Mr Hawke has recently shot down that promise in flames.

To conclude, Mr Speaker, I think Dr Hewson's tax package would be very much to the detriment of the tourism industry and very much to the detriment of small businesses, in particular, in that industry. I hope Mrs Nolan shares that view. I am quite sure that the tourism industry will come to realise it and will react accordingly in due course. I thank Mrs Nolan for her comments.

Question resolved in the affirmative.

HUMAN RIGHTS AND EQUAL OPPORTUNITY BILL 1991
Detail Stage

Clause 3

Consideration resumed.

MR STEVENSON (3.38): The two major concerns with this Bill are, firstly, that it creates a Star Chamber and, secondly, that it removes our common law rights, or many of them. The principle of using tribunals to try people goes against what is natural justice from our rich constitutional heritage in Australia. It should be that, if you in this Assembly wish to make something an offence, then you should make it an offence before a court. Before a court, defendants have certain rights, certain protections; but it should be only a duly constituted court.

Courts were set up to follow certain rules, to ensure that justice is done. The objects of this Bill suggest that it is done to eliminate sexual harassment, to promote recognition and acceptance within the community of the equality of men and women, to eliminate discrimination, et cetera, some of which may well be laudable. But, if we in this Assembly choose to make things offences, why do we choose to do so outside the protections of a duly constituted court? I would appreciate someone answering that question. Why do we need to set up an alternative court system? That is exactly what we are doing with this sort of legislation.

Why is this sort of legislation introduced? During the debate on the Australian Bill of Rights Bill in the House of Representatives on 14 November 1985 Mr Smith from Bass, in talking about why that legislation was being introduced, what the motivation was for it, stated:

> It ignores our common law traditions. We are reacting to the whim of international socialist ideals, and legislating and regulating is not the way to proceed.
>
> ... ...
>
> This Bill is merely for the purpose of social engineering, and its role is bizarre. We have only to look at how the Human Rights Commission has gone off the rails, and we have had plenty of examples during the day of what has happened to that body.
>
> The real purpose of the Australian Bill of Rights Bill -

and this relates also to this and other Bills like it -

> must be to promote and entrench values, ideologies and lifestyles that are unacceptable to the vast majority of Australians.

Indeed, I ask: Where is the call from the community for such legislation? Where is the call by people to bypass our common law rights to - - -

Mr Berry: Women and children - you would not want to protect them, would you?

MR STEVENSON: Mr Berry refers to women and children. Mr Berry says that I would not want to protect them. Yet Mr Berry, along with his Labor Party comrades, has repeatedly voted against one of the most useful actions we can take in this Assembly to protect women and children.

Mr Berry: What about relevance?

MR STEVENSON: The rights of women and children are important. It is interesting to note that, after Mr Berry talked about women and children and I replied to his interjection, he said to the Deputy Speaker, "What about relevance?". I think it is perfectly valid, if Mr Berry wants to make interjections, that I reply to them. So, let us do it one at a time. If you wish to make interjections, I am happy to pick up some of them. But when you talk about protecting women and children, and it is a vital part of any legislation that applies to them, why do you protect not women and children but pornography, Mr Berry? Why is it that the Labor Party protects pornography instead of women and children?

Ms Follett: On a point of order, Mr Deputy Speaker: Mr Stevenson is straying badly from clause 3 of the Bill.

MR DEPUTY SPEAKER: He is talking about the objects of the Bill. Continue, Mr Stevenson.

Ms Follett: He is talking about pornography.

MR DEPUTY SPEAKER: You could probably stretch that to object 3. Try to stay a little bit away from pornography, Mr Stevenson.

MR STEVENSON: Yes, Mr Deputy Speaker. I think it is important, when someone calls for women and children to be protected, that he be seen to be concerned about it himself. It is certainly not something that Mr Berry or his comrades have taken any notice of.

One of the difficulties with this Bill and others like it is that it creates a Star Chamber. Not only does the commission investigate, it also adjudicates and prosecutes. It has discretions that are exercised administratively, not judicially.

Why is it, once again, that if we want to bring in legislation we do not do so under duly constituted protections under the legal system? This does not provide for natural justice. The objects of this Bill do not explain what will happen under the Bill. We all know that we have fundamental principles of law in Australia, and I quote a particular maxim. If one fails to understand the fundamental principles of law, then there is no end to the degree to which one can be deceived about what is right and what is wrong. There would be no end to the means by which one could be manoeuvred and duped into abandoning or surrendering one's rights.

Law governs all events and things that concern our lives. Clearly, a failure to have a practical understanding of the maxims of law would lead to grievous errors in its application - no less, though, than the errors resulting from one's ignorance of the principles of any other science.

This is the point I make. It would appear that there are not grave concerns from anyone else in this Assembly. Why is it that I am the only one here so far - and there will certainly be plenty of opportunity for other members to speak up; I guarantee that - to speak up for true individual rights that have been worked and fought for, that people have died for, for generations? It is all very well to listen to Labor ideology suggesting that people should have rights. Do we honestly believe that? Would Mr Duby believe that? Would Carmel Maher believe that? Would the Liberal Party members believe that, when the Liberal Party have a proud tradition of standing up for rights?

Ms Maher: This gives them rights. It guarantees them. It takes away discrimination.

MR STEVENSON: Carmel Maher says that this gives people rights. If it gives people rights, it certainly takes a great number away. How can it give you a right when it removes the right to legal representation? How can it give you a right when it will not allow you not to answer questions if the answers incriminate you? How does it give you rights if it compels you to present written documentation to the Assembly, no matter that that is privileged documentation?

Perhaps Carmel Maher has been along to a counsellor, a doctor, a church leader or anybody else that any of us might go along to for counselling. If the commissioner so chooses to declare that he wants that information, that he wants that written documentation presented, the person has no right whatsoever to protect Carmel Maher's or anybody else's rights. He is compelled to deliver that documentation. How does that give someone rights when we destroy so many rights?

When we look at members of the Labor Party giving people rights, I suggest that in the past they may well have done that; but many of the people they have in their group these days no longer do those things. Once again, we all know that they had a proud tradition of giving citizens' rights - the right to say no to objectionable legislation and other rights under citizen-initiated referenda - but those rights were taken out of the Labor Party national platform in the mid-1960s. Unfortunately, they no longer fight for people's rights, although they say that they do.

Question put:

That the clause be agreed to.

The Assembly voted -

AYES, 16	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Clause 4

MR COLLAERY (3.53): I move:

Page 2, line 24, subclause (1), omit "Human Rights", substitute "Discrimination".

This amendment relates to the definition of "Commissioner". The arguments of the Rally for this provision were advanced earlier in the debate. For economy of time, I do not propose to repeat them, other than to say that generically this Bill deals mostly with discrimination, as we argued. Ironically, it provides in textual terms greater space for the exemptions and discriminations that the law does allow. Society requires a balance and society does allow a certain level of discrimination, and we see all those provisions further on in the Bill.

MR STEFANIAK (3.54): Given that I have the same amendment, I am not going to reiterate the arguments I put last week in relation to the same point. This is a consequential amendment to what we hope will become the title of the Bill. I reiterate what I said earlier. The title should be the Discrimination Act, just as the Crimes Act is the Crimes Act. That is the rationale; if one looks up any sort of legal textbook one will see the rationale for this. This is what the Alliance Government was going to bring in and I think it should still be the case.

MR BERRY (Minister for Health and Minister for Sport) (3.55): The Labor Party will oppose this amendment. We would prefer the title "Equal Opportunity Commissioner". It is very clear from our point of view that "Discrimination" is not the appropriate title. This is a Bill about equal opportunity for all, and discrimination is a negative term, in our view. It would therefore be more appropriate for the title to be Equal Opportunity Commissioner instead of Discrimination Commissioner, as proposed in the amendment Mr Collaery has moved.

MS FOLLETT (Chief Minister and Treasurer) (3.56): I move as an amendment to Mr Collaery's amendment:

Omit "Discrimination", substitute "Equal Opportunity".

I believe that we can come to an agreed position on the title of this Bill. I am aware, of course, that members opposite believe that the term "human rights" is too broad and has a general application which is perhaps not reflected in this Bill. I understand their point of view there. I hope equally that they will understand my point of view and the point of view of many of the people consulted on this Bill. The term "discrimination", I believe, is negative and the title "Discrimination Commissioner" is also negative. It is a term that will put people off, and that is contrary to the intentions of the Bill; I know that it is contrary to the intentions of 16 of the 17 members of this Assembly.

I hope that we can come to an agreed position that, while not 100 per cent perfect for either side of the debate, at least reflects a reasonable compromise on the name of the commissioner and perhaps at a later stage on the name of the Bill itself. I believe that there is an important educative role for this Bill and for the commissioner appointed under the legislation. It is very important that people are not put off; but it is equally important, and I take the point made by members opposite, that people know what the Bill is about.

If, in your view, taking out the words "Human Rights" gives people a clearer understanding of what the Bill is about, then I am prepared to do that. But I hope that you are equally prepared to move a little and to accept that the word "discrimination" may be seen as negative and may put people off. It may also not be a very accurate description of what the Bill is about. It goes beyond discrimination. If you had made it "anti-discrimination" I would understand it a little better.

I put forward the amendment to Mr Collaery's amendment and hope that members will see it in a reasonable light. It is an important issue in dealing with the Bill and one where it is worth compromising just a little on the initial position that I and Mr Collaery and others have put in the course of debate. I commend my amendment to the Assembly.

MR STEVENSON (3.59): It is interesting to note that the Chief Minister says that the word "discrimination" has a negative connotation. If we look in the dictionary at the word "discriminate", we see, "To divide, distinguish, to observe the difference between, to select from others".

Mr Moore: Dennis, your dictionary is out of date.

MR STEVENSON: Mr Moore says that my dictionary is out of date.

Mr Moore: What year is it?

MR STEVENSON: It is a 1943 *New Twentieth Century Dictionary*, unabridged.

Mr Moore: Our language changes.

MR STEVENSON: Mr Moore says that our dictionaries change. This is the very reason why I ensure that I have one wherein the meanings have not been changed by those who would give different definitions to certain things, those who would say that discrimination is a negative thing, exactly as the Chief Minister said a moment ago. Indeed, it has come to mean a negative thing.

Why is the word "discrimination" held to be negative? What more valuable characteristic could any of us have in this Assembly than to be able to select correctly one thing from another, so that not all are the same? What more valuable

role could one have in life than to be able logically to tell the difference between things? Why is it that words are given bad meanings by those who would seek to change the definitions of words, those who would seek to change our thoughts? Why is this done?

C.S. Lewis in his book *The Abolition of Man* demonstrates that mankind has shared a basic set of moral assumptions across all recorded ages and nearly all cultures. These traditional assumptions include such values as justice, freedom, protection of children and respect for the old. Lewis sets out the dangers of abandoning these traditional assumptions in favour of rule by experts, in favour of those that would use doublespeak, those that would use meanings other than what the derivations of certain words mean.

I grant that in a society words can mean other things, and I have no difficulty with that. What I am concerned about is a situation where words are meant to mean the entirely opposite thing. I think George Orwell put it rather well. Finally, we have a situation where freedom means slavery, and anybody standing up and saying "I speak for freedom" is just as likely to be clapped in irons and carted away because that, at this time, means slavery.

The word "discriminate" is a valuable characteristic of all people - all the more so of members in this Assembly. It is interesting that Ms Follett would suggest that the word has a negative connotation, and indeed it does. I suggest that Labor Party members have more to do with that negative connotation than anyone else in Australia. That is unfortunate.

What we need is rights. We need words to be interpreted. They need to be interpreted so that they really mean what they say. In this clause, the definition of "premises" says:

(a) a structure, building, aircraft, vehicle or vessel;
(b) a place (whether enclosed or built on or not);

... ...

That literally means anywhere. It is very difficult to think of any place that is built on or not, and certainly it is a wide description of premises, which I may refer to later. Most people in the community reading the Bill would believe that "premises" simply means what most people hold to be meant by "premises", not what the interpretation is in the Bill. It is also interesting that the word "relative" is defined in this way:

> a person who is related to the first-mentioned person by blood, marriage, affinity or adoption;
>
> ... ...

It is a very interesting suggestion that we can have a relative created by affinity.

I shall briefly mention why I speak on these matters. Mr Berry made certain comments earlier about why I do that. I do it because we have marvellous rights in this country. We have democratic rights in Australia, the like of which I do not believe is seen in any other country in the world. If we do not watch, if we do not fight for those rights, we will lose them, particularly under legislation such as this.

Mr Berry asks why I stand, why I fight, why I bring these amendments in. I do that to honour what is the right and responsibility and obligation of every member in this Assembly, that is, to debate on the floor of the house the important points you believe in. No-one here today will be able to say that this Bill does not destroy common law rights. Perhaps what will happen is that those ideologues that would force it through, knowing full well what it does to human rights, how it prevents people from discriminating, would prefer to ignore the matter. They would prefer not to discuss these rights, some of which I have mentioned and many more of which I will mention during this debate.

I stand to discuss this matter because it is vital. I care about rights as much as or more than anybody else in this Assembly. I have shown that not by talking about it but by doing it.

Ms Follett: The League of Rights.

MR STEVENSON: Once again the Chief Minister sings out, "League of Rights". It is an interesting point. Normally the Chief Minister does not make such comments herself. On this occasion she has made an exception, if you like, perhaps because she does not agree with what I say. Yet, what I have done in this Assembly again and again is to try to represent the majority expressed will of the people of Canberra, to try to represent as best I can the constitutional law that has protected Australians for many years.

What can be more representative of people than polling people and asking what they want - - -

MR SPEAKER: Order! Relevance, Mr Stevenson.

MR STEVENSON: There are a number of definitions which are perfectly valid within this explanation. However, what we should do is knock out this clause, as we should knock out all the others.

Ms Maher: Then we would not have a Bill.

MR STEVENSON: Carmel Maher says, "Then we would have no Bill". Indeed, we would not have a Bill, and we should not have this type of legislation. It is not okay and if I, in talking to these various matters today, can get other people in this Assembly to look honestly at the matter, to look at what they are going to vote on, to look at what they are going to pass into law, notwithstanding the fact that there is Federal legislation on this matter, then I consider it to be worthwhile.

MR MOORE (4.09): I shall make a very brief comment, Mr Speaker. Firstly, in response to this concept of discrimination that Mr Stevenson espouses, thanks to his 1943 dictionary, if he were genuine and principled and honest about his language he would go back to Chaucer, because that is the first record we have of the English language as we recognise it, and make sure that he used words in the same sense that Chaucer did. That is not too difficult for him because he can get a modern *Oxford Dictionary*, put together on historic principles, and actually find out how the words were used at that time and continue to use them.

The reason he is wrong is that English is a living language. One of the great beauties of English is that it allows us to use and develop words in such a way that they can take on new meanings. In doing so, a great deal more colour and flourish is added to our language and to our ideas. It allows us to develop our ideas, and that is the problem Mr Stevenson has. He wants his ideas back in 1943. He would be at war, of course.

Dr Kinloch: Who with?

MR MOORE: The question is which side he would have been on at the time, but that is something we ought not to discuss. The point is that in this case the word "discrimination" is quite appropriate in distinguishing exactly what it means. What is appropriate here is that the commissioner be given a very positive title, a title that recognises a position that people will be prepared to go to, a title, to use a very modern term, that we would perceive as user friendly.

If Mr Stevenson wanted to go back to a set of 1943 dictionaries and try to work out what "user friendly" meant before computers, I am afraid that our language would not cater for that. If we stay with his principles - or even if he did - he would not be able to deal with computers at all because he would not allow that whole new part of our

language to be developed. Having worked for seven or eight years as head of an English department in a school, I am delighted that I never had anybody with Mr Stevenson's ideas working for me.

MR DUBY (4.12): A rose by any other name still smells as sweet. We are arguing over a matter of semantics here. I give notice that I support the Act being known as the Discrimination Act. Secondly, I support the amendment moved by Mr Collaery that the commissioner be known as the Discrimination Commissioner. We have just passed clause 3 of this Bill. Clause 3 says that the objects of the Act are to eliminate discrimination. In Part II, clause 7 states:

> This Act applies to discrimination ...

It does not mention equal opportunity; it does not mention human rights, which is a totally different issue from the one this Bill addresses. Some members have commented that the word "discrimination" has negative connotations. What is wrong with that? Discrimination is a very negative thing, and people should be able to acknowledge that. The concept that we should have a user-friendly title simply does not make much sense to me. According to that argument, the Taxation Commissioner would soon become the public revenue collector, or whatever.

Mr Jensen: The rebate agency.

MR DUBY: Precisely. The fact is that discrimination is not a very nice thing, and the average man or woman in the street, when they wish to complain about being discriminated against, whether it be for sexual matters or for physical matters or whatever, will want to know where to go. The logical place to go when they want to complain about these matters that are adversely affecting their lives will be the discrimination commissioner.

I am happy to support the amendment, and I look forward to seeing in place a discrimination commissioner.

Motion (by **Mr Berry**) put:

> That the question be now put.

A vote having been called for -

MR SPEAKER: Mr Stevenson, I overrule you there. Let us be fair dinkum about this.

Mr Stevenson: On a point of order, Mr Speaker: Is it not within my power to call a division?

MR SPEAKER: It is not within your power to call a division. It is in your power to ask for one. I have ruled that in this circumstance you are clearly outnumbered and I think it is wasting time. If you insist upon it, you certainly can have a division.

Mr Stevenson: Not for this one.

Mr Duby: That is a bad precedent, surely?

MR SPEAKER: Thank you for your observation, Mr Duby.

Mr Duby: I raise a point of order, Mr Speaker.

MR SPEAKER: Mr Stevenson has withdrawn his objection in this case.

Question resolved in the affirmative.

MR SPEAKER: The question now is: That Ms Follett's amendment to Mr Collaery's amendment be agreed to.

Question resolved in the negative.

MR SPEAKER: The question now is: That Mr Collaery's amendment be agreed to.

Question resolved in the affirmative.

MR COLLAERY (4.15): I have a further amendment to clause 4. I move:

> Page 5, line 4, in subclause (1), insert "'Religious Body' includes an assembly of persons congregated for the advancement of a belief in one or more supernatural Beings, Things, or Principles and the acceptance of canons of conduct in order to give effect to that belief but does not include an assembly of persons whose sole aim is to advance a belief or supremacy which would otherwise be contrary to the purpose and intent of this Act.".

I draw attention to the use of the words "religious practice" at clause 11 in relation to employees. I note that there has been a minor alteration there. I bring members' attention quickly to clause 32, which refers to religious bodies, and is included in Part IV of the Bill, Exceptions to Unlawful Discrimination.

Looking at clause 32, a religious body may have as a very strong aim the advancement of a belief in male supremacy, perhaps, and many women argue that much of the Christian religion supports male supremacy. I am not going to touch those delicate chords in this debate. There is an increasing conjunction with certain religious sects, particularly in the United States, which ostensibly practise a form of Christianity but have a very heavy overlay of white male supremacy.

It is my view that we need to put into the Bill a definition of "religious body". I commend the definition that has been advanced to members; but the Attorney has pointed out to me that it would be easier, and probably

preferable in all the circumstances, to have further consultation with the mainstream religious groups, if I can use that term, before we decide upon a definition. Mr Duby has quite accurately pointed out to me that the definition advanced in my amendment is monotheistic, even though in my view the Acts Interpretation Act would cure that. The singular imports the plural, as some of the lawyers here know.

That amendment has come from the High Court's decision in Church of New Faith v. Commissioner for Pay-Roll Tax, reported in Australian Law Journal Reports, Volume 57, 1983, at page 785. Justices Wilson and Deane referred to the following indicia as aids in determining what a religious body is:

(i) that the particular collection of ideas and/or practices involved belief in the supernatural, that is, belief that reality extended beyond that which was capable of perception by the senses;

(ii) that the ideas related to man's nature and place in the universe and his relation to things supernatural;

(iii) that the ideas were accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in particular practices having supernatural significance;

(iv) that, however loosely knit and varying in beliefs and practices adherents might be, they constituted an identifiable group or identifiable groups.

There was also comment that the test of a religion was not one which confined the concept to theistic religions. I am reading - I hope members are listening to this - from a test case involving Scientology.

I believe that we need to come back to this issue at a later date. I accept the Attorney's request that I defer this amendment. I wish to flag it at this stage and sound a warning about misuse of the provision. In accordance with those comments, I seek leave to withdraw my amendment.

Amendment, by leave, withdrawn.

MR STEVENSON (4.21): We were talking about discrimination and the definition of "discrimination" and where one finds one's definitions. I mentioned that I found the definition in a 1943 dictionary. I think it is worthwhile to mention that that is not the only dictionary I have. I also have a

fairly modern two-volume *World Book Dictionary* that is excellent. I was very happy when our ACT Assembly Library purchased a full set of the *Oxford English Dictionary* at a cost of some $1,400. It provides a marvellous opportunity to find the definition of any word you would ever want to find.

It is not that I disagree with words becoming living things; I have already said that. What I said is that I do not think they should be changed for ideological purposes. The definition of "discrimination" has taken on a negative flavour, and I think that is unfortunate. Mr Moore said that, if it was 1943 I was operating in, I would have been at war. I can assure him that I would not have been at war; I would have been in Switzerland, where they had not any wars for 100-odd years up to that time because they have citizen-initiated referenda. They have some rights there.

MR SPEAKER: Relevance, please, Mr Stevenson.

MR STEVENSON: Mr Berry has asked me to repeat what I mentioned earlier about why I speak. I will make the point again, as Mr Berry may have been out of the room when I said it a little while ago.

Mr Berry: "I will block this legislation if I can", he said.

MR STEVENSON: I am with you if you are going to block the legislation, make no mistake. Let me say that this legislation is not okay; it is destructive of people's rights. Indeed, I would do whatever is within the bounds of what we can do in this Assembly to block it. Make no mistake whatsoever about that. Mr Berry, you are looking the other way. Do you have any doubt whatsoever that I would do what I can to bring it to the attention of members in this Assembly that this legislation is not okay and that we should all block it? The fact that it has been agreed to in principle is not the point. I will stand here and present as many points as I can to do with why we should block, stop, vote against, get rid of, dump, file in the wastepaper basket, adjourn until 1999 or anything else - whatever I can.

Mr Humphries: Are you opposed to this, Dennis?

MR STEVENSON: Mr Humphries asks whether I am opposed to it. Well said.

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

> That the question be now put.

Question put:
That the clause, as amended, be agreed to.

The Assembly voted -

AYES, 16	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.
Clauses 5 and 6, by leave, taken together

Question put:
That the clauses be agreed to.

The Assembly voted -

AYES, 16	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Clause 7

MR COLLAERY (4.28): I am very proud to be supporting clause 7; I believe that all members would be. It is the latest drafted compendium of discrimination bases in Australia. It is, on its face, a simple list of categories; but I can assure members that in each of those categories a great deal of work and research has been undertaken by all who contributed to the Bill. I hasten to put on the record our great satisfaction in the Rally with the inclusion of status as a parent or carer, and no doubt others will wish to make comments about other categories such as impairment.

