DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

28 November 1991

Thursday, 28 November 1991

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

WORKERS' COMPENSATION (AMENDMENT) BILL 1991

MR BERRY (Minister for Health and Minister for Sport) (10.31): Mr Speaker, I present the Workers' Compensation (Amendment) Bill 1991. I move:

That this Bill be agreed to in principle.

Mr Speaker, the Government is committed to the ongoing review of workers' compensation arrangements in the ACT and has accepted advice from the Workers' Compensation Monitoring Committee that a number of changes to the existing legislation are necessary. The committee is a tripartite body which provides advice to the Government on workers' compensation matters. Variations proposed are based on some of the recommendations of a report from a working party established in 1983 to examine the operations and provisions of the existing workers' compensation scheme.

A number of benefits will change under the provisions of this Bill. The definition of "spouse" will change to the terms of "de facto spouse" as defined in the Commonwealth Sex Discrimination Act 1984. As a result, a dependent male spouse will be entitled to receive benefits previously available to a dependent female spouse only.

Treatment by a registered chiropractor, osteopath, dental prosthetist, remedial medical gymnast or speech therapist will be allowable. Under present arrangements payment for treatment for any of these purposes is up to the insurance company concerned.

Fares and other expenses incurred in obtaining treatment will be payable, as will be the cost of replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance. Compensation for reasonable costs or damage to clothing, artificial aids and spectacles, including costs of fares and accommodation associated with medical treatment, will also be allowable.

Provision has been included for the payment of weekly compensation for the benefit of dependent children up to the age of 25 years. This will bring the ACT private industry scheme into line with benefits available under the Commonwealth Comcare scheme. Liability of the nominal insurer and employers for common law cases will be unlimited. Currently the liability is a maximum of $200,000.

A number of additional changes to the Act in general are encompassed by this Bill. The title of the legislation will be changed to Workers' Compensation Act and gender specific references throughout the Act will be changed accordingly. Ministers of religion will be covered under the Act where the Minister declares such persons as workers. Powers of inspectors will be increased to assist enforcement and administration of the Act. Penalties will be substantially increased to bring them up to contemporary levels. Present penalties, particularly the $200 fine for an employer who fails to take out a workers' compensation policy, do not encourage compliance with the Act. New maximum fines will be $5,000 for an individual and $25,000 for a corporation.

The nominal insurer will be given the right to recover unpaid and short-paid premiums. Authority to impose fees on organisations seeking approved insurer or exempt employer status will be provided. It will be compulsory for employers to post in a conspicuous place details of workers' compensation legislation. The form of the notice will be gazetted, and there will be a penalty for non-compliance.

Employers will be required to have copies of the compensation claim forms available at all times. Provisions will be made to protect the worker in respect of a statement made by him or her. Provision will be made to prevent costs being awarded against a worker unless the court establishes that the worker's application was made frivolously, fraudulently or without proper justification.

Overall, the Bill will provide much needed upgrading of workers' compensation arrangements in the Australian Capital Territory. A number of other minor changes concerning workers' compensation arrangements will follow the passing of this Bill. Mr Speaker, today I will be introducing the Workers' Compensation (Consequential Amendments) Bill to cover those matters.

I therefore commend the Bill to the Assembly and present the explanatory memorandum for the Bill.

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

WORKERS' COMPENSATION (CONSEQUENTIAL AMENDMENTS) BILL 1991

MR BERRY (Minister for Health and Minister for Sport) (10.37): I present the Workers' Compensation (Consequential Amendments) Bill 1991. I move:

That this Bill be agreed to in principle.

Mr Speaker, this Bill is a follow-up to the Workers' Compensation (Amendment) Bill 1991, which I introduced earlier. The majority of the amendments covered by this Bill are designed to make other Territory Acts consistent with amendments introduced in that Bill. I therefore commend the Bill to the Assembly and present the explanatory memorandum for the Bill.

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

OZONE PROTECTION BILL 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.38): Mr Speaker, I present the Ozone Protection Bill 1991. I move:

That this Bill be agreed to in principle.

Science has helped to develop a range of new chemicals which improve our everyday life. Science also allows us to monitor the unanticipated effects of these new substances. One such range is a group of chemicals known as chlorofluorocarbons and halons. I shall refer to them collectively as CFCs.

Mr Kaine: They are the greenhouse gases.

MR WOOD: Thank you, yes. In the case of CFCs, science created substances that are very stable and do not react with other chemicals. Industry and consumers found uses for these chemicals in many ways but, when used, the chemicals became waste and were allowed to escape. These waste chemicals mixed with the atmosphere. They are increasing because they are so stable.

Science has now been able to demonstrate through satellite technology and sophisticated ground based monitoring that the protective layer of ozone in the stratosphere is thinning significantly. Science is also able to show us graphically, through coloured pictures we can all interpret, that the hole in the ozone layer, centred over Antarctica in spring, is progressively growing. A similar hole may be developing over the Arctic region.

The reduction in the thickness of the protective ozone layer allows more ultraviolet light to reach us, and so increase our risk of skin cancer. This is a significant public health issue. Science has been able to show us that man-made ozone depleting substances, mainly CFCs, we have all used in our spray-cans, refrigerants, dry-cleaning and firefighting equipment and in foams are the cause of the demonstrated depletion of the ozone layer. We must act quickly, as already the effects of our past use will continue to deplete the layer for some time. In addition, Mr Speaker, most CFCs are gases which enhance the greenhouse effect. They are more potent than carbon dioxide and so must be controlled for this reason as well.

World leaders have indicated their concern and Australia has an international obligation under the Montreal Protocol to legislate to control and eventually phase out the use of ozone depleting substances. The Commonwealth, States and Territories responded to this obligation by developing the Australian Environment Council's strategy for ozone protection. This strategy was developed through comprehensive consultation with national industry groups, unions and the national environment movement. The States and the Territories were instrumental in this development. My colleague Ros Kelly, Commonwealth Minister for the Environment, presented this strategy to the recent international ministerial conference on ozone protection. The strategy was recognised as a leader in the world and is now a model for international action.

I am chairman of the Australian and New Zealand Environment and Conservation Council, the ministerial council which succeeded the Australian Environment Council, and am responsible for continued finetuning and updating of this national strategy. The process used in developing the strategy for ozone protection is a model for cooperation between government, industry, union, environmental groups and the community.

The ACT Government was active in assisting to develop the national strategy. The strategy has Australia-wide support. As a result of the strategy for ozone protection, the Commonwealth Government has enacted the Ozone Protection Act 1989, which regulates the manufacture and import of ozone depleting substances. The States and Territories are responsible for legislation regulating sale and use. This Government is committed to protecting the environment and recognises its responsibility in playing a role in achieving Australia's international obligation.

We have already seen positive signs. CFC propellant for spray-cans disappeared from the shelves and is no longer available for sale. Other actions will be more difficult and less obvious to the community, but will control much larger quantities of ozone depleting substances.

This Government has prepared legislation which will meet all obligations for the ACT. The legislation carries out these obligations in the most up-to-date way and, equally importantly, with the minimum of government regulation of business. This Bill is consistent with the regulation of other States and Territories, and it will strengthen the Commonwealth legislation if ozone depleting substances are manufactured in the ACT.

I will now outline the provisions of the Bill. The main administrative body under this Bill is the Pollution Control Authority established under the Air Pollution Act 1984. The authority also has functions under the Noise Control Act 1988 and the Water Pollution Act 1984. An ozone depleting substance is defined in Part I as any substance referred to in schedule 1 of the Ozone Protection Act 1989 of the Commonwealth. This approach is consistent with the States and the Northern Territory. It allows immediate uniformity across Australia, should the schedule be changed.

The operative offence provisions of the Bill are contained in Part II. That part makes it an offence to intentionally discharge an ozone depleting substance to the atmosphere or to manufacture, sell, supply, transport, store, recycle, reprocess or dispose of an ozone depleting substance except in accordance with a licence.

Part II also provides for phase-out dates for ozone depleting substances and provides for the labelling of ozone depleting substances and products that contain ozone depleting substances. The labelling requirements will ensure that ozone depleting substances are not inadvertently mixed or released and that consumers are aware of the content of the products that they are buying.

The provisions dealing with licensing are also contained in Part II of the Bill. The use of a licensing system will control ozone depleting substances at the wholesale level and at the point where there is interference with the substances in the servicing of equipment that contains ozone depleting substances.

Part III of the Bill is the education component. The Pollution Control Authority may approve courses and examinations under this part to ensure that an acceptable level of education leading to competency in the handling of ozone depleting substances is available consistently with that available in the States and the Northern Territory. This level of education is one of the prerequisites of the licensing system.

The remainder of the Bill deals with enforcement and miscellaneous matters. The enforcement provisions are very similar to other environment protection legislation in force in the Territory. The legislation will be supported with regulations which will be in accordance with the national strategy to control ozone depleting substances.

The regulations will pick up those industry codes which have been approved by the Australian and New Zealand Environment and Conservation Council of Ministers responsible for the environment. The ACT legislation has also been developed in consultation with ACT government agencies and local industry and has their support.

Fees will be set for any licences granted under the legislation. These will be kept as low as possible so as not to place workers in the industry at a disadvantage. I do not expect that additional resources will be required to administer the Bill, which is expected to be budget neutral, with costs being absorbed within existing budgets and through levying of fees for licences.

Mr Speaker, it is timely that this Government introduce the Ozone Protection Bill during National Skin Cancer Awareness Week. This legislation will enable Australia to continue to pressure internationally for worldwide controls on ozone depleting substances and so protect our environment and our public health. I am proud to bring this Bill before the house. Mr Speaker, I present the explanatory memorandum for the Bill.

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

TERRITORY OWNED CORPORATIONS (AMENDMENT) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.48): Mr Speaker, on behalf of the Treasurer, I present the Territory Owned Corporations (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

Mr Speaker, the Follett Labor Government has undertaken a detailed examination of the previous Government's proposals to corporatise Totalcare Industries and the ACT Electricity and Water Authority. We are still considering the appropriate future structure for ACTEW, but I am pleased to announce today legislation which will establish Totalcare Industries Ltd in a corporate form.

The decision to corporatise Totalcare has been taken by the Labor Government in the light of the commercial nature of the company's operations, the level of competition which it experiences in the marketplace and the need to place it on a similar footing with its competitors. Corporatisation will allow the former Health Services Supply Centre to operate more effectively and seek and win new business. Totalcare will concentrate on providing laundry, sterilisation and waste management services and will be well placed to explore new market opportunities. If it is able to capture these new markets it will be able to take advantage of significant economies of scale.

Totalcare has the potential to generate new employment opportunities, particularly for unskilled workers, with subsequent economic benefits for the ACT. The provisions made by the Bill for the retention of leave benefits by public servants who become employees of TOCs have been developed in close consultation with the Trades and Labour Council and the relevant unions, as indeed have other employment arrangements for which it has not been necessary to legislate. Our overall approach is one which appreciates that existing employees, as far as possible, should not suffer because of reforms undertaken in the interests of the broader community.

At the same time, our approach recognises that Totalcare Industries Ltd and any future TOCs, if they are to operate in a way that takes advantage of their company status, must have the freedom to negotiate employment arrangements for new staff as far as practicable within the same statutory framework as other companies. Accordingly, for new staff, relevant private sector leave entitlements will be the minimum entitlements; but the Government recognises that the actual level is open to negotiation between the union movement and Totalcare. The same principle applies to other employment conditions. The Government will, by virtue of its controlling shareholding in TOCs, ensure that appropriate industrial relations and employment practices are followed by the new company.

The Bill before the Assembly recognises that the pursuit of equal employment opportunity principles is integral to good management and to the maximisation of the range of human skills available to any organisation. The Bill places Totalcare and any future TOCs in the same position as the private sector regarding affirmative action principles. As the Commonwealth affirmative action legislation does not extend to other EEO target groups, ministerial shareholders in TOCs will request voluntary compliance with government EEO policy for other groups. The same approach will be adopted by shareholders in respect of other good employer practices of the Government.

Transitional provisions aside, the last major provision in the Bill seeks to ensure, in recognition of the fact that TOCs and their predecessor organisations are essentially one and the same for the purposes of ownership of property, that Federal capital gains tax does not apply merely because of the fact of corporatisation. I now present the explanatory memorandum for this Bill.

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

CRIMINAL INJURIES COMPENSATION (AMENDMENT) BILL (NO. 2) 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.52): Mr Speaker, I present the Criminal Injuries Compensation (Amendment) Bill (No. 2) 1991. I move:

That this Bill be agreed to in principle.

Mr Speaker, the Criminal Injuries Compensation (Amendment) Bill (No. 2) 1991 amends the Criminal Injuries Compensation Act 1983 to clarify the references to the Registrar in that Act. The Magistrates and Coroner's Courts (Registrar) Act 1991 altered the titles of the Clerk and Deputy Clerk of the Magistrates and Coroner's Courts to Registrar and Deputy Registrar and made consequential amendments to other Acts, including the Criminal Injuries Compensation Act 1983.

An unintended result is that the Criminal Injuries Compensation Act contains two definitions of "Registrar", one with reference to the Registrar of the Supreme Court, who performs most of the substantive functions under the Act, and the other to the Registrar or Deputy Registrar of the Magistrates Court. The references to the Registrar in the Act are, as a consequence, somewhat unclear. The Bill removes the definitions of "Registrar" in the Act and inserts into the appropriate provisions words which indicate where the Registrar of the Supreme Court is meant and where the Registrar of the Magistrates Court is meant.

I should add that a commonsense reading of the Act as it presently stands should not cause any difficulties with the ongoing consideration of matters under the Act. However, in the interests of clarity the references in the Act need to be clarified quickly. This is a Bill which makes purely technical amendments in order to cure a defect in the substantive Act.

I present the explanatory memorandum for the Bill.

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

BAIL BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.54): Mr Speaker, I present the Bail Bill 1991. I move:

That this Bill be agreed to in principle.

It is a fundamental tenet of our common law tradition that a person is presumed innocent until proven guilty by due process of law. A considerable time may elapse between a

person's arrest and final conviction or acquittal. Keeping an unconvicted person in custody for extended periods is inconsistent with the presumption of innocence, particularly if the person is eventually acquitted.

Bail is a mechanism to allow a person to go free at times when he or she is not actually required to be in court. Being in custody seriously prejudices the accused. The report published in 1976 of the Bail Review Committee of New South Wales identified the following factors: An accused who is held in custody is more likely to plead guilty; more likely to be convicted if he or she pleads not guilty; and more likely to be sentenced to a gaol term if convicted.

Also, while in custody, an accused is not earning any income and may even be sacked if remand lasts more than a few days. This will probably mean that his or her family will have to go on social security benefits and may be unable to meet loan or mortgage repayments. This outcome is obviously unacceptable for a person who is unconvicted and therefore presumed innocent.

More importantly, it is difficult, if not impossible, to prepare an adequate defence while in custody. To prepare a defence, you need free access to your lawyer and free movement to find witnesses and prepare evidence. The rules and regulations which are necessary for the effective running of a remand centre obviously impede this.

On the other hand, Mr Speaker, the community has a legitimate expectation that an accused person will stand trial and that the course of justice will not be obstructed. An accused person may justifiably be held in custody pending trial if he or she is likely to abscond or interfere with evidence or intimidate witnesses.

Under the present law in this Territory, bail is a type of security under which the accused usually undertakes to appear in court under pain of forfeiting a specified sum of money. The accused normally has to provide a guarantor to the undertaking as well, who also stands to forfeit a sum of money if the accused fails to appear in court on the appointed day. This person is called a surety. Originally, the surety was a kind of personal gaoler; but that function has long been extinct, although the surety's right to arrest the accused without warrant remains. The Bill will abolish that right, because it is no longer appropriate in today's society, and will confer substitute powers on the police.

Bail may be granted by the Supreme Court, the Magistrates Court or, in certain circumstances, a senior police officer. The current state of the law of bail in this Territory is unsatisfactory. First, it is difficult to determine what the applicable law is because it is scattered over so many sources. In particular, the police

have no comprehensive statutory guidelines to help them determine whether to grant or refuse bail. These criteria are found only in reported cases stretching back some 100 years.

Second, the existing law puts undue emphasis on the accused's financial means as the criterion for bail. This effectively discriminates against the poor, or those new in a community and who do not have family or friends to act as surety. Those without the necessary resources have no option but to remain in custody and suffer all the disadvantages I described earlier.

The Labor Government wishes to correct these deficiencies in the law. This Bill was developed under the previous Government. Since the change of government it has been scrutinised for compliance with this Government's policies, and a few minor amendments have been made.

The Bill consolidates the law of bail into one easily accessible Act. It will deal comprehensively with all aspects of bail. That is, in what circumstances is bail to be available? What criteria may be taken into consideration? What conditions may be attached to bail? How is bail to be enforced? When and how are bail decisions to be reviewed?

The new legislation will apply to child offenders as well as to adults and at any stage of the prosecution process up until sentencing. Few of the underlying principles in the Bill are radically new. Mostly, it re-enacts established law. Where it does make great advances is in procedures and in the emphasis placed on certain issues. One of the Government's primary objectives is to reduce reliance on money bail and to promote consideration of facts more directly relevant to the underlying purpose of bail - namely, will the accused appear in court for trial?

There are several other innovations in this Bill. First, there is to be a statutory right to unconditional bail where the offence charged is punishable by a fine only or by no more than six months' gaol. This right will not extend to offenders who have in the past breached bail, who are in some way incapacitated and consequently need physical protection or who are already serving a prison sentence after being convicted for some other offence. The reason for this provision is that it is simply not appropriate to hold someone in custody pending trial for an offence for which that person either cannot be gaoled at all or can be gaoled for only a very short time. In all other cases there will be a statutory presumption in favour of bail unless the prosecutor establishes a convincing case for why bail should not be granted.

Next, the Bill exhaustively specifies the only criteria which a court or police officer may take into account when deciding whether to grant or to refuse bail. These criteria fall into three categories - the evidence relevant

to whether the accused will appear on the appointed day to stand trial; matters concerning the accused's interests, especially his or her physical or mental state, his or her employment, whether there are any dependants who will be affected, and the need to prepare a defence; and matters relating to the community's interests, that is, to ensure that the accused stands trial and that no-one tries to subvert the course of justice. None of these criteria are new, as they are all well-established common law principles.

Bail will be contingent on the accused signing a written undertaking to appear in court when required. It will be an offence punishable by a maximum fine of $20,000 or two years in gaol to fail to honour these undertakings. This threat of criminal sanctions will replace forfeiture of a sum of money as the primary means of enforcing bail.

As a rule, it is preferable for bail to be granted unconditionally, but in some cases conditions are necessary - for example, the accused has to report periodically to the police or must stay away from a particular person or premises. The Bill spells out the purposes for which conditions may be attached to bail. It exhaustively lists the only conditions which a court or authorised police officer may impose, lists those conditions in a descending hierarchy and directs that the least onerous condition which achieves one of the permissible purposes is the one to be imposed.

The hierarchy of conditions ranges from those regulating the conduct of the accused to a requirement that a third party - in effect, a surety - deposit a sum of money which will be forfeited if the accused breaches bail. Some conditions are in the accused's best interests. For example, for the first time a court has a clear statutory authority to order an offender who is a drug addict to attend a rehabilitation program as a condition of bail. The accused may ask for a more onerous condition if that is more convenient. For example, an accused may prefer to deposit a sum of money.

Often an accused person stays in custody because he or she does not know about bail or feels that it is all too bewildering and complex to bother about. To avoid that as much as possible, the Bill imposes a duty on the arresting police officer to notify an accused of his or her rights to apply for bail and what the procedure involves. "Notification of rights" here includes access to a lawyer, an interpreter or, in appropriate cases, a relative or friend.

Mr Stefaniak: You will find that they all know that anyway.

MR CONNOLLY: That may be the case, Mr Stefaniak; but some people, the innocent accused, often do not. Where a court or an authorised police officer refuses bail or imposes conditions on bail, each must record reasons for doing so.

Part VI of the Bill sets out comprehensive review provisions. In general, any bail decision may be reviewed on its merits and a substitute order made, by either the same court or, except in the case of the Supreme Court, a higher court. Decisions of authorised officers may be reviewed by a magistrate.

Sometimes an accused person stays in custody because a court has imposed a condition which he or she cannot satisfy. The Bill therefore casts a duty on the officer in charge of the remand centre to notify the court if this happens. The court may then, of its own motion or on application, review the conditions and change them, grant unconditional bail or continue to refuse bail.

Under the present law, many are released on bail by a senior police officer. I see no reason for this to change. It is efficient and convenient for all concerned and frees the court from having to consider routine bail applications for minor offences. But the present law is deficient in not providing the police with full and clear guidance on the criteria for granting bail in all cases. The Bill remedies this.

For the first time the criteria for granting bail and permissible conditions which may be attached to bail are set out in ACT legislation. These, of course, apply equally to a court. But the Bill also sets out in some detail the procedures which an authorised officer - which means, in effect, a senior police officer at the relevant station - must follow when granting bail.

This Bill is the most significant criminal law measure yet put before this Assembly. It takes hold of difficult and abstruse law which directly affects the whole community, and remoulds it into a clearer and more easily accessible whole. I believe that it effectively balances the interests of both the accused and the community. It makes extensive provision to ensure that accused persons get all the information they need about bail and that bail decisions are based on information relevant to the underlying objective of ensuring that accused persons stand trial.

I commend the Bill to members of the Assembly and present the explanatory memorandum for the Bill.

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

BAIL (CONSEQUENTIAL AMENDMENTS) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.04): I present the Bail (Consequential Amendments) Bill 1991. I move:

That this Bill be agreed to in principle.

The Bail (Consequential Amendments) Bill 1991 is cognate with the Bail Bill 1991, which I have just introduced. It makes a series of amendments to other Territory Acts which affect or refer to bail, to ensure that there are no provisions elsewhere which may conflict with the proposed bail legislation. In particular, the amendments insert terminology which is consistent with that proposed in the Bail Bill. For example, the old, arcane word "recognisance" will be replaced with the term "bail undertaking" when used in connection with bail granted to an accused person.

Express references to the proposed Bail Act are inserted where needed. The Bill also repeals bail provisions wherever they occur in other Acts. The proposed Bail Act is intended to be the principal source of bail law and will replace all the repealed provisions. The main Acts affected are the Crimes Act 1900 of New South Wales as it applies in the Territory, shortly to have its name shortened; the Magistrates Court Act 1930; the Domestic Violence Act 1986; and the Children's Services Act 1986 - all of which currently contain extensive provisions dealing with bail.

There is also a transitional provision which applies the existing law to persons released on bail before the new legislation comes into force. It is for this reason that section 358AI of the Crimes Act, which makes it an offence to breach bail, remains in place for the time being. Clause 46 of the Bail Bill, which proposes the same offence, will not apply to those persons.

The provisions in this Bill are necessary to give full effect to the proposed Bail Bill. They are technical and do not make any substantive changes to the law which are not already proposed in the Bail Bill. I commend the Bill to the members of this Assembly and present the explanatory memorandum for the Bill.

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

MOTOR TRAFFIC (AMENDMENT) BILL (NO. 2) 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.06): I present the Motor Traffic (Amendment) Bill (No. 2) 1991. I move:

That this Bill be agreed to in principle.

This Bill contains amendments to the Motor Traffic Act 1936 to increase the penalties in relation to traffic infringement notices. These offences are often called on-the-spot fines or TINs. The ACT Motor Traffic Act was introduced in 1936 and relates to the control of motor vehicles and the regulation of motor traffic. Traffic infringement notices were introduced in 1983 and are issued by the police for less serious offences such as speeding, not wearing a seat belt, not stopping at a give-way sign, not wearing a motorcycle helmet, and so on.

Fines for speeding offences in the ACT are too low. There are far too many people in the ACT who speed habitually, knowing that the highest fine they can receive at present is $130. Approximately 75 per cent of all traffic infringement notices are issued for speeding offences.

This Bill does two things. The first is to change the way in which penalty levels for all traffic infringement notices are amended. The ACT is out of step with New South Wales and Victoria in requiring enactment to amend traffic infringement penalty levels. Both these States set levels by means of regulations. The Bill allows for changes to ACT penalty levels to be made by regulation. This will enable changes to be made quickly and with fewer resources, but of course the changes will always be disallowable and referable to this Assembly.

In addition, the regulations will create a new category of offence, namely, exceeding the speed limit by 45 kilometres per hour or more. This will result in four categories of speeding offences instead of the three currently. The introduction of this fourth category of offence is in line with a recommendation made by the Australian Transport Advisory Council and brings the ACT into line with interstate jurisdictions.

Penalties for offenders in the 0 to less than 15 kilometres per hour and 15 kilometres per hour to less than 30 kilometres per hour categories will be brought into line with New South Wales. Thereafter, the penalty for exceeding the speed limit by 30 to less than 45 kilometres per hour doubles the penalty for 15 to less than 30 kilometres per hour and the penalty for exceeding the speed limit by 45 kilometres per hour or more doubles the penalty for 30 to less than 45 kilometres per hour category. The penalties for the two highest categories are still, respectively, $13 and $26 lower than their New South Wales equivalents, which are $263 and $526.

The penalty for exceeding the speed limit by 45 kilometres per hour or more will be $500. This penalty is the same as the penalty for driving with a blood alcohol level between .05 and .08 grams per 100 millilitres. This measure is reasonable because, if drivers exceed the speed limit by 45 kilometres per hour or more, they are not trying to stay within the limit and they pose a substantial threat to other road users. The regulations will increase other on-the-spot fines by $5. This increase approximates inflation and ensures that penalties are maintained in real terms.

Secondly, the Bill increases the maximum court imposed penalty. The Motor Traffic Act 1936 provides that any person who receives a traffic infringement notice may contest the issue in court. Where this occurs, there is a maximum court imposed penalty for persons found guilty. Currently, the maximum fine the court may impose is $500. Under this Bill, the maximum court penalty is increased to $2,000 in order to maintain the relativity between the maximum on-the-spot fine and the maximum court imposed penalty. Otherwise there would be an attraction in never paying the on-the-spot fine.

This Bill is part of the Government's ongoing commitment to improve road safety and reduce the road toll in the ACT. I present the explanatory memorandum for this Bill.

MR STEFANIAK (11.09): It is a pity that you do not have the same attitude to the criminal law. Mr Speaker, I move:

> That the debate be now adjourned.

Question resolved in the affirmative.

EQUAL EMPLOYMENT OPPORTUNITY LEGISLATION
Suspension of Standing and Temporary Orders

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.10): Mr Speaker, I move:

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

(1) The presentation together of the following ten Bills (of which notices have been given) which propose the implementation in ACT statutory authorities the policy of equal employment opportunity and the merit principle with respect to appointment and promotions:

Milk Authority (Amendment) Bill 1991;
ACT Institute of Technical and Further Education (Amendment) Bill 1991;
Canberra Theatre Trust (Amendment) Bill 1991;
Legal Aid (Amendment) Bill 1991;
National Exhibition Centre Trust (Amendment) Bill 1991;
Long Service Leave (Building and Construction Industry) (Amendment) Bill 1991;
Teaching Service (Amendment) Bill 1991;
Fire Brigade (Administration) (Amendment) Bill 1991;
Electricity and Water (Amendment) Bill (No. 3) 1991;
Cemeteries (Amendment) Bill (No. 2) 1991; and

(2) one motion being moved and one question being put in regard to, respectively, the agreement in principle, the detail stage and agreement to the Bills.

The Government is introducing 10 Bills which substantially replicate each provision to a range of legislation creating statutory employment in the ACT. In order to save the time of the Assembly, the Government is proposing that the Bills be introduced in one job lot and that a single presentation speech be given. I would urge the Assembly to expedite proceedings by agreeing to the motion.

Question resolved in the affirmative.

MILK AUTHORITY (AMENDMENT) BILL 1991
A.C.T. INSTITUTE OF TECHNICAL AND FURTHER EDUCATION (AMENDMENT) BILL 1991
CANBERRA THEATRE TRUST (AMENDMENT) BILL 1991
LEGAL AID (AMENDMENT) BILL 1991
NATIONAL EXHIBITION CENTRE TRUST (AMENDMENT) BILL 1991
LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY) (AMENDMENT) BILL 1991
TEACHING SERVICE (AMENDMENT) BILL 1991
FIRE BRIGADE (ADMINISTRATION) (AMENDMENT) BILL 1991
ELECTRICITY AND WATER (AMENDMENT) BILL (NO. 3) 1991
CEMETERIES (AMENDMENT) BILL (NO. 2) 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.11): I present the following Bills: The Milk Authority (Amendment) Bill 1991, the ACT Institute of Technical and Further Education (Amendment) Bill 1991, the Canberra Theatre Trust (Amendment) Bill 1991, the Legal Aid (Amendment) Bill 1991, the National Exhibition Centre Trust (Amendment) Bill 1991, the Long Service Leave (Building and Construction Industry) (Amendment) Bill 1991, the Teaching

Service (Amendment) Bill 1991, the Fire Brigade (Administration) (Amendment) Bill 1991, the Electricity and Water (Amendment) Bill (No. 3) 1991 and the Cemeteries (Amendment) Bill (No. 2) 1991. Mr Speaker, I move:

That these Bills be agreed to in principle.

Mr Speaker, these 10 Bills are almost identical. They are cognate Bills forming part of the Government's package of legislation designed to promote equality of opportunity in the workplace and the application of the merit principle with respect to the appointment and promotion or advancement of staff with ACT statutory authorities. They are consequent upon the coming into effect of what would have been the Human Rights and Equal Opportunity Act 1991, which now has a different name.