Knowing that the *Hansard* of the debate will be regarded very closely by students at law schools and scholars the length and breadth of this country, I want to put on the record the very innovative and modern definition of "impairment" at page 3 of the Bill. That is the provision that takes into account HIV-AIDS issues. This is an excellent way of doing it in a non-judgmental sense. I believe that ACT UP have finally got what they wanted. I am sure that there will be national media focus on this aspect of the Bill in due course, and they will see that we have put down in clause 7 the grounds of discrimination. We have referred to impairment in a non-judgmental sense. If you go back to the definition of "impairment" at page 3 you see it all there in considerable detail.

Consideration interrupted.

ADJOURNMENT

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

That the Assembly do now adjourn.

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

Question resolved in the negative.

HUMAN RIGHTS AND EQUAL OPPORTUNITY BILL 1991
Detail Stage

Clause 7

Consideration resumed.

MR COLLAERY: The definition of impairment at page 3 includes "an intellectual disability or developmental delay". I congratulate the drafters and the groups who contributed towards the definition. That concept of developmental delay is very important in terms of autistic

children and autistic grown-ups and dyslectic children and grown-ups. Often their impairment is not discovered and their behaviour is mistaken occasionally by law enforcement authorities and others for insolence, for offensive behaviour, for diffidence and so on.

This provision will enjoin all, particularly in the court system, the police system, the judgmental system, to make sure that we think always as to whether a person's behaviour is not alcohol affected, is not drug affected, but is in fact a form of development delay impairment. It is a very modern definition.

Finally, Mr Speaker, the clause does not include social origin as a ground of discrimination. The 1951 refugee convention includes, in effect, persecution on the ground of social grouping. I believe that during the consultation phase of this Bill the Victorian Law Reform Commission suggested that a new ground, social origin, defined in terms of a person's past or present social class, source of income and occupation, level of education and residential locality, should be included.

Those elements, in my experience internationally, are often included as grounds by the United Nations High Commissioner for Refugees to judge a category group which needs protection. In historic terms, we all remember the burghers. We have seen levels of socio-discrimination against burgher types left behind after the decolonisation of Sri Lanka. I do not want to give current examples because that itself focuses unnecessary attention on it. I will give them from an historical basis.

All of those who have to answer, occasionally, to the appellation of coming from the boondocks are discriminated against, sometimes. There are terms like "westies" and "boondocks". I am sure Mr Duby knows others - - -

Mr Duby: Queenslanders.

MR COLLAERY: Mr Duby says "Queenslanders". Mr Wood is amused. Mr Duby meant that only in a jocular sense, I am sure. I believe that when we refine this Bill we should adopt the VLRC suggestion and have a good look at it. I do note that the Human Rights and Equal Opportunity Act, the Federal Act, covers social origin by implication because the International Labour Organisation convention deals with discrimination in respect of employment and occupation.

I say, particularly to the Labor members, that we should get back to discrimination on the basis of social origin because it does relate to employment and occupational issues. On the research available to me, some Canadian provinces - Newfoundland, Manitoba and Quebec - include that definition in their human rights legislation. It is no surprise that the Quebecois do include that in their law because, to use Dr Kinloch's language, which he would prefer, no doubt, as a scholar, that is a very

discriminating society. In Quebec the Quebecois have often been seen to be the people from the boondocks, the disadvantaged people. We have all heard of the Newfie jokes; so it is no surprise to us in this chamber to see that Newfoundland has adopted a definition of social origin.

Mr Berry is anxious to get through this Bill, but this is a very historic debate today and I think some of these things should be put down as - - -

Mr Duby: This is a typical lawyer's argument.

MR COLLAERY: It is not a lawyer's argument. I am setting the basis for Mr Connolly's next set of instructions to the Law Office, or the Chief Minister's. They are well aware of these issues; but they should be converted to instructions, if they are not already, for more work is needed.

The final explanation that has to be made relates to the definition of imputed characteristics that you see in subclause 7(2). That again reflects recommendations received from the AIDS action group. They wanted us to consider imputed characteristics for all grounds; that is, someone discriminates against me because I am thin, drawn and haggard and they think I have AIDS. If we had not drawn it to include a person who presumes a person to have a characteristic, they could dodge the discrimination law. A landlord could say, "You two people who want accommodation look thin, drawn and haggard, and I am going to impute some virus to you and you are not getting accommodation". That is the imputed characteristic test. That is very modern, up-to-date drafting, and it covers a ground that was recommended from other jurisdictions.

MS FOLLETT (Chief Minister and Treasurer) (4.38): I move:

> Page 7, line 17, paragraph 7(1)(k), omit the paragraph.

Paragraph (k) states:

> any other attribute prescribed for the purposes of this definition.

Mr Speaker, we are moving to delete this paragraph in accordance with the Scrutiny of Bills Committee report on the issue. In the report on this piece of legislation the Scrutiny of Bills Committee referred to this particular part of the Bill as a Henry VIII clause. Apparently, it was Henry VIII who perfected the technique that is embodied in this clause. The clause contains a power to alter the principal legislation without going back to the parliament. There probably was a slightly overzealous approach by us in the original drafting of this Bill.

Mr Speaker, I do commend this amendment to members. I do not believe that it diminishes the Bill in any way. If there is a further ground of discrimination that people believe should be added to the Bill, then that would be a substantive matter, and it is a matter that should be dealt with by amending the Act rather than having a kind of omnibus section in the Act. I trust that members will support the amendment, because I think it does strengthen the Bill and adds to its integrity.

MR STEVENSON (4.40): I had the same amendment. Obviously, it should be deleted. If the Government desires that other attributes should be included in this list, it should do so by a process that comes before the Assembly, not via yet another administrative decision.

Ms Follett: That is what I just said.

MR STEVENSON: Ms Follett says, "That is what I just said". She also said that including this showed a little overzealousness in drawing up the Bill. Indeed, much of the Bill shows overzealousness in the extreme. This is just one thing that Ms Follett is prepared to take out. She did say that it should be taken out. It is a pity that she did not mention that many others should be taken out.

The community, obviously, should have the right to determine or to know about what matters are going to be changed. This particular list of characteristics or categories or obligations, et cetera, is what the entire Bill is about. This is where it says what you can do and what you cannot do. It does give an interesting insight into the drafting of it. Mr Everingham, of the Northern Territory, in the House of Representatives on 14 November 1985 also referred to a similar situation when he was debating the package of rights Bills before the Federal Parliament. He said:

> It gives an insight into the collective mind of the Labor Government which drafted and presented these Bills. Genuinely democratic governments do not legislate on what a free citizen can do. Democratic governments tell us what we cannot do and then let us get on with living our own lives. But this Labor Government is obsessed with regulating the lives of the citizenry, right down to telling us whom we may employ and how we may address our fellow citizens and, finally, by delineating just what rights we have through this legislation, removing basic human freedoms which the Anglo-Saxon world has built upon since the days of Magna Carta.

Mr Everingham talked about the gobbledegook doublespeak which is used in various of these areas that I spoke about earlier. He mentioned that the CIA, instead of

assassinating people or murdering them, terminates them with extreme prejudice. Such is the sort of doublespeak that we get, particularly in bureaucracies. He went on to say:

> This means that, under the legislation now before the House, any citizen can be dragged before a human rights commission of this Government's choosing and be compelled to answer questions under oath, produce documents and provide written information under signature - all without the benefit of legal counsel ...

For what? For any of the offences that are listed in clause 7. Mr Everingham continued:

> But it gets stranger. The human rights commissioners who will exercise these incredible powers over the people of Australia will not necessarily be learned men and women of experience in jurisprudence.

Ms Follett: I take a point of order. Mr Speaker, could I point out to you that clause 7 is quite specific? It relates to the attributes of people who claim to be discriminated against. They are spelt out there in detail and they really have not been the subject of Mr Stevenson's remarks for quite some time.

MR SPEAKER: I must say that I have been a little lost in following your argument, Mr Stevenson. I ask you to draw it closer to the mark.

MR STEVENSON: We are asked to make all these things offences.

Ms Follett: No, they are not. You have the wrong clause.

MR STEVENSON: We are on clause 7, right?

Ms Follett: Yes.

MR STEVENSON: If you discriminate against any of these things, you commit an offence.

Ms Follett: No, that is not what it says.

MR STEVENSON: That is what we are talking about in the present. Mr Everingham continued on what the ideology behind this type of attribute is. He said:

> Rather, they will probably be doctrinaire socialists applying theoretical human rights by claiming a sole right of knowledge of what is best for all of us.

Mr Berry: Mr Speaker, I take a point of order. This is a bit off the track.

MR SPEAKER: Again, Mr Stevenson, I would ask you to address the clauses as they come up.

MR STEVENSON: Mr Speaker, I can understand the Labor Party's reluctance to have me speak on these matters. What is the basis of this clause? Why is it there? Why are things listed there? Why are there things not listed there?

I must be able to speak on these things by quoting people's ideas on what the basis of these things is. That is certainly not too wide an argument; but I take your point. If I find myself straying on any particular point and not talking to the particular matter, I will certainly try to get back on the track. But these points are important. The reason behind this legislation and these individual clauses, I feel, is vital. This clause says:

> This Act applies to discrimination on the ground of any of the following attributes ...

I am told that if I talk about any of these attributes I am not talking about discrimination on the grounds of any of these attributes. I find myself at a loss to understand that. That is what subclause 7(1) talks about. It says, basically, that you are not allowed to discriminate on the various grounds. Where is the objection to talking about those grounds as grounds upon which you are not allowed to discriminate?

If this sort of legislation had been put through six years ago it would have been spoken against very strongly by members of the Liberal Party, and indeed it was. That is exactly what happened at that time. They spoke well about it. As I mentioned, I was reading Mr Everingham's statement on what he thought about it. He said that the qualifications of someone selected to oversee these particular attributes probably would be an Australian Labor Party membership ticket and a file of newspaper photographs showing them mouthing slogans or fighting with policemen in a street demonstration or a picket line. I wonder whether there is any relevance to what has been happening at Aidex recently. Perhaps Mr Stefaniak might have some thoughts on that.

It is one thing to say that we should have these attributes listed, but when we list those attributes it is very important to look at the sort of people that we are going to have deciding whether or not you or anybody else discriminated against someone. This whole Bill, as I have said before, should be done away with. This particular clause, like all the others, should be deleted; but if it is going to be allowed the amendment should be made. If there are going to be any changes in this Bill, it should be done not by more administrative action but by the Assembly.

Amendment agreed to.

MR STEFANIAK (4.49): Now that that paragraph has been omitted, I move:

> Page 7, line 17, Paragraph (1)(k), insert the following paragraph: "(k) membership or non-membership of an organisation of employers or employees.".

Mr Speaker, I certainly hope that the Labor Government is not thinking of appointing as any of these commissioners some of the people that Mr Stevenson refers to who were outside Aidex. I think many of the other people would probably have trouble being in the same room with them. I do not think they would necessarily do that.

This particular amendment, Mr Stevenson, is a crucially important one when one talks about grounds of discrimination. We have the logical grounds listed here: Sex, sexuality, transsexuality, marital status, pregnancy, race, religion, political conviction, impairment and association. Quite correctly, the Chief Minister has taken out a huge general coverall which could have been quite disastrous, and I think all members would be concerned about that.

But there is one very obvious ground which is quite crucial and which should be put in here. It is a fundamental human right and it would give this legislation some balance. This legislation will be very much lacking in balance if this amendment is not passed. The amendment, of course, is to include membership or non-membership of an organisation of employers or employees. This is crucial, Mr Speaker. People in Australia should not be forced to join an organisation of employers or, indeed, an organisation of employees, that is, a trade union. It is absolutely crucial to fundamental freedoms.

This is not the Soviet Union under Stalin; this is meant to be a democratic Australia. This is not Nazi Germany under Hitler; this is supposed to be a democratic Australia. This is not Kampuchea under Pol Pot; this is not South Africa; this is not Chile; this is not Eastern Europe when the communists held sway there. This is Australia, and people should be free to belong to a trade union or an organisation of employers or to choose not to join such an organisation.

In clause 15 of this Bill, Mr Speaker, there is some mention of professional and trade organisations; but it does not include the right to join or not join. It properly defines "organisation" as an organisation of employers, a business organisation, or employees, a trade union, and it states that it is unlawful for an organisation or the management of an organisation to discriminate against a person who is not a member of the organisation by refusing or failing to accept that person's

application for membership. It then talks about the terms and conditions on which the organisation is prepared to admit the person to membership. So, you cannot discriminate against someone joining an organisation.

Similarly, once someone is a member of an organisation, they cannot be denied access or be given limited access to any benefit provided by the organisation. They cannot be deprived of membership by varying the terms of membership or be subjected to any other detriment on the basis of what is currently in clause 7.

But it says nothing about a person who might not want to join an organisation being given that fundamental human right to say, "No, I do not want to be a member of that trade union" or, "No, I do not want to be a member of CARD or any other business organisation". That is a fundamental human right. It is a fundamental right of a democracy and, if that is not put in this legislation, then this legislation is sadly lacking; this legislation is not human rights legislation.

There is room in this legislation for substantial discrimination if that is not put in there, because there will be nothing to stop a closed shop arrangement whereby someone has to join a trade union, otherwise they will not get a job, or someone has to join a body of employers, otherwise they are going to be ostracised and blackballed as well. Those things happen, and they have happened in the past all too often in Australia.

In the industrial area in Australia there are restrictions being placed on a person's ability to exercise freedom of choice. Freedom of choice is a fundamental aspect of democracy. Accordingly, Mr Speaker, I think it is absolutely essential that this be put in clause 7, along with the other most sensible grounds such as sex, sexuality, pregnancy, race, religion and politics. If this is not put in, this legislation is very sadly lacking. I would commend the Liberal Party amendment to members.

MR BERRY (Minister for Health and Minister for Sport) (4.54): You heard Mr Stefaniak's speech; it is more about ideology than good sense. Mr Stefaniak obviously has not taken the time to examine this issue properly and to research the extent to which his amendment would affect us. The Australian Capital Territory (Self-Government) Act, section 28, which is headed "Inconsistency with other laws", says this:

> (1) A provision of an enactment has no effect to the extent that it is inconsistent with a law defined by subsection (2), but such a provision shall be taken to be consistent with such a law to the extent that it is capable of operating concurrently with that law.

It goes on to say:

> (2) In this section:
>
> "law" means:

(a) a law in force in the Territory (other than an enactment or a subordinate law); or

(b) an award, -

this is the most important part -

> order or determination, or any other instrument of a legislative character, made under a law falling within paragraph (a).

Mr Stefaniak went to great lengths to raise the old harum-scarum, reds-under-the-bed stuff, Stalin and all those sorts of things; but there are matters of fact in Australian history that cannot be ignored. Industrial relations in this country have a long history. One of the very first pieces of national legislation which affected industrial relations in this country was the Conciliation and Arbitration Act of 1904. That has been overtaken by the Industrial Relations Act of 1988, but most of the longstanding provisions of that Act remain in force in the Territory. As Mr Speaker would be aware, Territory awards are awards generally of the Federal commission.

Mr Stefaniak seeks to ensure that membership or non-membership of an association of students or a voluntary body is included in the Bill at clause 7. What he seeks to do is overturn that Federal law. The Federal law is very clear on a number of issues. It talks about reinstatement and all of those sorts of things, as Mr Speaker would be aware. I will not go into the reinstatement law, but there is power under the Federal Act to reappoint members of organisations. Unions have the power to take these issues to the courts and the courts can rule in favour of members of organisations. They cannot, of course, rule in favour of people who are not members of organisations in relation to reinstatement.

The issue of preference is an example which flies in the face of what Mr Stefaniak is attempting to do. Subsection 122(1) of the Industrial Relations Act 1988 says:

> The Commission may, by an award, or by an order made on the application of an organisation or person bound by an award, direct that preference shall be given, in relation to particular matters, in such manner and subject to such conditions as are specified in the award or order, to particular organisations, members of particular organisations or persons who have applied to become members of particular organisations;

Subsection 122(1A) deals with preference, and it says:

> The following matters are examples of the matters in relation to which it may be directed under sub-section (1) that preference is to be given:

(a) engagement in employment;

(b) promotion;

(c) regrading;

(d) transfer;

(e) retention in employment;

(f) taking annual leave;

(g) overtime;

(h) vocational training; ...

Subsection 122(2) says:

> Whenever, in the opinion of the Commission, it is necessary:

(a) for the prevention or settlement of an industrial dispute;

(b) for ensuring that effect will be given to the purposes and objectives of an award;

(c) for the maintenance of industrial peace; or

(d) for the welfare of society;

> to direct that preference shall be given to members of organisations or persons who have applied to become members of organisations as provided by subsection (1), the Commission shall give the direction.

That flies in the face of what Mr Stefaniak is trying to achieve. Mr Stefaniak is trying to prevent the commission from - - -

Mr Humphries: Those provisions say that it does**.**

MR BERRY: Mr Stefaniak seeks to overturn the Federal law. I heard Mr Humphries say, "If those provisions say that it does". This is the dark side of the Hewson package. I will not go into that; more on that later. This is the little grab bag of dark tricks in the Hewson package; it is not mentioned up front. This is, very clearly, a provision of a Federal Act which would be affected by the provisions which Mr Stefaniak seeks to achieve by his amendment.

Very clearly, Mr Stefaniak's amendment, if it were to be enacted, would have no effect because it would be inconsistent with the law which is defined in subsection 28 (2) of the Australian Capital Territory (Self-Government) Act, and because it, very clearly, would be inconsistent with the law prescribed federally, and we all know that the Federal law would take precedence.

It is very clear that Mr Stefaniak has chosen this course on ideological grounds; it is the old "knock the union" stuff. There are some people in this chamber who would be opposed to unions or union members having preference in awards or in law, or of any other sort. Whether they like it or not, those are matters of fact and they cannot be overturned by laws made by this Assembly. The Australian Capital Territory (Self-Government) Act specifically prescribes that prohibition.

Those who are legally trained would understand and agree with the argument that I have put. Those who wish to pursue an ideological argument, an anti-union argument, will disagree. It is an anti-union, anti-labour argument rather than an argument based in law. So, Mr Speaker, it makes sense for this Assembly to reject Mr Stefaniak's proposed amendment.

MR HUMPHRIES (5.02): Mr Speaker, I certainly did not expect Mr Berry to accept this amendment, and he has not disappointed me. I note that in the argument he put forward he did not actually argue the question of discrimination. This is a Bill about discrimination; it is a debate about discrimination. He was not prepared to consider the question of discrimination in the context of this debate.

In clause 7 of this Bill we are talking about acts of discrimination. The attributes form the basis of acts of discrimination which we are outlawing by this Bill - sex, sexuality, transsexuality, marital status, pregnancy, race, political convictions, et cetera. All those sorts of things are mentioned.

Mr Berry: It is an anti-union move.

MR HUMPHRIES: Mr Berry categorises it as anti-union. What Mr Berry is saying to the community and to this Assembly is that discrimination on the basis of membership of an organisation such as a trade union - - -

Mr Berry: No, I am telling you what the law says.

MR HUMPHRIES: Mr Speaker, what Mr Berry is saying is that discrimination on the basis of membership of a trade union or other organisation is a good ground for discrimination. People should be able to - - -

Mr Connolly: The arbitration commission has said that since 1903 - preference clauses.

MR HUMPHRIES: I will come to that. I am talking about the principle, Mr Connolly. We will talk about the law in a minute; I am talking about the principle of the matter. We are arguing the principle of discrimination here. If we found an Act of the Commonwealth somewhere else which allowed sex discrimination - were that to be possible, which I doubt; but if it happened - we would not hesitate to argue that it should not occur. I am arguing here that this sort of discrimination should not occur. In fact, I throw it back on the Labor Party. What is the in-principle basis for allowing people to be discriminated against on the basis of whether they belong or do not belong to a particular organisation?

This provision, I think, is one which needs to be argued on its principle, on its merits, and I have not yet heard any arguments from those opposite which justify the idea. Two people come to an employer for a job; one belongs to a particular union and one does not. Why should one get the job over the other?

Mr Berry: It is in the award. The law describes it.

MR HUMPHRIES: Why in principle should that be? Mr Berry has not given any in-principle reason. Mr Connolly apparently is going to speak on this matter and, when he does, he can give us a reason why this happens. Do not just say, "Oh, it is in a Federal award; we cannot do anything about that. It is in a Federal Act; that is the end of the matter".

I say that because, Mr Speaker, I do not believe that it will long be a matter for which Federal law overrides ACT law. The fact of life is that there are a number of jurisdictions, not just the Federal coalition in the Federal Parliament, which are moving away from these sorts of restrictive provisions. We know full well that if the coalition is elected at the next Federal election - the opinion polls seem to give it a good chance of doing just that at the present time - we will see a move against those sorts of provisions in this sort of legislation. Have no doubt about it. So, the issue has to be addressed in the ACT.

What is our stand on the question of discrimination on the basis of membership of industrial organisations, be they of employers or employees? I have not heard a single argument put forward yet by anybody to say that there is a good basis for discrimination against people who do not belong to trade unions. Let us hear what it is, and we will debate the merits of that argument.

MR STEVENSON (5.06): Mr Humphries put the case very well indeed.

Mr Connolly: You would support anti-union laws; that would be right. You are opposed to any other aspect of human rights but will have a bash at this.

MR STEVENSON: Mr Connolly says that I would support anti-union laws. That is false. What Mr Connolly says is that you must be in a union. There is a vast difference. Why is it that we get constant misrepresentation from members of the Labor Party? Mr Connolly, why do you not take the opportunity shortly to get up and argue the point, as Mr Humphries said, rather than make false accusations about what I would and would not do? I would no more dream of outlawing unions than I would dream of preventing people from having a say in government.

I think it is a vital thing. I have worked with small businesses, and I have seen the necessity - I have seen it grow. I have seen why people need the opportunity to form an association, or a union. I absolutely agree with it. But that does not mean that I think it should be taken over by ideological people who are going to use it not to benefit people and stand for rights but to destroy rights, as has been done often within the union movement. Some of them do an absolutely wonderful job. But would you suggest that this has not been taken far too far by some people?

I commend Mr Stefaniak for bringing this particular amendment before the house. Why, indeed, should people be forced to join a union? Why should they be forced to pay money - quite a lot of money - out of their pay packet each week to a union to support union activities even when they absolutely disagree with some union activities? Why should people be forced to give money to unions when the unions, in many cases, then donate money to the Labor Party to further their own ideological goals?

Mr Humphries correctly challenged the members of the Labor Party. He said, "I have not heard anybody say why the unions should be allowed to force people to join them and why people should not have the right to determine that for themselves". Yet, the best we can get from the Labor Party is misrepresentative interjections that do not relate to the amendment before the house.

Mr Humphries asked, "Why?". Mr Berry replied, "It is in the law; the law prescribes it" - the legal positivism idea that because it is there it is right. But Mr Humphries did not ask that. He asked, "Why should it be?", and Mr Berry gave no reason whatsoever. Mr Connolly certainly should be able to present at least the Labor case. It may not have much validity, but by all means let us have an opportunity to hear him. I would enjoy hearing Mr Connolly debate the specific reason as to why people should be forced to join unions. Let us hear what the reason is. Let us hear the debate against the amendment moved by Mr Stefaniak.

I think Mr Humphries was right when he said that such legislation will not be long coming in Australia. I certainly support the right of all people to join a union. Indeed, when I was a member of the New South Wales Police Force I was asked whether I wanted to join the police

association. There were some 7,000 police in it at the time. I asked whether it was compulsory. I was told, "No, it is not. There are seven people who are not members of the association". I looked at what the association's goals and objects were, and I supported them, and I joined the union. But, one of the reasons why I was prepared to join was that it was not compulsory. If it had been compulsory, I would have been most non-accepting of being forced to join a union.

Labor members in this Assembly purport - and I use the word advisedly - to be concerned about the rights of individuals. Yet, when it comes to an opportunity to include something in this social engineering Bill to actually give people genuine rights in Australia by removing undemocratic obligations from them, what do they do? They withdraw into their shells. So far, we have heard no-one speak on the matter; they just try to call people names.

I think it is a sad thing that the Labor Party resorts to name calling. Where are the statesmen of old that could argue on a particular point? Where are the people who had the interests of people in Australia at heart? I was talking to someone yesterday about the Labor Party. He said, "How can they possibly call it the Labor Party when there are so many people out of employment in Australia - when there are so many people that have no labour - while it has control?".

Mr Connolly: Mr Temporary Deputy Speaker, I rise on a point of order. It relates to relevance. We are debating Mr Stefaniak's amendment and Mr Stevenson is - - -

MR TEMPORARY DEPUTY SPEAKER (Mr Jensen): I think, with respect - - -

Mr Connolly: The Speaker has been drawing members' attention to relevance and I would have expected that, as the Temporary Deputy Speaker, you would do the same.

MR TEMPORARY DEPUTY SPEAKER: With respect, Mr Connolly, Mr Stevenson is talking about labour and employment, and that is related to unions, as far as I am concerned.

Mr Connolly: No, he is talking about the Labor Party. I would expect a ruling from you in line with the ruling of the Speaker earlier.

MR TEMPORARY DEPUTY SPEAKER: I have made a ruling, Mr Connolly, and Mr Stevenson is talking about labour and unions.

Mr Connolly: So, you are not prepared to direct members' attention to relevance, as the Speaker is, are you?

MR TEMPORARY DEPUTY SPEAKER: Mr Connolly, would you resume your seat, please.

Mr Connolly: I take it that you are not prepared to uphold the Speaker's ruling.

MR TEMPORARY DEPUTY SPEAKER: Mr Connolly, would you resume your seat, please.

MR STEVENSON: Thank you, Mr Temporary Deputy Speaker.

Mrs Grassby: Why do you not dissent from the Chair's ruling?

Mr Connolly: No.

Mrs Grassby: Well, why does he not move out of the chair and let us debate it.

Mr Connolly: It is a waste of time.

MR STEVENSON: The very name - - -

MR TEMPORARY DEPUTY SPEAKER: Order, Mr Stevenson! Resume your seat, please. Mr Connolly, that was a reflection on the Chair, and I request that it be withdrawn.

Mr Connolly: No; I said that it was a waste of time. My point of order obviously was a waste of time.

MR TEMPORARY DEPUTY SPEAKER: I know what you were talking about, Mr Connolly. I request that it be withdrawn.

Mr Connolly: On what grounds?

MR TEMPORARY DEPUTY SPEAKER: Because I believe that it was a reflection on the Chair, and I request that it be withdrawn.

Mr Connolly: Unless you can explain why - - -

MR TEMPORARY DEPUTY SPEAKER: Mr Connolly - - -

Mr Connolly: Mr Temporary Deputy Speaker, I asked you to follow a ruling of the Speaker made earlier in which he said that in this debate, because of Mr Stevenson's express wish to delay debate, he was going to strictly draw members' attention to relevance. You refused to do so, and, on sitting down, I said that my point of order was a waste of time. It obviously was.

MR TEMPORARY DEPUTY SPEAKER: Mr Connolly, I indicated that I believed that Mr Stevenson was being relevant to the debate, and I continue to adopt that point of view. In saying what you did as you sat down, you were, in fact, making an implication against my ruling, and I request that you withdraw that.

Mr Connolly: It was clearly a waste of time. You are not prepared to draw Mr Stevenson's attention to relevance, although the Speaker, when he was in the chair, was.

MR TEMPORARY DEPUTY SPEAKER: Mr Connolly, I am in the chair; you are not in the chair; and I request that you withdraw that.

Mrs Grassby: Why do you not move out of the chair and let us debate it?

MR TEMPORARY DEPUTY SPEAKER: Mrs Grassby, please!

Mr Connolly: I withdraw.

MR TEMPORARY DEPUTY SPEAKER: Thank you, Mr Connolly. Mr Stevenson, maintain relevance, please.

MR STEVENSON: Thank you, Mr Temporary Deputy Speaker. What can be more relevant to a debate about unions than Labor, or the fact that Labor does not stand, as so often we see from its policies, for - - -

Mr Connolly: Mr Temporary Deputy Speaker, I raise a point of order. We have again a rant about the Labor Party's policies on unemployment. Are you going to impartially uphold the Speaker's ruling about relevance, or are you going to allow Mr Stevenson to take this as a debate about the political goals of the Labor Party and consistently overrule me?

MR TEMPORARY DEPUTY SPEAKER: Mr Connolly, resume your seat, please.

Mr Connolly: Well, you are not prepared to listen to the point of order.

MR TEMPORARY DEPUTY SPEAKER: Resume your seat. You are implying that I am not acting impartially. I request that you withdraw that.

Mr Connolly: No, Mr Temporary Deputy Speaker, I was taking a fresh point of order after you had ruled. Mr Stevenson then began again saying that he thought it was relevant to talk about the policies of the Labor Party in relation to general employment issues. I then asked whether, Mr Temporary Deputy Speaker, you are now prepared to take the point of relevance, as the Speaker had previously.

MR TEMPORARY DEPUTY SPEAKER: I have already indicated my point of view, Mr Connolly, and I request that, once again, you withdraw the implication that I am not acting impartially.

Mr Connolly: No, I see no implication. I have asked you - - -

Mr Collaery: Mr Temporary Deputy Speaker, on the point of order: I rise to - - -

Mr Connolly: I withdraw whatever imputation you find in my point of order.

Mr Collaery: The leader of business in the house has not risen to support the Chair. I believe that you have asked Mr Connolly to withdraw often enough. I think we are getting a storm in a teacup.

Mr Connolly: I have withdrawn.

MR TEMPORARY DEPUTY SPEAKER: Yes. Mr Stevenson, please continue.

Mr Collaery: And I believe that Mrs Grassby's comments, Mr Temporary Deputy Speaker, are more offensive. She has been inviting you down onto the floor to debate it.

Mrs Grassby: I think that the way the house is going on is absolutely disgusting.

Mr Collaery: And those comments by Mrs Grassby are highly disorderly. Her comments, in my view, are far worse than those that you are debating with Mr Connolly.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (5.16): Mr Temporary Deputy Speaker - - -

MR TEMPORARY DEPUTY SPEAKER: I hope that you will be relevant.

MR CONNOLLY: Mr Temporary Deputy Speaker, I think that is a fairly inflammatory remark from the Chair.

MR TEMPORARY DEPUTY SPEAKER: I withdraw it.

MR CONNOLLY: Thank you. We will both retreat gracefully to our earlier positions. The debate this afternoon really is a furphy for this issue of discrimination legislation. As Mr Collaery said in his opening remarks in this debate, clause 7, which is what we are looking at, is a clause which has been very carefully drafted over a long period of time. Without wanting to reopen debates about the authorship of the Bill - because this is a Bill that has been worked on over a long period of time and a lot of people have been involved in it - it is undeniable that this clause has been the clause that public attention has focused on very heavily.

The whole process of consultation on this legislation and on what should be the grounds of discrimination has been focused on this clause, because it is basically the key to the legislation. Clause 7, which sets out the grounds, is the key to all that follows, and it has been pored over by members of the community with an interest in this matter. There has been no suggestion at any time that membership of a trade union or otherwise should be included in this clause. Nobody in the community has suggested that as a

change to the legislation. Mr Collaery, who earlier on waved around the extensive consultation documents, would, of course, confirm that. No-one suggested that.

This is a political stunt from the Liberal Party, which wants to have a debate about compulsory unionism. I was pretty much a contemporary with Mr Humphries at university, and I can recall, from my perspective at Adelaide University, that the ANU Liberal Club in the mid-1970s was leading the charge about compulsory unionism. The rhetoric that we heard then - that 1970s rhetoric from the ANU Young Liberals - is essentially what we are hearing today. It is a bit of a bash; it is a bit of a stunt - "We want to make some fiery speeches about compulsory unionism". It is totally irrelevant to this legislation.

Discrimination legislation or equal opportunity legislation or, as we prefer, human rights legislation, is on the statute books in most jurisdictions. Over the last decade, as this type of legislation has been developed, we have had Liberal governments and Labor governments in most parts of Australia. In no jurisdiction has anyone thought that this was a sensible move. That clearly indicates both the lack of any support in the community for Mr Stefaniak's proposal and the lack of any such suggestion in the community consultations. The fact that no other State has thought to do this must indicate to members that this is not a genuine contribution to the development of discrimination legislation. It is a political stunt by the Liberal Party to wave the old flag at compulsory unionism - nothing more, nothing less.

As Mr Berry very succinctly pointed out, the amendment, if passed, would be meaningless, because in many awards there are preference provisions - preference, not compulsory unionism - and it is clearly the case that a law of the Territory which is inconsistent with an award is of no effect, just as a law of a State which is inconsistent with an award is of no effect. So, nobody in a State has thought that this is a sensible move. Equally, I would suggest, it is not a sensible move for this Territory because it would be mere puff and rhetoric. Preference provisions in awards would continue to have effect.

Clearly, the issue of union membership is one of the more sensitive issues in the field of industrial relations. We saw the Greiner rhetoric of union bashing, designed to whip up a few votes before the last State election. It was not very successful from Mr Greiner's point of view, given the result. But it is Liberal Party strategy, nonetheless. We know that it is political rhetoric.

Anyone who seriously takes an interest in industrial relations measures must know that to move in this direction one would need to have massive consultation with the trade union movement and with employer groups. Has Mr Stefaniak floated this proposal with the trade union movement and talked to people in the trade union movement? I very much

doubt it. Has he floated the proposal with employer groups? Has he got a view from employer groups about the industrial relations implications of this sort of legislation? Again, I doubt it. It is a knee-jerk Liberal Party reaction - a chance to wave the ideological flag about compulsory unionism and flash around a bit of rhetoric.

In terms of the contribution to the debate on human rights legislation, it adds not a jot. No other jurisdiction has thought it sensible to go down this path. No group in the community has suggested that it is sensible to go down this path. It is purely a piece of political puff, and I would urge members to reject the amendment.

MR STEVENSON (5.21): I listened carefully to what Mr Connolly said, trying to hear any valid practical argument that would suggest that people should be forced to join a group or a union. He talked about massive consultations with unions and employer groups being required before such an amendment was introduced. He asked Mr Stefaniak whether he understood the possible ramifications of such a measure. What Mr Connolly means is, of course, union action. Would such union action be just, or would it simply be maintaining the power they have over individuals, protected by the Government, to force them not only to join a union but also to contribute - - -

Mr Berry: Mr Temporary Deputy Speaker, I raise a point of order.

MR TEMPORARY DEPUTY SPEAKER: Mr Berry, I am sorry, but Mr Stevenson is talking about unionism and joining unions. That is what this amendment - - -

Mr Berry: Yes, but that is not what this is about.

Mr Connolly: You have not even listened to his point of order, Mr Temporary Deputy Speaker.

MR TEMPORARY DEPUTY SPEAKER: I know what he was going to say.

Mr Connolly: On a point of order, Mr Temporary Deputy Speaker: How can you possibly say, when Mr Berry raised the point of order, that you know what he is going to say?

MR TEMPORARY DEPUTY SPEAKER: Mr Connolly, would you resume your seat please. Okay, Mr Berry, continue.

Mr Berry: We are in no position to argue that the provisions within the Federal Act are right or wrong or indifferent. What we are talking about is the relevance of placing a provision within the Discrimination Act, or whatever it might end up being called, which conflicts with a Federal law. So, he ought to keep his comments to that issue.

MR TEMPORARY DEPUTY SPEAKER: Mr Berry, I think the point really is this: The amendment that has been proposed refers to the issue of unionism and compulsory or non-compulsory membership of unions, and I believe that it is appropriate for Mr Stevenson to comment on that as well as issues related to the matter that you have just raised.

MR STEVENSON: Thank you, Mr Temporary Deputy Speaker. I think it should be said that you were right. Prior to Mr Berry giving his full indication as to what his point of order was, it was obvious what it was. He said that you were not that good; but in that case, indeed, you were.

So, what we talk about is unions. We look at whether or not people should be forced to join a union. Actually, I find it quite amazing that, when I am using the word "union", someone in the Labor Party would take a point of order and say that I should not be talking about unions. I well understand that they would rather talk about the law and the proscription. But they would not like to hear other people talk about whether or not one should be forced into joining a union.

As I was saying, Mr Connolly says that massive consultation with unions and employer groups would be necessary before such an amendment was introduced. I think it is rather remarkable that the Labor Party suggests that we should have massive consultation on this matter and yet practically no consultation on the matter of the people of Canberra understanding what this particular legislation is about. This particular clause is something that Mr Connolly says people all over Canberra know about. I suggest that the majority of people - - -

MR TEMPORARY DEPUTY SPEAKER: Order, Mr Stevenson! Members, if you would like to caucus, could you please caucus off the floor of the house. It is very difficult to follow the debate.

MR STEVENSON: Whatever they are deciding, as they nearly have a quorum, I am sure it will happen. Mr Connolly talks about massive consultation on this specific clause. As I said, most people in Canberra - although we have not surveyed it - do not for a second, I believe, know that there is even a Bill before the Assembly and that we are debating this. Yet he suggests that this particular clause is something that is known by people all over Canberra. That is an absolute absurdity.

What we need to do is support one of the first genuine propositions given to us today. I am referring to the idea that workers - and certainly there are a lot of them about, even though the Labor Party has not done much for them and there are still many unemployed - need to be given the right to join or not join a union as they choose; not as the Labor Party chooses, not as unionists choose, not as other people in the community choose, but as individuals themselves choose.

I think it is unfortunate that we heard nothing - no thing, no single reason - from any member of the Labor Party, least of all Mr Connolly. When he got to his feet I thought, "He is going to give a reason why people in Canberra should be forced - compelled - to join a union or have no right to work in many cases". Is that not what it comes down to - if you do not join a union, you do not have a right to work?

Mr Connolly suggests that, if the Assembly passed such an amendment, things would happen that we would not approve of. As I said, he is talking about industrial action. Who would suggest that we in this Assembly should be concerned about industrial action when we decide what is right and what is wrong? Would unions take it into their hands to break the law because this Assembly chose to give people an undeniable right to work when they choose and to not work when they choose, and to join an organisation when they choose or to not join an organisation?

The real key here is that, while we have a Labor Party that suggests that it is for the workers, the truth of the matter is that they support people having the right to work only if they agree with Labor Party policies and union policies. You have no right unless it is conferred upon you by the Labor Party. Yet Labor members stand here today and suggest to us that this Bill, introduced by Mr Collaery initially and then by the Labor Party, is about giving people rights, and they absolutely refuse again and again to give us one valid reason why people in Canberra should be forced to join a union when they do not choose to do so.

MR DUBY (5.29): Mr Temporary Deputy Speaker, the amendment that has been moved by Mr Stefaniak is a very important amendment. Of that there is no doubt. Indeed, I can well understand the motives behind the moving of that amendment, and some of those motives, I think, were mentioned by Mr Stevenson. There is no doubt that in Australian society today there are many examples of people being discriminated against because they are not members of a union. There are examples of it. It is as simple as that.

Mr Wood: Because they are.

MR DUBY: Because they are not members of a union.

Mr Berry: And they get advantages from unions when they are not members, too - as a result of union action.

MR DUBY: They may well do that, Mr Berry; but I can certainly think of a number of occasions when people have been discriminated against because of non-membership of a particular organisation of employees, to use the phrase that Mr Stefaniak has used in his amendment. Indeed, I also know of occasions when people have been discriminated against because of membership of an organisation of employers. That has occurred in this Territory in recent times.

Mr Berry: There is a provision in the Act that prevents that.

MR DUBY: Mr Berry has interjected that there is a provision in the Industrial Relations Act 1988 that prevents that. That may well be the case; but, to all intents and purposes, membership of an organisation of employers has been a disadvantage in certain circumstances in recent times in the Territory.

Mr Berry: But not as much as it is an advantage, or they would not do it.

MR DUBY: That may well be the case. But, then again, if you were going to apply that argument you would not have sex discrimination mentioned at all because I think women often have great advantages in being a member of that particular gender. So, that argument does not hold water.

I would like to say that, in principle, I would like to see discrimination of all kinds eliminated, including that based on membership or non-membership of either an organisation of employers or, in plain English, a union. However, the realpolitik of life is that, as has been pointed out to me on the floor this afternoon, the Industrial Relations Act of 1988 governs membership and preference for union members - or for members of organisations, but basically preference for union members - in a whole range of awards which are subject to and authorised by Federal legislation.

It must also be pointed out that the vast majority of employees, if not all, in the ACT are employed under Federal awards. There are some people, I believe, who may not be under Federal awards - - -

Mr Berry: They might be awardless.

MR DUBY: As has been interjected, they are probably awardless. In other words, they are not covered at all and it is simply a matter of, I guess, negotiation between the employer and the employee as to what is a standard grade.

Mr Berry: There are youth workers - the Social Workers Union.

MR DUBY: Social workers and youth workers apparently are an example of the - - -

Mr Berry: No, the Social Workers Union would cover youth workers.

MR DUBY: All right. That is an example, apparently, of some people, though, who are employed under State awards rather than Federal awards. The bottom line is that passing this amendment, no matter how strongly people

support the motives behind it, could turn out to produce nothing but a paper tiger - and something which, in effect, would bring the whole discrimination or human rights legislation into disrepute.

Given that, and given the arguments that have been put by the Attorney-General and by Mr Berry, a dedicated former union shop steward - I suppose that is the right term, or perhaps "organiser", "secretary" or "official" - I would suggest that it may well be in Mr Stefaniak's interests, rather than pushing ahead with this amendment, to withdraw it at this stage so that full legal and industrial advice can be obtained on this matter.

There is no point at all - and I am a firm believer in this in all regards, not just in respect of this legislation - in having a law which cannot be implemented or which, having been passed, we know will be flouted, because that brings into disrepute not only the legislative process but also the very concept of the rule of law. There are many examples of stupid laws.

I think a prime example is one which was passed by the Alliance Government - and it had the support of this Assembly - which prohibited the game of two-up on Anzac Day, whereas we know that every year that law is flouted but that the police and the authorities conveniently turn a blind eye. Such laws are foolish and should be eliminated. I think it would be very dangerous for us to introduce legislation which we know cannot be enforced; and, indeed, the enforcers would not wish to attempt to enforce it, for the very reason that it would have no effect at all.

Accordingly, I reluctantly find that I will not be supporting the amendment proposed by Mr Stefaniak. It encompasses a whole range of issues which require much further consideration, particularly the issues in regard to section 28 of the self-government Act which relates to our inability to pass laws which are inconsistent with Federal laws or regulations. I think we would be opening a hornet's nest if we put this particular amendment into place. So, reluctantly, that is the position that I have come to after listening to the quite sensible debate on this issue that we have had this afternoon.

MR COLLAERY (5.36): I must say that, along with many of us in this chamber, I find compulsory unionism an anachronism. It is an anachronism in our times, and Mr Berry's own party is progressively endorsing enterprise based bargaining and issues that will bring us away from the closed shop. But the reality is that, just like advertising for alcohol, that issue has to be attacked nationally. I believe that the question of the closed shop and compulsory unionism has to be approached nationally.

Mr Stefaniak's party can go to the polls in a year or two - I suspect that it will win if things keep going the way they are - and get this matter decided at the Federal level, if it wants to. But, in the meantime, what Mr Stefaniak seeks to achieve is to pass a law which, to the extent to which it is inconsistent with awards, orders and determinations that give a preference to organised labour, will be ineffective. Section 28 of the self-government Act indicates that, and Mr Stefaniak is aware of that.

The fact is that the Rally - at least the MLAs, because the Rally does not have a policy on compulsory unionism - is empathetically, I am quite sure, opposed to the closed shop and to compulsory unionism. We nevertheless support the great gains of organised labour. But we believe, in common with Mr Berry's Labor cohorts on the hill, that there has to be a move away from the closed shop, such as enterprise based bargaining and the rest. In my view, if we were to start a 1950s-style debate about compulsory unionism here today, we would mar the passage of this Bill.

Also - and I will be very frank about it - I see no reason why we should give Mr Berry, as spokesperson on industrial relations, an issue at the next poll on which to say that we are union bashers, because I am quite sure that he will do that. When we cannot gain anything and cannot win our case and stop compulsory unionism, I cannot see why we should expose ourselves to some opportunistic political grandstanding by Mr Berry.

Of course, the Rally, because of its strong stand on social justice and other issues, gets a considerable number of votes from people who may have, until they fell by the wayside, voted Labor; and we have no intention of giving Mr Berry a slick way out because Mr Stefaniak wishes to make a statement. It is a statement that we agree with, but the method we cannot agree with. Therefore, we will not be supporting the amendment.

As Mr Connolly says, there has been a long process of consultation in respect of this Bill. It was never anticipated that we would, through this legislation, tackle the great issue that bedevils our country, which is compulsory unionism. Like alcohol advertising and other issues, it must be tackled federally. Shortly before an election, it is hardly propitious, in my view, or politically wise, for those on this side of the house to take on the hoary old issue of compulsory unionism, because I believe that it is not going to be resolved in a "them and us" debate in a parliament. It is going to be eroded as the unions, the ACTU and the employers move to enterprise based bargaining and similar types of arrangements.

The Human Rights and Equal Opportunity Act of the Federal Government adopts the International Labour Organisation conventions concerning discrimination in respect of employment and occupation. Of course, those conventions

provide for reservations for judicially recognised awards. And, of course, recognised judicially are those awards which Mr Berry states give a preference to unionists.

I think that this is a large windmill for a small assembly to tilt at. I think it would bedevil our human rights and equal opportunity legislation because, contrary to Mr Stevenson's outlook, human rights is a peaceful humanitarian process of adjusting powers within the community. The industrial relations front is a sector that needs to be fought over through other instruments, in my view, and they are the instruments that are being argued now by Mr Greiner in New South Wales and progressively by the Federal Liberal-National Party coalition. Mr Stefaniak, I believe, wants to use this parliament to run an issue which will be resolved only federally.