While ACT statutory authorities voluntarily exercise equal employment opportunity principles as a good employment practice, the formalisation of EEO through the enactment of these Bills attempts to eliminate discrimination in employment, whether intentional or not. The statutory provision for the development of equal employment opportunity policies and programs also heightens the awareness of all employees of their rights and obligations under the law. It also well and truly establishes that equal employment opportunity policies and programs are the responsibility of each authority in its employment practices.

This Government is committed to the elimination of unjustified discrimination and to equal employment opportunity for everyone, and we would be failing that commitment if we did not introduce these measures to ensure consistency in the law between statutory authorities and other areas of the public sector.

The Bills amend the enabling legislation of ACT statutory authorities in relation to employment to include the application of the merit principle and anti-discrimination provisions and the implementation of equal employment programs.

The Bills establish that the fundamental criterion for all decisions and assessments for appointment, promotion or career advancement and any other matter related to employment is merit - that is, the relative suitability of those who are eligible for the position in question, given the nature and requirements of the job, and their abilities, qualifications, experience, personal qualities and potential for development. In other words, Mr Speaker, any position is to go to the best available person.

Those who are eligible for employment are to be ensured, as far as practicable, a reasonable opportunity to apply for employment or promotion. Mr Speaker, this does not mean that impractical measures have to be taken or that unreasonable and unaffordable advertising and selection procedures are required for appointment or promotion.

Smaller authorities such as the Milk Authority and the trustees of the Canberra public cemeteries would obviously not be subject to the same requirements in advertising and selecting staff for appointment or promotion as would large authorities such as the Teaching Service or the ACT Electricity and Water Authority. The legislation makes it clear that practicality and reasonableness are the benchmarks for required procedures. The fundamental requirement is, Mr Speaker, that, whatever the specific practices and procedures adopted by an authority, they be based on the principles of merit and provision of equal employment opportunity for all who may reasonably be involved.

The prohibition of discrimination in employment is another key factor. The Bills provide that each authority's powers in relation to the employment of permanent staff shall be exercised without patronage or favouritism. This requires that recruitment, appointment, promotion or advancement, work conditions, staff development and any other matter related to employment will be carried out without unjustified discrimination, as established by the Discrimination Act 1991 - an unfortunately named Act - and unjustified discrimination on the ground of age or social origin.

Discrimination will be justified, however, where it is essential for the effective performance of the work involved. The legislation also permits discrimination which is not unlawful and which is in accordance with an equal employment opportunity program established by regulation. Special provision may be made for designated groups, which include members of the Aboriginal race or descendants of indigenous inhabitants of the Torres Strait Islands, migrants whose first language is not English and the children of such migrants, physically or mentally disadvantaged people, and any other class of persons prescribed by regulation to be a "designated group".

I turn to equal employment opportunity programs. The legislation also provides for the development by each of the authorities of an equal opportunity program after consultation with relevant staff organisations and others considered appropriate by the responsible officer or body. An equal employment opportunity program is to be designed to ensure that, in relation to employment matters, appropriate action is taken to eliminate unjustified discrimination against women and persons in designated groups. It will require the examination, identification and elimination of discriminatory employment practices. It is also to involve measures that will enable employees who are women or persons in designated groups to compete for transfer and to pursue careers within the relevant authority as effectively as any other person and to have equal opportunity with them in relation to all other employment matters.

This program is to be in writing and regularly reviewed by the management of the authority, which is accountable to the Head of Administration for carrying out the program. The Head of Administration may issue guidelines on its provisions. An annual report is to be made to the Minister responsible for the authority concerned.

Mr Speaker, again I wish to make it clear that measures adopted by the smaller statutory authorities, in establishing equal employment opportunity programs, will not have to be as extensive or complex as those of the larger authorities. Also, EEO plans may be adapted to the particular nature and needs of the authority involved. Details can also be dealt with in the guidelines as established by the Head of Administration.

Amendments to the Fire Brigade (Administration) Act have proved to be more complex than those relating to other statutory authorities, because of the need to remove outdated provisions concerning, for example, promotions made on the basis of seniority. The Fire Commissioner may publish in the *Gazette* such matters as the requirements for appointment as a member of the brigade or for promotion to a higher rank, including relevant academic requirements. The manner of determining the order of selection, which according to the Bill is to be based on merit, may also be published.

The Fire Brigade (Administration) (Amendment) Bill will give the Fire Commissioner discretion to promote a firefighter, subject to appeal to a committee convened by the Commonwealth Merit Protection and Review Agency. Before promoting a member, the commissioner must publish in the *Gazette* an invitation for members to apply for promotion, and the promotion must be within six months of this publication. Applicants are to be ranked in order of relative efficiency for the rank and appointment given to the member or, in the case of multiple promotions, those members ranked the most efficient of the applicants. The Bill establishes the meaning of "efficient", and I note that this is couched in the same terms as those establishing what is meant by "merit".

Alternatively to promoting at his or her discretion, the commissioner may promote a member in accordance with recommendations by a joint selection committee convened by a nominee of the Minister. Other members of the joint selection committee will be a person nominated by the Fire Commissioner and one by the union. Similar requirements for the publication of an invitation to apply for promotion, the carrying out of the promotion within six months of publication and the ranking of applicants according to efficiency apply to promotion based on a joint selection committee recommendation.

A member cannot appeal a promotion made on the recommendation of a joint selection committee. In the event that the commissioner does not accept the recommendation of the joint selection committee, he or she may choose to promote someone else instead, but this would be subject to the appeal process through the Merit Protection and Review Agency. All promotions are to be notified in the *Gazette.*

These modified provisions are, subject to necessary modifications, similar to the equivalent provisions in the Commonwealth Public Service Act. They eliminate the former regulations which established seniority as a major basis of eligibility for promotion and the deciding factor where two or more candidates for a single promotion are otherwise equally qualified.

I shall deal now with amendments to the Teaching Service (Amendment) Act and the Electricity and Water (Amendment) Act. The Teaching Service already has provisions in its enabling legislation requiring the establishment of equal employment opportunity programs, which has resulted in EEO programs already existing in components of the service. We have provided that these remain in force, and for the establishment of such programs in those components in which they do not currently exist. Each separate component of the Teaching Service is to review the effectiveness of its program and to provide details to the Head of Administration, who can, as with the other authorities, issue guidelines. There are also the provisions which are contained in the other Bills relating to the application of the merit principle in the appointment and promotion of staff.

The Electricity and Water Act likewise currently requires the development and review of EEO programs. Again, the amendment Bill makes the wording of these provisions consistent with the other Bills and applies the merit principle to the appointment and promotion of staff.

There should be no direct impact on government revenue or expenditure in these measures. It is anticipated that the authorities concerned will absorb any additional expenditure involved in what I am convinced are sound and efficient management practices. In fact, in most instances, equal employment opportunity programs have been shown to result in savings in the long run, because the work force is more efficient and effective as it comprises the best candidates for the job.

Mr Speaker, these amendments will ensure that the ACT statutory authorities have procedures to ensure a reasonable opportunity to apply for employment by those who are eligible, and selection based on merit. The equal employment opportunity programs will provide for the examination, identification and elimination of discriminatory employment practices wherever they occur.

These measures will ensure that legislation for ACT statutory authorities is consistent with that of the ACT public service. Mr Speaker, I now present the explanatory memoranda for this group of Bills.

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

HUMAN RIGHTS AND EQUAL OPPORTUNITY BILL 1991
Detail Stage

Clauses 55 to 63
Consideration resumed from 27 November 1991.
Clauses agreed to.
Clauses 64 and 65 taken together

Question put:
That the clauses be agreed to.

The Assembly voted -

AYES, 13	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Proposed new Part VA

MR COLLAERY (11.29): I move:

That the following new Part be inserted in the Bill:

"Part VA - Racial vilification
Interpretation

63A. In this Part, "public act" includes -

(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material;

(b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and

(c) the distribution or dissemination of any matter to the public.

Racial Vilification - Unlawful

63B. (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

(2) Nothing in this section renders unlawful -

(a) a fair report of a public act referred to in subsection (1);

(b) a communication or the distribution or dissemination of any matter comprising a publication which is subject to a defamation; or

(c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

Serious Racial Vilification - Offence

63C. A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include -

(a) threatening physical harm towards, or towards any property of, the person or group of persons; or

(b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Penalty: $2,000.".

I remind members that proposed new Part VA is on a sheet of paper circulated last night. It is not the list circulated earlier that was printed on a word processor and headed with a part number after clause 63.

I am indebted to the Attorney for making his law officers available to me to assist with redrafting the amendments I had earlier foreshadowed. They adopted, with very little variation, the amendments made on 9 October 1990 to the Western Australian criminal code, introduced by Premier Carmen Lawrence.

By way of introduction I say that the response by the Western Australian Government followed, by a year, initiatives taken on 1 October 1989, when the New South Wales anti-discrimination Act was amended. I will come back to the New South Wales model because that is now the one I prefer, but I will mention the background to the Western Australian changes because I think it is relevant to the debate.

The situation which developed in Western Australia was to stop the activities of a prolonged, highly organised and large-scale racist propaganda and graffiti campaign that developed in Perth during the 1980s. That campaign had a very damaging effect on individuals, community groups and businesses - and I stress businesses - which were its targets. Those businesses, as members know, were largely Vietnamese and Jewish businesses. I think all members will agree that that State has traditionally been a conservative State, and that has not changed much under Labor. I found it highly significant that the two conservative-led States in Australia, New South Wales and Western Australia, should be the first to bring in racial vilification laws to deal with serious racial incitement.

I am not going to go into the details of Western Australia or mention names and places, because I am not entirely clear in my mind, as a lawyer, whether there are any appeals pending in relation to proceedings there. Rather than risk any prejudice, unless members want further clarification, let me assure them that the Western Australian police found extensive literature; they discovered a right wing nationalist fascist movement; they discovered, on advice available to me in my former role as Attorney-General, that there were linkages within Australia with the far Right network; and there were constant references to the League of Rights.

I believe that the director of the Western Australian League of Rights, a Mr Robert Nixon, adopted a somewhat ambiguous and equivocal attitude during the pogrom - there is no other word for it - in Western Australia. The last thing we need in this national capital Territory - the seat of government and the window on Australia through the overseas diplomatic community - is for any of what has occurred in Western Australia to transfer itself here. It is with great regret that we observe a very active far Right element developing in the Australian Capital Territory.

Recently, I was shown papers which had originated improperly from Mr Stevenson's office, and they were handed back immediately they were perused by Mr Jensen and me. One of those documents, which we learned after it had been handed to us had come from Mr Stevenson's office, was printed on a professional printer and had a letterhead which said, "The Anti-Treason League of Australia". I was deeply disturbed to have documents shown to me by a person connected intimately with the Abolish Self Government party and headed "The Anti-Treason League of Australia".

As a lawyer I have to do justice to Mr Stevenson. I get League of Rights intelligence bulletins in my office, and the mere fact that someone might find one in my office does not mean that I subscribe to the views. We have to peruse all that material to know what is going on. Someone attempted to make available to me material from Mr Stevenson's office. Part of that material, perused by Mr Jensen and me and immediately handed back when we realised that there may be some difficulties about the manner in which it had been procured from his office, was a document headed "The Anti-Treason League of Australia". It said a number of things; I am not going to relate them in this house because it may cause some sort of sensational result. I think it might be better if Mr Stevenson addresses that issue before I mention it.

Mr Jensen - formerly Major Jensen, who served his country actively abroad - and I could only recoil at seeing the Australian flag on the top of that letter, the letterhead, the nature of the contents and the nature of the communication to Mr Stevenson. What is going on worries me deeply. I stress that it seems entirely inimical to the national capital for these premises to provide - if they do provide - a source of sustenance, a source of communication, for the strengthening elements in the bruderbond that is developing in this country. We must therefore ensure that the mere possession of literature can go towards an offence in the terms of these provisions, which I will move to in detail in a moment.

I put on record that in October Mr Stevenson attended an annual weekend conference of the League of Rights in Victoria. Mr Stevenson can correct the dates and my source of information if he wishes; but, on the advice available to me, at that league convention were a dozen or so German speakers and two skinheads with their girlfriends wearing swastika T-shirts, which is an offence to right-minded people, given the allusion and connection that has to the Holocaust. Following an article in the *Sydney Morning Herald,* Mr Stevenson confirmed that he was at the seminar. The *Herald* reported that Mr Stevenson said that he would attend any conference he chose in his own time and would continue to do so. That is his democratic right - - -

Mr Stevenson: Not if you had anything to do with it.

MR COLLAERY: I will respond to that. I think it is time we discussed in Mr Stevenson's presence in this chamber this issue and what he has turned our good Act into in the last 24 hours. *(Extension of time granted)*

Eric Butler, the long-term head of the League of Rights and apologist for their policies, was reported as saying that Mr Stevenson was not a member of the league and would not be eligible to join because he was a member of parliament. That has other implications and, if the league is registered, the league excluding Mr Stevenson from formal membership of its charter may be the beginning of an offence after we pass these laws.

Mr Wood: Mr Collaery, the league does not have members; that is the way around it.

MR COLLAERY: I am assisted by some advice from Mr Wood that suggests that the modus operandi of the league is such that we cannot identify the membership. So be it.

Mr Wood: They might be a threat to Mr Butler as well.

MR COLLAERY: I am indebted to Mr Wood for that interjection. What we can identify is their ethic. Their ethic is really a non-ethic. It is about peddling populist theories - the Jewish conspiracy in banking, the pornography issue, the security and integrity of the nation, and the treasonous instincts that elements of the community are seen to have.

I have mentioned before an interesting text written before the last war by a great journalist. I found it in my father's library when I was a teenager. It is a paperback that clearly outlines the modus operandi of the far Right in Nazi Germany. One of the elements dealt with in Hitler's infamous treatise was pornography. There is a whole section on the perceived licentiousness of the 1920s in Weimar Germany. I continue to see desperately disturbing parallels between Mr Stevenson's enunciated agenda here and the warnings in that paperback.

Let no-one be at all comforted by the notion that Mr Stevenson is just one among 17, that what he has been doing in the last 24 hours is a sort of cranky-headed stunt. It is a stunt that will expand his following because it is coupled with the populist theme that has been used elsewhere by people of that persuasion. It obscures the real issues in society. It elevates some issues to a higher level of importance in community consciousness than they should have. It adopts issues where right-minded citizens may well agree with the enunciations of Mr Stevenson. It elevates those into a general platform and sweeps them along on that far Right platform. I enjoin the house to make sure that all those who want to press those concerns are on notice.

Turning in detail to the racial vilification clauses, what is unique about these clauses, which I have adapted from the New South Wales law, with the help of the Attorney's officers, is that they extend the operation of discrimination law to acts done at large. This is what they should have had before the Reichstag was burnt in Germany, because libraries, literature and issues of that nature are attacked. The racial vilification clauses will attack forms of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material. In addition, any other conduct observable by the public, such as actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, is covered.

As a person who has a strong persuasion to civil liberties and civil rights, I say that here is another compromise in society. I believe that this is a necessary compromise. I would not be moving these amendments, were Mr Stevenson not in this house. We should probably not need them. There are enough signs given to those elements in Western Australia and New South Wales to suggest that we need not trouble ourselves to put them on the statute book here before problems emerge; but I think we have to. There is a need for preventative measures, and I commend the provisions to the house.

MR STEVENSON (11.44): Mr Collaery and, I hope, not too many others would seek to destroy rights that have been fought for in this country and in England for a long time. The simplicity of the Bill and its amendments is twofold, as I mentioned. It creates a Star Chamber and it removes common law protections that prevent someone from being dragged before some sort of tribunal and hounded.

The Bill and amendments are the product of one of the many so-called human rights treaties signed by the Australian Government through the auspices of the United Nations. They thereby seek to bring Australian laws into alignment with UN treaties, with the views of the United Nations. However, the majority of the countries of the United Nations represented on the body do not in any way respect Australian traditions of democracy and economic freedom, the family, personal liberty, the common law and the rule of law, Judeo-Christian ethics, personal responsibility, initiative and innovation, and independent institutions, and are socialist or communist totalitarian states.

A succession of governments in Australia, without the approval of the Australian people, notwithstanding this claim that people know what is going on, have signed a plethora of human rights treaties. They agreed to bring Australia's internal laws into line with the views of such states as Poland and the USSR, which certainly do not have any respect for the traditional heritage in Australia.

These amendments in the Bill propose to create laws, create a new cause for complaint, the basis of which is that the complainant is not assimilated into society but is part of a race. It therefore seeks to promote division or to retain division rather than promote assimilation. I think it worthy of note that some of the 75 per cent of the Anglo-Saxon-Celtic majority in Australia have expressed a preference for more European migrants, a preference shared by many Australians belonging to other European ethnic groups. This preference is racist only in the sense that Europeans prefer their own kind.

Any law seeking to regulate criminal conduct in society, including violence and incitement to violence, whether to persons or to property, should be impartial and should apply equally to all. All persons who break the law or who employ violence or incite others to violence, whether to property or to the person, should be treated alike by the law, whether their actions are based on racial hatred, political disaffection, personal dislike, revenge, robbery or any other cause. To do otherwise is in itself to adopt racist criteria and discrimination.

Persons harbouring racial hatred may legitimately be strongly criticised in public debate through the use of rational arguments. Many who are accused of being racist do not harbour hatred. Many people who do not regard their own racial group or ethnic group as superior, but merely prefer their own kind, are often regarded as racists. Most groups are racist in the sense of preferring their own kind. Thus whites in South Africa, Aboriginals in Australia, Tamils in Ceylon, Maoris in New Zealand, Jews in Israel, the Japanese and the Chinese are all racist in that sense. Some groups, such as the Japanese, the Chinese, the Jews and many Europeans, are also racist in the sense of believing that their group is superior.

Racism against whites, and especially the Anglo-Saxon majority of whites, is reflected in the anti-white bias in our immigration policy, the failure of the media to highlight Asian racism, and the use of the media to ridicule and belittle our European heritage. It is also reflected in the stacking of immigration advisory panels and groups such as the Institute of Multicultural Affairs with people who support the Asianisation of Australia and who refuse to condemn racism unless it is by Australians.

Professor L.J.M. Cooray, in his book *The Australian Achievement: from Bondage to Freedom,* deals with a number of the concepts that I believe are relevant to the principal objections to this legislation, namely, that it is not necessary, has no regard for the established traditional views and approaches to crimes or offences, is counterproductive, and is a legislative control in an area inappropriate for government control, where an educational approach would be more appropriate to deal with any real problem. Professor Cooray describes the proponents of legislation such as that

presently being considered as coercive utopians, idealists who wish to impose their views and perspectives on others. They want to use their authority of government to achieve their ends.

In commenting on provisions similar to those presently being discussed, Professor Cooray confirms:

> Laws already exist to adequately deal with any physical attacks which are made by one group or person against another, (whether of racist origin or not) and to deal with incitement to violence. New laws which enable prosecution at a much earlier time are both unnecessary and exceedingly vague (and therefore potentially dangerous) in their operation. Indeed, the freedom to make such statements is an important safety valve which society needs in order to lessen the likelihood of resort to physical aggression. Tensions of a racial nature are bound to develop in all walks of life and should not be suppressed. A heated public debate does not necessarily lead to, and is far more desirable than, violence.
>
> Those in Australia who are proponents of the fashionable term "Multiculturalism", mostly politicians, journalists, and certain segments of academia (very few are actually migrants), make strange bedfellows with those who promote the latest version of the Racial Discrimination Act. Indeed, it seems that most of these people wear two night-caps. They cannot be ignorant of what Italians feel about Greeks, Ukrainians about Russians, Chinese about Vietnamese, Turks about Armenians, Indians about Pakistanis, Nigerians about Ghanaians, or Croats about Serbs - and vice versa.
>
> Australia's attitude to all this should be that we welcome immigrants from any country, with the stern proviso that their national politics be firmly left at home.
>
> But the transformation of theory into reality may at times be more aptly described as metamorphosis, except that this time the butterfly can be uglier than the caterpillar. One simply cannot legislate to prevent people from holding what may be racist attitudes, especially migrants who could have fought against each other in the World Wars. The best we can do is to educate and attempt to change attitudes and let time heal these wounds as new generations of Australian-born children leave these views behind. Certainly legislating to make these thoughts inexpressible is likely only to harden people's feelings and prolong the whole process.

I think it is a sad commentary on democracy and political life in Australia that we have people such as Mr Collaery and others who are prepared to stand up and actually say that we should not have the right of freedom of speech, the right of freedom of publication, the right to read. What they are saying is that George Orwell's *Nineteen Eighty Four* was right and that *Animal Farm* was right: People should not be allowed to read, should not be allowed to discuss matters. These new utopians would say that they know better, that they know what they should silence.

Mr Connolly: But you are the strongest advocate of censorship in the house.

MR STEVENSON: Mr Connolly says that I am the strongest advocate of censorship in the house. As I have said on these various issues, again and again he neglects to mention that the majority of people in Canberra want X-rated videos banned, because that is what he talks about. *(Extension of time granted)*

Mr Berry: What is the Anti-Treason League? What is the White Aryan Resistance? We want to know about those. Tell us whether you support them.

Ms Follett: And the League of Rights.

MR STEVENSON: As I have said, the statement on pornography - - -

Mr Berry: Tell us whether you support them. No, you will not tell us that, will you? The White Aryan Resistance?

MR STEVENSON: I will get to that in a moment. All Attorneys-General in Australia would ban X-rated videos, and, indeed, all the States have. The people in Canberra, by a majority of 61 per cent to 39 per cent, I think it is, would call on us to ban X-rated videos. Yet this is supposed to be not okay. When I stand for this issue and for other issues that people are concerned about, it is supposedly not okay.

The Labor people and Mr Collaery specifically have said something about some treason group or whatever. Mr Collaery said that he has had documents given to him from my office, or a document which he said was - - -

Mr Collaery: From the Anti-Treason League.

MR STEVENSON: From the Anti-Treason League, which he said he returned immediately. I do not know whom he returned them to. He certainly did not give them to me, nor did Mr Jensen.

Mr Collaery: Did you have that documentation in your office?

MR STEVENSON: So, the interesting thing is - - -

Mr Collaery: Did you have it in your office?

MR STEVENSON: Why not be quiet and let me answer the question? Firstly, interestingly enough, I am not sure. Let me explain that. You would not believe the places I get information from.

Mr Duby: Yes, we would.

MR STEVENSON: Okay, you might. I am prepared to look at anything. I harbour no fear from looking at things. I refuse to be intimidated by political thugs who would tell us that we cannot read what we choose to read, who would tell us that we should not attend meetings because certain organisations have been denigrated - - -

Mr Wood: So, you did go. It is an admission that you went.

Mr Berry: How much cash do you handle for the League of Rights?

Mr Wood: He has admitted that he went. We have got that much out.

MR STEVENSON: Mr Wood suggests - - -

Mr Berry: How much cash do you handle for the League of Rights?

MR STEVENSON: May I make a point? If you want me to have a say on something, why not be quiet and let me answer the questions in my own way, rather than interjecting and asking others so that it cannot be done? That is the reason - because you will not hear someone else's view. That is the true reason. What you would do is try to denigrate by association and then prevent someone from talking on the topic. Those tactics have been used down the ages, and it is a sad commentary that we see them used not only in this Assembly but many times in Australia. Once again, I will maintain my right to attend any meeting I choose to attend, at any time I choose. I will read what I want. I will listen to whatever audio cassettes I want, and videos.

Mr Duby: Oh, no, you won't.

MR STEVENSON: Mr Duby holds up Mr Collaery's amendments and says, "Oh, no, you won't". What we got from just about every person in the gallery and in the Assembly was laughter. Supposedly, it is good that people will not be able to read what they like, will not be able to say what they like. Who in here has the courage to speak up for the same principles? I know full well that some people hold dear to their hearts the right to freedom of speech, the right to freedom of writing, the right to freedom of discussion; but who would have the guts to stand up and not

be intimidated by these pseudo-intellectuals who would prevent open discussion in our society and, instead of getting rid of division, would create it? I think it is a sad commentary.

What we have in this country is not a democracy. We do not have political freedom; we have an oligarchy. Let me give the definition of "oligarchy": "A form of government in which few people have the ruling power". That is what we have in Australia, and that came not from my 1943 dictionary but from my 1980s *World Book Dictionary*.

Mr Wood: Mr Deputy Speaker, I ask that Mr Stevenson be granted a further extension of time so that he can answer Mr Collaery's comments.

MR DEPUTY SPEAKER: It is up to Mr Stevenson whether he wants to. If you want a further extension, Mr Stevenson, you need leave.

MR STEVENSON: I seek leave to continue talking.

Leave not granted.

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

> That, under standing order 213, the documents Mr Stevenson read from be tabled.

MS FOLLETT (Chief Minister and Treasurer) (12.01): Mr Deputy Speaker, could I just remark that you have shown an incredible tolerance in allowing the debate to continue for the past little while, in terms of relevance. I will not stretch your tolerance any longer. I will address my remarks to the amendment Mr Collaery has moved to the Bill we are debating. Mr Collaery's amendment deals with incitement to racial hatred and incitement or threatening of physical harm on the ground of race. Initially, as members will be aware, our Bill did not contain provisions concerning racial vilification. Indeed, in Australia there are only two jurisdictions where racial vilification is the subject of law, that is, Western Australia and New South Wales.

I think it is fair to say that in Western Australia and New South Wales these provisions were brought in because of particular circumstances that applied in those States. In both States there had been either a campaign of racially based violence or a circulation of literature inciting people to racial hatred, racial violence, and an element of racial harassment. That situation obviously does not apply in the ACT, and thank heavens for that.

Another reason for our not including these provisions in the Bill we have brought to the house is that there are philosophical questions concerning freedom of speech. There have been difficulties in other jurisdictions on just this matter. Given that the circumstances do not apply in

the ACT and given those philosophical difficulties, we did not include these provisions in the Bill. Nevertheless, we will not object to Mr Collaery's amendment. I think it is fair to say that Mr Collaery has revised and reworked his amendment considerably, to the point where it is much closer now to the New South Wales model than, as it was originally, to the Western Australian model, and that certainly makes it a more acceptable proposal.

I also advise the Assembly that the Commonwealth Human Rights and Equal Opportunity Commission has made a recommendation that the Commonwealth Racial Discrimination Act should be amended to cover incitement to racial hatred and racial defamation. That work is still proceeding. Eventually there will be some Commonwealth legislation along the same lines. It is not a matter that is absolutely central to the Bill; but, as Mr Collaery has made great efforts to make his amendment more acceptable, we will not be opposing it.

The fact that so many of the comments directed to this amendment have been directed at Mr Stevenson, who is only one amongst 17, is enormously flattering to Mr Stevenson. I think Mr Collaery believes that he is making a pre-emptive strike to stop Mr Stevenson engaging in some kind of racial propaganda exercise in the ACT. We should not be introducing legislation aimed at the actions or the purported or imputed actions of one person. That is very flattering to Mr Stevenson. I think it is also fairly derisive of the ACT community. They know what Mr Stevenson is, and Mr Stevenson, it has to be said, is not alone in having been elected to this Assembly on one platform, ditching it completely, and coming up with a few little surprise packages.

Mr Stevenson: That is absolutely false, and you know it. You continue to make false statements, and you should be ashamed of yourself.

Mr Connolly: On a point of order, Mr Deputy Speaker: Mr Stevenson must withdraw that, surely.

MR DEPUTY SPEAKER: Withdraw what?

Mr Connolly: Accusing the Chief Minister of knowingly making false statements. I was required by Mr Jensen to make a similar withdrawal yesterday. Mr Stevenson can move a substantive motion.

MR DEPUTY SPEAKER: I think that is probably right. Would you withdraw the word "false", Mr Stevenson? I think that is what Mr Jensen did yesterday, and I will be consistent in that ruling.

Mr Stevenson: Mr Deputy Speaker, the Chief Minister said that I had completely ditched my policies. That is an absolutely false statement.

Mr Collaery: On a point of order, Mr Deputy Speaker, I ask you to get him to withdraw it or throw him out of the Assembly.

MR DEPUTY SPEAKER: Mr Stevenson, would you withdraw the word "false".

Mr Stevenson: Will the Chief Minister - - -

MR DEPUTY SPEAKER: No; I am asking you to withdraw the word "false". Would you do so.

Mr Stevenson: I withdraw, on your direction. It will not change the truth of the matter.

MR DEPUTY SPEAKER: Mr Stevenson, would you just say that you withdraw the word "false".

Mr Stevenson: I withdraw the word "false".

MS FOLLETT: Thank you, Mr Deputy Speaker. I repeat that - - -

Mr Stevenson: You should be ashamed of yourself.

Mr Collaery: Whom was that directed to?

Mr Stevenson: It was directed to the Chief Minister.

MR DEPUTY SPEAKER: I accept that withdrawal, Mr Stevenson.

MS FOLLETT: I say again that Mr Stevenson is not alone in this Assembly in having stood for one platform, abandoned it, and come up with some surprise packages.

Mr Stevenson: That is absolutely untrue.

MS FOLLETT: Mr Deputy Speaker, I require that that be withdrawn.

MR DEPUTY SPEAKER: I think you had better withdraw that, Mr Stevenson. That also has been ruled unparliamentary. Perhaps some people should go to court for a few interpretations of words.

Mr Stevenson: Mr Deputy Speaker, where do we have a situation where someone making absolutely false statements is allowed to get away with it, and yet I cannot say the same thing?

MR DEPUTY SPEAKER: Mr Stevenson, I suggest that you use the word "wrong" or something. I do not think anyone has held that to be unparliamentary yet. I have asked you to withdraw the word "untrue". That has been held before to be unparliamentary.