Finally, the other reason why I cannot support this amendment is that Mr Stefaniak's law will be good only in so far as there is a gap in the Federal awards. In other words, for every award that does not contain a preference for union labour, Mr Stefaniak's provision would prevail. I can tell you now what would happen, Mr Temporary Deputy Speaker. There would be an immediate move by the TLC to get all the issues covered by a Federal award to effectively knock out Mr Stefaniak's open shop provision.

I do not think that the Territory, in its current difficult economic phase, needs such a level of industrial disruption, particularly before an election. I have not had the chance to consult with main employer groups in the Territory who may not, I believe, have much confidence about this matter settling without a fuss in the ACT community. There may be some rednecks in the employer groups who would like to see this measure introduced, because, empathetically, I believe that many of us in this house support the notion that compulsory unionism is an anachronism. But I wonder whether we would have even the main employers' support in taking this tilt when we are seeking to win an election over the Labor Party.

MR MOORE (5.43): When I saw that the new-found union member - Bill Stefaniak with his police union - had put up an amendment like this, I thought to myself, "This looks like a sensible idea", knowing that Mr Stefaniak himself has now become so enthusiastic about unions such as the police union. At the same time, I make it quite clear that I agree with Mr Stefaniak, in principle, that it is now inappropriate to have such a thing as compulsory trade unionism. I make no bones about my position on that.

However, I am going to oppose this amendment at this time, because I believe that it would create more problems than it would resolve. It would certainly be entirely inappropriate for us, at this stage, to pass an amendment that could well be overturned due to the way that it conflicts with a piece of Federal legislation. That is something that I would like to look into further.

More importantly, it is an issue that needs some debate in the public arena first. The issue has been debated somewhat, but never with the clear intention that we should legislate for it in the ACT. I believe that it is appropriate that this concept be given some airing, as indeed many other concepts have been given an airing through this Assembly, either through its committees or through tabling legislation and leaving the legislation open for debate for some time. I think it is appropriate that we go through that process before going for this particular decision.

I know that Mr Stefaniak's position is a quite ideological one, and I know that it is only recently that he has discovered the great benefits of unions, whereas some of us, of course, have been long-term members of unions. But I am also personally aware of a number of people who chose not to be a member of a union and, because of that, suffered some significant disadvantages. At the same time, I recognise that they actually won some significant advantages, even though they were not members of a union, because of the work of the union.

Mr Humphries: You made the choice. You were not forced to make the choice.

MR MOORE: Yes, that was a choice to be made. But the choice to not be a member of the union, in that particular instance, involved doing away with any opportunity for promotion, and that, as far as I was concerned, was entirely inappropriate and incorrect. That is why, conceptually and in principle, I agree with Mr Stefaniak. I made that quite clear. I make no bones about it; I oppose compulsory unionism.

Mr Berry: But it does not exist.

MR MOORE: Mr Berry interjects, "It does not exist". It still seems to me that this is not the appropriate place for this provision. If Mr Stefaniak can convince me by the middle of next year, and after some debate in the public arena on this, that this is the appropriate place, then I would reconsider it; but at this stage, even though I accept in principle and agree with what Mr Stefaniak is trying to do, I feel obliged to oppose this amendment.

MR HUMPHRIES (5.47): I am disappointed that a number of people who expressed support for this amendment before have changed their minds on this subject. I have not yet heard anything that constitutes a good reason for backing down on this and - - -

Mr Berry: It will not work; that is a good enough reason.

MR HUMPHRIES: You have had your chance, Mr Berry. You can have another go in a minute. The fact of life is that I have not yet heard in this debate a single, good, in-principle reason why we should allow and sanction discrimination on the basis of membership of a trade union.

If one is prepared to defend compulsory unionism, if one is prepared to defend the sorts of rorts that go on in this community - - -

Mr Berry: There is no such thing. Have a look at the Federal Act.

MR HUMPHRIES: Mr Temporary Deputy Speaker, could I have some order, please?

MR TEMPORARY DEPUTY SPEAKER: Yes, Mr Humphries, you can. Order, Mr Berry!

MR HUMPHRIES: Thank you, Mr Temporary Deputy Speaker. If we are going to do anything at all about the sorts of rorts that exist in this community that are engendered by the situation where trade unions have the right to demand the allegiance of members of a particular work force because that is part of the award structure, or part of an agreement with employers that they be members of that union before they can be employed in that industry, then we, I think, are failing in our duty as members of this legislature. We have a responsibility to provide for the maximum extent of rights that we can grant to the people of this community, to the citizens of this Territory. We are not doing so by failing to pass this amendment.

The question of Federal awards is an irrelevant one. I think it is a matter of some repugnance that we should concede in the first place that Federal awards made by a Federal court can override the view of this Assembly. This is the parliament of the ACT. We have the right to make laws with respect to the peace, order and good government of this Territory. Why should we not have the power to make laws with respect to issues such as terms of employment in the ACT with respect to people who live and work in the ACT? Of course we should have that power, and the idea that a Federal award will override us is repugnant, it seems to me, to the notion of self-government. I, for one, think that particular provision is inappropriate and I hope that we will move quickly to do away with it.

I also remind members that we cannot assume any permanence in either the awards or the Federal Act that Mr Berry quoted from in the Federal context. There will be moves against those provisions in due course; take my word for it. It may be by the next Hewson Liberal Government at the Federal level, or it might even be by the Hawke Labor Government - maybe even the Keating Labor Government; who knows? - in the Federal sphere before the next Federal election.

I say that because in the last few years the Federal Government has moved quite some way towards enterprise bargaining. It follows that with enterprise bargaining there is the capacity for unions and employers, or workplaces and employers, to negotiate terms different from those arrangements that currently apply, and they may include non-compulsory unionism.

To the extent that there is such an arrangement in the ACT with respect to particular workplaces as a result of enterprise bargaining, the provisions of this law, as amended by Mr Stefaniak's amendment, would be operative. The Federal Act to which Mr Berry refers does not cover every workplace. It covers many but not all workplaces. The number of workplaces covered by Federal awards is in fact diminishing, I understand, and the number of trade union members as a proportion of the total working population is diminishing all the time as well. So, there are many parts of this community which are not affected by those Federal provisions and which should be covered by this law. As I say, I have not yet heard a single good reason why, in principle, we ought not to extend the principle of anti-discrimination to people who are in the workplace.

Mr Berry made a very telling comment. He said, "Preference for trade union members gives advantages". Membership of a trade union can give advantages. That is quite true. But every discrimination gives someone an advantage. When a woman goes in for a job and cannot get it because a man is preferred by an employer, the man has a preference and the man gains an advantage. When an Aboriginal person goes in to get served at a bar or a restaurant and is turned away in favour of a white customer, that white customer gets an advantage. Advantage is the other side of discrimination. It follows that if you are going to outlaw discrimination you have to also outlaw some advantages for some people who do not deserve them. I do not see yet, and I cannot understand, why a person who belongs to a trade union ought to have an advantage over someone who does not. I have not yet heard any reason put forward why that should be the case.

I am disappointed in the Residents Rally for its inability to stick to its position on this matter. That is a matter of some regret. But I think the public of the ACT will have something to say about this. The Liberal Party's position remains very clear: We are opposed to discrimination on the basis of membership of a trade union. We will take that position to the next election, and I believe that we will win significant support from citizens of this Territory because of that position we take. Apparently, we are the only party in this Assembly that does.

MR STEFANIAK (5.53): I wholeheartedly endorse the comments made by my brother and colleague Mr Humphries. I will deal with just a couple of points that were bandied about concerning trade unions. I am certainly not anti-trade union. I have only ever once refused to join a trade union. That was the BLF, when I was a labourer when I was about 18 - and that was because I was virtually going to be forced to. I left the building site rather than put my employer, who was backing me, into a situation where he would be blackballed.

Apart from that, I have joined a couple of trade unions. I was a shop steward with AGLA, a body of which Mr Connolly, in fact, was the president for a period of time. I had no problem whatsoever in joining that voluntary body. Not all government lawyers were members of AGLA. In fact, it was a fairly small proportion, really. I think it was about 50 per cent, but it was growing. Certainly, a significant number of people there were not members. I signed up a couple of members, actually, in the 12 months or so that I was a shop steward at the local office of the DPP in 1988. I had no problem in joining that union. I thought it was an organisation that should be supported. I was interested to hear even Mr Stevenson's comments in relation to why he chose to join the New South Wales police association.

There is very much a place for unions. The Australian worker would not enjoy the same conditions that he or she enjoys now were it not for stands taken by trade unions, especially around the turn of the century but also beforehand in the 1890s and later in the 1930s. There is a very strong argument, however, that perhaps the pendulum has swung a bit too far in a number of instances, and trade unions, like any other organisations - organisations of employers, too - have to move with the times. Times have changed. But one cannot take away the great benefit that trade unions have given to the Australian worker and to Australian society as a whole. I certainly do not mind putting that on the record, because that is a simple fact of history.

However, we are talking about a discrimination Bill, and I do not think it would be complete without this particular amendment. I have looked carefully at Mr Berry's Act. Certainly subsection 122(1) enables some discrimination, some favour to be given, to a member of a trade union. There are indeed exemptions. A person can be effectively deemed, to use Mr Berry's word, to be a quasi-member of a union if he or she gets a certificate on conscientious grounds that he or she does not want to be a member of a union or, indeed, an employer body. That is under, I think, section 267 of the Industrial Relations Act. So, even within that Act there are exemptions.

I would remind members that not everyone in the ACT is under a Federal award. Section 37 of the self-government Act empowers the Assembly and the Executive to do a number of things; to make laws in relation to a number of areas. They are covered in schedule 4 on pages 27 and 28 of the

Australian Capital Territory (Self-Government) Act. That includes industrial relations. Not everyone is under a Federal award here. Not everyone is covered by the Industrial Relations Act. And where they are, if preference is shown, that is a case of discrimination within an Act. There are instances in this particular Bill that we are dealing with today where specific categories of people are exempted because of the need for some positive discrimination. There are other Acts, too, which no doubt would apply to the ACT, which would exempt people, and perhaps organisations in some instances, from the operation of this proposed Act.

So, I think that, when one looks at all the legal ramifications of this particular amendment, it is not Robinson Crusoe; it is not alone in terms of some restrictions being placed on it because of another Act, but those restrictions are not 100 per cent restrictions right across the board. Some members have made reference to the fact that, indeed, there will be some changes in the Federal sphere in the not too distant future. I think that is probably inevitable, regardless of who forms the Federal government; and the awards, indeed, might change.

But the argument raised in relation to section 122 of the Industrial Relations Act, which has obviously been accepted by Mr Duby and Mr Collaery, has not been accepted by me or my colleague Mr Humphries, and I think with very good reason, because it is not a blanket provision. It does not go right across the board in the ACT. Really, we have so many other areas which this Bill applies to that I think it would be a great gaping hole in this Bill if this particular amendment were not to be voted for, because it is a fundamental human right and, in fact, some reference is even made to it in the Industrial Relations Act, which Mr Berry himself quotes, by way of the certificate under section 267.

It would appear that this might not be carried, and I think that in itself is a sad thing. I am a bit disappointed to hear Mr Collaery and some other members indicate that they do not want trouble - "We do not want industrial relations trouble as a result of this". For goodness sake, you are an Assembly; you are meant to make the laws. You are meant to be the law-makers; the people who determine what happens in this Territory. The Territory is not meant to be run by some other body. We are not run by the Trades and Labour Council here. We are not run by CARD. We are not run by BOMA. We are meant to run the Territory from this Assembly.

We are the people who have been elected to govern the ACT, not some other organisation. To say, "We cannot offend certain organisations", whatever they are - and I do not care who they are - is quite wrong because we are abrogating our responsibility if we use that argument. If sometimes you have to have some confrontation, so be it. I do not think that is at all likely here because, indeed,

most of our trade unionists and most of the members of our other organisations - business organisations - that are also covered by this amendment are, on the whole, very responsible people. So, I would urge members to support this particular amendment.

MR BERRY (Minister for Health and Minister for Sport) (5.59): A couple of things have been said on ideological grounds that I really should respond to. First of all, I deal with the notion of compulsory unionism. Within the meaning of the Federal Act, which most members agree covers most areas of employment within the ACT, there is no provision for compulsory unionism. For Liberal members to continue to talk about their opposition to compulsory unionism in the context of this amendment is somewhat misleading.

There are very good reasons for belonging to a trade union. I hear the Liberals say that they are not opposed to unions, but really what they want to do is say, "Yes, you can belong to a union. Just sit there and we will give you a bit of a pat on the head, but do not do anything. We do not want you to look after your members' rights. We do not want you to improve your bargaining position. We do not want you to improve your bargaining strength, because you will do better in industry and do better out of negotiations". Of course, one thing that we also should remember is that the trade union movement is the basis of the Labor Party, the mortal enemy of the Liberal Party. So, we have to consider all of those aspects when we listen to the Liberals arguing about their support for trade unions.

Their position is: "Yes, we do not mind trade unions. You just sit there quietly, and be a nice little trade unionist, and we will hand it out to you when we think you are entitled to it. But do not you improve your bargaining position; do not you improve your bargaining strength, because you might do well, and we do not want that to happen - and, worst of all, you might be a supporter of the Labor Party. That is even worse, because they are even worse than you trade unionists". That is the position according to the Liberal Party.

All those issues aside, we have to then go to what Mr Humphries said. He said that he could not think of a good reason that was put today why people ought to be involved in trade unions. There are very good reasons. There are all of the award conditions that have been won by unions over the years, by way of negotiations, in some cases by industrial strength, and often by conciliation and arbitration. But it has always been the unions that have been at the forefront of establishing not only wages and working conditions for workers in this country but also social conditions. All those issues ought not to be forgotten. There are significant benefits from belonging to a union.

It has been argued today that people ought not to belong to unions. It was even put to me that if a person did not belong to a union it could be argued that that person should not be entitled to the benefits. On the one hand, one could say that that is true: If you are a unionist you should get the benefits, and if you are not a unionist you should not. But the trade unions take a different view. They have a more socially just view of the world. They take the view that, if they have argued for a rate of pay and certain working conditions for a classification of worker, then that should apply across the board as a minimum. They have a socially just view of the world when it comes to the provision of wages and working conditions for Australian workers.

Much of the debate today has ignored industrial relations history in this country. That history has been about a long battle, in many respects, for the improvement of the rights of unionists to organise and to bargain, and they will continue to do that. Part of this process has found its way into the laws of the country, in much the same way as social change has found its way into laws of the country because the people have expressed a view politically, by weight of numbers, in one form or another, to have the laws of the country changed to reflect a different social value than perhaps was reflected at the turn of the century. That is the same as what has happened in industrial relations law.

But, when it comes to the conservatives and the Labor Party, it gets more complicated, because the conservatives seek to attack the base of the Labor Party, which is the trade union movement. It is from the trade union movement that we get our strength; there is no question about that. So, this is an ideological battle between us and the Liberal Party. It really has nothing to do with the laws on discrimination, as Mr Stefaniak seeks to argue in respect of his amendment. If the amendment was about those issues which concern the likes of Mr Moore and people who are concerned about compulsory unionism - entirely wrongfully, I suggest - that would be an entirely different matter.

This is about whether we ought to pass a law that will be no good. It would be worthless; it would do nothing. It is not about the ideological position of the Liberal Party or the Labor Party. It is about whether this Assembly ought to pass a law that will not work. It will not do what Mr Stefaniak wants it to do, because of the fact that Federal laws prevail. Mr Humphries said, "We ought not to be subject to those Federal laws". Well, every State in the country is.

In all cases where there is an industrial dispute which applies in an individual State in respect of a Federal award, the Federal award prevails; the Federal law prevails. Mr Humphries knows that. That will remain the case - there is no question about that - at least for the

foreseeable future. Mr Humphries is kidding himself if he thinks that anything is going to change in that respect. There will be, for the foreseeable future, a significant set of laws which apply federally, which govern Federal awards and unions that are federally registered.

But again, it does not really matter, because what we are talking about is whether or not a piece of Federal legislation should prevail over a law that we seek to make here. The fact of the matter is that it will, and there is nothing that we can do about it. I say that that is good; Mr Stefaniak and Mr Humphries say that it is bad. But that, again, is not the issue. It is whether or not Mr Stefaniak's amendment will work, and it will not. I think I can finish up there, and urge that members oppose the amendment.

MR KAINE (Leader of the Opposition) (6.06): I think that Mr Berry speaks from a position of interest, and he is not looking at the broader issue at all. As usual, of course, he misrepresents the case when he says that the Liberal Party is opposed to trade unionism. Let us be quite clear: The Liberal Party is not opposed to trade unionism. I am as well aware as Mr Berry is of the history of the trade union movement in Australia. It has had its rightful place and still does. But, when you take it to the point that it leads to discrimination - and that is what this Bill is about - and when discrimination is entrenched and we are trying to remove it and legislate against it, then it is just as proper and correct that we should move to make that illegal as it is to make any other form of discrimination illegal.

In our society there are a great many other forms of discrimination which perhaps have not received the same degree of formal legal discrimination as trade unionism but which are very highly developed forms of discrimination, nonetheless. I am sure that the Chief Minister would agree that women have been fighting for many years now to remove discrimination against women. The discrimination against women had become entrenched in our societal arrangements. Properly, women have moved to remove that discrimination. This Bill is just one further step in removing discrimination against women because they are women.

What we are attempting to do is to amend this discrimination Bill to say that one should not be discriminated against because one has membership or does not have membership of a trade union.

Mr Berry: Discriminated in favour of.

MR KAINE: You see, Mr Berry is talking about favourable discrimination. There are things like affirmative action and the like that go over the top of the hill a little bit in terms of discrimination against women, too. The fact that discrimination is built into a Federal Act does not make it right.

I will continue to assert and to insist that, if a labourer cannot get employment because he does not belong to a trade union, that is unfair and unreasonable discrimination, no matter how you dress it up. If trade unions can assert, as they do in some occupations, that you can work in this trade only if you belong to this trade union, it gives the trade unions a prerogative and a right that they should not possess, any more than any other organisation should possess it. So, I am just as much against discrimination on the basis of whether one is or is not a member of a trade union as I am against discrimination because one is a woman, or discrimination because one has a different colour or a different religion or comes from a different ethnic group from the one that I come from.

I do not accept Mr Berry's argument that because it is embedded in a Federal Act it is "okay", to use Mr Stevenson's phrase. It is not okay. So I, as a member of this Assembly - the fact that I happen to be a Liberal notwithstanding - will argue against discrimination in any form. I think that this Bill that is before the house is a good Bill, because it attempts to do away with and legislate against discrimination in any form.

I have already mentioned discrimination on the basis of age. I understand why that is not in the Bill. It is because it is too difficult, at this stage, to codify the forms of age discrimination, and until you can codify it you cannot put it into a Bill or an Act. But it is very simple to remove discrimination on the basis of membership of an organisation, whether it be a trade union or any other form of organisation. It is just a matter of writing it in, as Mr Stefaniak proposes to do.

I cannot see how anybody can argue that to simply take in another form of discrimination and legislate against it - just as we are legislating against discrimination on the basis of sex, sexuality, marital status, pregnancy, race, religion and so on - is a bad thing. I cannot see the basis on which Mr Berry can argue that discrimination on the basis of membership of a trade union is okay when he says - - -

Mr Berry: It will not work.

MR KAINE: I just told you that the fact that a socialist government embedded it in a Federal Act does not make it right.

Mr Connolly: No, no - Alfred Deakin.

MR KAINE: That Act was not written by Alfred Deakin.

Mr Connolly: No, the predecessor Act.

MR KAINE: You were talking about the Industrial Relations Act of 1988 and waving it before my eyes - an Act put in place by a socialist government. The fact that it is put in place by a socialist government does not make it right. I have already asserted that, and I repeat it.

Just as women, 25 or 30 years ago, really began a movement to remove discrimination against them, someone has to start somewhere on removing discrimination against those who choose not to join a trade union. You can argue about Federal legislation as much as you want. Indeed, there is a good chance that that Federal legislation will be changed in the very near future when a Hewson government is elected to the Federal Parliament. So, to provide in our own law that this form of discrimination will be removed puts it on the books; and, come the day when other people become more enlightened and remove the discrimination from the Federal Act, our Act will already be in place.

I believe that this is a reasonable thing to do. I believe that Mr Stefaniak's proposition is a valid one, and to argue against it purely on the basis of socialist Labor, far left ideology in this place is unacceptable. I would hope that people would look at this matter with a far broader view than that, and look at it in the same context as that in which they are looking at the other forms of discrimination that we are dealing with in this Bill. I support the amendment, Mr Temporary Deputy Speaker.

Question put:

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

The Assembly voted -

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

Question so resolved in the negative.

Question put:

That the clause, as amended, be agreed to.

A call of the Assembly having commenced -

Mr Collaery: On a point of order, Mr Temporary Deputy Speaker: Does not Mr Stefaniak have a further amendment to clause 7?

Mr Stefaniak: I do, indeed. It is to clause 7, Mr Temporary Deputy Speaker.

MR TEMPORARY DEPUTY SPEAKER: I call Mr Stefaniak.

MR STEFANIAK (6.17): In relation to this, members - - -

Mr Connolly: Mr Temporary Deputy Speaker, I rise on a point of order. There is a bit of confusion here. We actually had a vote and a call on the question - which is that clause 7 be agreed to - and you called it. Mr Stevenson called for a division, or called for a call of votes. It was then remembered that Mr Stefaniak had forgotten to move his amendment, but we cannot just - - -

Mr Humphries: That is right; deny a vote on the matter.

Mr Connolly: No; there are forms of the house and they need to be observed. We can get back to Mr Stefaniak, but we need to do it appropriately.

MR TEMPORARY DEPUTY SPEAKER: Order, Mr Connolly! Is it the wish of the Assembly that we return to clause 7?

Mr Stefaniak: Yes.

Mr Berry: Mr Temporary Deputy Speaker, that is not an appropriate course. I think that, if a member wishes to do that, the member ought to be allowed to move it.

MR TEMPORARY DEPUTY SPEAKER: I asked whether it was the wish of the Assembly, Mr Berry.

Mr Berry: Well, if somebody wants to move it, that is fair enough; but - - -

MR TEMPORARY DEPUTY SPEAKER: I have called Mr Stefaniak.

MR STEFANIAK: I move:

> Page 7, line 17, subclause (1), add at the end the following paragraph: "(1) membership or non-membership of an association of students or a voluntary body.".

This amendment follows on from the previous amendment, although it is in a different category in that it is not covered by the Industrial Relations Act in any way. The arguments for this amendment are very similar to the arguments for the amendment that has just been defeated 10 votes to 7, except that this matter is not covered by the Industrial Relations Act or any other Act that I can think of at this stage. It deals with membership or non-membership of an association of students or a voluntary body.