Mr Stevenson: If it has, I withdraw.

MS FOLLETT: To come back to the legislation under consideration, the Government does not oppose Mr Collaery's amendment, although the fact that he appears to be introducing it to contain Mr Stevenson's political ambitions and political activities seems to me to be enormously flattering to Mr Stevenson. It is a provision that Mr Collaery has found necessary to the legislation. It is a provision the Government would have put a great deal less priority upon. Nevertheless, we will not oppose it.

DR KINLOCH (12.08): I thank Mr Collaery most sincerely, with a great sense of gratitude, for adding these clauses to the Human Rights and Equal Opportunity Bill. As far as I am concerned, this is as important as anything in the Bill. I have heard some strange things in the last half-hour. Some of us are ethnics, we have ethnic families, and we want them to be supported. These kinds of clauses will help to do that.

I do not believe in going so far with freedom of speech that people can be vilified racially. Is that freedom of speech? We are on a very difficult matter. I understand that. We do not want to limit freedom of speech, but there is a point at which storm-troopers can say things about people that are so desperately damaging that they lead to terrible ends. I say thank you for these amendments. I hope that everyone here will support them. They are well said.

I also thank the Chief Minister for not being disgraceful - I think that adds up to being graceful, does it not? I do not believe that Mr Collaery is doing this only in relation to Mr Stevenson. I believe that it is in relation to a city which, from that demographic book we saw launched here recently, is the second most complex multicultural city in Australia. In some ways, in its life, I would have thought it was the most multicultural because we have all these embassies from all over the world which add to the complexity of our city. If there is one city where we must not allow racial slurs, racial injustice, racial disharmony, it is the city of Canberra. May that view spread throughout the Commonwealth of Australia.

I want to back the removal of material which incites racial hatred, or the prevention of publication of that material, or displaying material to harass a racial group. It is very difficult to know what to do about the possession of material. I do not believe that we should be in the business of raiding people's homes; but, given that limitation, I support the amendment. I wonder whether one is allowed to answer any of the things Mr Stevenson has said. I hope to do that in the adjournment debate tonight.

MR MOORE (12.12): I think this is an excellent amendment moved by Mr Collaery.

MR DUBY (12.12): There is something in this amendment that I have difficulties with.

Ms Follett: Mr Stevenson does not run this Assembly. You are obsessed with him.

MR DUBY: Absolutely. Let me say at the outset that I support completely the thrust of the amendments moved by Mr Collaery, but I have grave difficulties with a public act - for example, actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, that are likely to cause offence to another racial group - being made illegal.

Mr Collaery: No, you have misinterpreted it.

MR DUBY: Perhaps I have, and I would like to have it explained to me. It seems to me that this would ban the giving of a Hitler salute, the wearing of Nazi insignia, et cetera. I do not believe that it is appropriate that those things should be banned. I personally like to see the people we are fighting in this matter.

I can think of circumstances right now where a group of people, for example, Croatian Canberrans carrying a Croatian flag, which is not a recognised international flag, could be claimed by some other members of the Balkan community to be an incitement to violence. I personally do not believe that that should be banned. Members of the Croatian community should be allowed to display a Croatian flag, whether other members of the community find it offensive or not.

Exactly the same thing could be said of a whole range of other political issues. I have grave doubts, and I wonder whether other members of the Assembly share those views, about the display of signs, flags, emblems and insignia. I can understand that it is appropriate that a sign that says "Jews out" or something like that should be banned; but, in my view, a flag or insignia should not be banned. People should be allowed to have what they call their rallying sign or whatever and, whether it is offensive to other people or not, it should not be banned.

Perhaps other members of the Assembly could guide me in this matter. I want to be absolutely certain that I am not banning the wearing of a storm-trooper's uniform with Nazi insignia on it. In the same way, I want to make sure that I am not banning even the old South Vietnamese flag. The way I read this, that could be put up as an incitement to racial hatred. I want to make sure that I do not participate in that.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.15): Mr Duby makes a sound point here. As the Chief Minister said in her response, there is obviously a freedom of speech issue here. This is treading a fine line between allowing full freedom of speech and saying when it is appropriate for the law to move in.

There are two key things to say. One is that this provision is structured in two categories. It makes unlawful something which gives rise to a civil action under the Discrimination Act and the conciliation procedures and the complaint procedures. In the proposed section 63B provisions it is not creating a criminal offence for mere racial vilification. The only time a criminal offence is created is under proposed section 63C, which is the severe racial vilification that is the actual incitement to physical harm towards another person.

The other key point to make is that the test is not that a person finds something offensive. Rather, the test is that the doing of the thing incites hatred towards, or contempt for, or ridicule of a group. I think Mr Duby gave a good example where the waving of a flag, a national emblem, would fall on one side of that line. That may cause offence to another, but it cannot be said to incite hatred or contempt. If we were to take the Balkans conflict, the waving of one or other national flag, Serbian or Croatian, would not be racial vilification; but the holding of a sign accusing one of the other racial groups of brutality or atrocity or saying "Serbs" or "Croats", or whatever, would fall within this provision.

The Government is satisfied that this is not an unjustifiable infringement on a person's civil liberties, but Mr Duby is quite right in raising the concern.

Mr Duby: What about a swastika?

MR CONNOLLY: A swastika outside a synagogue would, I think, fall across the line. The circumstances always are necessary. Alternatively, filming a motion picture on World War II with people running around in German uniforms would not, I think, be likely to be caught. Again, this is not creating a criminal offence so that someone is going to say, "You have infringed section 63B. You are fined". It is creating the basis for a complaint action through the civil process of the Discrimination Commission. So, the making of a film would not be covered. It is not the giving of offence; it is the inciting to serious contempt. So, it depends on the circumstances. While we respect your concerns, Mr Duby, we think they are probably met in the legislation as it stands.

MR DUBY (12.18): I am gratified for that explanation of the legal terms of the Bill. I did have concerns and they have been laid to rest.

MR MOORE (12.18): I appreciate the issue Mr Duby raised and I am very gratified to hear a sensible and rational response. I think it is very important to take up one issue Mr Stevenson raised by referring to the proposed paragraph 63B(2)(c) amendment Mr Collaery has moved. It states:

> Nothing in this section renders unlawful -
>
> ... ...
>
> (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

What Mr Collaery's amendment has done is to protect free speech. It is very important to note that some of the arguments put by Mr Stevenson indicated that this amendment would in some way infringe his right to say or read what he wants to. When we are talking about academic or research purposes or anything like that, it is quite clear to me that that would not be the case at all.

One of the greatest ironies of this Assembly is that Mr Stevenson should stand up in this place and say that he would not allow anybody at all to infringe his right to read or see or listen to whatever he likes. He has spent longer than two years in this house and in this community telling everybody else that he is going to tell them what they can watch and what they cannot watch. It is one of the great ironies, and it is an act of great hypocrisy that he should do that.

What we have here is a debate about social control rather than about the issues that are at hand. The issue at hand and the issue brought on by this amendment is to extend the human rights of people to give them the right to not be harassed because of the colour of their skin or because of their race, whatever that race is. Mr Stevenson, in quoting from *Your Rights,* makes a quite big issue - - -

Mr Stevenson: I did not quote from *Your Rights.*

MR MOORE: Mr Stevenson interjects that he did not quote from *Your Rights.*

Mr Stevenson: It was a submission that I quoted from.

MR MOORE: A submission from the paper that he tabled. I may be incorrect about it being *Your Rights;* but it certainly, on my quick reading of it, appears to be. I accept that I may be mistaken there because I have not gone through it thoroughly enough. In quoting from this paper and taking

ideas from it, Mr Stevenson makes it quite clear that there is such a thing as anti-white racism. It is covered too. If there really is such a problem, it is also covered; it does not matter what the race is. It is not something upon which there should be any form of prejudice upon which to hang anything, whatever the race.

So, I cannot see how he can then turn around and say, "Well, Asians have some racial hatred against whites, and Jews have some racial hatred against somebody else". It is irrelevant. What Mr Collaery's very sensible amendment does is this: It says, "We do not want that; we are doing away with that. People are entitled to live in our country and be respected as people independent of their racial background".

MR STEVENSON (12.22): Mr Moore says that I have been trying to tell people what to do on the X-rated video issue. Yet again, he fails to - - -

Dr Kinloch: Mr Deputy Speaker, I take a point of order - relevance to this clause.

MR DEPUTY SPEAKER: Yes, I would ask you to keep your comments relevant, Mr Stevenson.

MR STEVENSON: It is relevant regarding freedom of speech, Mr Deputy Speaker. People, as I have said, have told me that they want these things banned. I have worked to do that and will continue to do so.

A case against such racial laws, that Mr Collaery and some people in this Assembly would seek to introduce, was put by David Allen. He said:

> From the outset I should make it clear that I am opposed to the vilification of any person on the basis of their race or ethnic origin. I am equally opposed to the silencing of racists through the use of law.

I agree entirely with both his sentiments. He continued:

> If there is any paradox in this position it flows from the conflict between two supremely important human rights which are expressed in the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. The latter treaty requires all signatories to take action against the incitement to racial violence, discrimination or hostility. At the same time, both treaties require respect for the fundamental right of freedom of expression.

Neither principle can claim absolute supremacy. There is not and there never has been an absolute right to free speech. It is a matter of balancing the individual's right with the rights of other individuals and the legitimate interests of the state.

Recent events in China poignantly demonstrate the difference in balance which may be struck in Western democracies as opposed to totalitarian states, where the voices of individuals are ruthlessly silenced and into that silence is poured abuse of the dead and lies to protect the state from criticism.

It is in this perspective that we may see that freedom of expression is an elemental value. It provides the foundation to establish and to protect other human rights. Those rights can only flourish in democracies which are formed on a genuine respect for the individual voice. The primal quality of free speech must never be forgotten and must never be undervalued. But, as I have said, freedom of expression is not an absolute principle, its practice must be tempered by other values which detail the nature of the community that we wish to create and, if Tiananmen Square provides a graphic image of liberty crushed under tanks, then the walls of toilets and the walls of public buildings in Melbourne, which are daubed with harmful graffiti, provide images of liberty perverted.

I do not underestimate the potential of language to hurt. I refer to the seminal statement of Justice Felix Frankfurter of the United States Supreme Court:

> "insulting or fighting words, which by their very utterance inflict injury or tend to incite to immediate breach of the peace, these utterances have no essential value as a step to the truth. Any benefit that may be derived from them is clearly outweighed by the social interest in order and morality".

First, that passage clearly draws attention to the fact that fighting words may have a direct connection with actual violence. Where words incite or precipitate particular acts of violence they are the literal fuse to an explosion. There is no argument with that. They ought to be punished by law and, in fact, they are at the moment. Public order offences have the potential to protect against threats of violence and incitement to violence.

The second point that I wish to draw from Justice Frankfurter's pronouncement really goes to the core issue. He identifies a general social interest in order and morality. This has been taken to suggest that the law may dispose of general views of an immoral character. These are said to have no essential value as a step to the truth and so they may be suppressed without loss.

Legislation to outlaw such views or ideas rests primarily on a desire to shape moral attitudes which may have a general impact upon behaviour.

Accordingly the New South Welsh racial vilification legislation was introduced as having a strong symbolic value - to make people realise what is and what is not acceptable to society.

That objective is perfectly admirable. But the law is not the proper vehicle to teach such morality. In a democracy the truth should never be proclaimed by the state. Clearly moral considerations do underpin the law but it is the act of murder, not anger or hatred, which is punished. Most relevantly - - -

Mr Berry: This is hardly relevant, Mr Deputy Speaker.

MR DEPUTY SPEAKER: Do you take a point of order on that, Mr Berry?

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

That the question be now put.

The Assembly voted -

AYES, 14	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Question put:

That proposed new Part VA (**Mr Collaery's**) be inserted in the Bill.

The Assembly voted -

AYES, 15	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Postponed clause 23

MR COLLAERY (12.38): Mr Deputy Speaker, I move:

Page 14, line 13, omit "Part V or VI", substitute "Part V, VA or VI".

This is to correct the titulation of a Part in clause 23. It is a technical amendment. It is consequential upon passage of the last matter.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 66

MR COLLAERY (12.38): Mr Speaker, I move:

Page 27, line 33, after "VI", insert "or section 63B".

This is another consequential amendment.

Amendment agreed to.
Clause, as amended, agreed to.

Clauses 67 and 68 taken together

MR COLLAERY (12.39): Mr Speaker, I move:

> Page 28, line 25, paragraph 67 (1)(c), after "VI", insert "or section 63B".

This is a technical consequential amendment.

Amendment agreed to.

Clauses, as amended, agreed to.

Clause 69

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

> Page 29, line 18, after "VI", insert "or section 63B".

Clause, as amended, agreed to.

Clause 70

MR STEVENSON (12.41): Clause 70 does not specify that the commissioner has to tell the person so enjoined anything other than that they have been made a party to the investigation. Why does it not require the commissioner to tell them exactly what the investigation is, what the details are, and, if they are alleged to have done anything, what they are alleged to have done?

Mr Connolly: Clause 72. Read it, you twit.

MR STEVENSON: The investigation, the court case, to a large degree, gives no requirement to tell you the different offences that have been complained of or the different charges that the commissioner is trying. I will get to clause 72 shortly.

Clause agreed to.
Clause 71 agreed to.
Clause 72

MR STEVENSON (12.42): This clause says:

> Before commencing an investigation in relation to a matter the Commissioner shall, in writing -
>
> (a) give each party to the investigation notice that the matter is to be investigated;
>
> ... ...

It does not say what matter is to be investigated; it does not give a definition of "matter". So, the details of the matter are not stated; there is no requirement to do that. It goes on to say:

(b) invite each party to present his or her case to the Commissioner.

I move:

Page 29, line 32, insert the following subsection:

"(1) In this section - "matter" shall mean and include the facts alleged to give rise to a breach of this Act including the time, date and place; the person against whom it is alleged the offence was committed; the person by whom it is alleged the offence was committed; and the person by whom the complaint has been made.".

This is what you call natural justice before Australian courts if you are to be charged with anything.

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 Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mrs Nolan	
Mr Prowse	
Mr Stefaniak	
Mr Wood	

Question so resolved in the affirmative.

Question put:

That the amendment (**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 Kaine Dr Kinloch Ms Maher Mr Moore Mrs Nolan Mr Prowse Mr Stefaniak Mr Wood

Question so resolved in the negative.

Clause agreed to.

Clause 73

MR COLLAERY (12.47): I rise briefly to acknowledge the assistance of both the Victorian Law Reform Commission and the Women's Electoral Lobby in reducing and refining the original draft clause 77. Clause 70 of the circulated discussion Bill, clause 73 as it now appears, reflects to an extent the United States rules. It is the beginning of the capacity of a member of a class of persons to raise their concerns, and I commend it to the house.

Clause agreed to.

Clause 74 agreed to.

Clause 75

MR STEVENSON (12.50): I move:

Page 30, line 31, paragraph (3)(c), omit the word "not".

If I am gagged on this, I will call for divisions on the next six items. In other words, allow me to speak on the matter.

Mr Connolly: I take a point of order, Mr Speaker. That clearly is an abuse of procedure and an indication of a lack of genuineness in calling for a vote. He is threatening and intimidating members. It could well amount, if we were to take it terribly seriously - - -

MR STEVENSON: You gag me, you prevent me from speaking, and I will call for a division on the item.

MR SPEAKER: Order, Mr Stevenson!

Mr Connolly: Clearly, that could well amount, if we were to take it particularly seriously, to a breach of privilege. He is threatening members as to how they may or may not vote on a gag. I would ask you to remind Mr Stevenson of what is and what is not acceptable.

Mr Collaery: Mr Speaker, I wish to address that point of order. Standing order 202 provides that a member may be named if he persistently and wilfully obstructs the business of the Assembly. I want to say to you, Mr Speaker, that Mr Stevenson has just denied all the reasons for his being here. He has said, without hearing arguments from the floor, that he will call for a division, that is, he will vote in a certain way. His behaviour obstructs the business of the Assembly. Mr Speaker, I am going to move that you utilise those provisions, if this continues much further.

MR SPEAKER: Mr Stevenson, I put you on warning. Please be careful.

MR STEVENSON: Mr Speaker, I speak to the motion.

MR SPEAKER: Please proceed.

MR STEVENSON: Mr Speaker, I speak to the motion that was just moved, as Mr Collaery did.

Mr Moore: He did not move a motion.

Mr Duby: Speak to the point of order.

MR SPEAKER: There was no motion; it was a point of order.

Mr Stevenson: I am sorry; I speak to the point of order. Mr Collaery said that I sought to have matters voted on before discussion had taken place. That is exactly what I seek to prevent. I have been gagged a number of times before I have had an opportunity to make the point.

Mr Wood: To waffle on, to stall. Why don't you be honest?

MR SPEAKER: As far as the point of order is concerned, Mr Stevenson, I would ask you to be warned that you are treading on thin ice. But I also warn other members that there is some fairly intemperate language coming out. That last one, from Mr Wood, I would ask to be withdrawn. The situation is that Mr Stevenson has every right to do what

he is doing, even though most of the members obviously object to the way he is doing it. The point is that I am here to control the debate according to the standing orders. I take Mr Collaery's point, and Mr Connolly's, that in fact Mr Stevenson is doing this in a manner to aggravate every member of this Assembly; but he still has the right to do that. Intemperate language from other members does not help. I would overrule any action at this time. But at the same time, Mr Wood, I would ask you to withdraw your last statement about honesty.

Mr Wood: Yes, sure; I will withdraw it.

MR SPEAKER: Thank you, and I would ask you to stand next time you do that.

MR STEVENSON: I have moved to delete the word "not" from paragraph 75(3)(c), which says that the commissioner is not bound by the rules of evidence in conducting an investigation.

Mr Connolly: Just like the Administrative Appeals Tribunal and virtually every other similar body.

MR STEVENSON: Mr Connolly says that it is just like the Administrative Appeals Tribunal. It is true that there have been many tribunals set up in Australia that are not bound by the rules of evidence.

Mr Connolly: But they must observe the principles of natural justice, or they are overturned by appellate process.

MR STEVENSON: Mr Connolly says, "They must observe the principles of natural justice". A famous painting hangs in the National Gallery in London. It shows the interior of an Elizabethan room with Roundheads seated around an eight- to ten-year-old boy. Obviously, the boy was a royalist or a loyalist, by his ringlets. This was the Star Chamber. This is what happened under Cromwell, in the so-called Lord Protector's reign around about the 1630s.

Anyone who was a royalist or a loyalist whom the puritans did not like could be hauled before a tribunal. You had no rights to natural justice, notwithstanding that one of Cromwell's men could have said that this was natural justice. The caption on this painting was addressed to the little boy - "When did you last see your father?". This is the sort of thing that could happen in a Star Chamber. A Star Chamber is where you have no rights. A Star Chamber is largely where the mind of the tribune, the commissioner, or whatever you call the person in charge, has largely already been made up.

The rules of evidence are vital in our society when unlawful matters are being heard. Supposedly, people would stand in this Assembly and say that they talk about rights. Others would not have the courage to stand up and say what I know some people think. They would allow this clause to go through and allow the commissioner to not obey the rules of evidence that protect all Australians whenever they go before a court.

MR STEFANIAK (12.55): I will just point out a few things to Mr Stevenson and members.

Mr Berry: Not too many.

MR STEFANIAK: No, not too many. We in the Liberal Party have been very restrained in our comments in relation to this matter, but there are a couple of things we need to say. In relation to this, Mr Stevenson, there are, as Mr Connolly interjected, quite a number of quasi-judicial bodies which, for very good reasons, are not bound by the rules of evidence. They are bound by the rules of natural justice. Even courts, sitting in some circumstances, are not bound by the rules of evidence. The Coroner's Court is a classic case in point, and there are some very good reasons for that.

However, the thrust of this particular piece of legislation - it is similar to a number of other pieces of legislation, even things like the Small Claims Act, for example - is to take the lawyers out, to take the adversarial procedures out too, so that most of these complaints can be resolved without anything further happening. Most of these things can be resolved basically by people sitting around and just trying to be reasonable. I think that is eminently sensible.

There is a provision here in clause 106 for appeals to the Administrative Appeals Tribunal if, in fact, anything does go wrong. That is a quite good protection for all of this. There is a further protection there, Mr Stevenson, of an appeal to the Supreme Court if there are further problems with the AAT. Also, if someone is way off beam, there is a provision, and I think it is a very sensible provision, that costs and expenses be awarded for any vexatious complaints. There are protections in the Bill for persons wrongly complained against. That is absolutely essential, and I said that in the in-principle stage in relation to this Bill. I think that is a very sensible provision.

I hear what you have been saying and repeating ad infinitum in relation to this debate. In the in-principle stage I mentioned that I had heard from a number of ethnic people, prior to, I think it was, the Human Rights Office moving from Canberra in 1986, of complaints against that office. If this legislation does not work, Mr Stevenson, if this is as bad and draconian as you say it is, I am sure that the Liberal Party in government in the future will simply repeal it; but it has worked fairly well in other States.

The consultation process, which the commissioner initiates, has worked very well. From what I can gather, and from my talks with various government officials, there have been very few incidents of abuse of this type of legislation in recent years, although I certainly am aware of alleged abuses in the early 1980s in relation to the Commonwealth Human Rights Office which was here. Rest assured, if there is gross abuse of this legislation along the lines you are saying, a Liberal Government will repeal it. We do not anticipate that as being necessary at all. There are a number of checks and balances in this legislation and in our legal system at present which should ensure that people are fairly treated. There is no real need for your particular amendment to this clause on that basis.

Question put:

That the amendment (**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 Kaine
	Dr Kinloch
	Ms Maher
	Mr Moore
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.
Clause agreed to.
Debate (on motion by **Mr Berry**) adjourned.

Sitting suspended from 1.00 to 2.30 pm

QUESTIONS WITHOUT NOTICE
Housing Trust Computer System

MR COLLAERY: Mr Speaker, my question is directed to Mr Connolly, as Minister for Housing and Community Services. Mr Connolly, I have received an inquiry from a constituent concerning a secondary problem with the Housing Trust computer arrears send-out. It relates to the fact that, for those who pay from their salary, the system has been

changed from a payday to payday operation to one based on a period starting on a Sunday. An incident has been related to me in which a tenant received a letter stating that the tenant's account was in arrears in the sum of $300-odd. When that tenant queried the situation and established that the account was not in arrears - because the tenant was having deductions made from a government salary base - the office advised that $60 was still owed because of a broken period covering from the Wednesday night to the Sunday, or the Sunday to the Wednesday; I am not clear which. I ask the Minister whether he could look at this matter carefully and perhaps consider putting a public notice in the journals. There is no need for the Minister to apologise; that is not what I am seeking. I wonder whether a public notice may not be appropriate, in view of the queries coming in.

MR CONNOLLY: Mr Collaery's suggestion re a public notice may well be appropriate. In addition, we are certainly writing to everyone concerned. I have asked my officers to give me a full report on what happened and why, and when I have that, as I previously indicated, I will provide it to the Assembly. But I thank Mr Collaery for his suggestion.

Urban Services Budget

MR HUMPHRIES: Mr Speaker, my question is addressed to the Minister for Urban Services. I understand from comments he has made today that the Urban Services budget, according to him, may be under target. I also refer to comments attributed to the departmental secretary today which indicate that a 1 December deadline for shedding some 120 staff will not be met. Can the Minister inform the house how many staff are to be shed from Urban Services in this financial year, how many staff have been shed to date, and how far behind schedule this staff reduction program is?

MR CONNOLLY: Certainly, the full process of the negotiation and the RRR redundancy process will not be completed by 1 December. There are ongoing meetings with the unions. I am confident that the budgetary targets will be met. The target for savings was contained in the budget papers and was gone over in great depth in the Estimates Committee.

Mr Humphries' question of yesterday was whether our budget was blowing out. He is a gentleman who speaks with some authority on budgets blowing out, with his $17m health record. He asked for the position for the first five months of the financial year. We are still within the fifth month, so I can give him the position as at the end of the first four months of the financial year.

The recurrent expenditure position is that, in the first third - 33 per cent - of the year we had spent 34.6 per cent of our recurrent budget, or $60.436m. So, we are 1.3 per cent over budget, which is within the normal rise and fall of being on target. My comments that we are on track and on target remain, and I am confident that the process in relation to staff numbers is going satisfactorily.

Grass Cutting Contracts

MR JENSEN: Mr Speaker, my question is also directed to Mr Connolly, this time in his capacity as Minister for Urban Services. I refer the Minister to a recent agreement between the Australian Workers Union, the Federated Engine Drivers and Firemen's Association and the senior management of the City Parks section regarding the accrual of authorised days off, or ADOs, and the suggestion that this arrangement will better utilise department machinery. As this change is predicated on the fact that no extra mowing will be done under the agreement, can the Minister advise what effect, if any, this arrangement will have on the work for private contractors currently employed on grass cutting contracts?

Mr Connolly: I do not like to comment on Mr Wood's portfolio.

MR JENSEN: I am sorry. I should have addressed it to Mr Wood.

Mr Wood: Would you just repeat that last sentence?

MR JENSEN: I will certainly do that. Can the Minister advise what effect, if any, this arrangement will have on the work for private contractors currently employed on grass cutting contracts? So, you are getting the grass cut, Bill.

MR WOOD: Yes, I am the grass cutter - and I noted that we had some rain the other day. The trial of rostered days off - and I stress that it is a trial - has been undertaken in the expectation that it will provide a more efficient service, benefits to the ACT through the way it is done and also benefits to the workers. It is in our mutual interests.

I cannot tell you the precise figures now, off the top of my head. I did go through them, and all the ramifications for the ACT and the department. It looked as though it was a sound proposition, and so we are running it. There were a few ifs and buts about it to see how long it will continue. It depends also on the cooperation of another union. So, at this stage, I have to say that it is a trial. On the basis of the careful consideration we gave to it, it looks like it will be successful. It certainly looked that way on paper. As it proceeds I will keep Mr Jensen informed about it.

MR JENSEN: Mr Speaker, I ask a supplementary question. My question really related to the effect that this arrangement will have on the number of private contractors currently employed on grass cutting contracts. In other words, will there be a reduction in the work provided for private contractors by this arrangement?

MR WOOD: There may be a reduction in the work of private contractors, but that would be more a result of the budget and the efficiencies in that regard - and such efficiencies are reflected in every area - than it would be a result of the rostered days off. It does not significantly alter that balance.

Asbestos Branch - Pager Servicing

MR STEFANIAK: My question is addressed to the Minister for Urban Services, Mr Connolly. It is not about Aidex; I will have a chat to him about that. Will the Minister explain to the Assembly why the asbestos branch, which is a relatively small section within his department, should need to spend $11,616 on pager servicings - that is, servicings, not purchases - as listed in the ACT *Gazette* No. 45 on 13 November 1991?

MR CONNOLLY: I will take that question on notice, because I obviously cannot give an off the top answer, other than to say that the asbestos branch, of course, is servicing work being done on houses all over Canberra and is very mobile and has a need to page its officers. But I will get a detailed answer and provide it to Mr Stefaniak as soon as I can.

Government Dividend Payments

MRS NOLAN: My question is addressed to the Chief Minister in her capacity as Treasurer. Chief Minister, dividend payments for the ACT look like showing a 272 per cent real increase, which is by far the highest increase among the States and Territories. What percentages of those dividends are derived from lower costs, asset sales or higher charges?

MS FOLLETT: I thank Mrs Nolan for the question. It is a complex one, and I have to admit that I do not have that level of detail with me at this moment. I will be happy to make some inquiries and make sure that Mrs Nolan gets a full reply as quickly as possible.

ACTION Buses - School Hire

MR HUMPHRIES: My question is directed to the Minister for Urban Services. I refer to the question I asked the other day concerning ACTION's hiring out of buses to schools for excursions. Why are the standards so different for buses on routes to and from schools at the beginning and end of each day - where much larger numbers of students, some standing, are often carried - from the standards set for the hiring of buses to schools for transport between excursion venues? Is it a case of ACTION demanding lower bus capacity only where the schools are paying for this rather than where they are paying for it through the ordinary allocation made in the budget for transport of commuters at the beginning and end of each day?

MR CONNOLLY: No, I certainly do not believe so. I do not have the figures with me now. I gave the figures the other day. There is a maximum capacity for buses for safe operation. It is a safety figure and it includes the number sitting and a certain allowable number standing. So, sometimes, to and fro, people will stand. When buses are hired, people wishing to hire a bus are asked how many people they need to take and a bus suitable for that number is provided with that number of seats.

I am unaware of any difference in policy. I will have further inquiries made and perhaps speak with Mr Humphries outside the chamber as to the specific nature of his question. Both questions seemed premised on some conspiracy within ACTION to do something untoward, and I am at something of a loss to know where we are going.

MR HUMPHRIES: I ask a supplementary question, Mr Speaker. Perhaps I can help the Minister by explaining. I have had complaints from schools that say that when they hire a bus they can transport on that bus only as many students as can be seated on that bus, whereas, if they had the choice, particularly for short routes, they would rather have the same arrangements as those that apply to buses on commuter routes, so that people can stand as well. ACTION does not allow them to have any children standing. But ACTION does tolerate it when the children are travelling to and from school in the mornings. I want to know why there is that difference between those two arrangements.

MR CONNOLLY: Yes.