As members might well be aware, organisations such as the Australian Union of Students certainly in my day were compulsory and you basically were not admitted to a university unless you became a member of such an association. You had to pay certain fees, and that certainly was a restriction on a person's human rights and equal opportunity and, indeed, discrimination against people who preferred not to be members of those associations.

Similarly, there have been instances - I will not go into them at any great length - of persons who have been discriminated against because they were or were not members of a body. Because people have been a member of some particular voluntary body they have not got a job or have been discriminated against in some way, just as in other instances people have not got jobs or face discrimination because of their race, their religion, their political convictions or their sex. Those things have happened in the past, they happen at present and, indeed, unless checked, they will continue to happen in the future.

So, Mr Temporary Deputy Speaker, I think there is very much a need for this to be put in as paragraph (l) and one of the grounds. It is a basic or fundamental tenet of human rights and a fundamental tenet if we are to be fair dinkum in relation to acting against discrimination. I commend this amendment to the house. Unless someone can come up with some Act which supposedly covers this one, the rationale given by some members for voting against the last amendment certainly cannot apply here.

MR COLLAERY (6.21): Mr Stefaniak needs to convince us about what exactly is the effect of this provision. As I see it - I can be corrected by subsequent speakers - Mr Stefaniak seeks to make it, under clause 8, a discriminatory action if a person is a member or a non-member of a students association and as a result someone treats them or proposes to treat them unfavourably or disadvantages them. I am looking at clause 8.

Turning to memberships of clubs and associations, clause 42, for example, relates to clubs for members of one race. There is an exception there for those genuine ethnic clubs whose principal object is the provision of benefits for persons of a specified race, and so on. You can understand that of the Pacific Islanders Club, for example. Discrimination by clubs is referred to at page 24. Discrimination by educational institutions is dealt with at clause 50, and it says:

> Nothing in section 18 renders unlawful discrimination on the ground of impairment in relation to a refusal or failure to accept a person's application for admission as a student ...

They are talking there about Down's syndrome and things like that, I presume. I need to be convinced that we are not going to get into unintended effects here.

I will pass from students for a moment, Mr Speaker, and talk about "a voluntary body". I can imagine that there are voluntary bodies - for example, a baby-sitting circle - where, unless you are a member of that circle, it could be asked: Why should you be able to demand services from that circle? Mr Humphries is troubled by this. I would be grateful if he would explain it to me.

Frankly, I will be swayed by arguments on the floor on this issue. I personally will advise my colleagues, since I am the lawyer and supposedly have an advantage in these statutory interpretation issues, that I am troubled that, after two years of working this one up, we are going to make it a ground of discrimination for there to be a preference to persons or a non-preference to persons who belong to a voluntary body. There is a hospice association in this town; there is a vast miscellany of voluntary bodies.

Mr Stefaniak has the call again. He needs to explain that we are not getting into difficulty with this one. If he can convince me that what he is referring to is a little gang of students at the ANU or anywhere else who want to discriminate against other students because they have not joined the Young Liberals or Young Labor or what have you, then I will vote with him on this.

Mr Stefaniak: That is exactly right.

MR COLLAERY: Mr Stefaniak says that that is his objective. That may be his objective; but the words of this may have a wider, unintended effect. It is 6.25 pm, after a very difficult day, and we need to be very careful that we do not mar this piece of legislation. I am at a loss to understand where we are going on it. The Attorney has the advantage of law officers. Perhaps we should hear from him next.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (6.25): I do not always say this in this chamber, but what Mr Collaery just said makes an awful lot of sense and I think it should guide all members in their deliberations on this.

Essentially, what Mr Collaery said was that this set of criteria for discrimination has been very carefully worked up over a number of years, many, many hours of consultation with the community, many, many pages of documentation prepared in the arguments to and fro from the community, and extensive consultation; and at the last minute the Liberal Party, for what I would say are ideological reasons, have come up with an amendment. Essentially, what Mr Collaery has said is that he would require a lot of convincing as to why we should adopt an off-the-cuff

amendment to add to a ground that has been so thoroughly traversed out in the community. That, I think, was a reason that also bore heavily on the minds of members in the previous vote.

This issue of, essentially, voluntary student unionism, which Mr Stefaniak says that he is directing it at, is an old ideological piece of baggage that Mr Humphries and Mr Stefaniak cut their teeth on politically, around about the same era that I did, as students in the 1970s around universities in Australia. It was the big issue of the Liberal clubs around the campuses then; they had court challenges and what not. Voluntary student unionism was seen to be the huge issue. As far as I am aware, the issue died on the campuses in the late 1970s, and no-one is concerned about it. It is just not an issue.

Mr Duby: Yes, they won.

MR CONNOLLY: Essentially, they did, Mr Duby. What Mr Duby says is right. Essentially, they won, and for all practical purposes there is not such an institution as compulsory student unionism now present. It is a dead issue. It is not an issue that the community is concerned about. Again, in the extensive process of consultation, nobody raised this; so it is unnecessary.

The other point that I stress to all members, that again Mr Collaery made, is this: While Mr Stefaniak says that what he is on about is trying to ban compulsory student unionism, which Mr Duby said is no longer an issue, because of the form of words he has used it may well go much further than that. He is asking us to take on board a new and untested ground of discrimination - not something employed anywhere else, not a ground that has been through the consultation process, not a ground that any community group wants - purely to make a political point. I would urge members to not accept this amendment and stick with the grounds that have been extensively debated in the community. There is no merit in Mr Stefaniak's proposal, other than to make an ideological point which has ceased to have any practical validity since about 1979-1980.

DR KINLOCH (6.28): I voted no on the previous amendment put forward by Mr Stefaniak because I feel that the issue of compulsory unionism or no compulsory unionism is itself a very big issue. I do not think it should be inserted into a Bill that is really about other matters, about what we understand by discriminating against people. If it is a big issue, put up a Bill about it.

Similarly with this one. I was very much involved with this question about student unionism. One tried to move through the problem, trying to be helpful to all sides. Again, it is a separate issue. If someone wants to put up a Bill about compulsory unionism, then I would be prepared to listen to that. But here we are talking about the kinds of things that are to do with discrimination of race and creed; those are the important things.

MR STEVENSON (6.29): Dr Kinloch suggests that, if someone wants to put up a separate Bill, that would be more appropriate. He said that here we are talking about other things. I would have thought that people are purporting to talk about rights. If the right to not join something is not a right, then I do not know what is. I find it amazing that some rights are supposedly things that we should stand up and speak up for today and include in this Bill, but other rights should be relegated to some other time.

What better opportunity is there to bring up something that has been a major problem in Australia? I am not sure what the various student unions around Australia require as far as compulsory membership is concerned. I believe that most of them have compulsory membership. I am open to hearing from somebody who may know whether or not that is the case.

It is not just that type of group that Mr Stefaniak's amendment refers to. There are a number of different areas that it could refer to. Mr Collaery said, as did Mr Connolly, that perhaps Mr Stefaniak could go over the points to put us in the picture exactly as to what the amendment does relate to. I think that would be an excellent idea. If he would like to do that, I think it would be worthwhile; or perhaps one of the other Liberal members could do so.

MR DUBY (6.31): This amendment primarily involves students, according to what Mr Stefaniak has said. I have great concerns over the words "voluntary body". Adding this subparagraph would mean that this Act applies to discrimination on the ground of membership or non-membership of a voluntary body. That would be the effect.

Mr Berry: A wide net.

MR DUBY: It certainly is, Mr Berry. I have real concerns. If I were an employer, for example, and I wished to hire an accountant, I would have every right, in my opinion, to refuse to hire someone because he was not a member of the Institute of Chartered Accountants, which is a voluntary body. The same goes for a chiropractor who is not a member of the Australian Chiropractors Association or a psychologist who is not a member of the Australian Psychological Society. That is a general employment issue.

The point raised by Mr Collaery related to a childminder. I would have every right, in my view, not to hire a baby-sitting organisation or whatever that was not a member of a voluntary association, the childminders guild or the baby-sitters association and may not choose to be a member or may not be permitted to be a member, for very good reasons.

For that person or organisation then to be able to put a claim against me on the basis that I have discriminated against them because they have, according to this amendment, non-membership of a voluntary body would be, in my view, quite unfair. I am sorry, but I cannot support the amendment, as it is worded, moved by Mr Stefaniak.

MR COLLAERY (6.33): Mr Speaker, I realise that people can be concerned about the inability to join a voluntary association or voluntary body. For example, there are many types of discrimination that this Bill will shortly prevent. As I read from the *Australia-Israel Review* of 23 October-5 November 1991 at page 6, Mr Eric Butler is reported to have commented that Mr Stevenson was not a member of the League of Rights and would not be eligible to join because he was a member of parliament. That is discrimination against Mr Stevenson on political grounds, is it not? Mr Stevenson laughs; I am making a jocular point. But here you have another example of what you call a voluntary body.

What is a voluntary body? Is the League of Rights a voluntary body? Should Mr Stevenson be able to join it or not? We must be careful here to protect everyone's interests. Mr Butler is making very clear that he will not admit Mr Stevenson because he is a member of parliament. There is a circumstance that perhaps Mr Stevenson might like to address. This clearly is an issue that must excite him. I will hand over to Mr Stevenson at this juncture.

MR STEVENSON (6.34): I could only guess at what was meant, but probably Mr Butler was referring to this particular parliament. Probably he was referring to it as such because this one is unconstitutional, unlike the rest.

Mr Kaine: We will soon know about that, Dennis.

MR STEVENSON: Yes, indeed, we will. Interestingly enough, one could only hypothesise as to why Mr Butler or anyone else would prevent politicians from joining a group. If ever there was a valid reason for someone being prevented from joining a group, I think it would be because he or she is a politician.

If someone regularly makes promises before elections and then breaks those promises, would that not be a reasonable reason to deny that person membership of an organisation? When you have people who take no notice of the majority expressed will of the people, would not that be a valid reason for rejecting someone's membership to a body? When you have people who regularly break the law, the very law that they are supposed to uphold, would that not be a valid reason for rejecting someone?

When you have members of parliament, as in the ACT parliament, who will stand up and speak on what may be called a Bill of Rights, a Discrimination Bill or something else, members who would stand up and support the destruction of our common law rights and support a Star Chamber, is that not a reasonable reason? Of course, I say that in a humorous vein.

Although I think most people should be able to join organisations, who would say that someone does not have the right to start up an association of left-handed tennis players? Why should they be denied the right? Who would deny someone the right to start up a Fabian association and deny other people access to their Christmas party? The Labor Party would do that, because they did it. I do not know whether that was discrimination just because I wanted to go along to the Christmas party, or whether they would have discriminated against other people. Perhaps some clue could have been given - - -

Mrs Grassby: Join the Labor Party.

Mr Wood: We have enough already.

MR SPEAKER: Continue, please, Mr Stevenson. I believe that you do have the floor.

MR STEVENSON: Mr Wood just said, "We have enough", supposedly referring to enough people in the Labor Party who hold the view that we should not destroy our constitutional protections. I suggest that they have not enough. If they do have enough, they are certainly not in positions of power, because they would never let such legislation be presented. When it comes to the Fabian Society, a lot of people do not know what Fabians are. Why do you not go and let people know what they are and what their goals are? Here we have people in the Fabian Society standing up and saying - - -

Mr Collaery: I take a point of order, Mr Speaker. Mr Stevenson is attempting to recruit from the gallery. I do not know how successful he might be, but I suggest that he is wasting his own time and our time.

MR SPEAKER: I believe that he is polling, Mr Collaery. Please proceed, Mr Stevenson; but address your comments to the Chair instead of to the gallery.

MR STEVENSON: I apologise, Mr Speaker. It is about as scientific as my polling gets. I say again and again that the Labor members can come along and have a look at my polls any time they like. What I suggest is that we swap polls; they show me theirs and I will show them mine.

MR SPEAKER: Relevance, please, Mr Stevenson.

MR STEVENSON: I think it is important. If we asked the people about this legislation, I would readily agree with it if it was not outside the Constitution and if the majority of people in Canberra wanted it. I would not readily agree with it; I would certainly speak on it. But, if that is what they want, I think that is what they should get. The people in this community have never had the opportunity to speak out against or for such legislation.

Mr Jensen: We will do a poll for you, Dennis, so that we do not have to sit here all day tomorrow.

MR STEVENSON: I hear a suggestion that the members might be prepared to go out and each speak to 50 people tonight, get a quick poll, and then this might be a lot quicker tomorrow. I can assure you that it would be. The reason it would be is that I believe that the majority of people would vote against it. Indeed, they should vote against it. So, the point is - - -

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

That the question be now put.

Question put:

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

The bells having been rung -

MR SPEAKER: I advise members that Mr Moore has advised me that he is no longer in the house.

The Assembly voted -

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

Question so resolved in the negative.

Question put:
That the clause, as amended, be agreed to.

The Assembly voted -

AYES, 15	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.
Clause 8

MR STEVENSON (6.47): If I could - - -

Motion (by **Mr Berry**) proposed:
That the question be now put.

MR STEVENSON: That is absolutely appalling.

MR SPEAKER: Order! No; I will allow you to proceed, Mr Stevenson.

MR STEVENSON: Clause 8 of the Bill says:

> For the purposes of this Act, a person discriminates against another person if -
>
> (a) the person treats or proposes to treat the other person unfavourably ...

I have circulated a number of amendments, but one that is obviously highlighted is the proposing - -

Mr Berry: I raise a point of order, Mr Speaker. Could you tell me at what point it would be appropriate for me to move the gag?

MR SPEAKER: I suggest that you keep trying and I will let you go through eventually, Mr Berry. I think it is quite appropriate to let the - - -

Mr Berry: Mr Stevenson has indicated that all he intends to do is block this legislation and delay it. He said that and it is on the record. I intend not to allow him to get away with that. We might as well get onto where people have meaningful amendments to consider. We might as well get to them and just work our way through the Bill. I understand that you, Mr Speaker, would be concerned about members' rights; but other members have rights in this place and they seek to deal with amendments that are meaningful, not amendments that are designed just to block the passage of this Bill or delay it. I am happy to take any ruling that you have on the matter.

MR SPEAKER: I thank you for that, Mr Berry, and I will let you know when it can be called to a halt. Mr Stevenson, would you be prepared to seek leave to move all your amendments to clause 8 together, instead of addressing them one by one?

MR STEVENSON: I was going to say earlier, before Mr Berry hopped to his feet, that I am happy to have the amendments on the typed sheet I put out taken together and then the other ones separately - without reasonable cause.

Mr Berry: What about Nos 8 to 30? Can we do them all together as well?

MR SPEAKER: Please proceed with the one you are on now, Mr Stevenson.

MR STEVENSON: Mr Berry suggests that I should have my right to speak to this particular clause removed. This is a man who suggests that he is standing here fighting for human rights. The hypocrisy of the statement is absolutely blinding. Mr Berry would say that the words "or proposes to treat" - in other words, that someone merely proposes to commit an offence - are perfectly acceptable and there can be nobody who disagrees with their clause.

Mr Berry: This allows for racial vilification, and that is what you are about.

MR STEVENSON: That is an appalling statement. Mr Berry makes so many interjections that it is hard to handle them all, one after the other, time permitting, and when I speak on a few he hops to his feet and tries to gag me, saying that it is not important. Perhaps the first thing he could do is stop making interjections rather than asking the questions, which I will reply to.

I would have thought it fairly obvious that we should not adopt the provision against a proposal to treat someone unfavourably. How can we sit here and say that we are going to make it an offence for someone to propose to do something? The potential for mischief under that clause is high. We should not have a law against people who talk about something or who write on something. This is not

about an act that has been done; it is not something that has had any effect on somebody. That is the important point. There is no effect whatsoever; it is simply something that someone may have proposed.

What Mr Berry and the other ALP members in this Assembly would do is make it an offence simply to propose something. You would become, if you did that, someone who should be dragged before a star tribunal and forced to answer questions and produce documentation. Why? Simply because you suggested something to somebody. The interesting thing, as I read the Bill, is that it does not even allow you to suggest it to any other person. The Bill says, at paragraph 8(1)(a):

> the person treats or proposes to treat the other unfavourably because the other person has an attribute referred to in section 7;

That does not even say that you have to tell anybody. If you wrote down in your planning diary that you were thinking about doing something, or wrote down a suggestion that you made to somebody, under the Bill you would become an offender. Supposedly, I am the only person in this Assembly who is going to stand up and speak up for people and say that they should be allowed to propose whatever they like. I believe that under our law in Australia you could even propose to kill somebody and it might not be an offence. Perhaps Mr Collaery or Mr Connolly might like to comment.

Mr Collaery: Don't tempt me, Dennis.

MR STEVENSON: The interesting point is: Is that an offence? Are there situations where you could propose to commit a crime? What about some other crime? What about a crime of breaking and entering? Is there such a crime as proposing to break and enter? Is there such a crime as proposing to steal someone's car? If not, if these things are not crimes if you propose to do them, how on earth - - -

Mr Duby: They are.

MR STEVENSON: I wonder under what Act it is a crime if someone says that they are proposing to do something and suggests - - -

Mr Duby: Dennis, if you say that you are going to kill me, that is an offence.

MR STEVENSON: No, I did not talk about that. I changed that one. Say I was proposing to break a window or whatever. Once again, I do not believe, and I would have to be convinced, that it is an offence to propose various things under our normal laws in Australia. I know that

there would be some, and there certainly should be; but, as for the general principle of it being an offence to propose something, I do not believe that it is, and I do not believe that it should be.

MR SPEAKER: Order! Mr Stevenson, you have not formally moved your amendment. Please do that.

MR STEVENSON: I move the amendments standing in my name on the - - -

MR SPEAKER: Are you moving the lot together or just this one?

MR STEVENSON: As I said, the ones on the typed sheet, leaving out the handwritten one.

MR SPEAKER: You have to move the handwritten one first.

MR STEVENSON: If that is the case, I move that and leave the others. I move:

> Page 7, line 27, after "if", insert ", without reasonable cause".

MR DUBY (6.55): I am not sure where that amendment came from. I have not got it in the list of amendments here. The simple fact is that Mr Stevenson is making much of the wording in the Bill where it talks of proposing to treat a person or proposing to impose a condition or requirement. He asks, "How can somebody commit an offence by simply proposing to treat the other person unfavourably?". The answer is very simple, Mr Stevenson. If I run an advertisement in the paper offering employment and I put at the bottom of the ad, "Jewish Asian homosexuals need not apply", that indicates that I am discriminating against a whole class of people, not just a person, and that I am proposing to treat a person of that class with discrimination.

It is exactly the same with "proposes to impose a condition or requirement". I could say something along the lines of, "Married women need not apply because they might fall pregnant. Therefore, I do not need to employ them". That clearly indicates that I propose to treat them unfairly or propose to impose a condition.

Frankly, Mr Stevenson knows that as well as I do. I think that what he is doing here is filibustering; he is simply trying to hold up the passage of this Bill. Whilst his motives for his own electorate may well be sincere, the bottom line is that he has made his objections to the Bill loud and clear and obvious in the *Hansard*. I am sure that he will be able to provide copies of many of the things he has already said and they should meet the requirements of those for whom he is speaking tonight.

I think this has gone far enough. Lord only knows what we are going to do. I looked at the further list of amendments and they go, "Delete clauses 10 to 26", in numerical order, and then, for whatever reason, we have a break at clause 27. I am worried about clause 27. I would like to have a close look at it to see what it is that Mr Stevenson has not objected to, because obviously there must be some - - -

Mr Connolly: Perhaps there is something wrong with it.

MR DUBY: Exactly. There may be something wrong with it; perhaps it does not meet the spirit of the legislation. Mr Stevenson's amendment should be rejected out of hand.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (6.58): I endorse entirely what Mr Duby has just said. Briefly, for the record, the principal reason why the proposal to treat was added to the definition of discrimination in this legislation was that, in some of the other jurisdictions, under the earlier discrimination Acts, there have been cases where tribunals have held that a decision to do something is not itself an act of discrimination until you actually do it. The classic example of that is that it is discriminatory to build a public building and not provide wheelchair or disabled access.

MR SPEAKER: Order! I draw members' attention to what has happened. Mr Stevenson was asked by me to move the first amendment, but he spoke to the subsequent amendment. People are now following Mr Stevenson's speech; but we really should be speaking to the first amendment, which is the "without reasonable cause" amendment.

MR CONNOLLY: I seek leave to speak more generally to the raft of amendments, because I think these amendments - - -

Mr Jensen: If it will save time, yes.

MR CONNOLLY: Yes, it will. Members would have seen a document circulated by Mr Alan Walker, who I understand is a student at the ANU and who has proposed a lot of amendments. A lot of Mr Stevenson's seem to come from that. The reason why "proposes" was put in was that the act of designing a building was not held to be an act of discrimination. The absurd position was reached whereby you could not challenge the discrimination until the building had been built, and by then it was too late. Allowing a challenge at the point of proposal is obviously sensible.

There is a fundamental misunderstanding that permeates all of Mr Stevenson's approach to this legislation. I will point out the fundamental error to him, but I do not know whether it will do any good. He consistently uses rhetoric about offences and breaches of one's liberty and legislation that is draconian. What he fails to understand is that an act of discrimination, while rendered unlawful,

is not made an offence, and the Bill says that very clearly at clause 93, which probably, the chances are, is one that he wants to delete. No, he does not; he wants to keep that, so he must have seen it. All of this rhetoric about star chambers and criminal penalties and all the rest of it is nonsense.

What is happening is this: We are creating an unlawful act in order to allow a challenge to prevent discrimination against individuals, and I am sure that all members of the Assembly support that. These qualifications and additional defences and all of the rest of it are premised upon the creation of a criminal act, which we do not have here. We have the creation of something that is unlawful for the purposes of civil remedies under the Bill. It is not a criminal offence.

MR COLLAERY (7.00): I agree with the Attorney. I believe that legislation against indirect discrimination is necessary to complete the protections necessary in society, and that is what this provision includes. The Supreme Court of the United States has determined that statistics demonstrating under-representation in a class, such as blacks in a jury or women in a teaching profession, are in themselves sufficient for a prima facie case of discrimination. But the court has also said that proof, not mere argumentative speculation, will be necessary to dispel the inference of discrimination raised by statistical disparities.

The question of indirect discrimination has to be covered. It is covered; and it does not require, necessarily, the conscious act or the guilty intent that Mr Stevenson may be used to from his police lectures. The provision is very wide. It covers some substantive submissions received during the formulation stage of the Bill. It is meant to cover a situation where a person adopts a practice - I have referred to this in the house earlier - that has the effect of disadvantaging a group of people of like nature that I mentioned. When you are trying to prove those cases in the courts, as I have, you get statisticians or consultants to go and look at standard deviation issues and all the rest that Mr Kaine, in fact, knows more about than probably any of the rest of us here, and you try to get up the unintended effects of a policy or procedure and so forth.