Environmental Standards

MR JENSEN: My question is directed to Mr Wood in his capacity as Minister for the Environment, Land and Planning. I am sure that the Minister will recall the recent statement in the Assembly by the Chief Minister on an intergovernmental agreement on the environment as part of her statement on the Premiers Conference. Can the

Minister assure the Assembly that the ACT Government will not be required by this agreement to force the ACT to reduce any of the environmental standards currently in place in the ACT?

MR WOOD: We have looked closely at that. I believe that that is the case. I will have a further look, lest Mr Jensen has any anxieties; but it has been very carefully matched up with what States want and with our existing provisions. Both of those are very high, and I think we have accommodated each of them.

Health Services

DR KINLOCH: My question is addressed to Mr Berry, as Minister for Health. I wonder whether Mr Berry could help us in this area. What is the nature of the relationship with the New South Wales Department of Health, especially with nearby health care areas in rural New South Wales? Is there, for example, consultation between you and the Minister of Health for New South Wales, or your offices and the nearby health care areas? In particular, what is the situation re that part of the ACT which is Jervis Bay?

MR BERRY: In relation to nearby New South Wales, the south-east region of New South Wales, it is well known that 25 per cent of the patients to whom the ACT hospital system provides services come from the south-east region of New South Wales. In terms of formal arrangements between the ACT and various organs of the New South Wales system in the south-east region, I do not have the detail of what might occur in relation to that.

I have not had a need to discuss the issue of the provision of health services in the ACT with the New South Wales Minister; but, if the need arises, I shall. He certainly has not contacted me with any desire to discuss the issue, although the New South Wales health system was very helpful recently when I visited Westmead Hospital in Sydney. So, I do not think there is any difficulty in having cooperative arrangements, as the need arises. Of course, it is well known that we at times transport patients who need special services to Sydney hospitals and other hospitals, as the need arises.

Some of these matters, of course, could be liaised through the New South Wales-ACT Consultative Forum as well. I can find out the formal arrangements, if you like, Dr Kinloch, and I can provide you with the information on that; but I do not have it at my fingertips at the moment.

Dr Kinloch: Yes, I would welcome that. That would be good. What about Jervis Bay?

MR BERRY: Jervis Bay, of course, is a Commonwealth area; and, like the rest of south-east New South Wales, if there are any people in Jervis Bay who wish to use hospital services here they are able to do so under the same arrangements. They would otherwise use medical and health services in that region of New South Wales.

Public Works and Services Group Tenders

MR STEVENSON: My question is directed to Mr Connolly and it concerns a tender from the Public Works and Services Group for printing, warehousing and distribution of common use forms. The contract would amount to possibly over $100,000 over the time of the contract, which is in excess of one year. There is some concern from local printers about jobs like this going to other States. This one went to Sydney. Some of the local printers consider that it would be a better idea if such jobs were kept in Canberra for the benefit of local businesses and the local employment situation and to have a better chance of keeping the money in the ACT. I wonder whether Mr Connolly would be good enough to explain the policy.

MR CONNOLLY: I thank Mr Stevenson for his question. This question arises from time to time. Mrs Nolan smiles over there. We went through this in some detail in the Estimates Committee. There is an agreement. While at first glance it would seem sensible that we have a policy of preference for ACT firms - and I can accept that at first glance it seems a sensible policy - there is an intergovernmental agreement that all State and Territory governments and the Federal Government are a party to that prevents that; that is, we have all agreed not to give preference to local producers.

We have all agreed to invite tenders for services on an open basis and effectively take the lowest tender. That does mean that sometimes Sydney firms, as in this case, or other firms - even Brisbane firms - will be the best tenderer, put in the best price and so get ACT Government work. On the other hand, an awful lot of ACT firms get Federal Government work because they put in the best tender price and they are here and they can service the local market. If that was not the case, given that perhaps the voters of the ACT sometimes can be overlooked, there would be an obvious temptation for any Federal government to focus its work away from Canberra to help whatever region it thought needed to be looked at.

On balance, I am confident that the ACT industry does better out of that no-preference agreement because of the large amount of Commonwealth government work that we get - disproportionately above what we would get if it were doled

out on a sort of per capita or equal amount to each State basis. Also, the fact is that sometimes local firms here will tender successfully for New South Wales government work, Victorian government work or Queensland government work. The no-preference agreement is a sensible policy that all State governments are a party to. We probably do better out of it than most other States, because of the enormous entree it gives us to Commonwealth government purchasing.

Society for the Physically Handicapped - Respite Care Facility

MR HUMPHRIES: My question is to the Minister responsible for services to the disabled. I am not sure who that is, but that Minister presumably can stand up and take the question. Is the Minister aware that the Federal Minister for Health and Community Services has declined to allow the use, under the Federal Disability Services Act, of a vacant house at Hartley Court as a respite care facility? Does the Minister agree that this decision imposes a heavy burden on the ACT Society for the Physically Handicapped, which does not enjoy the economies of scale which are evident in other States? What will the Minister do to persuade his Federal colleague that this decision should, in the case of the ACT, be reversed?

MR CONNOLLY: Yes, I am aware of that problem and I actually wrote to Mr Howe about it some months ago. The Federal Government is locking into its position on that. Mr Humphries would be aware that the Federal Government has some fairly strict guidelines about use of respite facilities and use of institutional facilities. The policy is to de-institutionalise as far as possible, and the Federal Government guidelines say that respite facilities ought not to be on the same premises as institutional, long-term, permanent care; they ought to be separated. That is the stated reason for the failure to allow that building to be used for respite care. I have actually gone out and discussed this with the relevant organisation and inspected the premises. It is certainly frustrating for it, and frustrating for me, that there is a building standing there unused when there is an unmet demand for respite places.

This is a matter which, next year, will become the responsibility of the ACT Government. We may be able to take a somewhat more flexible approach to it when the disability services agreement comes into force in the early part of next year. I can see the reason behind the Commonwealth Government's policy as a general policy. If one were building a new building for a respite care facility, one would not necessarily want to put it on the same grounds as permanent accommodation. But, on the other hand, as Mr Humphries suggests, when a group with limited resources has a perfectly good building there, there may be

reason for a bit more flexibility. That was certainly my view, which I expressed to the organisation when I went through the premises some three or four months ago. I did write to Mr Howe, and Mr Howe said that he would stick to the guidelines.

Counselling Services

MR COLLAERY: My question is directed to the Minister for Housing and Community Services, Mr Connolly, although I recognise that some aspects of it relate to the portfolio of the Minister for Health. It relates to the many families in the Australian Capital Territory currently afflicted by events in the Balkans and in Timor, particularly those with relatives missing, displaced, injured or, sadly, deceased. I ask the Minister whether these people will receive some degree of support in their grief, in terms of the counselling that is required, through the community services and health agencies. I ask whether the Minister will be sympathetic to those program needs and can address them appropriately.

MR CONNOLLY: I thank Mr Collaery for his question. We see these events on our television screens and we think they are far removed from safe, secure Canberra. But, of course, they are not. There are Canberra families who are involved in these tragic events. There are a range of programs across my portfolio and Mr Berry's portfolio and with community organisations, the Ethnic Communities Council in particular, that provide counselling and support services. Tragically, they are being called upon, because these events, though they are happening far from our shores, are impacting in our community, as Mr Collaery rightly points out. So, yes, tragically, there is call on those services which, as I say, spread across a range of portfolios.

Royal Canberra Hospital - Furniture

MR JENSEN: Mr Speaker, my question is directed to the Minister for Health, Mr Berry. He may like to make some notes on this. I refer the Minister to an incident at 3.25 pm on 13 November 1991, when a Wards scrap metal vehicle was at the Royal Canberra Hospital on Acton Peninsula removing furniture. Can the Minister confirm that this furniture was being taken to Wagga for auction? If so, why was the furniture not being sold by auction in Canberra? Why was it not possible for the furniture to be used as an interim measure to enable the obstetrics ward at the Woden Valley Hospital to be fully opened?

MR BERRY: The question was fully answered a couple of weeks ago.

Mr Jensen: Where?

MR BERRY: I will do it again. I do not know whose truck picked up the furniture from Royal Canberra Hospital, but a question was asked here. The issue was whether the furniture was useable or not, as I recall. It has nothing to do with the opening of the obstetrics unit. I am not quite sure how you - - -

Mr Jensen: Because there was a delay in providing the furniture.

MR BERRY: My information is that the furniture that was taken away to Wagga was furniture that had gone past its point of economic use.

Mr Jensen: Not according to my informant.

MR BERRY: Mr Jensen says that his informant has a different view. One might be able to get a half broken chair and stick it out in one's backyard and get some use out of it, but it might not be very useful in a hospital. I do not know the detail of every article - every broken chair, every chair with torn covering, every chair without torn covering, or every table - that was sold to the person in Wagga; but my understanding is that proper processes were followed in disposing of the equipment. It was disposed of in an appropriate way, and it would not have enhanced the opening date of the obstetrics ward if this worn-out furniture had been retained for that purpose.

Russian Goodwill Flight

MR KAINE: I would like to address a question to the Chief Minister and Treasurer - and this is not a political question.

Mrs Grassby: That worries us.

MR KAINE: It may have some political connotations, though. In the next two to three weeks there will arrive in Canberra a flight of eight Russian light aircraft which will have completed an historic flight from Moscow to Australia. There are some 35 people, I understand, included in the crew and the support crew for these light aircraft. These are private Russian aviators that have undertaken this trip. Has the Government received any application from any source to provide assistance in terms of hospitality for these people while they are in Canberra? If not, would the Government be prepared to accept such an application?

MS FOLLETT: I thank Mr Kaine for the question. It is an interesting one. The first thing I should say is that Mr Kaine's raising the question today is the very first I have heard of the matter. I can say that I have seen no request through my office, although I have here a late advice that the Government has been contacted through Mr Wood's office and the suggestion has been made to contact my office. It sounds to me to be a fascinating project. Indeed, it is probably historic. I would not imagine that eight Russian light aircraft would have been seen in Canberra before - certainly not all together. Indeed, I would look favourably upon a request for some form of hospitality, as I have for many other groups on many other occasions in Canberra. So, if Mr Kaine has further information, perhaps we could talk about that later. I note that they are to contact me on the matter.

Reimbursement of Private Hospital Fees

MR HUMPHRIES: Mr Speaker, my question is directed to the Minister for Health. It concerns the case of a young woman who made a claim against the ACT Government earlier this year on the basis that she had been refused admission to a public hospital. She claimed from the Government the fees that she incurred at a private hospital in the ACT. Given that the Minister said at the time that she ought to have been reimbursed, and given that at the Estimates Committee hearings some two months ago the Minister promised to reconsider her case, I ask the Minister whether now, approximately nine months after this incident occurred, he has made a decision on whether she should be reimbursed her fees.

MR BERRY: Mr Speaker, this gives me an opportunity to - - -

Mr Humphries: Waffle.

MR BERRY: No, to hark back to the very serious damage that was done to the hospital system while Mr Humphries was in office. But I am not about to go over all of those issues, because the people of the ACT, of course, are aware of that. The question of an ex gratia payment is still being examined.

Mr Humphries: Nine months later?

MR BERRY: What did you do when you were there, Mr Humphries?

Mr Humphries: I refused it, but you said that you were going to pay it.

MR SPEAKER: Order!

Government Vehicles

MR STEVENSON: My question is addressed to Mr Connolly. I have been approached by a constituent with a question regarding taxpayer funded vehicles operated by the ACT Government. Could Mr Connolly please inform the Assembly how many vehicles operated by the ACT Government do not have government number plates?

MR CONNOLLY: No, offhand I could not. The basic criterion, of course - and it is a condition of service which we have essentially inherited from the Commonwealth - is that SES officers are entitled to have privately plated vehicles, for which they make a contribution. So, the entitlement to a privately plated vehicle is a condition of service and employment condition for SES officers, and they make a contribution.

Mr Duby: Dependent upon the contribution.

MR CONNOLLY: Yes - in response to Mr Duby's interjection - that is quite right. There are also cases where cars used by persons below SES level are not government plated. This is done essentially where there is a security aspect. So, I think Investigations Unit vehicles are not government plated, and there are a few others around the place. I will, however, endeavour to find out precisely how many such vehicles there are.

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

Asbestos Branch - Pager Servicing

MR CONNOLLY: I seem to have taken a lot of questions on notice in the last couple of days, and I have a bit of a raft of answers. Mr Stefaniak asked me today about the $11,000 pager services contract. I am advised that the asbestos branch has some 50 pagers. They are extensively used because all the officers are field based and they are required to be paged when an air sample is determined. So, they are extensively used and that $11,000 - about $200 worth of pager services per pager - is not excessive.

Government Computing Service

MR CONNOLLY: On 26 November, Mrs Nolan asked the Chief Minister the following question:

> What controls over consumables currently operate within the ACT Government Computing Service?

I am responding to that question as responsibility for the ACT Government Computing Service falls within my portfolio.

The answer to the question is that the ACT Government Computing Service systematically monitors its available funds allocation, which is controlled electronically by the whole of government financial system, or Fiscal program. In addition, the ACT Government Computing Service has set its own internal budgets. Budget consumables are broken into three parts: Computer consumables such as ribbons, toner, computer paper, magnetic discs and tapes; machine consumables such as photocopier toner and binders for binding machines; and office stationery, such as photocopy paper, pens, notepads, folders and the like. Orders for consumables are raised only if sufficient budget and cash is available. Orders cannot be raised without the appropriate delegates' signatures.

The budgets are also split across the main business areas of the ACT Government Computing Service, and the manager of a business area can access only budget available for that particular area. Regular monthly reports go to all managers and the assistant general manager and are reviewed at the next weekly management meeting. So, there is an ongoing examination. All office consumables are held in the administration area. Most of the computer consumables are kept at the Barton Computer Centre, which is secured by a magnetic key.

Asbestos Removal

MR CONNOLLY: The day before yesterday Mr Jensen asked me to table a copy of the contract between the Government and the companies contracted to remove loose asbestos from Canberra houses. I assume that Mr Jensen has asked for this document to look at the entitlements of asbestos program clients in cases where their houses are damaged during removal. The contracts comprise a variety of papers, including the technical specification for removing asbestos, which is a public document. While I am reluctant to table the full contracts as they are commercial-in-confidence - that is, they contain price sensitive material - I can table the technical specification, and I expect that this will provide the information which Mr Jensen is seeking.

I can assure Mr Jensen that the departmental policy is to require the contractor to make good any damage which occurs while asbestos is being removed from a house. Rectification work is considered to be an integral part of the removal process, and the decision about what work is required to bring the house back to standard is made within the department. There is a review procedure within the department so that clients who are dissatisfied can have their claims reconsidered if they are not happy with any

decisions made, and at the end of the day often those reach my desk. I would suggest that, if Mr Jensen knows of any asbestos program clients who are in difficulty over this matter, he contact my office. I table the document to which I referred.

PAPER

MS FOLLETT (Chief Minister and Treasurer): For the information of members, I table the ACT Treasury annual report for 1990-91, together with annual reports from the Commissioner for ACT Revenue, pursuant to section 11 of the Taxation Administration Act 1987, and the Registrar of Co-Operative Societies.

DAYS AND HOURS OF MEETING

MR BERRY (Deputy Chief Minister) (3.04): I seek leave to move a motion concerning the times and dates of sittings for next week.

Leave granted.

MR BERRY: I move:

> That, further to the order of the Assembly of 21 June 1991, the Assembly shall also meet on Tuesday, 3 December 1991, at 10.30 am; Wednesday, 4 December 1991; and Thursday, 5 December 1991.

This matter arises because of pressure on the Government to find extra sitting periods for the passage of government business. Firstly, this range of days does not suit everybody. Our first preference was to sit this evening. There was significant resistance to that amongst members. Some members had in their diaries bookings for this evening that they did not wish to pass up. There were other members who had appointments next week. On balance, this is about the best compromise that I could find amongst all members. There was also a desire not to sit on Tuesday evening, as is normal, and, in this case, the Government is prepared to agree with that.

Private members' business will, of course, occur on Wednesday, as usual. Generally, I think members wish that to be the case as well. There does not seem to be an answer that satisfies everybody, but I think that is about the best that I can come up with amongst members today. There does not seem to be any other solution which would suit everybody. So, I think the majority of members support that view. That is all I have to say, Mr Speaker.

MR KAINE (Leader of the Opposition) (3.06): I can only assume from Mr Berry's moving of this motion that he has the numbers to pass it. Otherwise, he would not have put it on the table. I can only express my concern. This proposition was put to the Liberal Party only today. We discussed it today and we asked our party Whip to ask the Government what essential business it had that must be passed before the house adjourned, so that we could then make a judgment about whether we needed one, two, three or more sitting days.

The Government has simply put this on the table without any regard for the negotiations that were going on - negotiations which, I would submit, were going on, presumably, between the Government and the Leader of the Opposition. To find this proposition dropped on my desk without any consultation whatsoever I find quite offensive, frankly. I do not know how many members of the Assembly have agreed to it, but it certainly does not at this stage have the agreement of the Liberal Opposition.

MR COLLAERY (3.07): Like Mr Kaine, we had this issue posed to us this morning; but, quite frankly, given the importance of the planning legislation, the Rally is inclined to assist the Government on this matter. But I am disappointed to see that Mr Berry's motion has not reflected the Rally's request that we have the equivalent of a full day of sitting for private members' business by way of return.

Mr Berry: But you can do that anyway.

MR COLLAERY: We would be inclined to move an amendment to the motion, but if the leader of government business is going to give that undertaking to the chamber - - -

Mr Berry: If you want to get nine of you together and have an additional day, you can do it. It is not a problem.

MR COLLAERY: If, in return, the leader of government business is going to state that he will not obstruct the access to a full day's private members' business, we will accede to the motion.

MR MOORE (3.08): I must say that Mr Berry did mention this matter, but it certainly causes me a great deal of inconvenience. Mr Berry was aware of this. It is a matter that I have had planned for some time, on behalf of the Assembly. For that week I will be forced to cancel, I guess. It would certainly suit me far better if we used the week of 17 December. However, I accept the importance of the planning legislation in particular, and quite a number of other pieces of legislation that were introduced this morning that I feel we ought to take care of. I reiterate the point that Mr Collaery made: It is appropriate for us also to deal with private members' business, and I think it is appropriate that we have an extra day specifically for that.

MRS NOLAN (3.09): Also very briefly, Mr Berry did broach the subject with me just prior to lunch. Unfortunately, it is going to cause me some considerable hardship because I have to be in Sydney on Tuesday. That was expressed to Mr Berry. It seems that other members do not give that terribly much consideration. It is for medical reasons, and I would have thought that perhaps we could have worked around it.

MR STEVENSON (3.10): One would wonder about the requirement for an extra three days. Perhaps, if 19 Bills had not been introduced this morning with the intention of ramming them through before Christmas, we would not have the problem.

Ms Maher: If you had not been using delaying tactics, Mr Stevenson.

MR STEVENSON: Carmel Maher talks about delaying tactics. What I have said is that that particular Bill is a vital Bill and that there were things that needed to be said. While people may not agree with what the Labor Party wants, it is just one of those things that they will have to put up with. So, as I said, one would wonder about the lack of consultation on this matter. Mr Kaine put it very well indeed. As usual - and as has happened many times in the past few weeks - we see again and again the Labor Party saying that it has this consultation - - -

Mr Berry: Did I talk to you?

MR STEVENSON: Yes, today, as Mr Kaine said. Either at the last minute or with little notice - and then not talking to everybody - these things are done, and it is expected that they will be accepted.

MR DUBY (3.11): Mr Speaker, the need for the house to give itself additional sitting days has been addressed as recently as one week ago when the party Whips met and discussed this very issue. On Friday afternoon there were discussions about the amount of legislation the Government was introducing. This is legislation which, in a lot of ways through no fault of the Government's, has been delayed. A lot of it is legislation which flows from the Alliance Government and which, because of the change of government in June of this year, has been inordinately delayed because of the very process of arranging to have legislation introduced into the Assembly. I think most members here accept the fact that our sitting program needs to be amended so that the Government can introduce its legislation program into the Assembly.

The other point that I think needs to be made is that, frankly, we are never, ever going to get a day that suits everybody.

Mr Kaine: We might, if we actually discussed it.

MR DUBY: I agree with you entirely, Mr Kaine. Having seen Mr Stevenson's performance in this house yesterday, the Government would have known that it was going to require at least some additional sitting time, if not this week - and that has been arranged already - then at some other time, such as in December.

Nevertheless, I think the consultation has occurred. Our primary duty in the Assembly is that of legislators, and I, personally, am quite prepared to adjust my timetable to suit the meeting times of this Assembly as determined by the majority of its members. Sometimes that has been inconvenient for me. I think other members should adopt that attitude also. To carp at the Government and say that it is rushing legislation through, as Mr Stevenson does, is not to give a true reflection of the situation.

Finally, Mr Collaery has suggested that one of those days should be dedicated to private members' business. Whilst I have no difficulty whatsoever in having as many private members' business days allocated as the Assembly wishes, it should be remembered that it is not the Government's responsibility to allocate that time; it is up to the private members themselves. We have the power. As we all know, if nine of us can get together and call the Assembly for any day whatsoever, the Assembly shall so sit, and the Government has no say in it whatsoever.

It should be pointed out that these additional meeting days are primarily for the purpose of getting government business through. And, just between you, me and the wall post, and given the fact that it is an additional sitting week organised by the Government, I, personally, would like to see private members' business left out of it altogether, leaving us to devote ourselves to the legislative program.

MR STEFANIAK (3.14): I believe that Mr Berry is going to mention the fact that he told me that the Government would be unable to prioritise until the Cabinet had decided what legislation it deemed essential to be passed in these sittings. One thing I mentioned to Mr Berry is that, in thinking about days, we would tend to prefer the 17th, 18th and 19th. There is good reason for that. If the Government tells us that it has legislation which it thinks is absolutely essential, we may actually agree that it is fairly important and that perhaps we should have a couple of extra days to deal with it.

But the Assembly has to give proper consideration to that proposition. We have to look at the legislation and have some consultation with relevant parts of the community in relation to it. All that takes time. You cannot do that properly in two or three days. You might need two or three weeks. In fairness to the proper consideration of legislation, it is important that there be that time.

Of course, we have a couple of very major Bills in front of us at present which we are laboriously going through and which will also take time. We are mindful of that. But, certainly until such time as the Government tells us what is absolutely essential, we really cannot agree to these three days.

MR BERRY (Deputy Chief Minister) (3.15), in reply: There has been a bit of cross-chatter across the place, and it is just impossible in these circumstances to satisfy everybody. But there are just a few things that I would like to say. Last night we changed to have evening business at the very last moment, and that was with the general agreement of all members. It was most inconvenient for the staff. The Government had proposed that we sit this evening and it was urgent that I get to members early this morning and get the matter sorted out quickly. I had also indicated around this place that we may be sitting this evening, and I needed to sort that issue out. That has been sorted out.

Let us not forget that the Government did not want to have a private members' sitting day on Monday; it was inconvenient for the Government. But members decided that they wanted it and the Government goes along with that. I just hope that members will go along with the Government in this matter, because it is convenient for us.

In relation to the essential business, may I indicate - and I apologise for not indicating this when I first spoke on this matter - that the Government is considering what business falls into the category of essential business, to see whether we can find some matters which are not so essential and drop them off. But we will not really be able to make a decision in relation to that until Monday's Cabinet meeting. Of course, things which are important business include draft variations and so on and so forth, which will come up next week.

So, essentially, what is proposed is that we drop the night sitting which may have been a goer for today, and opt for a normal three-day sitting next week, with all of those timings that we have agreed to in the past - that is, the shorter lunch breaks and the later finishing times - as options. I understand that it does not suit everybody, but I am afraid we are not going to be able to do something that suits absolutely everybody. I urge members to support the motion.

Question put:

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

The Assembly voted -

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

Question so resolved in the affirmative.

YUGOSLAVIA AND EAST TIMOR
Discussion of Matter of Public Importance

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

The need for this Assembly to reject isolationism, appeasement and to offer support to the Canberra community.

Motion

MR COLLAERY (3.20): To save time and to ensure that the debate is swift, I also seek leave to move the motion circulated in my name.

Leave granted.

MR COLLAERY: I thank members. I move:

That this Assembly -

(1) Urges the Prime Minister to pursue every effort in the United Nations to secure a just peace in Yugoslavia;

(2) Condemns the atrocities perpetrated during the incident of 12 November 1991 at East Timor Cemetery in Dili;

(3) Strongly endorses the 1982 United Nations General Assembly Resolution on East Timor that "the Secretary-General be asked to initiate consultations with all parties concerned, with a view to exploring avenues and achieving a comprehensive settlement of the problem";

(4) Calls on the Federal Government to formulate proposals for a United Nations supervised act of self-determination for East Timor as a matter of priority and to use its diplomatic resources to enlist the support of the United Nations Member States to ensure maximum support for such an act; and

(5) Requests the Speaker of this Assembly to forward the motion to the Minister of Foreign Affairs in the Australian Federal Government.

Members, a moment's reflection is required when we think of events in Yugoslavia and the recent events in Timor. The appropriate way to reflect on that matter is to go back to February 1939 when the Australian Broadcasting Commission instructed a Miss Ann Caton of the National Joint Committee for Spanish Relief to delete the word "German" from a reference to planes which had bombed Guernica. It is also appropriate, historically, to remind members of what was said in the Australian Parliament in May 1939. I refer, firstly, to comments by the Australian Minister for External Affairs, Sir Henry Gullett, with whose son, I might add, Mr Jensen and I stood at the Hellenic war memorial only a few days ago. Sir Henry Gullett spoke in the Federal Parliament of Mussolini's "genius, his patriotism ... and almost superhuman capacity", and Hitler's "shining - - -

Members interjected.

MR SPEAKER: Order! Order, members, please!

MR COLLAERY: Yes, Mr Speaker, I find it particularly difficult at this end of the chamber when this occurs, because of the acoustics. He referred also to Hitler's "shining record of service to his people".

Of course, they were gross errors of judgment, and it is a great tragedy that the person who spoke first, the then Minister for foreign affairs in Australia, Sir Henry Gullett, within a year lost his own son on the battlefield. Of course, a person in Australia at the time witnessing these events, H.G. Wells, said, when he got back to England, that what he saw in Australia laid bare "all that is most indecisive, disingenuous and dangerous in the present leadership of British communities".

Those remarks come from an excellent text, which I often keep close to me, known as *Isolationism and Appeasement in Australia*, by Andrews. That text adequately sets out the way that this country approached issues in the 1930s. They were appeasing, they were not willing to face up to issues internationally and they dodged decisions. I believe that there is a most regrettable parallel to that situation in Australia at the moment.

I was very pleased to hear that the South Australian Parliament has started a significant move in Australia. Yesterday, the South Australian Legislative Assembly passed a motion in similar terms to paragraphs (2) to (5) of the motion before you. My motion states, firstly:

That this Assembly -

(1) Urges the Prime Minister to pursue every effort in the United Nations to secure a just peace in Yugoslavia;

(2) Condemns the atrocities perpetrated during the incident of 12 November 1991 at East Timor Cemetery in Dili.

There are then two other paragraphs, which members can read, dealing with the rights to self-determination. Finally, the motion requests you, Mr Speaker, to forward the motion to the Minister for Foreign Affairs in the Australian Federal Government. I understand from the Clerk that, as a matter of form, you communicate this motion, if it is supported by members, to the Chief Minister, who will send it to the Prime Minister and/or the Minister for Foreign Affairs.

We owe a great debt to people in our community now who suffer as a result of events in their homelands. I am pleased to say that in the chamber at the moment we have the president of the Slovenian National Council in Canberra, Mr Florian Falez, representatives of the Slovenian Information Office in Sydney, Ljubo Vranko, secretary of the Croatian Coordinating Committee, and other representatives from the community. There is also, I am pleased to see, a representative of the Muslim community in the chamber today, Mr Mustafa Ajkic. There are Timorese representatives as well.

I believe, as does the South Australian Parliament as expressed in its resolution last night, that it is now time for the constituent communities of Australia to pressure the Federal Government to take action. The communities themselves have been demonstrating for months - in the case of the Timorese, for years - but now it is time for each of the parliaments in Australia to speak up and let the Federal Government and the Prime Minister know how we as a community feel about the continued sense of inaction perceived by those communities.

We also have a sense of debt. If you go to every suburb in this town you will see that our built urban environment reflects the great artisan hand of our immigrants. Those immigrants come in large measure from the communities that I am speaking about today - from the Balkans and from other regions of the world.

With respect to Timor, although its people here are not artisans in the same numbers as those from Slovenia, Croatia, Macedonia, Bosnia and Herzegovina, Montenegro, and Serbia - all those regions of Yugoslavia - we have a particular debt to Timor because on 12 December 1941 Australia in fact invaded East Timor. It was a friendly occupation and the neutral Portuguese Government at the time reluctantly agreed, under some pressure, to accept 400 soldiers of Australia's elite Sparrow Force. They landed at Kupang, which at the moment is the capital of West Timor.

That elite group of Australians perished in part. Most of those who perished, ironically, were those detailed in West Timor where, regrettably, they were betrayed in large numbers. On the other hand, the Australian troops in East Timor successfully waged a war there and kept the entire Japanese 48th Division stationed in Timor, which no doubt saved many, many more lives on the main battlefronts. The Timorese throughout that period in East Timor supported Australia.

On 7 December 1975, there was a brutal invasion of East Timor by the Indonesian Government, and this 7 December coming up will certainly be a time of great anguish for the Timorese as they commemorate another year under occupation. How many people in the world are now falling under occupation? The Slovenians, through luck, good management and geographical placement, have escaped the yoke of occupation. The Croatian people have not, and they are, regardless of the issues between the parties, under partial occupation at the moment. No-one in this chamber could have escaped feeling great remorse at seeing the blatant breach of the UNESCO conventions on the protection of cultural properties as last week those rockets went into the historic town of Dubrovnik.