It is not as simplistic as Mr Stevenson sounds. At this juncture, Mr Speaker, I wonder whether we could not simply set the Assembly on automatic pilot, leave ourselves until tomorrow morning, keep the lights on and Mr Stevenson here addressing his concerns, and we will come back in the morning when he is finished.

Mr Speaker, I seek your guidance as to whether under standing orders, in chapter 15, headed "Bills", you cannot assist the proceedings in the Assembly by determining whether Mr Stevenson's amendments, which all have a similar proposal, such as a deletion, can be postponed while we get on and debate the substantive amendments before the house.

That device was employed recently, as I recall. At least we could resolve the interparty issues in this Assembly. Hopefully, when Mr Stevenson sees that these tactics will not reflect well on him, I believe, the public may be able to pass some comment on it. I seek your guidance on that, Mr Speaker.

I do want to say, however, that if Mr Stevenson has, on the face of his amendments, an argument, I believe that he should not be gagged until he has made out his case. But this evening and this afternoon, I believe, he has put his argument and then repetitively argued a position in relation to the Bill. I direct your further attention, Mr Speaker, to those provisions that relate to repetitive arguments.

MR SPEAKER: Of course, Mr Stevenson would be quite entitled to debate every clause as you raise it, and I do not think the circumstances proposed will achieve much. Mr Stevenson, I put to you the feeling of the house; that maybe this is a delaying tactic. Members appreciate where you are coming from. Perhaps you could make individual points on each of these clauses as required, but keep your debate to as short as possible a time span.

Question put:

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

The bells being rung -

MR SPEAKER: To add to my comment, while we are waiting for the bells to conclude, it is up to members to postpone clauses if you so wish; that is just a move from the floor. If you want to postpone particular clauses, that is your prerogative.

The Assembly voted -

AYES, 1	*NOES, 15*
Mr Stevenson	Mr Berry
	Mr Collaery
	Mr Connolly
	Mr Duby
	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Jensen
	Mr Kaine
	Dr Kinloch
	Ms Maher
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

MR STEVENSON (7.08), by leave: I move:

Page 7, line 28, subparagraph (1)(a), omit "or proposes to treat".
Page 7, line 30, subparagraph (1)(b), omit "or proposes to impose".
Page 8, line 1, subclause (2), omit "Paragraph" substitute "Subsection".
Page 8, line 6, subparagraph (3)(b), insert before the word "feasibility", the words "cost and".
Page 8, line 8, subparagraph (3)(c), omit "or proposes to impose".

Much is made about rights today; yet Mr Berry and others would suggest that I have no right to speak on this. They have a different ideological bent and would suggest that what I say is wrong. In other words, my consideration is that - - -

MR SPEAKER: Order! Mr Stevenson, you are debating a separate issue. I would ask you to come back to the amendments you have moved.

MR STEVENSON: It is relevant to why we should delete the words "or proposes to treat".

Mr Berry: You have done that. Tell us about "Paragraph" and "Subsection".

MR STEVENSON: Once again, Mr Berry says that I have told you about that. I have heard no valid reason as to why we should make it an offence. Mr Connolly talks about whether something is going to be an offence or unlawful. The way I see it, most people do not see a great difference between what is an offence and what is unlawful. I must admit that I do not see the - - -

Ms Follett: I take a point of order. Mr Speaker, the amendments that Mr Stevenson is proposing are quite specific. They refer to a range of words like "feasibility", "cost", "paragraph" and "subsection", and he is yet to address the substance of any of those matters.

MR SPEAKER: Yes. I think your lead-up is concluded, Mr Stevenson. Would you please address the individual amendments.

MR STEVENSON: Mr Speaker, I think that whether something is an offence, and I refer to it as an offence and ask whether it is unlawful, is a relevant point.

MR SPEAKER: I think there is repetition coming into your argument, Mr Stevenson. Please proceed as quickly as you can.

MR STEVENSON: I have not mentioned that point before, but I take your point. As for amendment No. 5, I thought that would stand by itself - the substitution of the word "Subsection" for "Paragraph". Yet, once again, supposedly that will not be agreed to. The insertion of "cost and" before the word "feasibility", once again, I think, stands by itself. I think it is unfortunate that members just look at the various things and say, "Oh, we do not agree with any of this". How about we look at it point by point and make a decision as to whether or not we agree?

Question put:

That the amendments (**Mr Stevenson's**) be agreed to.

The Assembly voted -

AYES, 1	*NOES, 15*
Mr Stevenson	Mr Berry
	Mr Collaery
	Mr Connolly
	Mr Duby
	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Jensen
	Mr Kaine
	Dr Kinloch
	Ms Maher
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

Clause agreed to.

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

INTERIM PLANNING ACT - VARIATIONS TO THE TERRITORY PLAN
Papers and Reference

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (7.18): Earlier this week the Assembly passed amendment No. 2 to the Interim Planning Act 1990. With the exception of the changes to sections 22 and 23 of the principal Act, the provisions of this amendment will not come into force until the Act is promulgated in the *Gazette*. However, in recognition of the spirit of the amendment to section 18 in the Act, I present to the Assembly a copy of the draft variation to the Territory Plan, background papers and

reports for Griffith, section 96, block 1, and Forrest, section 24, blocks 4 and 5. This draft variation has been submitted to the Executive by the ACT Planning Authority, pursuant to subsection 18(1) of the Interim Planning Act 1990.

Subsection 19(1A) of the Act, which was introduced into the principal Act by the amendments, provides that before approving a variation the Executive shall have regard to any recommendation of the committee of the Legislative Assembly in relation to that variation. I seek leave to move that this variation be referred to the Planning, Development and Infrastructure Committee for report to the Assembly.

Leave granted.

MR WOOD: I therefore move:

> That the variations be referred to the Standing Committee on Planning, Development and Infrastructure for inquiry and report.

Question resolved in the affirmative.

Sitting suspended from 7.19 to 8.30 pm

HUMAN RIGHTS AND EQUAL OPPORTUNITY BILL 1991
Detail Stage

Consideration resumed.

(Quorum formed)

MR BERRY (Deputy Chief Minister), by leave: I move:

> That, in consideration of the detail stage of the Human Rights and Equal Opportunity Bill 1991, the Assembly consider the Bill in the following order:
>
> Clause 9.
> Clauses 10 to 14 together.
> Clauses 15 and 16 together.
> Clauses 17 to 22 together.
> Clause 23.
> Clauses 24 to 32 together.
> Clauses 33 and 34 together.
> Proposed new clause 34A.
> Clause 35.
> Clauses 36 to 38 together.
> Clause 39.
> Clause 40.
> Clauses 41 to 44 together.
> Proposed new clause 44A.

Clauses 45 to 54 together.
Clauses 55 to 63 together.
Proposed new Part VI.
Clauses 64 and 65 together.
Clause 66.
Clauses 67 and 68 together.
Clause 69.
Clauses 70 to 82 together.
Clause 83.
Clauses 84 and 85.
Clause 86.
Clauses 87 to 92 together.
Clauses 93 to 95 together.
Clauses 96 to 104 together.
Clause 105.
Clause 106.
Clause 107.
Clause 108.
Clauses 109 to 122 together.
Clause 123.
Any postponed clause.

MR SPEAKER: Does everyone have a copy of Mr Berry's unsigned proposal?

Mr Stevenson: Perhaps we could have some time to look at the motion, Mr Speaker. I am halfway through the first page. It is difficult to agree or disagree - - -

MR SPEAKER: Certainly, I will allow time, as this has just been presented.

MR BERRY: The motion is built around all amendments which are before the Assembly. For example, because it seems that Mr Stevenson has no difficulty with clause 9, that clause is dealt with separately. Mr Stevenson seeks to amend clauses 10 to 14; so they are dealt with together. Mr Stevenson has no difficulty with clauses 15 and 16. He has amendments to clauses 17 to 22, and so on through the list.

MR SPEAKER: I think all members have had time to look at the motion now.

MR STEVENSON (8.36): I would be happy with most of it. I would like clauses 70 to 82 to be considered separately, also clause 116 and clauses 120 to 122. Therefore, I move the following amendment:

> That (1) the words "clauses 70 to 82 together" be omitted and clauses 70 to 82 be considered separately; and (2) the words "clauses 109 to 122 together" be omitted and the following substituted: "clauses 109 to 115" "clause 116", "clauses 117 to 119" and "clauses 120 to 122".

Question put:

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

The Assembly voted -

AYES, 8	*NOES, 5*
Mr Duby	Mr Berry
Mr Humphries	Mr Connolly
Mr Jensen	Ms Follett
Mr Kaine	Mrs Grassby
Dr Kinloch	Mr Wood
Mr Prowse	
Mr Stefaniak	
Mr Stevenson	

Question so resolved in the affirmative.

Motion, as amended, agreed to.

Clause 9 agreed to.

Clauses 10 to 14 taken together

MR STEVENSON (8.49): Clause 10 talks about unlawful discrimination against applicants, employees and so on. This general area discusses whether or not one in a business can determine whom one hires. I think the principle here is that, if the marketplace discriminates, a business owner should not be made to pay for that discrimination. The legislation is flawed, to the degree that it tries to enforce things that it would be far better to achieve simply by education. I think we all agree that a society without unwarranted discrimination against such things as colour, creed, race, political views and so on would be a good idea.

I do not think these things will ever be achieved by making laws and by hauling offenders before a court to be fined or possibly put in gaol. We need education before legislation. I think most people would agree that over the years, as these matters have been talked about, there has been a change within society. As the matters have been debated, many people have looked at them a little bit more closely. I think that is a beneficial thing.

If someone comes to an understanding through education, that will benefit the person. Compulsion through enforcement could create division, disharmony and even discrimination. It could actually create the very things that this Bill purports to campaign against. Mr Speaker, suppose somebody running a business, say a grog shop, decides that a woman would be better suited to serve in the business. It may be that customers of that business think the same. If we force that business owner to hire someone other than a person he would normally choose to hire, we

force that business owner to pay for the marketplace discrimination. I recall no-one commenting on that area and suggesting why it is that a feature of the marketplace should be paid for by people in business.

Mr Collaery earlier brought up the point that there was no definition of religion. If clause 11 goes through, there should be a definition of religion. Otherwise, what constitutes discrimination on the grounds of religion is open to wide interpretation that most people and particularly religions may not agree with.

Clause 11 also talks about what is reasonable and what is unreasonable. I have a difficulty with this. Who decides these things? We have a human rights commissioner or a discrimination commissioner who has tremendous powers to determine these things. That person is bound by practically no rules, certainly not by any precedent. There is no history of problems being resolved by hauling people before such tribunals. Traditionally, in our society problems have been resolved before the courts. Down through the ages, people's problems have been resolved in the courts, and that is where we get our protections from. But there will certainly be more to say on that as we go through other clauses.

Clause 12 talks about commission agents. It is yet another clause that does not allow the business owner to determine how best to operate the business. Think for a moment. We are forcing business people to take on employees who may not be suitable for the betterment of the business. In small business small changes can have big effects. In these hard economic times for businesses, that could well cause some people to go into bankruptcy, to have to close their business.

Some people in this Assembly may say that that is not the case, but I have read that in America that is exactly what has happened in certain cases. The marketplace, even though forced into taking particular actions, has responded to some degree; but the downturn in commerce in America was noted from 1973. Information I have talks about the cost of quotas in America. It says that, while the principal objection to quotas is their injustice, their costs cannot be ignored; that the most obvious cost is the paperwork involved. It is highly likely that paperwork will be involved under this Bill.

The University of Michigan, for example, had to undertake a $430,000 underutilisation study of women on its staff, despite the absence of any evidence whatever of actual discrimination. A case was mentioned on the ABC this morning. The owner of Doyles restaurant said that he did not get his paperwork in to the State on time. I do not know actually what happened, but he was told that that was

not okay and some action could be taken over it. This had to do with the number of women he had on his staff. He said that employees in his restaurants, as I recall, were 85 per cent women. One of his daughters was responsible for putting in a fairly lengthy report on what was being done in that business. She had been away and the report had not been put in and - - -

Mrs Grassby: I raise a point of order, Mr Speaker. This is irrelevant. This has nothing whatsoever to do with the Bill. I know exactly what this paper is, and it has nothing to do with human rights.

MR SPEAKER: Stick to the point, please, Mr Stevenson.

MR STEVENSON: I firmly believe that it is to the point because it talks about the sex of people you hire, as does the Bill that we have before us. One can be charged - or whatever you wish to call it - with discrimination if one supposedly discriminates against a woman or a man. I think it has a relevance. We see people in Australia being discriminated against.

A fellow had no other problem than that paperwork that he had to put in was put in late. This well-known fellow employs many staff, yet to some degree he felt victimised. There was no doubt about that. I heard him on the radio this morning. He was quite indignant that this should happen to him. I think we need to be careful about these things.

Question put:

That the clauses be agreed to.

The Assembly voted -

AYES, 14	*NOES, 2*
Mr Berry	Mr Stevenson
Mr Collaery	Mr Duby
Mr Connolly	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Clauses 15 and 16 taken together

MR STEVENSON (9.01): There are difficulties about to whom a number of clauses could apply and when they could apply.

Mr Wood: They are all quite clear. There is nothing uncertain about them.

MR SPEAKER: Order!

Mr Wood: If other people can filibuster, why can't I?

MR SPEAKER: When you have your turn, Mr Wood, you certainly can.

Mr Wood: I just might do it one day when someone else is on his feet. It is rather late in proceedings for me to do that now, because the parliament is nearly finished.

MR SPEAKER: Order, Mr Wood, please!

MR STEVENSON: I think it is an interesting situation when many times in this Assembly I have sat through - - -

Mr Connolly: No, you do not. You leave the chamber. You are hardly ever here.

MR STEVENSON: I got into that habit, it is true; but over the last 2 years - - -

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

> That the question be now put.

Question put:

> That the clauses be agreed to.

The Assembly voted -

AYES, 15	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Clauses 17 to 22 taken together

Mr Berry: There is no issue in these. These are all just motions to delete clauses.

MR STEVENSON (9.04): Mr Berry says that these are just motions to delete clauses. I think they should be deleted. It is not just a matter of "delete clause". I think they should be out of the Bill.

Motion (by **Mr Berry**) put:

That the question be now put.

The Assembly voted -

AYES, 15	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Clauses agreed to.

Clause 23

MR COLLAERY (9.06): I move:

That clause 23 be postponed until proposed new Part VI has been considered.

I have moved this motion so that this clause can be brought back when consideration of clause 34 is completed. I will move an amendment in relation to that clause later.

Question resolved in the affirmative.

Clauses 24 to 32 taken together

MR COLLAERY (9.07): Mr Speaker, I am concerned. Could you just slow up a little bit. It is not just a matter of attending to amendments, with respect. There are issues to put on the record. Could you just slow it down a little bit.

MR SPEAKER: I thought we were going too slowly.

MR COLLAERY: Mr Speaker, we just have to reach that balance.

MR SPEAKER: To which clause are you speaking, Mr Collaery?

MR COLLAERY: I want to address, firstly, why we have exceptions to unlawful discrimination, to put on the record the reasons, because no doubt - - -

MR SPEAKER: Yes; which clause is this?

MR COLLAERY: This is 24 to - how far did you go?

MR SPEAKER: To 32. Yes, that is okay.

MR COLLAERY: To 32, okay.

MR SPEAKER: That is exactly where we are at. Please proceed.

MR COLLAERY: Thank you, Mr Speaker. Mr Speaker, these exceptions really spell out the meaning of this Bill. The discriminatory conduct which society allows is in these enumerated provisions. They also should record some comments that were made during the discussion stage about general exceptions to discrimination for domestic duties, so called, and residential care of children.

The provisions, for example, in respect of domestic duties are compared with those in other jurisdictions. In Western Australia there is an exemption covering much of this. In Victoria it is not unlawful to discriminate where employment is of no more than three persons in domestic or personal service, or in relation to the home of the employer. So, there are these acceptable provisions and it remains for us to explain adequately to the public the actual ambit of what they can do.

The exemption for religious bodies requires comment. I am aware that Justice Elizabeth Evatt in May last expressed the view that the exemption of religious bodies from the sex discrimination legislation was something that required review. I think we should put on the record the fact that we have given that very wide exemption to religious bodies.

I also put on the record the fact that at a stage before this Assembly rises I would like us to consider a definition of religious bodies because we have given an extremely wide exemption. Women particularly have concerns about their access to the ministry in at least one of the major Christian denominations where decisions were taken recently to exclude any further ordinations or granting of ministries. We have gone along with the rest of the nation and put off the time when we must consider whether it is

appropriate for us to continue to support a situation where there is, in the words of many women - Christian women activists particularly - an unnecessary exclusion of them from clerical service.

It would not hurt this Assembly to debate this a little bit tonight and to put some views on the record. Let us not be put off by the fact that Mr Stevenson, to my great disappointment, has turned what should have been a very interesting, fairly swift intellectual debate into a mechanical exercise that induced a level of boredom. The fact is that there is a high level of male domination in certain of the religious denominations in this country, and no clear way for women in some significant areas.

I accept that this is not a matter that the state should press - it is not for secular intrusion - but elsewhere in this Bill we have intruded in a host of other probably sensitive areas. I stress that this provision can be used for certain dominant groups who could call their exercise religious but who in fact are developing a policy of ascendancy for one gender or the other.

Working backwards, I need to address clause 30. Members may recall a very large and somewhat mischievous article in the *Canberra Times* during the consultation period, in fact on Monday, 11 February. I regret to say that it was an article by Marian Sawer. It was written by someone who should have known better. She should have consulted with my then officers or me before writing a very unfortunate article for the paper. She wrote that the then proposed clause, which is now clause 30, provided an unlimited exemption of all ACT legislation and subordinate legislation. She said:

> This can only be described as an ambit claim on the part of the ACT Administration - and it renders the Bill a travesty. The ACT Government wishes to make discrimination unlawful - unless that discrimination is required by its own laws or regulations.
>
> The equivalent exemption in the Commonwealth Sex Discrimination Act gave a two-year grace period for Commonwealth and state legislation to be brought into line with the Act, plus a loophole for further exemptions by regulation - a loophole that the Senate Standing Committee on Regulations and Ordinances is now closing.

In response to Marian Sawer, may I put on the record that it was unfortunate that those comments went in, because there was, of course, no attempt to evade the actual purposes that she sought to make out. The fact is that, because of all of the catch-up work that we have to do, it is necessary to provide some time for us to go through progressively and amend a lot of legislation. We need to

note here that we have given ourselves just two years to do it. We are sorry, Mr Berry, but this is one of the best and most important pieces of legislation that will go through this chamber. It deserves some explanations so that the people will know what it is about.

Ms Sawer, who is a member of the Women's Consultative Council, or was at the time, also referred to a then section which exempted industrial awards from the Act. She wrote:

> ... a strange thing for an Act which sets out to prohibit discrimination in employment. Current equal-opportunity legislation in South Australia and Western Australia contains no such exemption, nor does the Commonwealth Racial Discrimination Act, and the Victorian Law Reform Commission has recommended its removal.

So, there is a view on the exemptions of industrial awards which we considered in another context earlier on. The other views of Ms Sawer are interesting and were taken into effect. This will create pressures on the Government to bring legislation up to scratch.

On the subject of superannuation, there is an exemption there, and that is mostly at the request of the Federal Government under its age discrimination moratorium. There are long-term implications for some of the provident superannuation funds because women and men have had different retirement ages. This clause 29 has been changed from the Alliance Bill. The Alliance Bill put in a 12-month sunset clause. In other words, we put in a clause to force the Government to finalise its age discrimination provisions, and that has been removed in this draft. I assume that the Government is going to explain why and how it is going to set about solving the issue of age discrimination. Presumably, there are ongoing discussions with the Commonwealth to bring that matter together. The South Australian Government, of course, has already legislated in part in that area. Mr Speaker, again, in insurance there are further challenges for us to reach.

MR SPEAKER: Your time has expired, Mr Collaery.

MR STEVENSON (9.19): My amendments included deleting clauses 24, 25 and 26. The reason for that was that they were consequential. They basically refer to clause 10 or others that I would have already deleted. There is one point with clause 26, which is to do with domestic accommodation. Subparagraph (a)(ii) says:

> ... accommodation provided in those premises is for no more than 6 persons ...

I wonder why there is the arbitrary six. I stayed in a home at one time where there were 11 people - well, it was someone's home, but obviously not one family - and I wonder why we have an arbitrary six. If you have seven it means

that you do not qualify. This is one of the many things that are difficult with this Bill. Clause 26 also refers to a near relative. As it describes someone that you can have affinity with, one would wonder how you can have a near affinity with someone if you talk about a near relative.

Clause 31 allows certain exemptions for voluntary bodies but does not allow a voluntary body to make a choice on moral grounds. We are told throughout this Bill that there are certain political distinctions you can make. There are times when you can make a choice or discriminate, if you wish, when you have certain religious convictions; but this would hold that moral convictions do not have the same weight. I wonder why that is.

Mr Collaery: Which clause, Dennis?

MR STEVENSON: Look at clause 31. It relates to a number throughout here. It is okay, under certain exemptions, to discriminate in the area of religious or political convictions; but it is not okay to discriminate or to make a choice on the grounds of moral convictions. I think it could well be that some people's moral convictions are a lot stronger than their political convictions, and may even be stronger than their religious convictions in certain cases. So, once again, I wonder why in this Bill, as a general rule, you cannot have moral convictions. That is not treated as okay under this Bill.

MR DUBY (9.21): Mr Speaker, as Mr Stevenson said in his introduction to this small address, he originally had planned to remove these clauses on the basis that he had hoped to have clause 10 removed from the Bill. I would like to set the record straight. I have really managed to get this relevant. In the vote that was taken on clauses 10 to 14 I mumbled my words. The vote has been recorded as if I voted to remove those clauses - through no fault of the Clerk, I might add. I would like to put it on the record that I certainly did not; that, instead of 14 to 2, the vote should have been 15 to 1. I guess that I will have to live with that.

Ms Follett: Speak English.

MR DUBY: It might help. A number of the issues that have been raised by Mr Collaery I find very interesting, in particular his mention of religious bodies. I, for one, would certainly not wish to be interfering in the religious practices of persons. If that religion is a bona fide religion which specifies that members of a certain gender can perform only certain tasks, it is only quite right and appropriate that they should not fall within the ambit of this Bill.

Some of the other matters that Mr Collaery has raised also deserve a short comment from the Government. For example, he mentioned that there had been some removal of sunset clauses relating to age discrimination. I notice that they simply do not appear in this Bill; in particular, in this Part IV. Like others, I too would like to hear from the Government as to why those sunset clauses have been removed. However, I disagree with Mr Stevenson's suggested amendment and look forward to seeing clauses 24 to 32 as part of the Act as passed.

MR COLLAERY (9.23): Mr Speaker, I omitted to record that one of the first exercises for the discrimination commissioner will be to review all the laws of the Territory to ascertain consistency with this discrimination legislation. At some stage, no doubt, the Chief Minister will, I trust, consult the Assembly about her intentions with regard to the provision of that office, and the aims and objectives to be pursued outside those enumerated in the legislation.