But it is not the purpose of this debate today to take sides on the issue, other than to say that the aggression is clear on both sides. The responses on both sides may become progressively more self-demeaning to everyone involved in the struggle. It is for that reason that we must pursue peace, not revenge, and not make judgments on territorial or border issues in this chamber. That is not the purpose of this motion, and it is not proper in international law for us to involve ourselves in the domestic frontier setting issues that need to be settled by international boundary commissions and the like as soon as peace is achieved.

But I do ask members to support the motion. It relates partly to the inherent right, supported by the UN declaration on human rights, of all peoples of identifiable and competent management to self-determination.

I would like to make one final comment, and that is that the Prime Minister, frankly, needs to become far more active, in respect of these various war zones or occupied zones, in calling for full UN observer teams to be dispatched and for full UN peace intervention. Australia needs to take an interest in those concerns equal to that taken in other areas, particularly Namibia in the past and now Cambodia. In a country which says that it treats all people equally and supports multiculturalism, it is inappropriate for the Australian Government not to put equal efforts into resolving the distress of our constituent communities - the families, relatives and friends of those in trouble abroad.

I was pleased to hear Mr Connolly's response to a question in question time concerning the many thousands of people who have come from the Balkans and the hundreds of Timorese in our region. Those people need our support now more than ever. I must say to members that it is time that we, as the local Assembly representing those constituents of ours, accepted that it is relevant for us - as indeed it was relevant in South Australia last night - to urge the Prime Minister to take these steps. I thank members.

MR STEFANIAK (3.31): Certainly, I do not have any real problems with Mr Collaery's motion. Mr Collaery's matter of public importance actually referred to, "The need for this Assembly to reject isolationism, appeasement and to offer support to the Canberra community", and I will talk about that in a couple of contexts, one of which will please him and one which probably will not.

As Mr Collaery said, he and I stood a couple of days ago on a number of platforms where the topic of human rights around the world was discussed. This matter has a lot of relevance for communities in Canberra. At present that is especially true of our substantial Croatian and Slovenian communities. As I said when I was at Commonwealth Park about a month ago with my colleagues Mr Collaery, Mr Jensen and Senator Margaret Reid, there is one thing that the Australian Government can do, and that is recognise the reality of the situation in the Balkans; that there has always been conflict there and that there are distinct national groups and national areas. I said that one of the best ways of ensuring that peace can be achieved there is by recognising the independence of the republics of Croatia and Slovenia - and that is something that the Federal Government still has not done.

What is happening over there, especially in relation to the fighting between the largely Serbian Yugoslavian army and the Croatian forces, is quite tragic. Mr Collaery has spoken graphically of that dreadful footage of rockets

going into the fortress at Dubrovnik. I have seen a lot of footage on TV of some dreadful devastation in Croatia. I understand that about a third of that country has been overrun by the Yugoslavian army and that thousands of its citizens have been killed.

I do not think the nations of western Europe - or even the United States - can take much succour from what has occurred over there. They quite correctly intervened in the Gulf when Saddam Hussein, a bloodthirsty dictator, invaded another state. They threw him out. Perhaps they should have gone on for another 48 hours and made a proper job of it. At any rate, at least the United Nations, western Europe and the United States acted there. They are strangely quiet - indeed, almost obstructionist - in terms of getting off their backsides and doing something about the problems in the Balkans.

One thing that probably should have been done there, very early in the piece, was to put in a United Nations peacekeeping force - which could have been a largely western European force - to ensure that there could be a real peace for the people of Croatia, Slovenia and the other states that make up the old country of Yugoslavia which, to all intents and purposes, has ceased to exist. There have been about 14 ceasefires, none of which has had any effect. I wonder whether they have been used as a tactic simply to give the Yugoslavian army a bit of a breather every now and again, when it wants one, before it restarts its offensive.

I think that this brings out the point that the only way that you can ensure peace in the world is, on occasions, to use force. I think that the United Nations, as the appropriate body, through the Security Council, should have put in a peacekeeping force to ensure that the self-determination of the people of Croatia, Slovenia and the rest of the Balkan communities could be respected and given a chance to develop, because the numerically superior and also equipment superior Yugoslavian army is now dictating from a position of strength, and that is not going to be very good at all for peace in the Balkans. I am appalled by what has happened there, and I think the United Nations and the western European countries especially have been particularly gutless in that regard.

Mr Collaery also spoke of Timor, and we have seen a bloody massacre recently in Dili, the capital of Timor. A demonstration - and, by the sound of it, a much more peaceful demonstration than the one we saw out at Aidex - was fired upon for about eight minutes with automatic weapons by the Indonesian army, resulting in hundreds of deaths. In relation to that, Mr Collaery also spoke of the debt that we owe the Timorese people, and he is quite right, in terms of the great assistance that they gave the Australian forces during World War II.

The Indonesian invasion of East Timor could almost certainly have been prevented if Australia had acted firmly during the six months hiatus in the second half of 1975 when East Timor declared independence and was trying to sort itself out, and Indonesia loomed large and threatening on the border. We had the Whitlam Government then. We had a considerably stronger Defence Force then than we have now. We still had, I think, about nine infantry battalions; we had a fleet air arm and an aircraft carrier. We had the military capability to lift a battalion of troops into Dili. If we had done that, I do not think Indonesia would even have contemplated invading East Timor, and we could have sorted out with the East Timorese people their self-determination so that East Timor could have become a self-governing territory rather than a province, and a rather unruly province, of a larger occupying power, that being Indonesia.

So, the Whitlam Government certainly can share a hell of a lot of the blame in relation to what happened in East Timor, because it basically gave tacit support to the invasion of that unfortunate country. There is not a huge amount that Australia can do there now. Mr Collaery's motion is probably reasonably realistic in terms of what steps we can take to show our abhorrence of these particularly unpleasant events that have occurred in recent weeks and months around the world.

Mr Collaery is quite right to ask this Assembly to reject isolationism and appeasement and to offer support for the Canberra community. Unfortunately, Mr Collaery - along with, I believe, the majority of people in this Assembly - has rejected the Aidex exhibition, which is about Australian manufacturers showing their wares, including defence equipment, almost all of which is bought by the Australian Government. That exhibition will not be held again if the Labor Party is returned or, indeed, I suppose, if most non-Liberal members in this Assembly are returned.

I think that is a shame because, apart from the fact that it brings $10m into the Territory, a strong Australian Defence Force also sends a clear message to would-be aggressors. It sends the message that we are prepared, if need be, to defend ourselves, our freedom and our democracy. I admire the police restraint at Aidex immensely, but a hard core of about 300 professional protesters were there to intimidate the police and to engage in violent acts. One has only to read the front page of the *Canberra Times* to see what types of weapons have been used against the police - acid, rocks, metal knives. Metal knives were used at a peaceful demonstration! There were balloons filled with dye, avocados with nails embedded in them, barbed wire, and even forks. A police cameraman had his camera stolen; he was jabbed in the arm, which later swelled up. Fourteen police officers have had broken bones and there have been 27 police injuries in all.

I have never heard of that happening before. I have never heard of 14 police in Canberra in one particular series of demonstrations receiving broken bones. Veteran protesters have indicated just how restrained the police were. Veteran protesters also stated in the *Canberra Times* that the demonstrators would not last five minutes in Sydney, and that is true enough. I certainly support Assistant Commissioner Dawson, who says that now the police will get tough and, if need be, will use shields and even the police dogs, which are a very effective crowd control tool, Mr Collaery. Incidentally, I understand that the dog to which Mr Collaery referred yesterday was not a police dog; it was a protester's dog which bit a policeman. So, Mr Collaery should get his facts right.

Mr Collaery talks about appeasement, but he is doing the wrong thing by appeasing these very violent protesters. Also, by banning Aidex you are impliedly appeasing would-be aggressors. You are sending the wrong message outside Australia and the wrong message outside Canberra; that is, that we are not interested in defending ourselves, in the Australian Defence Force and in defending our freedom. I think it is terribly important to - - -

Mr Jensen: Relevance, Bill.

MR STEFANIAK: I think that what I am saying is pretty relevant to looking at this matter - isolationism, appeasement and offering support to Canberra. So, whilst I wholeheartedly support Mr Collaery in the foreign affairs part of this particular motion and the specific areas he wants it to cover - that is, the tragic events in Croatia and Timor - I think it is very important to ponder on appeasement and to make sure that this Territory and this country do not lapse into appeasement, because the lessons of history are that it never, ever works.

DR KINLOCH (3.41): First of all, we recognise the problem of time in the Assembly. Alas, we have to say to many of our visitors that we are under very great pressure here. Speaking for the three of us in the Rally - and I thank Mr Jensen for allowing me to take that role at the moment, because I am trying to speak for all three of us - may I say that we are honoured by the presence with us of representatives of the Balkan states, Timor and other countries. We are the ones who are honoured. Many times, may I say to you, our galleries are empty, and I wonder whether we should not be in the business of encouraging many of our communities to come here and see us in action; that is, as we talk about problems of isolationism, and the problem of the Canberra community in relation to that, are we reaching out to the ethnic communities and other communities in our city? So, I want to say how very pleased we are to have our visitors.

I have another quick matter which I especially want to pass on to the Deputy Chief Minister for his party, to Mr Stefaniak for his party, and to all members of the Assembly. Briefly, I hark back to the delightful launch at

Lanyon, hosted by Mr Kaine, as Chief Minister. That was not only a pleasant social occasion, with splendid service from our TAFE hospitality program, but also a learning experience from two ends.

The diplomats - who, after all, are residents of the ACT, albeit temporarily - were, so it seemed, intrigued by us. As diplomats, that is what they would at least pretend to be. Naturally, anyone would be intrigued by us. We are intriguing people, are we not? Above all, they were interested in education and health services. Their children are in our schools, and they and their families are dependent on us for their very lives. Also, consider the degree to which the diplomatic industry, the foreign policy industry, the international relations industry, is an intimate part of the economic, political and social life of this city.

The major isolation, however, is at our end. We are swamped, are we not, by our parochial concerns? We lose our sense of perspective. Yet our nature as a city is that of an international city - a city which should be concerned with the kinds of problems that we now should be fully aware of in the Balkans, Europe and East Timor. I feel that there is insufficient contact between us and those who are a vital part of one of our largest concerns - diplomacy and international affairs.

There is so much to be done in this Assembly - too much. But may I put that on the agenda of every member, for the future of the Assembly in several areas. I offer some suggestions - and I am cutting down on this speech. We could give briefings about our city to arriving diplomats. We could cooperate with Foreign Affairs. Secondly, we could have social occasions at which, perhaps by rotation, those same arriving diplomats and members of the Assembly could meet. It should not be just one more cocktail party, but a working, cooperative relationship, perhaps with a speaker or a theme. I would welcome a chance to hear much more, for example, about Timor. Thirdly, we could have meetings of our Amnesty International sub-branch with special invitations to representatives of appropriate nations. How appropriate that would be now for the Balkan countries and for East Timor.

Fourthly, in relation to the Education Department, we could develop a cooperative relationship, vis-a-vis our excellent special schools, for the study of English - with people from Latin America, Europe, Africa and all over the world bringing their children here to study in those schools. Another element, of course, is the increased number of foreign students in Australia.

Specifically - and I will cut down my comments - I am very glad indeed to support Mr Collaery's motion, especially in terms of the degree to which we are isolated from these matters; and we should not be. As Canberra citizens and community leaders, we should play a role in discussing and

publicising these issues, and being sympathetic towards them. Looking around the room, there are very few of us here who are first generation migrants. I think I might be the only one. But many of you are second and third generation migrants, and we all recognise that the countries that we have come from, or been involved with, have had their troubles in their time. Here we are in this comfortable, peaceful city, and it behoves us to recognise the tremendous problems that exist elsewhere in the world. So, I strongly support the five parts of Mr Collaery's motion, and I hope that we will all do that.

MR BERRY (Minister for Health and Minister for Sport) (3.46): I rise to give the Government's wholehearted support to this honourable motion. I was pleased to have discussed the issue with Mr Collaery before he brought it forward. I must say that, when we watch our televisions, we cannot help being moved by the obscenity of the events which are occurring in Yugoslavia in the course of that war. It is a war which is the same as all other wars. It violates human beings, and it scars human beings for life. Any efforts which can result in some sort of peaceful settlement have to be applauded.

In relation to East Timor, we may never know the full facts about events there, because of the censorship which exists in that very small country. Many Australians have a soft spot for that country, but we really have to focus our attention on the need for the establishment of world peace. Peace is a lofty aim, and the aggressive pursuit of this aim is to be applauded wholeheartedly.

Just to touch on Aidex, because it has brought the pursuit of peace to our front door, those at the Aidex exhibition who have devoted themselves to this lofty cause, without provoking violence, I should say, have to be applauded wholeheartedly, and may they continue to pursue the cause of peace until it is achieved. May I also say that, without the sorts of hardware which are marketed through bazaars such as Aidex, those wars which are occurring abroad would not occur; human beings would not be violated and scarred; neither would those atrocities which were committed against the people of East Timor take place.

So, it is up to us, as representatives of the people of the Australian Capital Territory, to put our shoulder to the wheel in pursuit of peace and, of course, to urge our Federal leaders to put their weight behind any moves which can achieve a lengthy peace for all of those countries which are troubled by the atrocities of war.

MS MAHER (3.49): I would like to move an amendment to Mr Collaery's motion. I move:

> Paragraph 5, line 2, after "the", insert "Prime Minister and".

It is unfortunate that the violation of fundamental human rights continues to be widespread. It is, however, the notion of human rights that is our greatest weapon against abuse and repression. As Victor Hugo has said:

> A stand can be made against invasion by an army; no stand can be made against invasion by an idea.

In the fight in Yugoslavia for independent republics and the struggle by East Timorese for self-determination, many have suffered, and indeed many Australians of Yugoslavian and Timorese descent share this suffering. The protection of human rights is a universal responsibility and by publicly declaring support for these people's right to self-determination we go some way towards alleviating that suffering.

I, therefore, will be supporting Mr Collaery's motion and, obviously, the amendment. Mr Speaker, I quote from a book called *Every Right - Australia and Global Human Rights,* in which the Minister for Foreign Affairs, Gareth Evans, says:

> Australia insists that human rights know no boundaries.

It is such a true statement. I just hope that the Minister follows through with those words and acts upon Mr Collaery's motion.

MR MOORE (3.51): Mr Temporary Deputy Speaker, I think this is a very timely and appropriate motion. It seems to me that every thinking person has spent the last while really wondering exactly what we are doing, particularly in respect of East Timor; and we have watched the situation in Yugoslavia unfold over some time. We cannot help wondering what could have been achieved in both of those cases if people's protests had been gone about in an active and peaceful way. We have also seen the contrast between what has happened in the Soviet Union and what has happened between Serbia and Croatia, with a great deal of sadness, I think. If only people could learn to resolve these sorts of problems without recourse to arms.

One of the great leaders in the world that we have watched, of course, was Gandhi in India. He was able to bring about so much change there through peaceful non-violent protest. We have seen similar things happen in other countries. It seems to me, though, that our "appeasement", as Mr Collaery calls it, of Indonesia as far as the East Timor situation goes is simply unsatisfactory. He is quite correct in suggesting that we need to send a message to the Federal Government that we need to take a stand on this. That stand does not have to be, as was implied by Mr Stefaniak, a militaristic stand. There are many other ways of sending a very clear message to our near neighbours that this is something that is entirely unsatisfactory, and the message should ensure that the response to the United Nations position on self-determination for East Timor is a matter of priority.

This is an important motion to be brought up at this time, particularly in Canberra because of the issue that was raised by Mr Stefaniak - that of the arms exhibitions and the way that we deal with arms. I think it is most important that Mr Collaery's motion is supported. What I would like to see, of course, is unanimous support from this Assembly, to send a clear message to the Federal Government that, if you are going to try to play politics always by appeasement, there comes a time when what you have achieved is clearly outweighed by what you have lost. It is very important that we take a very strong stance on these human rights issues.

I go back to the first paragraph of Mr Collaery's motion, which urges the Prime Minister to pursue every effort in the United Nations to secure a just peace in Yugoslavia. I think the situation there is much more difficult, but Mr Collaery's motion has been left very broad and I think that is an appropriate way to leave the motion in this case. If Australia can play a role in trying to sort out that terrible situation in Yugoslavia, then that would be appropriate.

Similarly, we can look to our near neighbours and try to take action on what is happening in East Timor and send a message not just to our Federal Government but also to the Indonesians from ordinary Australians and from parliaments throughout Australia. As I understand it, the South Australian Parliament passed a similar motion last night. I hope that there will be a growing movement so that the message is loud and clear - just the same as the Prime Minister got a very loud and clear message from parliamentarians on both sides of the house with reference to the media situation.

Let him get a loud message that he is getting out of touch with what is happening in Australia. That is just what this motion does. It says, clearly, "Get back in touch; we are not happy with what you are doing. The message is that we want you to take much stronger action".

MR STEVENSON (3.57): I fully support any genuine attempt at peace. I think the solution to problems is communication; to pour on more and more communication rather than some of the methods that are used when someone disagrees with someone else around the world. There are far too many wars; there have been for many decades.

Mr Kaine: Try centuries.

MR STEVENSON: Yes, I think they are increasing, percentage-wise, actually. I went along to the demonstration outside the United Kingdom embassy some weeks ago now and spoke to Croatian people at some length. I think there is always some concern about the information that we are given. I generally like to try to speak to

people on both sides and not just believe what I see in the newspapers or in the media. I also was at the demonstration, I think it was just last week, against the extreme hardships in East Timor.

It is fairly obvious that anybody here would support peace, that anybody here would support communication along those lines. As I said, I fully support genuine attempts at peace. I think it is a reasonable thing that we speak in this Assembly of things that are happening overseas. I think we have a right to stand up on behalf of Canberrans and put out our thoughts.

MR TEMPORARY DEPUTY SPEAKER: Mr Collaery, do you wish to speak?

MR COLLAERY (3.59), in reply: No, thank you, Mr Temporary Deputy Speaker. I believe that the remarks of all members stay on the record. I need not add any more words, other than to thank members for their support on behalf of the Canberra community.

Amendment agreed to.

Motion, as amended, agreed to.

Mr Moore: Mr Temporary Deputy Speaker, by leave of the house, I think it should be put on the record that that motion was carried without dissent.

MR TEMPORARY DEPUTY SPEAKER: That is noted.

HUMAN RIGHTS AND EQUAL OPPORTUNITY BILL 1991
Detail Stage

Consideration resumed.

Clause 76

MR COLLAERY (4.00): Clause 76 enjoins the commissioner to try to resolve each complaint of racial discrimination or denial of human rights by conciliation. This is the appropriate course that should be adopted in an informed and aware society. It should not be judgmental and punitive unless one reaches serious breaches of racial discrimination laws, in which case the amendments that were passed this morning would apply. One hopes that the conciliation process will ensure that the Canberra community at least, especially during the strains it has whilst the community is somewhat divided on issues of overseas civil wars, will be able to be brought to the party for conciliation rather than seeing trials of issues in the courts.

MR MOORE (4.01): I believe that clause 76 is one of the most important clauses in the whole human rights legislation. I think it emphasises an attitude that goes with the particular legislation. The very issue that we are trying to resolve is bigotry. I think that, in looking at a conciliatory approach rather than a hardline approach, we have far more chance of changing people's ideas and attitudes. No matter how much we legislate, it is still a very difficult thing to change people's attitudes. But it is a step in the right direction.

We already have had major changes in attitudes in our society over the last 20 years. I suppose all who are my age or older, in the same range as me, think back to our own actions some 20 years ago with embarrassment. In our youth and in our enthusiasm for youth, in our understanding of other people's rights, there were things that we did not recognise. I imagine that all of us can think back to situations in which we were involved when we were intolerant of other people's human rights.

Mr Duby: No.

MR MOORE: With the exception of Mr Duby, who interjects, "No". He clearly has never made a statement, for example, such as is covered under clause 57. He never wolf-whistled at an inappropriate time or did anything along those lines.

Mr Duby: Hey, hang on!

MR MOORE: You said "No", so I gave you a couple of examples. I do recognise the broad grin on Mr Duby's face that went with his interjection.

I think it is important to say that this really is one of the most important clauses in the Bill because it does set the attitude. It is about attitude. It is about the attitude of the Bill. It is one of conciliation. Just a short while ago we heard Mr Stevenson saying that, to resolve the sorts of problems we have worldwide as far as Mr Collaery's motion went, we need people to talk more and to understand; so, I would presume that Mr Stevenson, although he has objected to great slabs of this Bill, would be very supportive of this particular clause because it is so important and it is so critical to the whole way that the Bill operates.

MR STEVENSON (4.03): Yes, I will respond. As I mentioned a moment ago, I agree entirely with conciliation. It is the way it is gone about and what happens afterwards that I have concerns with. I agree with conciliation; I agree with communication, more and more of it. It is the Star Chamber and the destruction of our rights underneath that chamber that I am concerned with.

MR MOORE (4.04): This clause says:

> Subject to this Part, the Commissioner shall endeavour to resolve each complaint by conciliation.

The irony of what Mr Stevenson just said about star chambers and so forth ought not be missed. The man is ignorant.

Clause agreed to.

Clause 77

MR STEVENSON (4.04), by leave: I move:

Page 31, line 25, subclause (3), after "fit" add "and is reasonable in the circumstances".
Page 31, line 26, subclause (4), omit "Except", substitute "Subject to subsection 77(5), except".
Page 31, after subclause 77(4) add the following subclause:

"(5) Subject to subsection 66(2), nothing in this section prohibits the appointment without leave of the Commissioner of -

(a) a representative to assist a person who suffers an impairment where the impairment is such as to significantly diminish a person's ability to communicate effectively, or is likely to cause a bias against a person, or places the person under unreasonable stress; or

(b) a legal representative.".

Clause 77 gives the commissioner power to require any party to an investigation to attend a compulsory conference, or any other person who the commissioner believes on reasonable grounds is likely to be able to provide information relevant to the investigation.

Subclause 77(3) says that the conference shall be held in private and shall be conducted in such a manner as the commissioner thinks fit. My first amendment is to include, after the word "fit", "and is reasonable in the circumstances". I think that to allow the commissioner the right to determine how something should be conducted without also requiring, as the Bill has in some other clauses, that it be reasonable in the circumstances, is to omit an important point in this Bill and in this clause.

Subclause (4) says:

> ... a natural person is not entitled to be represented at a conference by another person ...

I would ask: Why is it that the right of every individual in Australia, when they are accused of unlawful activities, to have legal representation is removed by this particular Bill?

Dr Kinloch: Except with the consent of the commissioner.

MR STEVENSON: What I said was the right. Where you give someone else the discretion, that is no longer a right. Once you hand over to governments, to politicians, the power to declare rights, at that time you have lost the right. The government or the commissioner, in this case, then has the right to grant you the right to legal representation or to withhold that; so, it cannot be a right.

Dr Kinloch: This is not a court; it is conciliation.

MR STEVENSON: Dr Hector Kinloch says that it is not a court; it is conciliation. Yet we have very high fines, up to, I think, $25,000 under this Bill, and also imprisonment. So, although within the Bill it is called a court, interestingly enough, under the definition, whilst people may suggest that it is not a court even though they call it a court it certainly has powers far in excess of any court in Australia.

Ms Follett: What a load of rubbish!

MR STEVENSON: The Chief Minister says, "What a load of rubbish!". I have just said that this Bill gives the commissioner powers that no court has in Australia. Where in Australia does the court have the right to deny legal representation to someone who has been charged with offences, someone who has been charged with unlawful activities? Where in Australia has a court the right to deny - - -

Mr Connolly: In every other State and under the Commonwealth Act. Everywhere.

MR STEVENSON: You are talking about similar Acts. I said "courts".

Mr Connolly: This is not a court.

Mr Wood: Why not admit that you do not know what you are on about?

MR DEPUTY SPEAKER: Order, members! Let us not have a discussion among ourselves.

MR STEVENSON: What the Labor members would have us agree with is that a natural person is not entitled to be represented at a conference by another person. It says what it says. It means what it says. No amount of denying by anybody else will ever remove the fact that your right to legal representation is removed under this Bill.

There is a fascinating irony in the next clause, which discriminates against someone who is a natural person over a body of persons, if you like, whether incorporated or unincorporated. It would not be unlikely that an incorporated body, particularly a large one, would have a legal representative on its staff. If that is the case, then that body of persons, as it says here, can be represented by "a member, officer or employee of the body".

What that means in practical terms is this: If you have a big company and you have a solicitor on the books, or someone who can handle themselves well on behalf of the company, then you can be represented by that person because they work for the company. The individual has no such right to pick or select the sort of person who represents them.

After subclause 77(4), I would include a new subclause (5), to read:

> Subject to subsection 66(2), nothing in this section prohibits the appointment without leave of the Commissioner of -
>
> (a) a representative to assist a person who suffers an impairment whether the impairment is such as to significantly diminish a person's ability to communicate effectively, or is likely to cause a bias against a person, or places the person under unreasonable stress; ...

Once again, why do we have the Labor members not allowing someone who may have an impairment to be represented? Where is the logic of that? When someone has an impairment, when someone does not have the same capability of representation as some other people, why would you not allow them the right to do that? I welcome the opportunity to hear, when I finish what I am saying.

Paragraph (b) of that proposed subclause says:

> (b) a legal representative.

I think the vast majority of people in Canberra, if they knew that they were being denied a legal representative when compelled to go before a commissioner who has powers that no court in Australia has, would be most concerned indeed.

Mr Connolly: But every commission throughout the rest of Australia has.

MR STEVENSON: Mr Connolly mentions that every commissioner in Australia has the same powers. Yes, indeed, he is right. I have already acknowledged full well that there are other tribunals around Australia that also do away with our rights under common law. Perhaps that settles that point. I know that it has happened before; but what we should do is protect our common law rights.

We should protect the right of any individual who is accused. Mr Connolly would say that it is not a charge; it is not an offence. I would suggest that most people in the community would not really mind whether you call it a charge, an offence or unlawful. If they are told that they have done something for which they can go to gaol or for which they can be fined thousands of dollars, that would not make a difference.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.14): The basic objection is that Mr Stevenson does not like human rights legislation. He does not like it in the ACT; he does not like it in any other part of Australia or at the Commonwealth level. His objections are spurious because he is raising red herrings that do not exist.

His fundamental and wilful misrepresentation is that an unlawful complaint procedure is a criminal offence which will see you landing in gaol. That is nonsense. Wherever there is a criminal offence created by this Bill, it is dealt with in the ordinary courts of the land, and you have the same rights to legal representation, wherever there is a criminal offence and it is dealt with in the ordinary courts of the land, as you have for any other offence. So, Mr Stevenson's rhetoric about facing gaol without legal representation is stuff and nonsense, and wilfully so, because clause 93 makes it very clear that an act that is unlawful does not constitute an offence. Offences and unlawful acts are very separate things.

In relation to complaints, which is the basis for an unlawful act process, these are dealt with in a commission in an informal manner; and the purpose of saying that you shall not have legal representation, except with leave - so, there is a right to have legal representation if the commissioner chooses to give you that discretion - is to ensure that these procedures do not become the domain of the lawyers. The danger would be, if you had what Mr Stevenson wants - this right to legal representation in all cases - that the whole process would bog down in legalism.

The decision to keep the lawyers out, except with leave, has been made in every jurisdiction throughout Australia. We checked this very carefully, because there was some concern about the New South Wales situation. In New South Wales and in every other State, the Human Rights

Commission, or the equivalent body, does not allow lawyers, except with leave; just as the Administrative Appeals Tribunal does not allow lawyers, except with leave; just as the Conciliation and Arbitration Commission, now the Industrial Relations Commission, keeps the lawyers out to try to keep it less formal.

I would say, though, that in practice, whenever there is an appropriate case for legal representation, it has been granted. In fact, as we speak, the Proudfoot matter is being dealt with in the Federal commission and all parties have been allowed to have legal representation if they so choose. So, the discretion is there. What Mr Stevenson is saying is nonsense. The bottom line is that he just does not like anti-discrimination legislation, and we heard why this morning.

MR STEVENSON (4.17): Clause 118, dealing with the secrecy provisions, talks about a penalty of $5,000 or imprisonment for six months, or both. I would have thought that where it says "imprisonment" it means imprisonment. Is that not the case? Cannot someone, under this Bill, go to gaol?

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.17): Yes, when a court so orders, in proceedings in which you have a right to counsel.

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
	Mr Moore
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

Clause agreed to.

Clause 78

MR STEVENSON (4.23): I move:

> Page 32, line 7, subclause (2), after "Commissioner" add "but shall be reasonable in the circumstances".

Simply put, this requires the commissioner to take action if it is reasonable in the circumstances under subclause 79(2), which says that the commissioner "may conduct the hearing in the absence of that party".

Once again, I think it is perfectly acceptable to put that reasonableness clause in there. One of the difficulties is that the commissioner, as I have said, is given enormous power and - - -

Mr Berry: This flies in the face of your earlier argument. Who interprets what is reasonable?

MR SPEAKER: Order!

MR STEVENSON: Well, at least we put the clause in there that it is reasonable. I grant that the commissioner would determine what is reasonable. If the matter went before another tribunal, such as the Administrative Appeals Tribunal, then at least that point on reasonableness could be looked at.

Amendment negatived.

Clause agreed to.

Clause 79

MR STEVENSON (4.24), by leave: I move:

Page 32, line 12, subclause (2), omit "if", substitute "Subject to subsection (3), if"
Page 32, after subclause (2), add the following subclause "(3) Where a party, upon the receipt of a notice specified in subsection (1), notifies the Commissioner within seven days of receipt that he or she is unable to attend the hearing, the Commissioner shall postpone and arrange a new hearing, if the Commissioner is satisfied that the party if genuinely unable on reasonable grounds to attend a hearing on the date or at the place specified in the notice.".

The reason for that is fairly obvious. There is no allowance there for somebody to not attend at a place and date. Obviously, if somebody is unable to attend at a place and date, it is reasonable to include within the Bill a provision that lays out under what conditions they do not have to attend and can put the matter off, with agreement, to a later date. If that is an unreasonable clause, I would like to hear why from Mr Connolly.

Amendments negatived.

Clause agreed to.

Clause 80

MR STEVENSON (4.26), by leave: I move:

Page 32, line 18, subclause (1), before "an officer" insert "a member".
Page 32, line 20, subclause (2), omit "Except", substitute the words "Subject to subsection 80(3), except".
Page 32, after subclause (2) add the following subclause:

"(3) Subject to subsection 66(2), nothing in this section prohibits the appointment without leave of the Commissioner of -

(a) a representative to assist a person who suffers an impairment where the impairment is such as to significantly diminish a person's ability to communicate effectively, or is likely to cause a bias against a person, or places the person under unreasonable stress; or

(b) a legal representative.".

I would insert in subclause (1) the words "a member" before the words "an officer". I think that as "a member" is used in another part of the Bill, together with other parties within a body, it is perfectly reasonable to use it again. This is probably an omission on the part of the drafters.

Mr Connolly: It is covered by "agent".

MR STEVENSON: Mr Connolly says that it is covered by "agent". So, where it appeared elsewhere it probably should have been taken out, if it was covered by "agent". You cannot have it both ways; it should be either in all the time or out all the time.

In subclause 80(2) I would include notice of subsection (3), and that would allow "a representative to assist a person who suffers an impairment, where the impairment is such as to significantly diminish a person's ability to communicate effectively, or is likely to cause a bias against a person, or places the person under unreasonable stress". Again, it is a similar amendment to that which I sought under the compulsory hearing. I still have not heard why someone with an impairment should not have the right to have someone appear for them. Why should we not

include it there so that there would be no doubt? It is not a matter of the commissioner making a decision as to whether they could or not; a person with an impairment would have the right.

MR DUBY (4.28): I, too, would like to hear why the Government would not support that amendment. I notice that the amendment that Mr Stevenson is moving has a subclause (b) which he has not mentioned. It mentions a legal representative. I think that should be struck out because that matter has already been debated at length. But it is quite obvious that some persons appearing before the commissioner could well have an impairment of some kind which would render assistance likely. However, I also remember reading in the Bill that the representation, I think, is at the discretion of the commissioner.

I guess that in a circumspect way, Mr Speaker, I have answered my own question. Mr Stevenson, if someone is sufficiently impaired to require assistance at a commission hearing, it would be obvious that the commissioner would recognise that, particularly if the nature of the complaint was discrimination against the person's impairment. On that basis, I guess, it should be apparent that that particular amendment would not be required. I think the arguments, as I said, about subclause (b) relating to a legal representative have already been discussed in this chamber. The need for that was dispensed with.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.29): Yes, the bottom line is that there is that discretion and it is widely exercised where there are people with disabilities. I draw, also, to Mr Stevenson's attention - but Mr Duby will probably be more interested and actually read it - the fact that in clause 66, which is the provision that initiates complaints, there is a provision that, if you are incapable of launching a complaint yourself due to disability, the agent can have the carriage of the whole matter. So, it ranges from a specific provision to allow another person to have the carriage of the whole matter, to simply coming along as an agent to assist.

Mr Duby: So, it means that this amendment is superfluous.

MR CONNOLLY: It is superfluous. This is the practice in all commissions across Australia. The discretion of the commissioner to allow any agent, whether they be a legal representative or a next friend, is invariably exercised in a sensible manner. The purpose is that people should be able to do this themselves. If they have any reason why they cannot, the commissioner will exercise the discretion accordingly.

MR STEFANIAK (4.30): There is one thing. I was in the chair for subclause 77(2), so I could not talk on that, or on clause 80 which, at face value, we had a little bit of a problem with initially. I should concede that perhaps Mr Stevenson might have had an initial problem with it. I am not going to reiterate what other speakers have said - - -

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

Consideration resumed.

MR STEFANIAK: Both these amendments, in which Mr Stevenson wishes to have legal representation included, and in this amendment representation for someone impaired, are covered by clause 66 and, in relation to legal representation, the general thrust of the Act. But, if there is a problem, as I think I indicated before, we go to clause 106, where there is the right to appeal to the Administrative Appeals Tribunal. If the commissioner stuffs up, that is your first right.

Mr Stevenson: Another one.

MR STEFANIAK: Yes. But, if they stuff up, Dennis, it is to the Supreme Court. One improvement in this particular Bill over some I have seen is that at least there is a section for vexatious complaints and expenses if there is a malicious or frivolous complaint, which makes it better than the AFP Act. Someone who has been victimised by some lunatic taking them before the commissioner can, in fact, recover costs and expenses. There are a number of checks and balances within this which, in fact, do alleviate some of Mr Stevenson's otherwise justifiable fears.

MR STEVENSON (4.33): First of all, Mr Stefaniak suggests that there are other clauses in there that handle the problem. As for an appeal to another court which does not have the normal protections for Australians, that is not much help. The second thing is this: On an appeal, what do you say? Do you say, "I was not allowed legal

representation"? The court says, "Well, that is okay; they have that power". Do you say, "I was not told the details of the charge"? The court says, "Well, that is okay; they have that power to not tell you". Do you say, "I was not given the opportunity to confront the accused"? They say, "Well, yes, but that is okay; they have that power". Do you say, "I was forced to present before the commission documents that were privileged"? They say, "Well, yes, that is okay; they have that power". Do you say, "I was compelled to write down information I had in my head that the commissioner said was relevant"? They say, "Yes, that is okay; the commission has that power".

The point I make is this: You are giving widespread powers to a commissioner and then telling people to then go along to somebody and say, "Hey, this is what they did". I know that that is what they can do. That is what I stand and speak against. Mr Connolly suggested that my amendment was covered under clause 66. Paragraph 66(1)(b) says:

> an agent acting on behalf of one or more persons aggrieved by the act.

In other words, there is an opportunity for an agent to go along and act on behalf of someone aggrieved by the act. I do not doubt that the person aggrieved by the act, under that definition, is not a respondent or a person who has been accused, who could well be aggrieved; it is the person who is complaining, the person who is doing the accusing.

My amendment does not discriminate just for the person doing the accusing; it allows both sides the right to be represented. So, I would like that matter addressed. Clause 66 appears not to relate to the person who has been accused, the respondent; it relates only to the person who is doing the accusing, or, as it says, the person or persons aggrieved by the act. My amendment allows protection not only for the complainant but also for the person who would be defending their good name.

Amendments negatived.

Clause agreed to.

Clauses 81 and 82 agreed to.

Clause 83

MR DUBY (4.37), by leave: Mr Speaker, I move:

Page 34, line 6, subclause (1), after "VI" insert "or section 63B".
Page 34, line 12, subclause (2) after "VI" insert "or section 63B".

These are Mr Collaery's amendments to clause 83. They are consequential upon the insertion of Part VA.

Amendments agreed to.

Clause, as amended, agreed to.

Clauses 84 and 85 taken together

MR STEVENSON (4.39), by leave: I move:

Page 34, line 15, subclause (1), after "The Commissioner may", insert ", if he or she believes, on reasonable grounds, that it is necessary or desirable in the circumstances,".
Page 34, line 31, heading to Division 3, omit *"Decisions"*, substitute *"Directions"*.

Clause 84 talks about the commissioner prohibiting publication of evidence. I can certainly understand where that would be valuable. There are certain personal details that could be presented before any court that should not be published, particularly if the court so directs. However, subclause 84(1) says:

> The Commissioner may direct that -

It goes on to say that evidence can be suppressed. My amendment seeks to add, after "The Commissioner may", the words "if he or she believes, on reasonable grounds, that it is necessary or desirable in the circumstances,". Once again, this is a reasonableness clause. Why should there not be a requirement for the commissioner to act on reasonable grounds or to do something that is necessary in the circumstances?

As for clause 85, it is just a brief point. The heading is "Interim decisions". As the clause talks about directions rather than decisions, "Interim directions" would be a better title.

As I said, it could well be valid for some evidence to be suppressed. However, there is a possibility that the commissioner may suppress evidence that people should get to hear about. There may be something that occurs within the commission that a person accused of certain things feels should be brought to the attention of the community because of an injustice, but clause 84 allows the commissioner to suppress the right of that individual to make that known to other people in the community. One would wonder whether one of the reasons why some things have happened is that we do not know because the evidence has been suppressed.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.41): Mr Speaker, I will just once respond to this plethora of proposals that Mr Stevenson has about adding "on reasonable grounds" or "if he or she believes on reasonable grounds that it is necessary or desirable in the circumstances", and so forth. Throughout this Bill, as throughout any Act,

there are probably hundreds of cases where there is a discretion such as "a commissioner may", "an officer may", or "an authorised person may". It is unnecessary and superfluous to say after every discretion, every time the word "may" is used in relation to a discretionary power, "on reasonable grounds", "if you consider it necessary in the circumstances", "if it all seems a fair thing", or "if they think it is okay", to use a phrase beloved of Mr Stevenson.

A "may" is a discretion under the general principles of administrative law, enforceable in the courts which apply to decisions under this Bill and as to decisions under all other Acts. Decisions, discretions, are exercised in a reasonable manner. It adds simply nothing to the Bill, apart from superfluous words, to put in what Mr Stevenson wants. If we are going to debate it on every occasion, it will just show that it is unnecessary.

In relation to clause 85, he suggested that he would rather change the title - we are back to titles - to "Interim directions" instead of "Interim decisions". Clause 85 deals with directions, but the effect of a direction is a decision - the person takes a decision to issue a direction which has effect for a period. It is a perfectly appropriate and accurate title and need not be changed.

Amendments negatived.

Clauses agreed to.

Clause 86

MR COLLAERY (4.43): I move:

> Page 35, line 11, subclause (1), after "VI" insert "or section 63B".

This makes that technical adjustment of the part numbers.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 87 to 92 taken together

MR STEVENSON (4.44): I move:

> Page 37, line 16, omit subclause 91(3).

Subclause 91(3) says:

> The validity of a direction referred to in subsection (1), or a decision referred to in subsection (2), shall not be taken to be affected by a failure to comply with subsection (1) or (2).

In other words, there are certain requirements of notification by the commissioner. The commissioner has to do something to notify somebody of what they have done and that places an obligation on the commissioner. Yet, in subclause (3), it says: "Well, if the commissioner does not do that, it does not matter". I would suggest that we delete that subclause.

Amendment negatived.

MR STEVENSON (4.46): I move:

> Omit clause 92, substitute the following clause:

"92. No person shall be required to provide information, produce documents or answer questions where that information, document or answer would, or would tend to incriminate that person.".

Clause 92 talks about self-incrimination and it suggests that a person is not excused from providing information, producing a document, or answering a question when required to do so under other clauses in the Bill on the ground that the information, document, or answer might tend to incriminate the person. I believe that that entire clause should be deleted. It does suggest that any information, document, or answer so provided, information, or thing, et cetera, is not admissible in evidence against the person in criminal proceedings, other than proceedings for a number of things. It mentions a number. However, it still means that persons can incriminate themselves under this Bill, and we have some protections against that in Australia. So, I would delete clause 92 and insert:

> No person shall be required to provide information, produce documents or answer questions where that information, document, or answer would, or would tend to, incriminate that person.

This would allow the natural justice requirement, that persons do not have to incriminate themselves.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.48): I can only say that this is a standard provision that is found in Acts like this in every State, in the Commonwealth Act and in the Administrative Appeals Tribunal legislation. It is a standard administrative power.

MR STEVENSON (4.48): I make the point that the fact that it is a standard provision under this sort of legislation does not help anybody who is subjected to it and who is forced to incriminate themselves.

Amendment negatived.

Clauses agreed to.

Clauses 93 to 95 taken together

MR DUBY (4.49), by leave: Madam Temporary Deputy Speaker, in clauses 93, 94 and 95, I request that the amendments circulated in Mr Collaery's name be agreed to. I move:

Page 38, line 4, after "VI" insert "or section 63B";
Page 38, line 9, after "VI" insert "or section 63B";
Page 38, line 12, after "VI" insert "or section 63B".

These are consequential upon the amendment that was moved this morning.

Amendments agreed to.

Clauses, as amended, agreed to.

Clauses 96 to 104 taken together

MR STEVENSON (4.49): Madam Temporary Deputy Speaker, I move the amendment standing in my name.

MADAM TEMPORARY DEPUTY SPEAKER: Which number, Mr Stevenson?

MR STEVENSON: It is No. 59. I was checking whether there was more than one. Yes, there is more than one. I seek leave to move more than one amendment.

MADAM TEMPORARY DEPUTY SPEAKER: Which ones please, Mr Stevenson?

MR STEVENSON: As I said, my amendment No. 59. If we are talking about clause 96, my amendment is No. 59.

MADAM TEMPORARY DEPUTY SPEAKER: Go ahead, Mr Stevenson.

MR STEVENSON: I move:

Page 38, line 32, subclause (3), omit all words after "that", substitute:

"(a) reasonable precautions were taken and due diligence was exercised to avoid the conduct; or

(b) it was reasonable in the circumstances for the body or person to assume that the director, servant or agent took reasonable precautions and exercised due diligence to avoid the conduct.".

This particular clause relates to the conduct of directors, servants and agents. It talks about a director, servant or agent of the body having a particular state of mind. Then it goes on to explain how it is determined that you had that state of mind. The clause, as it stands, does not allow you the reasonable opportunity to not know that a person you had hired was going to do something. If the person was a professional, it is reasonable to assume that they were going to do the job properly if you hired them as an agent to do something.

Deeming provisions should always be subject to scrutiny. They are contrary to a person's normal and just entitlement not to be penalised for the act or omission of another. Under this clause, someone else can do something or fail to do something and, even though you reasonably did not know about that, it could still be the case, under this clause as it is, that you could be held to be guilty of doing it.

Let us say, for example, that a person hires a professional employment agency to obtain competent employees for positions in his or her business. The business person has the right to expect that the agency, being a professional agency, will conduct themselves as professionals. To assume otherwise, without evidence, would be to undermine the very foundation of business practice. However, the agency may, either mistakenly or consciously, discriminate unlawfully against candidates for employment.

Under these circumstances it is unreasonable, in the normal or natural course of business, to have to stipulate to that agency that it must comply with the Act. It is perfectly reasonable that the business owner would assume, quite reasonably, that the Act was going to be followed; that the particular person, the agent, et cetera, that they were hiring knew about that and was not going to discriminate, either mistakenly or deliberately. This is something that every reasonable person would assume.

The situation differs in the case of servants. Here, the employer should be obliged to take precautions that their employee will not break any law. That is their obligation under that particular situation. But where you hire an outside agent, you should not be able to be held liable for something the other person or agent does.

Amendment negatived.

Question put:

That the clauses be agreed to.

The Assembly voted -

AYES, 14	*NOES, 1*
Mr Berry	Mr Stevenson
Mr Collaery	
Mr Connolly	
Mr Duby	
Ms Follett	
Mrs Grassby	
Mr Humphries	
Mr Kaine	
Dr Kinloch	
Ms Maher	
Mr Moore	
Mrs Nolan	
Mr Prowse	
Mr Wood	

Question so resolved in the affirmative.

Clauses 105 to 107 agreed to.

Clause 108

MR STEVENSON (4.59): I move my amendment No. 67 in the following terms:

Page 42, line 34, subclause (2), omit "7", substitute "3".

The clause says that a commissioner may be appointed for a term of up to seven years. I believe that it is more reasonable that the commissioner be appointed for a maximum term of three years, as members of this Assembly are. I thus move that "7" be removed and replaced by "3".

MR HUMPHRIES (5.00): Madam Temporary Deputy Speaker, Mr Stefaniak has circulated an amendment which I would seek leave to move.

Leave granted.

MR HUMPHRIES: I move:

Page 42, line 31, subclause (1), omit "Human Rights", substitute "Discrimination".

Of course, we have already resolved to substitute "Discrimination" for "Human Rights" elsewhere in the Bill. No doubt, the title will follow suit. I think it would be appropriate to ensure that we are consistent. Therefore, this clause should also be amended to "Discrimination" rather than "Human Rights".

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (5.01): May I deal with Mr Stevenson's point, because other people have asked why we have the seven-year term rather than a three-year term. It is common for this type of senior independent statutory office holder to be appointed for a term that varies from State to State. In Western Australia and in the Commonwealth it is seven years; in South Australia it is five years; in Victoria it is five years.

It is always a term longer than the life of a government, given an expectation that a government will hold office for a three-year term, basically in order to show that the person stands apart from government and should remain in office over successive governments rather than be a partisan appointee of one particular government whose term of office expires when that government's term of office expires. It is a very senior appointment. Three years is too short a time. A seven-year to five-year term is standard.

MS FOLLETT (Chief Minister and Treasurer) (5.02): I would like to give the Assembly an opportunity once again to consider the issue of the title of the commissioner. I strongly believe that it is quite wrong and very regressive for this Assembly to name Australia's latest piece of human rights legislation the Discrimination Bill and to name the commissioner appointed under that legislation the Discrimination Commissioner. I am absolutely convinced that the term "discrimination" is a negative one and will be interpreted negatively by the community. It will not achieve the community educative function which this Bill should achieve. It seems to me that members have set their face against any compromise on this. I do not know why. I feel that they are just plain wrong, and they are about 10 years out of date.

I had an opportunity this morning to address the Non-English Speaking Background Women's Council. I can tell you that the women I raised this issue with were appalled that we should be proposing a piece of legislation called the Discrimination Act and that the commissioner should be called the Discrimination Commissioner. Most of those women represent groups that will need these services. I can only repeat what I have said before - that the name that has been imposed by the Assembly is quite wrong.

As I have said before, I am willing to compromise on this, and I do not see why others are not. I would be happy to accept "Equal Opportunity Act" and "Equal Opportunity Commissioner". I would even move as far as "Anti-Discrimination". But I think the terms "Discrimination Commissioner" and "Discrimination Act" give completely the wrong impression, completely the wrong message, about this very important and very progressive piece of legislation. So, I would again ask members to reconsider that issue. I am prepared to compromise. I really fail to see why the rest of you are not.

MR HUMPHRIES (5.04): It seems to me that Ms Follett is not prepared to accept the vote of the Assembly on this matter. We have had an extensive debate on it. We did consider the arguments that have been put by Ms Follett already. We did have extensive discussion on this the other night and - - -

Mr Duby: In clause 4, we have already changed the name of the commissioner.

MR HUMPHRIES: And we have already changed clause 4 in the expectation of following that theme throughout this legislation. I can repeat the arguments if you like - - -

Ms Follett: Women are appalled.

MR HUMPHRIES: Some women are appalled. I would suggest, Madam Temporary Deputy Speaker, that most people who will come to use a provision such as this, if dismayed by a particular act of discrimination, will not pull out the phone book and look under "Human rights", "Equal employment" or whatever. They will look up "Discrimination", because that is what they will feel they have been dealt. I think that this is a term which accords with what the ordinary person in the street would use and is therefore appropriate for this Bill.

I am afraid that I do not hold to the trend of necessarily giving legislation or bodies titles which seem to accord with the current popular euphemism for particular activities. That, it seems to me, is not always appropriate, because it does, in one sense, actually make the particular organisation, body, person or Act a little bit less user friendly than it ought to be - to use a modern term. I think that we ought to consider a title which actually reflects what this Bill is all about. This is a Bill which is not about human rights entirely because, in fact, not all human rights that we would acknowledge in this Assembly are listed in this Bill - not by a long shot. The Bill is not merely about equal opportunities. There are many other Acts of this parliament which deal with the provision of equal opportunities.

This is a Bill which specifically talks about outlawing discrimination. That is what is in the objects clause. It is clearly what the thrust of most of the major parts of the Bill is about. It ought, therefore, to be reflected in the title. I reject the idea that people will not turn to a discrimination commissioner. I suggest to the Assembly that that is the first place they will turn. They will look in the phone book under "Discrimination".

I also reject the Chief Minister's assertion that we ought to use the word "anti-discrimination". As others have said elsewhere, we do not have an anti-crimes Act; we have a Crimes Act. There must be other examples of that. This is a Bill which deals with discrimination, and therefore "Discrimination Bill" is an appropriate title to give this Bill.

There are all sorts of popular euphemisms. For example, with respect to the grounds for discrimination, rather than refer to "sex" we could refer to "gender"; but we have not. We have referred to sex because that is the more common way in which people think about this form of discrimination. We should use user-friendly, common, everyday, lay language which people in the community use. The term they would undoubtedly use is "discrimination". I think, therefore, Madam Temporary Deputy Speaker, we should stick with that term.

MR COLLAERY (5.08): I should give account because I agreed to the title "Discrimination" in the developmental stages of the Bill, and the record should show why. Firstly, if you look at the long title of the Bill, you will see that it uses the word "discrimination". It says, "An Act to render certain kinds of discrimination unlawful and to provide for related matters". Someone in this Assembly - I think it was Mr Duby - gave a far more prosaic but more accurate argument as to why we should stick to "Discrimination". He thinks that someone discriminated against who did not have a total grasp of the English language would be more likely to look in the phone book under "Discrimination". That is an argument that commends itself to me.

On a more organised front - as Mr Connolly knows - there is no heading "Human Rights" or "Equal Opportunity" in the *Legal Monthly Digest.* Many of the documents that those in the informed circuit read have the heading "Discrimination". The Australian *Legal Monthly Digest* puts these matters under the heading "Discrimination". I am not saying that we are sticking to that term simply because it is in the lexicon of the law. In the consultation period there was some comment about the name. The ministerial advisory council - and Ms Follett accurately reflected their views in her remarks a moment ago - certainly said that the name did not reflect the purpose. They said that it should be "Anti-Discrimination" or "Equal Opportunity".

Of course, in New South Wales the term is "Anti-Discrimination"; in Victoria, South Australia and Western Australia it is "Equal Opportunity". The Professional Officers Association thought that the name should be "Anti-Discrimination", as it is in New South Wales, and that the current title, with the large number of exemptions in the Bill, suggested that the purpose of the Bill was to legitimise discrimination. That was one argument.

The Women's Electoral Lobby, the Advisory Council on Multicultural Affairs and the South Australian equal opportunity office thought that neither the short title - "Discrimination" - nor the long title reflected promotion of equal opportunity to all citizens as part of the objects of the Bill. They thought that the present title was negative, not positive, and that it did not raise community awareness of the issue.

Clause 8 of the Bill - I do not want to disappoint Ms Follett, but I am not swayed by her argument - under the heading "What constitutes discrimination", says:

> For the purposes of this Act, a person discriminates against another person if ...

My colleague Dr Kinloch, who has a great facility with the English language, indicates to me that the expression "a person discriminates", though sound in law and though it will appear all through this legislation, has an awkwardness about it, as he puts it, and that we need different terminology completely because that is a pejorative term. Dr Kinloch could best advance these arguments himself.

The legislation was developed with the title "Discrimination". If only the Chief Minister could understand the situation. The term "discrimination" permeates the whole Bill. It is used as a heading throughout. It is too late, in my view, to get back from the generic term that we have sewn right through the weft and the warp of the Bill. The Human Rights and Equal Opportunity Act is a Federal Act, and I do not believe that this Bill, as I said earlier, is accurately described as a human rights Bill. It affects human rights; but human rights instruments are broader and wider and have as a schedule to them international instruments and the like.

I beg to differ with the Chief Minister. I do not think immigrant groups and individuals with English as a second language would easily think of the term "equal opportunity". I think the real issue, the root issue, is discrimination - lawful and unlawful discrimination. So, we are going to be different; but so be it. I do not think we should be too upset about the use of a term that has a connotation it should not have.

Those petitioning the Chief Minister think that the term "discrimination" has a pejorative sense to it; that it implies some oppression. But we discriminate all the time lawfully and properly. There are more words in the Bill about lawful discrimination than there are about unlawful discrimination. I have already made that point. It depends on how people perceive the use of language. I remember being corrected recently for using the term "pack rape". A women's group wrote to me and said that I should not have used that term; that it was an aggressive term. Accepting that rebuke, I can see that some groups have a particular sensitivity to terms.

I accept that the multicultural groups have a particular sensitivity to the term "discrimination", but we should not change our language. I am not advocating that we only ever have English as the language of the law in this country. But the language that the vast majority of us would use is "discrimination". This Bill is about discrimination. I think compromises such as putting "anti" in front of it are

meaningless and do not reflect the sensible part of this Bill which sets a proper community standard for discrimination that we can practise. The term "equal opportunity" is not an easy handle, in my view, for multicultural groups and people of a non-English speaking background.

On balance, I agreed originally with "Discrimination", as I do now. For the record, I have given my reasons. Time will tell and, subject to the next election, the Chief Minister can shake this term out if she gets power in her own right. But at this stage the Bill has been drafted with the term "discrimination" right through it. You will need more than just a name change, I suggest, in the future.

DR KINLOCH (5.16): Madam Temporary Deputy Speaker, Mr Collaery has made a kind reference to my word skills. I would not want to claim those skills. Perhaps we should consult Professor Ralph Elliott. But in consulting the big *Oxford English Dictionary,* the multi-volume one, we find that there are four main meanings of the word "discrimination" - indeed, more, if you start going to all the adjectives and adverbs and composites of "discrimination". At least one of those meanings is now obsolete and there is no point in my discussing it here. Another one is a technical term in logic and mathematics. There is no point in discussing that one here either.

Discrimination, as many people used to use it, certainly was a very positive term. Someone had a good sense of discrimination. One discriminated carefully. One discriminated between A and B, between work of art A and work of art B, et cetera. It was a term that had a very positive meaning. However, it would seem that in the growth of the language what really should be "discrimination against" - that is, if you could imagine "discrimination against" as one word rather than two words - has in a sense become the word "discrimination", with its pejorative meaning. There are examples in the OED of the word being used in that way.

I am not making a judgment about it. I wish that I did not have to. It seems to me to be playing word games. But what has happened is that a growing late meaning of the word "discrimination" has now taken over and become the substitute for "discrimination against". I see the logic for having that late meaning in the Bill, although I am very sad to see what has happened to that old word "discrimination".

MS FOLLETT (Chief Minister and Treasurer) (5.18): Madam Temporary Deputy Speaker, I really cannot believe what I am hearing from Mr Collaery and Dr Kinloch. It seems to me that they are both saying, by implication and in fact, that this Bill is about some pleasant kind of discrimination which we should all be proud of - the ability to discriminate. Of course, what the Bill is all about is

making unlawful those acts of discrimination which are unjustified, unwarranted and unfair. It is not about the finer art of discriminating. It is about making unjustified discrimination unlawful. I really fail to see how they can overlook that point. They are really indulging in sophistry in order to maintain their position, which is a position that has been rejected universally by the community in consultation.

I think it is worth noting that all of Mr Collaery's comments supported my position. Indeed, all of the discussion I have had on this issue also supports my position. I have not blinded myself to other argument; but, unfortunately, Mr Collaery and Dr Kinloch have. I think I know the reason for that. I think that reason lies in Mr Collaery's admission that, in fact, it is in the drafting that the term "discrimination" has assumed its prominence and that it is at the drafter's behest that the word "discrimination" is now intended to be in the title. I do not accept that at all, and I am surprised that Mr Collaery has allowed himself to be bamboozled by a bureaucratic or technical argument when, in fact, the community that he has consulted disagrees.

Although everybody consulted said, "We want it called 'Human Rights' or 'Equal Opportunity' because that is what we understand and that is how we think this Bill should be perceived in the community", Mr Collaery and Dr Kinloch have turned around and said, "We think the draftsmen probably know best; we will go along with what our bureaucracy has advised us". They are quite determined upon this course of action. I fail to see a reason, other than that they have quite simply set their face against the logic of the position put to them by the community and the position continually put to them by me in this debate.

I really believe that they have adopted a thoroughly pig-headed attitude on this, a pig-headed attitude that does not do justice to all of those groups that have written in, taken the trouble to respond to the call for comments and consultation, and genuinely put their views, only to be rebuffed totally, illogically and quite insultingly by Mr Collaery and Dr Kinloch. It is just not good enough and I hope that the rest of the Assembly sees the error of their ways.

MR COLLAERY (5.21): The Chief Minister referred to comment by "all those groups". I mentioned only three or four groups. Submissions were received from more than 40 groups. I will just run through a few of them. They included the Australian Democrats, the Conflict Resolution Service, the law societies, AIDS councils, various federations, universities and consultative councils, councils on intellectual disability, anti-discrimination boards, the Catholic Education Commission and so on.

It is just not accurate to say that the balance of those who were consulted on the Bill was against the title "Discrimination Bill". I do not know what you can glean from the fact that, to the best of my knowledge, perhaps six of those groups commented on the title. I do not think it is decisive. I think the Chief Minister illustrated in her speech that which is confusing. We were not saying that we wanted the title to make light of the important objects of the Bill.