I should put on the record that, although I mentioned Ms Sawer's comments about industrial awards being exempted, the Victorian Law Reform Commission did recommend that the exception be retained in so far as it related to agreements and arrangements about union membership. I still, nevertheless, believe that that issue needs to be kept under active review and should be on the list of catch-up review when we look at this Act again, hopefully after it has been operating for an appropriate period, say, of one year.

MR STEVENSON (9.25): Just a brief point, Mr Speaker. Clause 32 gives religious bodies, which certainly need to be defined, certain exemptions. I do not believe that anywhere in the Bill it allows a religious body to choose the person they buy certain services from. Obviously enough, if they went out and bought a service in the marketplace, there is no discrimination there. However, they could well decide whom they buy from or whom they spend their money with. If that service was perhaps a service that came into their area, it then may be discriminatory if they choose to select the particular service or service man or woman that they want to deal with. This is something that the Bill has not addressed. There could be many organisations that may not want to give their money, as it were, to someone they feel may have moral values or some other values they do not wish to support. I do not believe that they are covered under this Bill.

Question put:

That the clauses be agreed to.

The Assembly voted -

AYES, 15	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Clauses 33 and 34 taken together

MR COLLAERY (9.27): I move the amendment, circulated in my name, in relation to clause 34.

MR SPEAKER: Could you read it into the record, please, Mr Collaery.

MR COLLAERY: I apologise, Mr Speaker; I think my amendment is to come after clause 34. In that case I wish to address the provisions. I want members to know that they just voted to exempt industrial awards from the law, in clause 30. I hope you realise that. That is against the recommendations of the Commonwealth, Western Australia, South Australia and the Victorian Law Reform Commission. I trust that you know what is going on tonight.

Mr Connolly: Section 28 of the self-government Act.

MR COLLAERY: Well, it does not matter; they could be local awards. We are capable, under the self-government Act, in the fourth schedule, of doing that. I am very concerned, Mr Speaker, that we are not getting a contribution from the Government about this Bill. We are asking a series of questions. Mr Duby asked questions. There are no responses and we are going on to vote. I think you want to stop and think, and know what you are doing, because you are going to cop the publicity about these matters in the next few days. I am not trying to undermine a Bill that we largely drafted. I think you should know what you are doing.

How many of you realise that clause 30, paragraph (1)(b), exempted industrial awards, and that that decision is not accepted at Commonwealth level. Western Australia and South Australia have no such exemption and the Victorians have recommended its removal. The Women's Electoral Lobby and a whole lot of other groups opposed it on the basis that minimum wages and terms of employment should not be set in breach of principles of equal opportunity laws. We are not getting a debate tonight. If the Government is not able to debate the provisions it has adopted, then I will lead the debate in future. Why should I respond this way and try to work my way through it? The Attorney has the resources of the Law Office. I put that on the record. I am not happy.

I trust that members have read and understand the implications of the clauses that relate to genuine occupational qualifications. I will put on the record now that I do not want to be a devil's advocate on my own Bill. There have been a number of comments about this matter. One of the bases for some of this is gender hiring. For example, there has been trouble getting women doctors for women's health centres, women's refuges, and so on. That should be understood. The New South Wales Anti-Discrimination Board looked towards a provision that allowed some exclusivity in rape crisis centres and women's refuges, and I hope that is understood as well.

The issue of exemption for artists and photographic model work is of interest. Members should note that sometimes people of a certain sex or race, or with a certain impairment, are employed for reasons of authenticity because a body wishes to photograph a particular disability for the purposes of a disability education program, or the like. That is why that is there, but it is capable - - -

Mr Duby: Or a Negro for a Tia Maria ad?

MR COLLAERY: Yes, quite correctly, or a Jamaican for a Tia Maria ad. Members should be aware that in giving this exception we can allow some exploitation of those provisions by sham arrangements. That is a point.

Finally, I want to flag paragraph 34(2)(g), which is to do with separate sleeping accommodation, sanitary facilities and the rest. I want to flag that because after this provision I want to move an amendment to take into account the situation in pastoral areas of Australia where pastoralists are not able to provide separate gender sanitary facilities, and other issues such as where they do want to have, in a shearing shed, a male tea boy, as the term used to go, and all the rest. There are issues there that we need to approach.

MR STEVENSON (9.34): Paragraph 34(2)(b) says:

> the duties of the position involve performing in a dramatic performance or other entertainment ...

That does not include someone who has a business and wants to choose the staff. Let us say that it is a travel agent and, because the agency is particularly highlighting travel to the South Seas, or wherever, it wants to hire someone. Regardless of whether it was someone they had to hire, there is no need for authenticity, aesthetics would not come into it and tradition would not come into it. Under this provision the agency would not be allowed to do that. The point I make is that what we are doing is taking away from people the freedom to run their own lives, in many cases.

Question put:

> That the clauses be agreed to.

The Assembly voted -

AYES, 15	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.
Proposed new clause 34A

MR COLLAERY (9.35): Mr Speaker, I move:

> Page 18, line 14, after clause 34, insert the following new clause:
>
> **Employment of Married Couple.**
>
> "34A. Nothing in Part III renders unlawful discrimination against a person on the grounds of marital status in relation to a job which is one of two to be held by a married couple.".

This seeks to restore to the Bill the provision that the Alliance had.

Mr Berry: What if they are not married?

MR COLLAERY: Yes. I seek leave, Mr Speaker, to delete the word "married" and insert the words "in a bona fide domestic relationship" after the word "couple".

MR SPEAKER: I think you had better put that in writing, Mr Collaery.

MR COLLAERY: I spoke to the Clerk. We will do it now.

MR SPEAKER: Which "married" are we talking about, Mr Collaery?

MR COLLAERY: "Married" where it occurs on the - - -

MR SPEAKER: In the header or in the text?

Mr Connolly: It is in the title and the text.

MR SPEAKER: Both in the title and in the text. Is that what you are saying?

MR COLLAERY: I would delete the word "married" in the title, and delete the word "married" - - -

MR SPEAKER: Would you like to postpone this while you write it out, Mr Collaery?

MR COLLAERY: I did write it out for the Clerk. Something has gone wrong.

MR SPEAKER: That is not written out for the Clerk. With due respect, Mr Collaery, that is not of good quality.

MR COLLAERY: Okay; we will defer it for a while.

MR SPEAKER: Thank you. The question is: That proposed new clause 34A be postponed.

Mr Duby: I do not believe that that is what we want to do.

MR COLLAERY: I seek leave to move this at a later time.

MR SPEAKER: To save confusion, please just write it out now, Mr Collaery.

MR COLLAERY: Mr Speaker, I will read out the amendment. The proposed new clause, clause 34A, is headed "Employment of couple". I move:

Page 18, line 14, after clause 34, insert the following new clause:

Employment of couple.

"34A. Nothing in Part III renders unlawful discrimination against a person on the grounds of marital status in relation to a job which is one of two to be held by a couple in a bona fide domestic relationship.".

MR SPEAKER: Are all members aware of what is proposed?

DR KINLOCH (9.41): I seek some help. I do not quite know how to go about this, but could I give an example. There is a Quaker house in Melbourne and they have advertised for a married couple. This is not even in the ACT; but, if there were similar circumstances here, does this mean that it is illegal to advertise for a married couple? I need some help.

MR COLLAERY (9.41): The reason for inserting this is for the very situation that Dr Kinloch refers to. It is to preserve the right, in certain circumstances, to advertise in a discriminatory fashion for people in a different marital status, that is, for single persons or married couples, because one of the grounds for discrimination is marital status. It is intended more for child-care and pastoral situations. The situation Dr Kinloch referred to, I assume, would not affect the intent behind the provision; but, once again, one would want to review that provision if it were used widely to ensure, for example, the employment of only married couples in milk bars. That would not meet the spirit and purposes of this provision. I am not sure why the Government dropped it out of our draft. I commend it to the house.

MS FOLLETT (Chief Minister and Treasurer) (9.42): Mr Speaker, we in the Government have no particular objection to Mr Collaery's amendment. I suspect that it was dropped out in the drafting because of its rather quaint nature. Mr Collaery referred, in particular, to circumstances in rural employment where there might be call for a married couple. To my knowledge, that is not a common occurrence in the ACT, and I am not aware that it is a common occurrence in other rural areas. I know that it has occurred, particularly, I suspect, in domestic employment, and particularly in the diplomatic corps where they often have a housekeeper and a chauffeur and usually require that they are in some sort of domestic relationship. So, we have no real objection to it.

I think it does need to be carefully watched, though, because it is a clause that could be used to discriminate. It could be used, in particular, to turn away single people who are otherwise perfectly qualified for the job. I think it is something that we would want to watch very carefully,

because it is a kind of provision that has not really moved with the times, either in employment terms or in human relationship terms. We will not be opposing it, but we will be keeping a careful eye on it.

MR COLLAERY (9.44): I would just put on the record that the Women's Electoral Lobby, during the discussion stage, wanted the de facto or two single persons capacity there, and we have met, I believe, that requirement. I guess, implicitly, in asking for that, that they accepted the exemption; but I am sure that they would endorse the Chief Minister's comments.

Proposed new clause agreed to.

Clause 35 agreed to.

Clauses 36 to 38 taken together

Question put:

That the clauses be agreed to.

The Assembly voted -

AYES, 15	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Jensen	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Clause 39 agreed to.

Clause 40

MR COLLAERY (9.47): Mr Speaker, this provision renders otherwise unlawful discrimination on the grounds of sex acceptable in sporting activities. The Women's Electoral Lobby thought the sweeping exemption was unacceptable and it was redrafted to put in some grounds. The Women's Electoral Lobby also had concerns with the fact that there was no mention of sporting activities by children who had not yet attained the age of 12 years, but it was considered that that issue might be covered within the implied terms of the provision.

The House of Representatives Standing Committee on Legal and Constitutional Affairs report on equity for women in sport had doubts about the strength, stamina and physique requirement. There was a suggestion that it should be eliminated. Their view was that exemptions should provide that the same range and levels of competition should be offered to both sexes on the basis of demand, and that physiological differences, for example, in gymnastics where you have physiological differences, should result in specific exemptions. Another House of Representatives standing committee, again reporting on sport, believed that gender differences should be acknowledged and valued, not competitively compared.

So, I say again that we have effectively adopted what appears to be a recognition of the status quo in this Territory; in other words - I am sure Mr Stefaniak is listening somewhere, wherever he is - this clause deals with the exclusion of women, for example, from certain of the male sports, and vice versa. In gender terms there may well be a neutral effect in terms of which gender is most excluded; but it is an issue that needs to be looked at down the track, in my view. I believe that this provision is appropriate at this time, but I flag it as one for us to do some work on.

I think the record should show, particularly for the Women's Electoral Lobby and for the House of Representatives standing committees, that we are bringing in a compendious piece of legislation. We have been very innovative in some areas. This is an area that needs to be approached carefully and consultatively. I do not believe that we yet have the proper centralised sporting overview in this Territory to enable us to get going a fully independent review and a proper and thorough community consultation as to how we could start to develop gender equity and equity and access issues for women, and particularly girls' sports, in the Territory.

That was an issue, as some members know, which was discussed at the sports summit the other night. There was no disagreement, from just about all of the leading representatives there, with the notion mentioned by some speakers that the question of equity of access and women's and girls' involvement in sport needs to be looked at. So, I put on the record, and I do not see any members of the Assembly disagreeing, that that is an issue that we are conscious of and are looking at. It will obviously be one that will exercise the next Assembly.

MR DUBY (9.52): I, for one, anyway, would like an explanation by the Government of exactly what paragraph 40(2)(d) intends to achieve. It says that the subsection relating to discrimination on the grounds of sex in sport does not apply in relation to "any prescribed sporting activity". I was hoping that someone might be able to clarify that in my mind before I came to a position on that particular part of the legislation.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (9.53): Members would recall that earlier on, in the list of grounds of discrimination, there was originally an open-ended power there to prescribe an additional ground of discrimination. The Scrutiny of Bills Committee quite properly said that that was too open-ended and should be removed. The Government moved an amendment to take that off.

This is, again, a somewhat open-ended provision, but of less severity. Mr Collaery, in his remarks, indicated the difficulty of this area, and the difficulty of applying the concept of non-discrimination to the many and varied aspects of organised sporting activities. This is, in effect, an open-ended provision that will allow the Government to fix up problems as they may arise.

I note that the Scrutiny of Bills Committee did not have any problems with that. Any prescription of a sporting activity is, of course, disallowable. So, it is allowing a bit of discretion to the Executive to fix up problems as they may arise unthought of, because of some of the problems in liaising with the vast area of organised sporting activity. To some extent, I guess, we are asking you to take this on trust; but it is disallowable. It allows us to fix up problems as and when they arise. Trust us.

MR DUBY (9.54): I am sure I speak for other members of the Assembly, Mr Speaker, when I say that in this case I am prepared to trust the Minister for Sport, who I know will be zealous in ensuring that sex discrimination does not appear in any sporting activities within the Territory. It did seem to me that the provision was doing just what the Attorney has specified; namely, that it was giving the Government a blank cheque to say that.

When I raised the point originally I heard voices - I think they were from the public gallery - suggesting that the Government could, for example, use this to remove jelly wrestling, or something equally worthy, from the sporting activities of Canberrans, and I would hate to think that it was applied to circumstances such as that. Clause 40 does seem to paint a very broad canvas. To be honest, for the life of me, I cannot think of an additional sporting activity which would fall within the purview of the meaning of the Bill. Nevertheless, I will take the Government's word on this and allow them that leeway.

Clause agreed to.

Clauses 41 to 44 taken together, and agreed to.

Proposed new clause 44A

MR STEVENSON (9.56): I move:

Page 21, line 33, after clause 44, insert the following new clause:

"44A.(1) Subject to subsection (2), nothing in Part III renders unlawful discrimination in relation to employment or work on the grounds of religious or political conviction, where the duties of the employment or work involves or relates to the dissemination or development of information, ideas or beliefs of a political, educational or religious nature.

"(2) Nothing in subsection (1) entitles a person to discriminate against another on the grounds of religious or political conviction where -

(a) the discrimination is unreasonable in the circumstances; or

(b) the discrimination is unnecessary to the effective dissemination or development of such information, ideas or beliefs.".

This amendment was suggested by the student at the law school that Mr Connolly referred to earlier, Alan Walker. As I mentioned earlier, discrimination on the grounds of religious or political convictions is unlawful under the Bill, and clauses 43 and 44 introduce exemptions to discrimination on those religious or political conviction grounds in relation to offers of employment, commission agents, contract workers and partnerships.

The exemption should not be limited to mere political or religious convictions but should also encompass moral beliefs - that is, not all convictions are political or religious, obviously. No sensible distinction can be made to exclude political or religious convictions but not moral or ideological grounds. If one is excluded, then so should the other.

Some difficulties arise when an employer or a particular group - let us say, voluntary organisations, lobby groups or organisations that have a party political function - wish to hire somebody who shares the same ethical, social or institutional views. This could range from groups like the Farmers Federation to the Salvation Army. While obvious political groups are entitled to discriminate on the basis of political conviction, other groups are not entitled to discriminate on the basis of ethical or social convictions.

Let us say that X heads a group called Citizens for an Ethical Society. The organisation is active on a number of fronts, including lobbying governments and educational and public relations areas. Let us say that the organisation also strongly believes that people should be tolerant of each other so long as they do not cause harm to other people. The organisation decides to look at the question of population, forms the view that the world is overpopulated, and that one of the mechanisms to control population is to encourage contraception. If it wishes to promote these ideas it must tread very carefully in respect of this Bill.

There are at least three possible areas of conflict - discrimination in relation to parents, pregnancy and religion. Of the last, it finds that members of particular religions have a religious conviction against contraception. Under the Bill, if X discriminates against a person with such a religious conviction or who is pregnant by, for example, refusing to employ such a person in a public relations campaign to promote contraception, X may be guilty of unlawful discrimination.

Certainly subclause 8(2) relates to this area. However, under the circumstances, it would be somewhat imprudent for X's organisation to employ a person who had such a conviction or attribute. There are a number of clauses, as I mentioned earlier, whereby similar problems arise. One would assume that in a democracy the person we call X is entitled to develop a campaign against such activities, and an argument that a person with such a conviction or attribute would not apply for the position is simply naive.

Another example may serve to cement the point being made. Let us say that X's organisation formed the view that nuclear and chemical weapons were immoral and their proliferation symptomatic of a psychosomatic illness, and it wished to campaign against it. Clause 44 would seem to allow X to discriminate against a person who had a political conviction that nuclear weapons were necessary if X's organisation was a political party or the person was to be engaged in any other similar employment or work of a political nature.

Mr Connolly: "Was a political party or the person was to be engaged in any other similar employment or work of a political nature. Consequently, if X refused - - - "

MR STEVENSON: It is nice to know that Mr Connolly can read as well.

Mr Connolly: We have all read it.

MR STEVENSON: As I said, I well understand that you have got it and you have read it. You will have an opportunity to answer the points, and I look forward to hearing you. But it does seem, without any shadow of a doubt, that under the Bill people who have political organisations, in other words, members of parliament usually, are able to discriminate fairly widely; yet those same rights of discrimination are not allowed for beliefs other than political beliefs. Where is the fairness in that? As Mr Connolly and other people say that they have read it all, I will leave it to Mr Connolly to let us know the particular point he wishes to make.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.01): Mr Speaker, as was apparent as I was reading one word in front on Mr Stevenson's speech, Mr Stevenson's views just expressed are precisely the submissions of a gentleman who has, I think, just finished a course at the ANU in human rights and has kindly offered to rewrite the Bill for us, giving us the benefit of his recently completed course. I have asked the law officers, the people who have been involved in drafting this legislation for some years, to have a look at this. Their basic premise is that what is proposed here is far too wide.

At the outset it must be said that Mr Stevenson's proposed clause 44A must be taken together with a proposal to delete clauses 43 and 45. He is having a catch-all provision as an exception for what he is describing as political, education or religious beliefs, rather than three specific provisions relating to specific circumstances.

The Bill says that for religious workers it is appropriate to discriminate on the grounds of religious belief - that is, a church that wishes to instruct in a particular faith may discriminate and employ only persons of that faith. For political workers, a political party may discriminate on the grounds of political belief, and so forth.

The problem with the catch-all provision is that it is so wide that it would, in effect, allow a religious organisation to discriminate on the grounds of political belief, and a political organisation to discriminate on the grounds of religious belief. He is muddying the waters by being far too broad. It is far safer, on the considered advice of my advisers, to keep the separate grounds of exemptions.

The basic premise of this legislation is that discrimination is not acceptable, and the exceptions provided in the Bill are kept to a minimum and made as specific as possible in order to detract as little as possible from the overall purpose of non-discrimination. The exceptions deal with real situations and provide specific exemptions.

To have a cover-all provision for exemption for each of these categories of belief and apply it across the board would broaden the level of allowable discrimination and, by allowing that sort of crossover, there is no logical reason why a religious body ought to be able to discriminate on the ground of political belief or a political body on the ground of religious belief. I would urge members to retain the existing structure. While we are debating an alternative to clause 44, it must be remembered that we are saying that we should retain clauses 43, 44 and 45 as discrete bases.

MR STEVENSON (10.05): I appreciate Mr Connolly's explanation; I just remain unconvinced. He said that that is his advice. Proposed new clause 44A that I have suggested does indicate, in paragraphs (a) and (b), that discrimination must be unreasonable in the circumstances and that the discrimination is unnecessary to the effective dissemination or development of such information, ideas or beliefs. I feel that the point still holds. I make the point once again that it is a very widespread discrimination allowance for political organisations, but that does not hold for other groups.

MR DUBY (10.05): I would just like to comment on these three clauses. I notice what Mr Stevenson has said. When looked at generally, it is not an unreasonable supposition; but I think Mr Stevenson deserves an explanation of why I shall not be supporting his proposed new clause 44A.

As Mr Connolly, the Attorney, has so adequately pointed out, the current arrangements under clauses 43 and 44, and indeed clause 45, meet the provisions that I think Mr Stevenson was trying to address with his new clause 44A. There is nothing unreasonable about it, frankly, in comparison with some of the things we have heard from him in relation to the rest of the Bill. In my view, there is nothing unreasonable in what he is trying to do.

I would like to let him know that I think we are better off leaving the waters unmuddied, as the Attorney said. I shall not be supporting your amendment, Mr Stevenson. But that is not on any philosophical basis. I just think it is cleaner law if it is left the way it is.

Question put:

That the proposed new clause (**Mr Stevenson's**) be agreed to.

The Assembly voted -

AYES, 1	*NOES, 16*
Mr Stevenson	Mr Berry Mr Collaery Mr Connolly Mr Duby Ms Follett Mrs Grassby Mr Humphries Mr Jensen Mr Kaine Dr Kinloch Ms Maher Mr Moore Mrs Nolan Mr Prowse Mr Stefaniak Mr Wood

Question so resolved in the negative.

Clauses 45 to 54 taken together

MR STEVENSON (10.08), by leave: I move:

Clause 48 -

Page 22, subparagraph (1)(a), line 34, omit all the words after "be", substitute "effectively unable to carry out the work that is the object of the position concerned; or".

Page 23, subclause (2), line 5, omit "essential to", substitute "the object of".

Clause 49, page 23, line 17, omit all words after the word "be", substitute "effectively unable to carry out the work that is the object of the position concerned.".

Basically, why I move the amendments is to carry the clause a little further, to talk about the person being effectively unable to carry out the work that is the object of the position concerned. Otherwise, you can have a situation where someone might be required to hire someone who really cannot do the job; unfortunate though it may be, they do not have the capacity to do the job correctly. It may be that they take a lot longer. There are other possibilities. That is why I think it would be reasonable to put in that they are effectively unable to carry out the work that is the object of the position. The proposed amendment to clause 49 is, of course, similar.

In regard to subclause 48(2), the reason I would delete the words "essential to" is that you can have many things that you require someone to do in a job; although it may not be essential to it, it can be very important. It can make it extremely difficult if you do not have it; but someone could say, "Look, it is not essential. We really need someone like that, but it is not absolutely essential". So, I would remove the words there. That would allow someone to discriminate against somebody; even though it may not be absolutely essential, it may be highly relevant to the particular job. I think that is a perfectly reasonable situation.

MR COLLAERY (10.11): I am commenting on clause 45. You will recognise that here again is a peculiarly Australian accommodation to the circumstances of our dual schooling system. You would not see someone who lived in France for five years touch this provision. After they drove the Jesuits out in 1905, nothing like this has survived since. I simply want to record for members' interest what we are doing. This is another historic adjustment to the Australian condition.

Clause 46 is an adaptation that came out of the consultation period. I forget which authority in Western Australia commented; but it was said that we should have a definition of undue or unjustifiable hardship, and we are indebted for the enlightened provision. My marginal note says, "See subsection 4(4) of the Western Australian legislation for the definition of what constitutes unjustifiable hardship".