The Bill deals with unlawful discrimination, and it sets out in extensive provisions that level of discrimination which is acceptable. I say again: Look at the headings in the Bill - "Discrimination by qualifying bodies etc", "Discrimination by educational institutions", "Discrimination concerning access to premises", "Discrimination in the provision of goods, services or facilities", "Discrimination concerning accommodation", "Discrimination by clubs". They are the headings for the exceptions. They are not the headings for offences.

It is a mixed bag. It is a toss-up between using the term "discrimination" and the term "anti-discrimination". "Anti-discrimination" is a negative way to name an Act. It does not work well in terms of referencing; it gets listed everywhere under "A". "Discrimination" is surely the generic term for the conduct we are dealing with. We are dealing with the conduct of discrimination. In other Bills we deal with criminal conduct. They are called crimes Bills. This is about discrimination. The heading is "Discrimination". It is the appropriate title.

MR MOORE (5.24): I have watched this part of the debate with some interest. I am glad that we have revisited it, because it seems to me that there are a number of members who, for some reason, feel that this Bill ought not to be called a human rights Bill and the commissioner ought not to be called a human rights commissioner. It seems to me that the Chief Minister has accepted that. She said that she is prepared to compromise. It was a compromise that I certainly tried to organise the other day when we were debating clause 4 - although I would not, of course, reflect on that vote, unless I wanted to negative it.

The point that has been made by the Chief Minister is that to call it the "Discrimination Bill" really takes away the tone of the legislation and the tone of the commissioner appointed under the legislation. I think that is very important in terms of what we are trying to achieve by this Bill. I spoke earlier - on clause 76, which provides that the commissioner shall try to resolve complaints by conciliation.

The Chief Minister has attempted a conciliatory approach that has been met with a brick wall by many members opposite. It seems to me that somebody involved in conciliation ought not to be called the "Discrimination Commissioner". It would be better for that person to be

called the "Conciliation Commissioner". That is the problem that we are dealing with. I think that the word "Discrimination" used in this context is really inappropriate. It would be far better, at the very least, to go for "Anti-Discrimination". But I think "Equal Opportunity Commissioner" is a valid name, and it is something that we ought to reconsider.

Judging from the way members opposite have spoken, I presume that they are going to use their numbers to push this through again. But perhaps, over the next few minutes, while we deal with the rest of the Bill, they may well rethink the matter. I would be delighted if they revisited these few parts of the Bill. Perhaps we can reconsider the matter in a conciliatory way. Perhaps "Commissioner for Conciliation" is yet another compromise that would fit the intent of the Bill far better. I throw that in as a compromise.

DR KINLOCH (5.27): Madam Temporary Deputy Speaker, may I speak very briefly. I really want to be helpful. The other day, you will recall, when this came up, I left the chamber. I did not want to be involved in a word game. I know that there are several meanings to the word "discrimination". I only reflect on them; I am not putting a point of view. I like what Mr Moore is saying. I wish that we could come up with a gentle, careful, positive term. I have to say that the word "discrimination" is ambiguous.

Question put:

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

The Assembly voted -

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

Question so resolved in the affirmative.

Amendment (**Mr Stevenson's**) negatived.

Clause, as amended, agreed to.

Clauses 109 to 115 taken together

MR STEVENSON (5.35): I move:

Clause 111, page 43, add the following subclause:

"(2) In the administration of this Act the Commissioner at all times be subject to the control and direction of the Minister.".

Obviously enough, that is our intention and I would suggest that we make the point in the Bill that indeed the commissioner is subject to the control and direction of the Minister in all matters covered under this Bill.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (5.35): That deserves a brief response from the Government. It is quite likely that a large volume of complaints to the commissioner will be complaints against government activity, and Mr Stevenson's proposal - - -

Mr Kaine: They might be complaints against the Minister.

MR CONNOLLY: There may indeed be a complaint against a Minister, and Mr Stevenson is proposing that the commissioner be subject to the direction of the Minister. It is central to this type of proposal that it be an independent statutory officer. That is why we have the seven-year term of appointment - so that the person, once appointed, does not depend for continuing employment on the whim of the government of the day, is independent and can fearlessly and vigorously investigate a government department or, indeed, a Minister. To make that person subservient to the Minister would completely subvert the purpose of an independent commissioner.

MR STEVENSON (5.36): Unless we make sure that the commissioner is under the control of the parliament through the Minister, we are placing enormous power into the hands of a bureaucracy - which is what it is - that is not accountable to the parliament or to the people.

Mr Connolly: Judges are not either.

MR STEVENSON: Mr Connolly says that judges are not, but I suggest that there are certain traditions that a judge follows. I think it is probably worth while to note that a judge does not prosecute the case. A judge, prior to hearing matters, is not required to go out and promote one side, as is required under this Bill. The principle of the judiciary in Australia comes from a long heritage and a wonderful heritage whereby justice can be done, provided the law is followed.

This Bill takes out the requirement that the commissioner be accountable directly to the people. Unless the commissioner is accountable to the Minister, who is an elected representative of the people, the people will have no control over the commissioner. Certainly, the commissioner can be removed for misbehaviour, but it is open to question what misbehaviour is.

We need to look very carefully at this situation. Are the members of this ACT Legislative Assembly prepared to give a commissioner the power to compel someone to attend a hearing, the power to force somebody to produce documents even though they have privilege, the power to force people to write down information they have in their head, sign it and present it to the commissioner at a particular time and place? Are we prepared to place this power in the hands of an unaccountable commissioner? I know that many members may not have been particularly listening to some of the things that have gone on in this house, but I really make the point - and I make it very strongly - that, whatever power we place in the hands of the commissioner, it should be accountable power.

The commissioner should be accountable to the parliament, and it is reasonable that the commissioner be accountable to the Minister. Otherwise, how can the people, through their parliament, make the commissioner accountable? This is an extremely important point, and I would ask all members to consider the power that they are about to hand over to a commissioner without requiring any accountability.

MR STEFANIAK (5.40): I am not even sure whether Mr Stevenson's amendment will do what he wants it to do. He would simply make the commissioner subject to the control and direction of the Minister. Clause 111 is a fairly normal termination of appointment provision, and I do not see a problem.

Amendment negatived.

MR STEVENSON (5.41), by leave: I move:

> Clause 113, page 43, lines 36 and 37, omit paragraphs 113(2)(c) and 113(2)(d).

This amendment is basically self-explanatory.

Amendment negatived.

Clauses agreed to.

Clause 116

MR STEVENSON (5.43): I move:

Clause 116, page 44, add the following subsection:

"(2) In the event of the Commissioner determining to delegate any of his or her powers as herein provided, then such determination shall be made in writing and a copy thereof will be forwarded forthwith to the Minister who shall table the same before the Assembly and such delegation shall take effect unless disallowed by the Assembly within three months of such tabling.".

Clause 116 relates to whom the commissioner may delegate power to. The clause says that the commissioner may delegate power to a member of the staff of the commissioner. We should look at what powers may be delegated. Clause 116 mentions powers or functions under section 68, 69, 77 or 78. Clause 68 relates to preliminary inquiries and says:

The Commissioner may make inquiries of the respondent to a complaint ...

So, we are allowing a staff member to take over that power. Clause 69 is perhaps far more extreme. Subclause (2) says that the commissioner may, of his or her own motion, investigate matters. Under clause 69, the commissioner can decide to investigate anything under the sun, moon or stars. Members of this Assembly have agreed that the commissioner should have the power to investigate whatever he or she likes, regardless of whether anybody has ever complained about it or not.

To delegate the power to make inquiries is one thing. I suggest that it is an entirely different thing to allow the commissioner to delegate the power to initiate investigations. If you want the power to initiate an investigation when there has not been a complaint, leave it in the hands of the commissioner; do not allow the commissioner to hand over to one of his or her staff the power to initiate entirely new investigations of matters that have never been complained about. Leave that power with the commissioner and, once the commissioner has decided that a matter should be investigated, allow him or her to hand over the power - delegate that power, as it were - to a member of staff.

Clause 116 also gives the commissioner the power to delegate the responsibilities under sections 77 and 78. Clause 77 allows the commissioner to compel compulsory conferences. I think it is probably reasonable to allow the commissioner the right to determine who is going to be pulled before a compulsory conference, but not one of the commissioner's staff.

The major point I would make is that the commissioner should not be able to delegate the responsibilities set out in clause 69. I believe that a new subclause should be added as follows:

(2) In the event of the Commissioner determining to delegate any of his or her powers as herein provided, then such determination shall be made in writing and a copy thereof will be forwarded forthwith to the Minister who shall table the same before the Assembly and such delegation shall take effect unless disallowed by the Assembly within three months of such tabling.

If the commissioner decides to delegate those powers, which are very strong indeed, then I think it reasonable that notification be given to the Minister and that the Minister be required to notify the Assembly that the commissioner is going to delegate powers. The matter would be allowed to proceed unless disallowed by the Assembly. That would give the Assembly the power to disallow a decision by the commissioner.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (5.48): The crucial thing here is that decisions cannot be delegated; decisions have to be made by the commissioner. These are the footwork-type provisions. The power to investigate is the classic one. Obviously, staff will do a lot of the legwork in the investigation of complaints, just as would happen in any body. These provisions are comparable to provisions in the Ombudsman Act. Mr Stevenson's proposed amendment is extraordinarily cumbersome and unnecessary.

MR STEVENSON (5.49): Mr Connolly did not answer the question that I asked.

Mr Connolly: All right. I did not and I will not; so sit down.

MR STEVENSON: He says that he did not and he will not. There have been questions about many clauses that he has not answered and will not answer. Indeed, he will not answer many of the specific points I bring up quite often - although he has answered some. I was not talking about the delegation of normal, day-to-day, routine things. I was talking about - and I made the point specifically and in some detail - the delegating of the power to initiate a new investigation. That point was not answered, and I suggest that it cannot be.

MR DUBY (5.50): It is a very specious, false argument that Mr Stevenson is putting to the Assembly. It is quite apparent that there will be many occasions when the commissioner will wish his staff to investigate and will wish to authorise them to initiate inquiries. I give as a

prime example the following imaginary situation. You see an advertisement in the paper saying, "Would you like to join the Tharwa Golf Club? Chinese Jews need not apply". Obviously, that is the sort of thing that needs to be investigated. It should not be up to the commissioner himself to initiate such an investigation. He will have staff - they are called troops - to do the legwork.

Mr Stevenson knows that such circumstances exist. According to his reasoning, the Commissioner of Taxation, sitting in the building opposite, would be the person who had to check every tax form that was returned to the Government. Such a situation is clearly ridiculous, and Mr Stevenson knows it.

Amendment negatived.

Clause agreed to.

Clauses 117 to 119 taken together

MR STEVENSON (5.51): Mr Speaker, I move:

> Clause 119, page 45, line 28, omit "5", substitute "2".

Clause 119 refers to penalties imposed on corporations and says:

> ... the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

I think that five times is too large an amount to give to a commissioner outside a court. Therefore, I have moved that the 5 be replaced with a 2.

MR DUBY (5.52): Surely Mr Stevenson must have read a little bit of legislation throughout his career as an Assembly member. In most legislation, if it is a fine of $1,000 for members of the public, it is generally $5,000 for a corporate body; if it is $2,000 for members of the public, it is $10,000 for a corporate body. It seems to be a standard ratio.

Mr Connolly: Because members of the public can be gaoled and corporations cannot. For the most serious offence, the citizen goes to gaol.

MR DUBY: Absolutely. As the Attorney has pointed out, members of the public can be gaoled, and corporate bodies cannot. Apart from anything else, it is only commonsense, Mr Stevenson, to keep that ratio which applies in other legislation throughout the Territory in place in this legislation.

Question put:

That the amendment (**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 Kaine Dr Kinloch Ms Maher Mr Moore Mrs Nolan Mr Prowse Mr Stefaniak Mr Wood

Question so resolved in the negative.

Clauses agreed to.

Clauses 120 to 122 taken together

MR STEVENSON (5.59): Clauses 120 and 121 should be deleted - and for very good reasons. I wonder whether the members of the Liberal Party would be kind enough to have a bit of a listen-in. There may be something that - - -

MR SPEAKER: Mr Stevenson, you have the right to be heard, but not to be listened to. Please proceed.

Mrs Grassby: Very well put, Mr Speaker.

MR STEVENSON: It may have been well put. Indeed, I do understand that nobody in this Assembly has to listen to anything. Often, the truth of the matter is that they do not. But the point of the matter is that they are representatives of the people of Canberra, and when I have asked specifically - - -

Mr Berry: I raise a point of order on the grounds of relevance.

MR SPEAKER: Yes, Mr Stevenson.

MR STEVENSON: Clause 120 talks about intergovernmental arrangements. It says:

> The Minister may make an arrangement with a Commonwealth Minister in relation to -
>
> (a) the performance on a joint basis of any of the functions of the Commonwealth Commission;
>
> (b) the performance by the Commissioner of any of the functions of the Commonwealth Commission; or
>
> (c) the performance by the Commonwealth Commission, on behalf of the Territory, of any of the Commissioner's functions.

And it continues. It says - - -

Mr Connolly: We can read it. You do not need to read it out.

MR STEVENSON: All right.

Mr Connolly: What is your problem?

MR STEVENSON: The problem is: If we wish to allow our ACT discrimination commissioner the rights of the Commonwealth Human Rights and Equal Opportunity Commission, then let us decide that that is what we want to do. But before we do that, before we say that we agree to the lot of them, perhaps we could follow the mildly important course of discovering what they are. In other words, before we agree to extra powers, extra functions, for the ACT commissioner, it is probably not unreasonable that we find out what they are, rather than just vote in these clauses that say, carte blanche, that we agree that our commissioner can have the functions of the Commonwealth commission.

That is the reason, Mr Speaker, I felt it important that the Liberal Party members, who are having a conference over there, listen in. You quite rightly made the point that I have a right to speak but not a right to be listened to. But it would be unfortunate if the Liberal Party did not listen in to the fact that if you pass this particular clause, above all others, you will allow functions for the ACT commissioner when you have no idea whatsoever what those functions are.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (6.03): Clause 120 allows the joint arrangement for one-stop shops. There are similar arrangements between the Commonwealth and the States. In some cases the State people perform both the Commonwealth and the State functions. In other cases the Commonwealth people perform both the Commonwealth and the State functions.

Mr Stevenson displays a fundamental confusion. He seems to think that, in relation to an ACT matter arising under the ACT Act and involving an ACT complaint, the ACT commissioner might gain additional powers through the joint arrangement. That is not so at all. In respect of ACT complaints under the ACT Act, the ACT commissioner exercises his powers under the ACT Act. The ACT commissioner may, if there is an arrangement with the Commonwealth, also look at Commonwealth complaints arising under the Commonwealth Act and involving the Commonwealth powers. But that would otherwise happen with the Commonwealth commission.

It just means that one person can perform two functions with two separate sets of powers. It is a very sensible, practical arrangement to avoid duplication. I commend it to the Assembly in the knowledge that the States, conservative or Labor, have found it a sensible approach.

MR STEVENSON (6.04): Mr Speaker, I - - -

Mr Connolly: Whenever I explain, you jump up again.

MR STEVENSON: Whenever you explain! The point is that clause 120 says that the ACT Minister may make an arrangement with a Commonwealth Minister in relation to the performance by the ACT commissioner of any of the functions of the Commonwealth commission. If the functions of the Commonwealth commission are functions that we do not have, how on earth is it that that is not acquiring new functions or, more simply put, new powers?

Clauses agreed to.

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

MR DUBY (6.05): Mr Speaker, I seek leave to move the amendment circulated by Mr Collaery relating to clause 123 - namely, after "V" insert "VA". Of course, this amendment is consequential on a previous amendment that was agreed to.

MR COLLAERY (6.06): Mr Speaker, I am indebted to Mr Duby for his assistance, but the Attorney's legal adviser tells me that that provision was not included on the updated sheet because, for technical reasons, it is superfluous. I will not proceed with that amendment.

Question put:

That the remainder of the Bill 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.

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

That clause 2 be reconsidered.

Clause 2

MR COLLAERY (6.09): I move:

Page 2, line 3, after subclause (3) add the following subclause:

(4) Section 108 of this Act shall not commence until the Chief Minister has appointed Ministers for the Territory pursuant to Section 41 of the *Australian Capital Territory (Self Government) Act 1988* following the next general election for the Legislative Assembly for the Australian Capital Territory.

Mr Speaker, clause 2 sets the dates for commencement of the Act generally and for aspects of it. I draw members' attention to clause 108 of the Bill, which provides for the appointment of a commissioner. I have asked the Chief Minister today whether she proposes to appoint a commissioner prior to the rising of the house, and her advice to me is that that is her business.

Ms Follett: So it is.

MR COLLAERY: She confirms by interjection that that is her business. Mr Speaker, this house will rise in three weeks. The appointment is to be for seven years and is a most important Executive appointment. The position should be fully advertised nationally over an adequate period. We all agreed on this for the Territory Chief Planner appointment.

It is my very strong view that there is now inadequate time available before the Assembly rises on 17 December for there to be proper advertising, selection and consultation with party leaders in the Assembly, in accordance with the normal convention. Of course, the convention that there shall be no appointments following the rising of this house will be observed by the minority Follett Government because we would simply recall the Assembly, I am sure, were any of the important Westminster conventions to be breached in any way.

The upshot of my amendment is that the Chief Minister can indeed get all the functions of the commissioner going under clause 113 in the same way as the Chief Planner functions are performed by an Acting Chief Planner. Clause 113, under paragraph (1)(a) provides:

> during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office) ...

It is clearly anticipated that the discrimination office need not necessarily commence operations with a permanent appointee. In effect, my amendment will require that convention be observed - that is, that this important seven-year post be fully advertised, that there be adequate consultation and that appointment be secured on merit and by open process. That clearly cannot be done over the next three weeks.

The Chief Minister has committed herself to a similar process for the appointment of a new Auditor-General. That process should be followed for the appointment of the commissioner. The amendment seeks to delay the commencement of the legislation until the next Chief Minister is able to appoint Ministers and, in effect, has an Executive available for the appointment of the commissioner pursuant to section 108.

MS FOLLETT (Chief Minister and Treasurer) (6.16): Mr Speaker, the Government will be opposing Mr Collaery's amendment because it really is a most unwarranted intrusion into the business of the Government. It is the right of the Executive, a right given by this very legislation, to appoint a commissioner. Mr Speaker, when I said to Mr Collaery that it was our business, I meant just that - it is our business. The fact is that the Government has not given consideration to this matter. I really do not

consider it appropriate that the Assembly - or Mr Collaery - attempt to tie the Executive's hands in this way. It is most inappropriate. It is a most unfortunate precedent for Mr Collaery to attempt to set.

I want to make one other point. Mr Collaery has referred to the Westminster tradition on major appointments. I would like to say to Mr Collaery that our election processes in the ACT in general do not comply with the traditional Westminster arrangements. It is a fact that in other parliaments that kind of activity stops on the issuing of a writ for an election; but that does not apply in the ACT. The election times are set. The date of the next election has been known for at least three years and, quite frankly, the Government will be governing right up until, and after, the date of the election.

I do not see why Mr Collaery seeks to enshrine in legislation a provision that would hamper the Government in doing that. I think it is quite incorrect of him to attempt to do so. In technical terms, there is no cut-off date, as there would be under a traditional election arrangement, and that is just a fact of life. I think it is most regrettable that Mr Collaery should seek, in effect, to delay the operation of this Bill by some months. Why would you want to do it?

Mr Speaker, if the Assembly supports Mr Collaery's amendment, they are really saying that they do not believe that the Executive has any rights in this matter; that they do not believe that it is up to the Executive to consider appointments and to make appointments. They are really denying the commencement of this legislation. It is, I think, a very foolhardy step for them to take, if that is what they want to do.

It is my intention to bring this legislation into operation as quickly as possible. It has been urgent, in my view, for the whole life of this Assembly. It is my intention that the human rights office be opened in Civic next month.

Mr Duby: There is nothing stopping it.

MS FOLLETT: There is indeed, as Mr Duby says, nothing stopping me, and nothing will stop me from doing that. But I fail to see why Mr Collaery tries to make that course of action difficult. It is quite clear to me, Mr Speaker, that that is Mr Collaery's intention. He is seeking to deny the Executive a right which is given to it in this legislation. Members should think very carefully about that. I think it is very wrong indeed.

MR KAINE (Leader of the Opposition) (6.20): Mr Speaker, I am undecided on this issue, but I would have to say that Mr Collaery raises an important issue and the Chief Minister's speech in rebuttal does not make me feel any better about it. We are talking here about a seven-year appointment to a position which everybody agrees is a highly sensitive one

and which reasonably one could expect would be given mature consideration. Yet the Chief Minister appears to be saying that she has already selected the person to fill this job and that within three weeks she is going to have somebody sitting in it.

That, I believe, demonstrates - despite this great consultative process that the Government talks about - that she has made up her mind that, irrespective of the opinion of this Assembly, irrespective of the conventions that apply when a government becomes a caretaker government, irrespective of the fact that this Government is a minority government - I remind you, a minority government - she will have her way. When Mr Collaery started talking to me about this issue 20 minutes or half an hour ago, my first reaction was to say, "That is imposing an unwarranted restriction on the Executive".

Ms Follett: You would be right.

MR KAINE: But I have now heard you. I have heard you express a most uncompromising position. You have stated that you intend to bulldoze this through, you intend to make an appointment and you do not intend to have any regard to the views the other members of this Assembly have expressed. That makes me think very hard about why it is that you are so determined to override and to ride roughshod over this Assembly and move so rapidly. You could move to fill this job temporarily. You do not have to put a permanent appointee into the job within three months of an election, in fact within three weeks of the Assembly dissolving for the election, three weeks before you become a caretaker government. This is, I remind you, a minority government to boot.

If that is going to be your attitude and you do not show some willingness to be a little more cooperative and a little more sensitive to the views of this Assembly, you may well find that, much and all as I have some reservations about it, I will support Mr Collaery and my party will support Mr Collaery, and you will be unable to make the appointment that you seem so determined to make.

Let us have some consultation, let us have some reason, let us have some sensitivity to the issue, and let us bear in mind that, if you put somebody in this job under those conditions and the government changes in February, you put your appointee in a very difficult position because that person will know that he or she was appointed over the objections of the new government. Just bear it in mind, let us hear some sense and let us have some rationality on this.

MS FOLLETT (Chief Minister and Treasurer) (6.23): I am surprised at Mr Kaine's comments, Mr Speaker.

Mr Kaine: I am disturbed at your comments; that is what I am disturbed about.

MS FOLLETT: I wish Mr Kaine would calm down. I am not being intransigent on this matter, and I wish members would listen to what I say. I said that the Government has not considered this matter; I said that this is the Government's business. Both of those are facts. You should not read into those statements any more than the facts as I have stated them. I have no intention of making an appointment which would cause enormous distress to other members. It would be foolhardy to do so.

Mr Speaker, I really think that members are expressing an enormous lack of confidence in the ability of the Executive to make a proper appointment, and I find that quite unwarranted. I do not believe that any appointment has been made in the life of this Government that would give you grounds for such a lack of confidence. If there has been, I would like to hear about it. Of course, if it is the wish of members to be consulted on this appointment, I will consult you.

Mr Speaker, I really fail to see what the concern is about this. As Mr Kaine says, it is perfectly possible to make an acting appointment, and I really think his concerns here have been whipped up by Mr Collaery, in a quite unjustifiable way - in a way that is a slur upon the Executive, in a way that has no grounds whatsoever. We have not made any appointment which would give you the slightest cause for concern, and we will not on this occasion either; but I think it would be of grave concern for the Assembly to deny the Executive a right which it has just given to them by Act of this Assembly.

MR DUBY (6.26): Mr Speaker, I find the statements by the Chief Minister quite remarkable. She says quite categorically, "We have given the matter of who will take the position of discrimination commissioner no consideration". I think that was the phrase.

Ms Follett: I said that we have not considered it.

MR DUBY: You have not considered it. You have not considered any applicants.

Ms Follett: The Executive has not considered it.

MR DUBY: The Executive has not considered it. That puts a different slant on things. I would like you, Chief Minister, to explain to me how you can say that the office will be open and operating in three weeks' time if you have given no consideration whatsoever to who will be the commissioner of this office.

Ms Follett: The commissioner probably will not even be in the office. It will be staffed.

MR DUBY: For you to say, Chief Minister, that the office will be open and operating in three weeks' time indicates to me that you personally have given some consideration to who is going to be in the position. I do not think you are being entirely truthful with us in this matter.

Ms Follett: I take a point of order, Mr Speaker. Mr Duby made a statement which was unparliamentary, and I ask that he withdraw it.

MR SPEAKER: It was more a rhetorical question, but I ask you to withdraw, Mr Duby.

MR DUBY: I withdraw. It was meant in a rhetorical sense; I certainly was not implying anything about your truthfulness, Chief Minister.

Secondly, you have said, "This Government has never appointed someone whom other members of this Assembly would regard as unsuitable". Far be it from me to name individuals, but I am going to give one example of an appointment by your Government which was, frankly, outrageous. I refer to the appointment of the young lady to the ACT Milk Authority by your first Government. I believe that she was an 18-year-old college student. She was made a member of the Milk Authority on the basis that she was female and that she represented youth. The girl in question did a very creditable job, I must admit; but she was an inappropriate appointment to that authority.

Mrs Grassby: If she did a good job, she was not.

MR DUBY: She did her job to the best of her ability - that is what I said. I am giving you an example of someone - - -

Ms Follett: A former Minister is criticising a board member.

MR DUBY: I am criticising the appointment of that person to the board. You said, "Name an area where we acted irresponsibly". I regard that appointment as an example of where you acted irresponsibly. You have said that you have given the appointment of the commissioner no consideration, but the office will be operating in three weeks. I remember you saying also that there are no conventions governing a caretaker government in the ACT. "We govern until 15 February 1991," I believe you said.

Ms Follett: Until 1992; we do.

Mr Humphries: And beyond, she said.

MR DUBY: Well, that might well be. That is a matter for the people to decide. I have no problems with that. I find that attitude rather frightening because - - -

Ms Follett: Well, it is true.

Mr Collaery: The Assembly will not be sitting. You have five months.

MR DUBY: Just let me finish. As Mr Collaery has quite ably stated, there is a tradition throughout the Australian system concerning caretaker governments over, and adjacent to, election periods. For you to suggest that on 14 February, for example, you and your Executive, on the basis that you may win the election, can make decisions which will affect life in this Territory for some time to come, I find quite outrageous.

We had an example of this previously. If I remember correctly, a number of arrangements and appointments to various authorities and boards were made in the week preceding 5 December 1989. People's terms were extended and people were installed on boards and authorities when you knew perfectly well that your Government could not govern and would not govern after that date.

Ms Follett: You still said that you supported us. You were still supporting us.

MR DUBY: After that date.

Mr Berry: You still supported us right up to that point, liar. I withdraw that.

MR DUBY: Thank you for that withdrawal. The fact is that I know that a number of those appointments were made on 4 December when you were due to be in this Assembly the very next morning to be relieved of your position. That cannot be refuted. If I am not being accurate, I defy you to get up and say that I am not being accurate. You know that you did it. All of you know. Look at them, shamefaced about the issue. Yes, we worked with the people that you appointed to those various authorities and various boards. If you think we are going to be mugs enough to let you try to pull the wool over the people's eyes again, you have another think coming.

Mr Berry: You should get back on the bottle, Craig. You would do better.

MR DUBY: You tried it once and you got away with it. You are not going to get away with it again.

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

MR SPEAKER: Yes, I would ask you to withdraw that, Mr Berry. Please stand when you are requested to withdraw.

Mr Berry: I withdraw that.

MR HUMPHRIES (6.33): Mr Speaker, I wish to ask a question of the Chief Minister. I know that she can speak on any number of occasions on this Bill; so there is no question of missing out on opportunities to speak. I would ask her a question. It is unclear to me what convention the Chief Minister adheres to with respect to appointments. Can the Chief Minister indicate whether she sees a cut-off date beyond which appointments will not be made by the Government, because of its interim character, being the rising of this Assembly, the issuing of writs - if there are such things - for the election, the day of the election, or the day of the new Assembly being sworn in? Can the Chief Minister please indicate which of those she sees as the appropriate date?

MS FOLLETT (Chief Minister and Treasurer) (6.33): Mr Speaker, I think that any government appointment that is made at any time is open to scrutiny; but an appointment made within 11 weeks of an election is open to perhaps more scrutiny than at most other times, and this appointment, if we make an appointment, would be open to such scrutiny. That is the case, and it would be, of course, open to scrutiny in this Assembly, open to scrutiny at the election. If it were felt by members that any appointment I had made was of such an outrageous nature as to become an issue for the public, then obviously I am vulnerable in a pre-election period. That seems to me to be commonsense.

Mr Humphries has asked a particular question, and the fact is that there are no specified cut-off dates. That is the fact, unfortunately.

Mr Collaery: But there had better be one. Well, you are going to find another law introduced in three weeks.

MR SPEAKER: Order, Mr Collaery, please!

MS FOLLETT: Mr Speaker, I do not know why it is that all members opposite impute to me the very worst possible motives in this. I simply find it incomprehensible. It seems to me that we have all agreed that this is probably the best piece of legislation that has gone through this Assembly; that it is indeed a very significant piece of legislation; a piece of legislation that is designed to protect the rights of all citizens in the ACT, to increase their protections and to allow them to exercise rights which they otherwise would not have had. I really think, in the light of what I would regard as the Assembly's pride in this piece of legislation, that to be having a squabble at this point over one aspect of it is very unfortunate.