That is a very important key definition because it will effectively set the benchmark for the types of exceptions relating to impairment. When you are talking about impairments, the groups with impairments are extremely sensitive about their equal opportunities. I am sure that Mr Duby's eyes have focused immediately on paragraph 47(d). I want to tell Mr Duby, so that he can spring to his feet, that that provision was not there when I last saw the Bill. It is a new one.

I am not imputing any improper motives to the present Government. It has obviously been put there on advice, because there will be a phase-in period. You will see that it follows a similar exemption given in respect of genuine occupational qualifications at clause 34. We are dealing here again with a similar concept. We have not completed our classes and we are new to this field.

I am prepared to accept the addition by the Government on the basis of the understandings that have been reached with them in this chamber on that; firstly, that this would be a disallowable instrument and we will be in a position to monitor the effect of it.

Mr Jensen: It does not say that.

MR COLLAERY: Mr Jensen interrupts and says that it does not say it; but the Attorney can correct me if I am wrong. I would presume that it is a disallowable instrument.

Mr Connolly: Mr Collaery is right.

Mr Jensen: Where does it say that?

MR COLLAERY: We have the benefit of an amendment drawn by Mr Connolly, in fact, to the subordinate law.

Mr Connolly: Yes, the Subordinate Laws Act gives a general cover.

MR COLLAERY: Again, and we should know, there was a great deal of comment about these exceptions from various groups - the Women's Electoral Lobby, the AIDS Action Group and a number of others. The upshot of it all is that adjustments were made to the Bill.

But we need to be vigilant to make sure that these will not be used in workshop-type situations, where people with disabilities are taken on to put things together for a commercial operator. Often those functions are profitable to the operator of that exercise; nevertheless, occupational health and safety regulations and laws should, of course, be relevant here in terms of the employment of people with impairments in sweatshop-type situations, in repetitive working types of situations, and the like. I think the Government is aware of the need for a level of attention to how these exceptions will work, and I am sure all members in the chamber agree with that.

Mr Speaker, finally, the discrimination by qualifying bodies provision states:

> Nothing ... renders unlawful discrimination by an authority or body against a person on the ground of impairment if the authority or body believes on reasonable grounds that, because of an impairment, the person is, or would be, unable to carry out work that is essential to the position concerned.

One could imagine someone in a trade or profession that required a standard of occupational skill for safety reasons, such as an eye surgeon, or a precision worker, where there could be dangers to other people working. These are work person-like provisions and, of course, they are acceptable. That is the reason why we are doing it, despite the fact that a number of groups were concerned about it.

The overall issue here is that these exceptions should not reach a level such that we are not assisting people with impairment to integrate with the type of groups they would want to. All of those who have been petitioned by the Down's syndrome parents know what I am talking about in this area. The right of intellectually impaired children

to be integrated into the mainstream is in accordance with - the term "normalisation" is not liked these days, but it is still called that in government - the normalisation policy accepted by the ACT and Commonwealth governments. The question of resources is also important in making sure that we attend to those interests.

I turn to the exceptions in the education area. This is clause 50. I know that Dr Kinloch was interested in this on the Down's syndrome side. Here is the provision that relates partly to this. It is subclause (2) and I think we need to ponder it a little bit. We are deciding here to effectively reject the petitions we have been receiving for a long time that this group of children now be let into the mainstream. If Mr Humphries were here, he would be able to contribute to this debate, because we both became involved at some time.

It has been argued by the Down's syndrome parents that their children should go naturally into the mainstream. It has been responded to by the education authorities that the matter of the particular resources required to be allocated to them in our schools raises, inversely, access and equity issues for other students. It is a very difficult and sensitive area, but we are deciding tonight to accept the position that has been advised for some years by the education authorities in the Territory.

Mr Berry: Erudite remarks, Bernard; but you are just taking up time.

MR COLLAERY: Well, I am sorry, Wayne. I believe that these things need to be settled. We will be accused of rushing through the legislation. We would not have this pressure if Mr Stevenson had been reasonable about his approach to the Bill.

I think the rest of the matters have not raised a great deal of comment; but in respect of the clause relating to access to premises it was argued that there should be a sunset clause for people, and it is there. It is in subclause (3).

MR STEVENSON (10.21): I wish to move an amendment to paragraph 51(1)(b), to delete the word "unjustifiable".

MR SPEAKER: Order! We have to get rid of the other amendments first, Mr Stevenson. We are still on clauses 45 to 54, and your amendments Nos 34 and 35. I have not put that question yet.

MS FOLLETT (Chief Minister and Treasurer) (10.22): I think that Mr Stevenson's comments on his amendments Nos 34 and 35 are deserving of a response. I am sure that Mr Collaery would agree that, in relation to this part of the Bill, there really has been very careful and quite exhaustive

consultation carried out with groups representing people with disabilities. The words contained in this Bill have been very carefully chosen after that consultation. The words have been chosen to ensure that non-essential elements of a job are not used to exclude people with impairment from those positions. So, they are non-essential elements of a job.

I think everybody in this chamber would agree that it is very important indeed that people with disabilities are brought into the work force and that non-essential elements should not be used to exclude them. I do not see how anybody could disagree with that. The job itself is what matters, and the person's capacity to do the job - not their incidental capacity to make the tea or answer the phone or whatever. So, I think those words are very carefully chosen and should be supported.

Mr Stevenson's amendments are an attempt to water down those provisions. His amendments would allow an employer to discriminate against a person with a disability on the basis that they could not do one non-essential aspect of a job. I think that is quite unacceptable where a part of a job is not considered essential, and we all know what they are. It is just commonsense that that should not be used to exclude a person from a position. The Government opposes Mr Stevenson's amendments Nos 34 and 35, and I trust that the rest of the Assembly will as well.

MR DUBY (10.25): I would like to endorse the comments made by the Chief Minister in relation to the consultation that has occurred, particularly in respect of clauses 46 through to 56, primarily relating to people suffering from physical impairment of some kind. I agree with the Chief Minister; Mr Stevenson's amendments, if successful, would effectively eliminate that requirement of being able to effectively do the core of the job rather than peripheral parts of it. That, of course, is one of the major factors which have placed people with impairment of various kinds at a great disability over many years.

In relation to clause 50, Mr Collaery raised a point relating in particular to Down's syndrome children whose parents wish to enrol them in local schools. I also acknowledge that that is the case and that what we are doing here is effectively shutting the door on those folk, as has been the case for some years. Speaking personally, I must admit that I have put a great deal of thought into that matter over recent times and I have come to the conclusion that it is acceptable to actually discriminate in those cases, because not just one person but a whole number of children in a class are affected. So, I am prepared to accept subclause 50(2).

MR JENSEN (10.26): I think it is appropriate at this stage to follow Mr Duby, in view of Mr Duby's record as Minister for Urban Services in relation to employing people with disabilities in the Motor Registry and the Parks and Conservation Branch. I think it is something that we should put on record. As I understand it, the current Minister is continuing that practice, and I think we all support that.

DR KINLOCH (10.27): Mr Speaker, I am very aware of clause 50, subclauses (1) and (2). No-one has the final wisdom on just where is the best place to put someone with that kind of handicap. The other side of that worry is the people who insist on placing people with that kind of handicap in inappropriate situations. There has to be some concern to give people with the maximum objectivity the right to exercise their judgment in that matter.

Question put:

That the amendments (**Mr Stevenson's**) be agreed to.

The Assembly voted -

AYES, 1	*NOES, 16*
Mr Stevenson	Mr Berry
	Mr Collaery
	Mr Connolly
	Mr Duby
	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Jensen
	Mr Kaine
	Dr Kinloch
	Ms Maher
	Mr Moore
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

MR STEVENSON (10.29): I withdraw my circulated amendments Nos 37 and 38 and substitute the handwritten amendment I have circulated. I move:

Clause 51, page 23, paragraph (1)(b), line 38, omit "unjustifiable".

MR SPEAKER: So, you are not moving to delete them. You are advising people what you want to do.

Mr Duby: I take a point of order, Mr Speaker. We have just passed clauses 45 to 54.

MR SPEAKER: No, we have not, Mr Duby.

Mr Duby: I beg your pardon.

MR STEVENSON: I seek to remove the word "unjustifiable" from the term "unjustifiable hardship" in this clause that relates to discrimination concerning access to premises. Paragraph 1(b) relates to the alteration of premises to give access to someone who has some impairment and it says:

> ... such access would impose unjustifiable hardship on the person ...

Many would suggest that if it imposes hardship on the person that should not be allowed. "Unjustifiable", I feel, goes too far. Once again we are asking the employer, the business owner, to pay for the corrections. Even though it may place hardship on that person, that, unless we remove "unjustifiable", would be allowable.

MR COLLAERY (10.31): I am concerned about Mr Stevenson's approach. It is an affront to the sensibilities of so many people. I have never seen so comprehensive an affront to the values that this society should hold. I am astounded tonight. I just want to read something; let Mr Stevenson listen to this. It comes from a foreword to a consultant's report done for the Human Rights Commission of Brian Burdekin, who is setting about that great study of the human rights of people with disabilities, including intellectual disabilities.

This is principle 3 of the UN Declaration on the Rights of Disabled Persons. I guess Mr Stevenson does not accept any of the UN documents, but I am going to put it on the record. It is old language, but it has to be used. It is from 1976. It states:

> Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

Mr Stevenson clearly does not accept that. It is extremely sad tonight to see this happening.

MR DUBY (10.33): I was just going to put something on the record about subclause 51(3). Two years seems to me to be a long time for the Government to set as a time for construction of buildings to meet the requirements of disabled persons. Whilst I am not about to move an amendment to that, I would like to imagine that the spirit of the legislation will be taken up by the Government and that the Minister will fix a date certainly prior to the end of 1993.

MR STEVENSON (10.34): Mr Collaery's suggestion that I do not have any concern for those with impairment or those who are disabled is yet again false. The concern that I also have, though, is for people who run a business. They should not have to undergo hardship to accommodate someone with impairment. Unfortunately, that may be a problem. Why does somebody in a business have an obligation to employ people who might not be able to do the job correctly? No-one has explained that to me.

Mr Collaery mentions that people with impairment and so on should have a right to a good life and whatever, and who would disagree with that? But that was not the point; and that was not what I mentioned in the amendment. The amendment discriminates, or could be used to discriminate, against someone who runs a business. That is not fair. That is discriminatory. That is what you suggest this Bill is against. It could cause someone to hire somebody who may not be able to do the job as well. In this particular case it could cause someone hardship through having to make certain changes to premises.

MR DUBY (10.35): I must admit to the house that I misread subclause 51(3) in my earlier deliberations. I find this dating to be quite unacceptable. This legislation means just the opposite of what I hoped the Minister would do. This means that nobody shall be required to have a building constructed to meet the needs of disabled persons until at least two years after the commencement of this section. In other words, December 1993 is going to be the time. Subclause (1) talks about the design or construction of premises and the provision of access. The Minister is to fix a date for the operation of this clause and the Bill then specifies that that date cannot be for at least two years. This is, to me, quite inappropriate, and I would move, Mr Speaker, that subclause 51(3) be deleted from the Bill.

MR SPEAKER: You cannot move that yet. You are foreshadowing that amendment, Mr Duby.

MR DUBY: I foreshadow that I shall so move.

Amendment negatived.

MR DUBY (10.37): As foreshadowed, Mr Speaker, I move:

> Clause 51, page 24, subclause (3), lines 4 and 5, omit the subclause.

MS FOLLETT (Chief Minister and Treasurer) (10.37): Mr Speaker, the Government does not object to Mr Duby's amendment. On a reading of that clause in the Bill, it can readily be seen that what it does impose is a mandatory period of two years before the commencement of these provisions of the Bill concerning access to premises. It is certainly acceptable to us to remove that mandatory period and to attempt perhaps an earlier commencement; but I am sure Mr Duby would agree that there does need to be

some consultation with the building industry, the construction industry, to allow reasonable time for them to adapt to the changed provisions. As I said, we do not object to Mr Duby's amendment.

MR DUBY (10.38): I appreciate the Government's acceptance of that amendment. It is clear that any government will set a date, as the Chief Minister has said, after consultation with the industry. We are, in effect, giving the Minister a blank cheque in terms of the date, but I am sure that that date will be promulgated and it will certainly be less than the two years which the Bill specifies.

MR JENSEN (10.39): Mr Speaker, I am a little bit concerned as well. By taking that out we are leaving it open-ended to the Minister. We could reduce the time by making it 12 months instead of two years. By taking out that subclause, we will be leaving it to the Minister. I hope that the Minister will put on the record, before this is voted on, what he proposes as the appropriate date.

MR COLLAERY (10.40): Perhaps I could throw some light on this while the Attorney makes the same voyage. There was discussion as to whether this should be related to substantial alterations and new buildings and so on. Really, it is a question of consultation with the building industry, as the Chief Minister said, but at the same time ensuring that a government will not equivocate on the issue for more than a couple of years. I do not mind; I will accept the view of the Assembly. It is not clear from my historical records that we have spoken to the building industry. Perhaps the Attorney has better advice than I have. I cannot recall consulting the industry, although, at the Federal level, this has been discussed in one of the Federal ministerial committees. I cannot recall the details, so I am unable to assist the house on that matter.

The Women's Electoral Lobby from South Australia responded, as did the South Australian Government, and they believed that this question of access by impaired persons to premises required a reasonableness about the approach. There was a submission by Disabled Peoples International that the time limit for new buildings should be one year and that it should apply to all substantial alterations. They also advise that renovation is often an excellent time to make a building accessible, and the building controller could intervene at the time people, particularly commercial lessees, apply to renovate a building. There were a number of issues discussed there. I am unable to assist any further.

Amendment agreed to.

Clauses, as amended, agreed to.

Clauses 55 to 63 taken together

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

ADJOURNMENT

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

That the Assembly do now adjourn.

Aidex

MR STEFANIAK (10.44): I think it is probably appropriate, as we have been dealing with the discrimination Bill, to mention that I think there were, perhaps, some instances of discrimination, and reverse discrimination perhaps, out at Aidex. I was very disturbed today to hear a report from my assistant who went out there and spoke with both police and demonstrators. Might I say at this stage, especially for the benefit of my old friend Dr Kinloch, that there are some sincere, peaceful demonstrators there. My assistant talked to groups such as the Western Australian Peace Movement and Christians for Peace. These individuals have been protesting for peace since the Vietnam war. Most of them are middle-aged or older, and most of them are Christians of mixed ages.

Unfortunately, there are several hundred other people out there who really are not terribly interested in peace. The spokesman for one part of the mob, after a particularly violent struggle witnessed by my assistant, stated that he was not being allowed to exercise his right to choose to be arrested, and that was the aim of the bulk of them - to get arrested. This fellow was infuriated that the police were not reacting more strongly. To use the words he used, the fact that the cops could not be dragged into arguments and were simply picking them up and placing them back on the footpath was driving quite a few of these people absolutely mad.

My assistant saw small children, aged between two and five, wandering around dirty, half-dressed, crying and lost, chewing pieces of bread, and with paint daubed all over them. One lost little five-year-old boy came up to a policeman and asked him to help find his mum. The policeman attempted to help him and was called away because a part of the mob was breaking through. There was a two-year-old sitting, crying, about 10 feet away from a violent struggle. One pregnant woman said to my assistant that she had been pushed by the police. She was about eight months pregnant, but unfortunately she was also in the front line at the time, having a go at police.

Police have been behaving with exceptional restraint there, Mr Speaker. One incident I heard of was that police had a hamburger run and were given some hamburgers at about 2 o'clock this morning. Several of the police officers

offered them to the demonstrators because a few of them had come on on the morning shift. Most of the demonstrators refused; some of them throwing the hamburgers down on the ground. One young bloke, of about 18, accepted; but his mates around him turned on him with absolute hatred on their faces because he accepted the hamburger from the police.

When some of these demonstrators were running onto the road - this was at lunchtime today - the police would go out there and try to stop them. When the police would get to within about six feet of them, some of the demonstrators would contort their faces, which then shows up as pain in photographs, scream, and throw themselves on the ground. Police would pick them up and carry them back to the footpath.

My assistant told me that the police are certainly losing a lot more skin than the protesters. There are both sexes of police officers there, police men and women. Again, today, we had another broken arm for a policewoman, and three more broken wrists. I was disturbed to hear, also, that some demonstrators are now throwing balloons filled with acid at police and that police have been burned.

MR SPEAKER: Call in the troops.

MR STEFANIAK: A lot of people in the community are saying, Mr Speaker, "Why are not the army involved?". I keep telling them that we are a democracy and you have to go a hell of a long way before troops are called out in aid of the civil power; but maybe we are not too far away from that.

I was sickened, also, to receive a press release from two Democrats, Tony Coles and Senator Sid Spindler, although it does not, unfortunately, surprise me. They were crowing about how Democrat Senators Spindler, Karin Sowada, whom I have never heard of, and Robert Bell, along with what they call Gulf war campaigner Senator Janet Powell, have all spent time at Aidex demonstrating, adding their support and encouragement to the protesters. How lovely! Local Democrats gladly welcomed the arrival of the senators, according to Mr Coles. He said that the senators have been warmly received by the protesters and that they appreciated the support the Democrats gave them. Other Democrat senators are expected over the next three days, he said.

I was rather annoyed to see this in Mr Coles' press release:

> "The last few days of violence and mass arrests have only strengthened the resolve of the protesters", Mr Coles said. "We are hoping that the arrival of the Senators will stop the use of violence by the police and the TRG".

That is, the tactical response group. From what I have heard and from what I have seen, that is an obscenity; that is disgusting. Our police have been incredibly restrained there in the face of excessive intimidation by a large number of this rent-a-crowd, 97 per cent of which comes from interstate.

I think people should take a leaf out of the book of Dr Kinloch and his Quakers, out of the book of the women from the Western Australian Peace Movement and the Christians for Peace who are there protesting peacefully. I heard from the Attorney-General today that there were some Women for Peace who had a dignified march down from the War Memorial. That, indeed, gives the peace movement credibility.

The actions of these ratbags who are there clearly trying to intimidate the police, to intimidate the people going into Aidex, and to intimidate the right of free entry of other ordinary Canberra citizens to have a look at this exhibition, very little of which in fact has anything to do with arms, are absolutely disgusting. I think they should be condemned in the strongest possible terms. I might say this as well, Mr Speaker. I had a look on Tuesday and there are fewer arms on view there than at the Royal Canberra Show. If this Government is going to ban future Aidex exhibitions, it might as well ban the Royal Canberra Show as well.

Aidex

MR COLLAERY (10.49): Speaking of arms and alms - in all its spellings - I received some communications today from the community at Mount Oak that I was long-term solicitor for. They are peaceful people. They may dress in an unorthodox fashion, but they have lived there for many years. They rang me today expressing concerns about the use of dogs at Aidex.

I must confess that I put my point of view over earlier and I will not repeat it; but I stress to Mr Stefaniak that many of the alternative-type people there were peaceful also, as no doubt he recognises. I particularly want to mention that on behalf of my good friends from Mount Oak and other parts that I represented over the years.

I must say that I find myself in agreement with Mr Stefaniak, but not with the same language or the same vehemence. I witnessed totally unacceptable scenes there on the weekend. I saw protesters terrify horses in floats. The horses were in a serious state of agitation and were damaging themselves. Young girls were weeping at the sight of their animals being terrified by these people. It was a really bad situation. Fires were lit in the toilets out there, in the stables, and other damage was caused.

The point of my question today in question time was that I believe that there is an identifiable group of agents provocateurs at work there. I think I know where they are from. I think I know what they are about. They have seriously embarrassed this Labor Government. I am not in the least suggesting that they are friends of this Labor Government, or any government, in fact. I am sure that they have been given a great deal of leniency under our democratic system; but they had better be warned. All they will do will be to provoke a great deal of adverse feeling now from policemen and policewomen who have been so badly dealt with. What happens, in fact, ironically, is that we brutalise youngsters in the police force at the very worst time of their careers. It has been a most unfortunate event.

We have had years of effective community policing here, with few exceptions, and now we have a cross-brutalisation of very large proportions. It is most unfortunate. I do enjoin Mr Stefaniak also to cool the language a bit, because it will end up being tit for tat. As the Minister for Health would know, I was out the back ringing the casualty ward at Calvary tonight. There is a long list of broken heads and injured protesters as well. That has been dealt with largely by the competent services out at Calvary casualty.

I am going to keep a close watch on this. I am sure that Mr Connolly said what he needs to say to Assistant Commissioner Dawson. I really think the dogs should be taken away. For me, they conjure up images of things I have seen abroad - totally unacceptable things. Also, the animal rights people have additional objections to the use of animals in that situation. If it is true that one of them latched onto the flesh of a protester on the roadway in Flemington Road, it is not the image we want in the national capital.

I fervently hope that there are no photographs of that being shown in Indonesia, in Jakarta, tomorrow. I fervently hope that we do not see a photo of a dog clamped onto the arm of an Australian protester being published in Indonesia tomorrow. You must see these things globally. The use of dogs in crowd control is known to be extremely effective; but it also is related to methods used by fascist bully boys in the Nazi era, in Chile and in South Africa, and it is wrong. It is absolutely wrong. In my view the dogs must be withdrawn.

Aidex

MR MOORE (10.54): Mr Speaker, I think that Mr Stefaniak raises some quite important issues. The irony of the situation is that, whilst he is so aggravated about the weapons and so forth that have been used by the demonstrators - and I agree with him about that - - -

Mr Collaery: Some demonstrators.

MR MOORE: By some of those demonstrators, a small group of them. The irony is that what they are doing is so minor compared to what Aidex itself does in providing weapons to allow countries like Indonesia to carry out social control as they have in Timor. I think one also has to keep in mind the broader picture. It serves no purpose to attempt to aggravate the situation in the way that Mr Stefaniak has done, especially when we have had such sensible replies and sensible comments from Mr Connolly with reference to the police.

Assembly Staff

MR BERRY (Deputy Chief Minister) (10.55), in reply: Mr Speaker, I rise to give credit to the tolerance and dedication of the staff this evening and to the public servants who have worked so hard and long under difficult circumstances, particularly over the last few days - and, regrettably, it ain't over yet. There will be more long hours to deal with these issues, because of the obstructionist tactics which have been used by Mr Stevenson. We have to work our way through that, and we will.

I would like to particularly thank the attendants, the secretariat staff, the *Hansard* staff, who at short notice were able to provide *Hansard*, the security staff, and all of those public servants I mentioned earlier. All of these people had very short notice because of the earlier decision of the Assembly to sit on tonight and try to deal with this issue. I would like to pass on, on behalf of all of the Assembly members, our sincere thanks.

Amendments to Legislation

MR SPEAKER: Members, I would ask that large schedules of amendments be provided to the Clerk at least half a day in advance. It is ridiculous that we are being handed these proposed amendments and are expecting the Clerk to maintain order and sanity.

Question resolved in the affirmative.

Assembly adjourned at 10.57 pm