I can say again, Mr Speaker, as I have said before, that I will consult other members if that is their wish. I am, obviously, open to scrutiny in everything that I do now - perhaps more so because we are in a pre-election period - and it would be foolhardy indeed for me to blunder. I have not done so in the past and I will not do so on this occasion. I really do not see, Mr Speaker, that I have given cause for the concerns being expressed by members

opposite. I do not want to openly canvass what the Government's decision on this appointment might be, because we have not taken a decision. That is a fact. It is a matter that we need to discuss.

Mr Collaery: You said that you were going to open the office.

MS FOLLETT: Mr Collaery interjects that I am going to open the office. Yes, I am; and I will open the office regardless of what the Assembly's decision about the commissioner is, because I have an arrangement, as you know, with the Commonwealth Human Rights and Equal Opportunity Commission. They will be providing some staff; they will be providing some rent. I will be providing some staff; I will be providing an office. The office will open. I think it would be most unfortunate if it were to open without a commissioner. But it will open, whether there is one or not. I think members are going to have to live with that fact, as well - that the office will open regardless of your decision.

DR KINLOCH (6.37): I need something clarified. I take it that under clause 113 there could be an acting commissioner at any moment, and surely that is an excellent thing. Is that not a way to avoid this contentiousness - that there be an acting commissioner under clause 113?

MR KAINE (Leader of the Opposition) (6.37): Mr Speaker, I think that the point has been made. There is a concern as to Executive decisions that might be made in this period leading up to the campaign and to the election date; but I think the point has been made. I would suggest to Mr Collaery that, if we have reservations about that as a legislative body, it should be dealt with in a different way and not through the medium of making an amendment to a particular Bill like this. I think the Chief Minister is on notice that this is a matter that this Assembly considers to be sensitive and crucial. How she deals with that, I think, is for her to determine.

If the Chief Minister has now stated, quite clearly, that she does not believe that there are any conventions about caretaker governments that apply in this place, then we have to take that on notice and we have to consider what, if anything, we intend to do about it. It does not relate to only this issue; it could relate to any number of issues that could arise over the next three, four or five months. I submit to members that that is a matter which should be dealt with in another way, and it should be dealt with in its totality rather than in the context of one Bill and one particular matter. I believe that our point has been made and that we should consider what, if anything, we should do from today onwards.

MR JENSEN (6.39): I wonder whether the Chief Minister would be prepared to provide an undertaking to the members of this Assembly that she will consult with the leaders of the various parties within the Assembly - - -

Ms Follett: I said that twice.

MR JENSEN: I never heard any suggestion of consultation. I heard Ms Follett say that she would think about it, but I never heard her say that she would consult with the leaders of the groups within this parliament. I never heard her say that once. That is why I request that Ms Follett provide an undertaking from the floor of this Assembly that, before the appointment of any commissioner - be they acting or full-time - between now and the time that the next government is formed, she will consult with the leaders of all the parliamentary groupings within this Assembly.

MS FOLLETT (Chief Minister and Treasurer) (6.40): I do not know what is the matter with people opposite. I genuinely, honestly and absolutely have said twice that I will consult. But I will say it again: I will consult.

MR HUMPHRIES (6.40): The Chief Minister is full of sincerity and so on today; but I am afraid I must say that we in the Opposition have serious concerns, serious reservations, about what has been said here today by her and by her Government. On the point of consultation, let me remind the Chief Minister that she and her Government agreed in May of 1989 to consult with members of at least the Liberal Party about appointments to bodies that her Government was going to make. There was never any consultation - I correct that. There was one instance I can recall of consultation between the Opposition and her Government at that time, her minority Government as it was. So, you will have to forgive me, Mr Speaker, for saying that I do not necessarily believe the Chief Minister when she says to me that she is going to consult about this matter.

Ms Follett: I raise a point of order, Mr Speaker. A clear imputation is expressed there. It must be withdrawn.

MR HUMPHRIES: Mr Speaker, it is a fact. I am sorry; I do not believe - - -

MR SPEAKER: He did not say that you had done anything wrong, Chief Minister. He said that he has a problem in accepting certain points of view, and I do not believe that that is out of order.

MR HUMPHRIES: I will rephrase it slightly, Mr Speaker. I have grave reservations about the Chief Minister's ability to do this time what she did not do on the previous occasion. Let me put it that way. I am also extremely concerned about the Chief Minister's interpretation of conventions on the matter of appointments to any body or position that she has power to appoint to, or she or her Ministers have power to appoint to, at any particular time. Certainly, I could accept that there must be some argument about whether or not appointments can be made after what would normally be the issuing of writs in another circumstance.

Ms Follett: But we have not got that circumstance.

MR HUMPHRIES: She says that there are no writs in these circumstances. Therefore, we ought to rethink the concept of appointments in those circumstances. But I cannot accept under any circumstances that a government in the ACT would have a right to make appointments after 15 February next year. After 15 February is an unbelievable suggestion.

Ms Follett: Don't be silly.

MR HUMPHRIES: The Chief Minister now says, "Don't be silly".

Ms Follett: I am sorry. I did not realise that that was what was worrying you.

MR HUMPHRIES: That was what I asked you before, and you were not able to give me any indication of a date. If you can give me a clear indication that you will not make any appointments after 15 February, I would be very much relieved and my opinion on this matter would be greatly changed.

MS FOLLETT (Chief Minister and Treasurer) (6.43): I continue in my third degree grilling here. I am sorry if I had misunderstood what Mr Humphries had said. I can give a guarantee not to make an appointment after 15 February. I think members have to know, and should accept, that the Executive does continue until the ballot is declared. You do understand that. But I give you an undertaking not to make any appointment after 15 February.

Question put:

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

The Assembly voted -

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

Question so resolved in the negative.

Clause agreed to.

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

That clause 1 be reconsidered.

Clause 1

MR STEFANIAK (6.47): I move:

Page 1, line 5, omit *"Human Rights and Equal Opportunity"*, substitute *"Discrimination"*.

I initially moved that the name of the Bill be the Discrimination Bill. I think my amendment to that effect is still floating about. In other words, the Act is going to be called the Discrimination Act. That is what the amendment is all about. We have already made consequential amendments to clauses within the Bill to reflect that. I reiterate the points I made in my speech on this topic - I have forgotten when it was - as to why the Act should be called the Discrimination Act. We have had further argument today in relation to why the Bill is more properly referred to as the Discrimination Bill than as the Human Rights and Equal Opportunity Bill, and I now encourage members to vote on it.

Amendment agreed to.

Clause, as amended, agreed to.

Bill, as amended, agreed to.

ADJOURNMENT

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

That the Assembly do now adjourn.

Assembly adjourned at 6.52 pm until Tuesday, 3 December 1991, at 10.30 am

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APPENDIX 1:

(Incorporated in Hansard on 26 November 1991 at page 4871)

CHIEF MINISTER FOR. THE AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY QUESTION

QUESTION WITHOUT NOTICE

21 NOVEMBER 1991

MR KAINE: CHIEF MINISTER THROUGH ACTING CHIEF MINISTER. QUESTION ON THE. LAND TAX. WHAT IS THE REASON WHY THE NEW LAND TAX IS NOT BEING COLLECTED QUARTERLY THE SAME WAY AS THE RATES LEVY.

SUPPLEMENTARY: WOULD YOU MAKE A COMMITMENT TO FIND OUT WHAT THOSE EXTRA COSTS WILL BE AND BRING THOSE COSTS BACK TO THE ASSEMBLY.

MY ANSWER IS: THE ONE PERCENT LAND TAX ON RESIDENTIAL PROPERTIES OTHER THAN THE PRINCIPAL PLACE OF RESIDENCE OF AN OWNER IS NOT A NEW TAX BUT RATHER AN EXTENSION OF THE EXISTING LAND TAX BASE TO INCORPORATE PROPERTIES WHICH ARE CLEARLY COMMERCIAL IN NATURE. SUCH TAX IS PAID ANNUALLY RATHER THAN QUARTERLY AS IN THE CASE OF GENERAL RATES.

TIME PAYMENT ARRANGEMENTS ARE AVAILABLE: TO .LESSEES GENUINELY EXPERIENCING DIFFICULTY WITH MEETING LAND TAX PAYMENTS. SUCH LESSEES SHOULD CONTACT THE COMPLIANCE SECTIO14 OF THE ACT REVENUE OFFICE.

THE. COSTS OF PROVIDING AN INSTALMENT SCHWAB LAND TAX WHICH WOULD CLEARLY HAVE TO COVER ALL LAND ,TAXABLE PROPERTIES ARE SIGNIFICANT AND NOT ONLY INCLUDE THE COSTS ASSOCIATED WITH ADMINISTRATION OF SUCH A SCHEME BUT ALSO THE LOSS OF INVESTMENT INCOME.

5313 .

COST TO REVENUE BET CLOSE TO $1 MILLION, COMPRISING JCS A LOSS OF INTEREST ON INVESTMENTS OF ABOUT $800,000 BASED ON CURRENT MARKET INTEREST RATES, AND DIRECT ADMINISTRATION COSTS OF $74,000 WHICH INCLUDES PRINTING, PROCESSING AND MAILING OF REMINDER NOTICES AND COLLECTION OF FOUR PAYMENTS.

OTHER ASSOCIATED COSTS ARE DIFFICULT TO QUANTIFY BUT THE COMPLIANCE WORK FOLLOWING EACH OUTSTANDING INSTALMENT PAYMENT WOULD INCREASE COSTS SIGNIFICANTLY.

CONTACT: GORDON FAICHNEY
ACT REVENUE OFFICE
246 3177

5314

APPENDIX 2:

(Incorporated in Hansard on 26 November 1991 at page 4871)

MINISTER FOR HEALTH

QUESTION TAKEN ON NOTICE ON

21 NOVEMBER 1991

MR KAINE. ASKED THE MINISTER FOR HEALTH

DURING THE ESTIMATES COMMITTEE HEARING THE BOARD OF HEALTH STATED THAT PART OF THEIR MAJOR SAVINGS WERE STAFF REDUCTIONS. HOW ARE THE STAFF CUTS GOING? HOW MANY HAVE BEEN SHED? HOW MANY MORE STAFF TO GO?

MR BERRY - THE ANSWER TO MR KAINES QUESTION IS:

THE EXERCISE FOR DETERMINING THE NURSING STRUCTURE AT LEVEL 3 FOR THE PRINCIPAL HOSPITAL HAS BEEN FINALISED. THIS HAS RESULTED IN THE IDENTIFICATION OF 7 EXCESS OFFICERS. THE REDEPLOYMENT PROCESS AS REQUIRED BY THE AUSTRALIAN PUBLIC SERVICE REDEPLOYMENT AND RETIREMENT, (REDUNDANCY) AWARD 1987 HAS. COMMENCED FOR THIS, GROUP 0P STAFF.

5315

CONSULTATION WITH RELEVANT UNIONS REGARDING THE AMALGAMATION OF ALL OTHER AREAS WITHIN THE HOSPITALS IS CONTINUING. IN SOME INSTANCES NATURAL ATTRIBUTION AND TRANSFERS TO CALVARY WILL ACHIEVE THE REDUCTIONS. HOWEVER STAFF WHO MAY BE AFFECTED HAVE RECEIVED LETTERS INFORMING THEM THAT THEY ARE POTENTIALLY EXCESS AND THE SELECTION OF STAFF OR THE NEW STRUCTURES WILL COMMENCE SOON.

STAFF LOSSES WILL ALSO RESULT FROM REDUCTIONS !N THE 1991/92 A.C.T. BUDGET. THE REDUCTIONS WILL BE ACHIEVED LARGELY THROUGH NATURAL ATTRITION AND RESTRICTION ON THE USE OF CASUAL AND TEMPORARY STAFF. AREAS THAT WILL EXPERIENCE AN ACTUAL LOSS OF STAFF ARE CURRENTLY DEVELOPING REVISED STRUCTURES IN ORDER TO FACILITATE THESE REDUCTIONS. UNIONS ARE BEING CONSULTED ON ALL CHANGES. STAFF IN AFFECTED AREAS ARE AWARE OF THE SITUATION AND WILL BE FORMALLY ADVISED OF THEIR EXCESS STATUS WHEN THE NEW ARRANGEMENTS ARE FINALISED AND IMPLEMENTED.

5316

APPENDIX 3:

(Incorporated in Hansard on 26 November 1991 at page 4871)

MINISTER FOR HEALTH
QUESTION TAKEN ON NOTICE ON
21 NOVEMBER 1991

ASKED THE MINISTER FOR HEALTH:

CAN THE MINISTER MIINISTERINFORMTHE ASSEMBLY
WHETHER THE MUCH NEEDED ADOLESCENT WARD,

WHICH IS BEING NEGOTIATED WITH IN TH. E HOSPITAL REDEVELOPMENT," WILL GO AHEAD AND IF NOT, WHY NOT?

MR BERRY - THE ANSWER TO MS MAHERs
QUESTION IS;
I REGRET THAT PROVISION OF AN ADOLESCENT
WARD WILL NOT BE POSSIBLE IN--,THE, NEAR
FUTURE.
AS IBS MAHER IS AWARE THE PROVISION OF
TIES FORADOLESCENTS WAS DISCUSSED AT
GREAT LENGTH BY THE PAEDIATRIC WORKING
PARTY-ASSOCIATED WITH,THE REDEVELOPMENT -
OE WODEN VALLEY HOSPITAL: WHILE THEY
SUPPORT THE CONCEPT OF WHITTLE
...

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ACCORDINGLY AN ADOLESCENT WARD HAS NOT BEEN INCLUDED IN THE BRIEF FOR THE PERMANENT PAEDIATRIC UNIT WHICH WILL COMMENCE CONSTRUCTION IN FEBRUARY 1992.

FOLLOWING THE CONCLUSION OF THE REFURBISHMENT, OR AT THE TIME THE REHABILITATION AND AGED CARE SERVICE IS RELOCATED, THE MATTER WILL BE RECONSIDERED.

5318

APPENDIX 4:
(Incorporated in Hansard on 27 November 1991 at page 5031)

THE ANGLICAN DIOCESE OF CANBERRA AND GOULBURN

THE DIOCESAN REGISTRY, GAMIEST HOUSE,
CONSTITUTION AVENUE, REID, A.C.T.

Please address all correspondence to:

Please address

P.O. BOX 1981,

all correspondence CANBERRA, A.C.T. 26(11
to "The Registrar" Telephone: (062) 48 081 l

27th February, 1991.

Dr Hector Kinloch, MLA, Executive Deputy for the Arts, -GP0 Box 1020, CANBERRA. A.C.T. 2601.

Dear Dr Kinloch,

I refer to your note of 19th February to Bishop Dowling with which you enclosed copies of correspondence between yourself and Pastor Shayne Cunningham on newspaper reports about the Assembly committee on prostitution.

Bishop Ian George made a personal submission to the Select Committee and Bishop Dowling therefore asked him to respond to your request. That response, and a copy ofhis submission, is enclosed, As far as we know, our Synod has not passed a resolution on the subject of prostitution. It is therefore difficult to give the Churchs view on the subject.

Yours sincerely,

(Miss L. Fell)

Bishop’s Secretary

5319

ANGLICAN CHURCH OF AUSTRALIA

DIOCESE OF CANBERRA & GOULBURN

S U B M I S S I 0 N

to the ACT Legislative Assembly
Select Committee on HIV, Illegal Drugs and Prostitution

INTRODUCTION

1. I am grateful for the opportunity to present this submission. I must emphasise that it is a personal response. The Anglican Church does not have an official position.

2. As the focus of the Committees concern seems to be prostitution (per statement authorised by Mr Moore, MLA, as Chairman, referred to hereafter as The. Statement), this submission will first focus on that issue.

THE JUDAEO-CHRISTIAN TRADITION

3. The Judaeo-Christian tradition has seen prostitution as of two kinds: (a) secular; (b) cult prostitution.

To take (b) first, it appears that upon entry into Palestine (then known as Canaan) in about 1250 BC, the Hebrew people found themselves in the midst of a highlydeveloped system .of fertility cults (common to the middle east) in which the success of the agricultural economy was believed to be dependent upon the satisfaction of gods responsible for the fertility of .the crops. By the processes of sympathetic magic it.was,adcepted that believers could influence those gods. The use of sexual intercourse, as a natural expression of human fertility, was partof that. Both male and female prostitutes were available in the temples for this purpose.

Much prophetic condemnation is delivered against these practices, regarded as idolatrous.

Secular prostitution (a), is recognised .as a common phenomenon in both the old and new testament periods and is sometimes tolerated, sometimes condemned. There is a strong and consistent line of thinking declaring .sexual relationships of this kind as unacceptable for those faithful to the God of Israel.

5320

2.

The strongest statement occurs in 1 Corinthians 6, where St Paul declares that be who joins himself to a prostitute becomes one body with her (1 Car. 6:16). 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.

favorably. There are, however, other reasons for which the church finds prostitution difficult. One definition is sexual intercourse from which ensues no binding or enduring relationship (OCR. Haab: The Interpreters Dictionary of the Bible, Abingdon, 1962, X101.3; p.932).

The word prostitution comes from the Latin to stand in place of, on behalf,of. It is thus seen as a substitute for the realthing, a committed relationship between a man and a woman (monogamy and its necessary equation of exclusivity in sex and love as expressed by The Statement) as envisaged. by the Marriage Act 1961 (s.ec.46[11).

It would be the churchs argument that such sexual relationships always dehumanise both parties. The act of love, as it has often been called, is properly conducted in an environment of commitment and love. Many Christians, therefore, would condemn prostitution of all kinds.

5. However, the Anglican Church, among others, recognises that this world is not yet.made perfect-and in this interim period, many aspects of life and huduanrelationships are far from what we desire and,hope for.

6: The church also recognises, the. deep aid mysterious origins of the relationships between the sexes: Im spite of centuries of profound specirlation.w"d. more than a century of careful scientific investigation ,we seem no closer to &-real understanding of tie psychology of sexuality, especially in its aberrant phases.

There is; however, ample evidence that human sexuality can be a,.desperately explosive influence iii the community

5321

and one of the traditional safety valves has been prostitution. This has been the case for centuries for men and, with the more open and aggressive roles for women emerging in our society, will no doubt be more so for women in the future.

MANAGING PROSTITUTION

7. Once prostitution is recognised as a necessary evil in society, then the nature of its exercise becomes the primary concern. The church then directs its focus to the effects upon the people concerned and its impact upon the general community.

The Statement places great emphasis upon the rights of sex workers. That may well be the jargon of the day and yet another part of -the demand for rights we hear from all sections of the community. No doubt the Committee will look.closely at the equivalent responsibilities those who claim rights can be expected to bear.

8. The church would prefer to see the role of each individual in the light of Christian understandings of the uniqueness of .each person, their sacredness in Gods eyes and our responsibility to treat each one as an equal.

9. It is clear that in the past many women have been forced into prostitution by economic necessity. In a time of recession, people in difficult economic circumstances (like single mothers with children) are undoubtedly vulnerable to this kind of pressure., It is good to read of the Committees concern to ensure that such oppression will not continue, and retraining schemes, must be made available to,those who wish to give up prostitution.

10. It is the problem of, AIDS which has caused this Select Committee to be set up: Hence the health of prostitutes and clients is of vital importance .to the whole community. There must be-ways of ensuring safe sex and regular medical inspection.

11. The safety of prostitutes and confidentiality of their relationships must be ensured for the benefit of the whole community. Any standover tactics mist be eliminated, including those of tradesmen (The Statement, p.3).

5322

PROSTITUTION AND CASINOS

12. The Committee and the Government must be made aware that most of the same considerations apply to the question of prostitution as to the question of a casino in-Canberra. In particular, the presence of organised crime in both spheres has been well documented for decades. Indeed, there is a long .and important link between casinos and prostitution which must be carefully policed and prevented.

UNTENABLE PROPOSITIONS

13. The Statement makes a numbers generalisations which I believe to be untenable. It is not true to say the issue of the rights of all workers in the sex industry is the single most import ant.concern in any examination of the question of the reform of the prostitution laws in the Territory (par).

However important the place of every individual person may be in society, there is a corresponding and balancing

. concern, for the whole community to be considered also.

The Statement falls into the common prevailing trap that
the individuals rights are prior in every situation.
To follow this to its logical conclusion would mean anarchy.

14. Again, The Statement says (p.4) ,The majority of people do not support the enforcement of moral values by criminal penalties: This is sip-ly not true. The entire AngloAus.tralia.n. legal system: is based upon the,jurisprudence of" the western Christian tradition: The community acts to prevent tbeft,of property, defamation of a. persons name,,sexua:l or personal abuse by word ;or act, danger to life, and so on. At some times prostitution has been regarded as,a degrading form of-activity for human beings to enter into. Many would, still regard it as such. The Church.would regard it as sin.. But the church has no right to impose the standard expected of its members (who often-fail to meet them anti so are in need of Gods
forgiveness) upon the whole community.. However, the arch does ralse.,the question of what kind of community is to have. And, if a more .permissive general approach is to be taken, asks many questions about how it is to be managed.

15. The Statement says (p.5) the views of the majority of the community would have to be ignored. When and how was any survey made to support such a generalisation?

THE POLICE AND LAW ENFORCEMENT

16. This brings us to the role of the police. When the law is seen as an ass and unenforceable it must be changed.

The role of the police at the moment is clearly totally unsatisfactory. While the AFP has an excellent reputation for probity, there is, at the moment, alarming potential for corruption and standover tactics in this area.

The Winchester Inquest has raised public anxiety about the AFP to a new level. It is vital that the police force are above reproach.

17. It is clear that the law is unsatisfactory when prostitution is legal and associated activities are illegal:

FURTHER QUESTIONS FOR INVESTIGATION

18. There is a number of other questions to which The Statement makes little or no reference.

(a) there is little or no consideration of male or homosexual prostitution
(b) there is no consideration of child prostitution
(c) there is no consideration of the connection between pornography and sexual expression in the community
(d) although it speaks of the importance of social and attitudinal change, it says nothing, about how this might be effected, especially in attitudes to the saleability of women as sex objects and the stigma attached to such activities.

DRUGS

19. The Statement is disturbing when it says the use of hard drugs appears to be rare among Canberras sex workers, and the majority of brothels in this city do not employ workers with a drug habit.

In itself the comment is cursory and raises many anxieties. The /Committee does not appear to have done its homework in this vast area., It is well known that many senior

Canberra people use hard drugs for recreational purposes. It is common practice for drugs to be

used in association with sexual intercourse across all sections of our society. The Committee must make up its mind on the vexed questions of legalising, decriminalising or enforcement of current-drug legislation to make their report of any value.

HIV

20. To -say that there is no basis for therefor that sex workers are instrumental in transmitting ;HIV is not very responsible (p.6). The only safe sex is-total abstention or perhaps an. exclusive monogamous sexual relationship. Condoms do not ensure safe sex. They.only improve the odds. Oralsex is not necessarily safe sex. The Committee will have to approach this area more carefully and substantiate their arguments with a great deal of research.

CONCLUSION -

21. The church regards prostitution as a social evil because it dehumanises all involved.

22., The church recognises that as a social eviller may nevertheless be the lesser of evils in relation to established reports on,sexualviolence in society, etc.

23. As &.necessary evil it should be accepted and controlled.

24. That control should be by way of decriminalisation not legislation.

25. Canberra should never recognise-prostitution -as a respectable part of the hospitality industry.

26. The ACT Government should recognisethe links between, casinos, prostitution and organised crime.

27. The role of drugs in prostitution should be carefully investigated in Australia and overseas.

28. Careful,research on, the passing of various STDsefor, including RIV,.should preeede.the issuing of any report of the Committee.

29. The. Committee must engage in a .thorough investigation of Canberra community Attitudes before releasing -any report

7.

30. The ACT Government should give serious thought to both public debate and Government consideration of how the ACT electorate is to decide what kind of community is wanted by the people here. The Committees approach may be too ad hoc to be useful.

The Right Revd IAN GEORGE
A.M., LL.B.ittee., Md.., Do.
Assistant Bishop of Canberra & Goulburn

January 1991

5326

28 November 1991

ARCHBISHOPS HOUSE
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CANBERRA, A.C.T. 2601

TEL: (062) 48 6411

25 February 1991

Dr Hector Rinloch.MLA
Executive Deputy .for the Arts
Legislative Assembly for the
Australian capital Territory
GPO Box 1020
CANBZR&R ACT 201

Dear Hector, -

Thank you for your note of 19 February concerning the letter you received from Pastor- Shaven Cunningham. I enclose a copy of the submission that Bishop P Power made to the Committee on the question of prostitution.

As you will see, the Catholic understanding of prostitution as immoral and reprehensible is not at issue. How it .is to be approached ire the public forum and in legislation is however indeed a difficult issue!

- with every best wish. ,

Yours sincerely;

Francis P. Carroll
Archbishop of Canberra and Goulburn

5327

SUBMISSION TO THE SELECT COMMITTEE ON HIV ILLEGAL DRUGS

AND PROSTITUTION - LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

GENERAL COMMENTS

Respect for the dignity of the human person must be the primary consideration in the matter under discussion. Whether or not prostitution is the worlds oldest profession, it is a clear case of exploitation of the women (and of the men) involved. Consideration needs to be given to the dignity of the prostitute, of the client, and of other people affected by prostitution. Governments have a duty to protect and promote the well-being of their citizens and of the environment in which they live.

In other words, the civil law has a duty to protect individual rights and to promote the common good. 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.

The terms of reference at times adopt a stance which would say that immoral behaviour . is of no concern to Government. Where does that leave us with regard to murder, rape, stealing, fraud or the exploitation of children?

The Catholic Church has always condemned the immorality of prostitution because of the illicit sexual activity, its violence to marriage, and more particularly because of the degradation, exploitation and attack on the dignity of the persons involved. Historically, the Catholic church has tried to do what is possible to help prostitutes to escape from their enslavement and to be rehabilitated. Currently, there are two Good Shepherd Sisters working among prostitutes at Kings Cross in Sydney.

It seems that up until recent. years, prostitution was not widely evident in Canberra, and that currently it is confined to Fyshwick which appears to have "boomed" as the centre for pornographic videos arid other "adult" products.

Canberra would be done a great disservice if any legislation, were to appear -to be condoning .prostitution and encouraging its spread. At least it appears to be contained at the moment. It would surely be a backward step for the people of Canberra if they were to be subjected to soliciting on the. streets as is so evident in parts of Sydney and

Melbourne. It is surely in the interests of the people of Canberra at least to restrict the practice of prostitution to its present confines and -to deny it any respectability which would lead to its spread. To suggest that. prostitution should be an extension of the hospitality industry is to invite the kind of visitors that Canberra can do without.

In September 1984 the New South Wales Catholic Social Welfare Committee raised the following points in a submission to the Select Committee of the NSW Legislative

Assembly on Prostitution. they are relevant to the ACT in 1992. The submission warned against "legalization" of prostitution on three grounds:

"Such legislation will institutionalise ash 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.

"Such legislation would be bad, law.., Authorities will be unable adequately to regulate zoning, licensing of premises and health regulations. Evidence suggests that legislation would apply effectively only to ,a particular group of prostitutes. .

"Legislating for.prostitution will appear to many in the community that because it is legal it is right. We find this unacceptable."

SPECIFIC COMMENTS

1. "The issue of the rights of all workers ,4n the sex industry is the single most important concern in any, examination of the question of the reform of the prostitution laws in reaffirm." (pace 1)

The rest, of tie .people. in. the community live rights as we lurid the common good of the ,community needs to be considered as of paramount;isaportafice.

2 The second sentence. pf the second paragraph on page 1 suggests th at positive changes in .the law will mean regarding prostitution in a more tolerant light. This is not necessarily s o. It could be metre positive and enlightened to try to bring.. about: aonditiors whereby, women (and men) find it necessary to degrade themselves as prostitutes.

3. The distinction towards the end. of per, one, between. decriminalization and legalisation is a good one. For reasons as noted earlier,. the path of .decriminalisation appears. to be the better course to follow. : ,Otherwise the way is open to pro automation becoming, legal;. respectable and more widespread.

5329

4. "Whatever specific form of law reform is adopted, it would involve some sort of. state control, especially regarding the involvement of minors and the use of violence and coercion. It is relevant to view the law reform in the context of improving the,status of women." (page 2)

Certainly every effort must be made to eliminate the exploitation of minors. Attention should be given to the status of males involved in prostitution as well as that of women.

5. "The orthodox position in legal theory has for several centuries been liberal, allowing the individual to make his or her own moral decisions, provided these do not harm society."

Whether prostitution openly practised and seemingly permitted by the law is harmful to society is the very point in question. What is the possibility of harm to the prostitute and to the client especially in the context of spreading disease as well as undermining personal dignity? What is the impact on neighbours, people going about their own business, impressionable young people?

6. The first paragraph on page 3 stresses the importance of allowing women to escape from the shackles of prostitution. Particularly in these difficult economic times, it is not hard to imagine that some prostitutes could be almost forced to continue for fear of loss of. livelihood for themselves and their families.

7. To suggest as does the second paragraph on page 3 that prostitution should become more respectable would be a backward step. Seeing it as part of the hospitality industry is d railing both to potential visitors to Canberra and to he host city.

8. "It is apparent that the law reflects attitudes no longer held by the community and this obsolete legislation should be updated." (1st paragraph page 4)

Communities do not hold attitudes; people do. The people who make up the community hold a great variety of attitudes. It is not a ,question of whether a law is obsolete but whether it is a good law or a bad law.

9. "The majority of people do not support the enforcement of moral values by criminal penalties, whatever their view on the particular moral question." (last paragraph page 4)

Does that mean people have the right to steal, murder and rape without fear of penalty?

10. The first paragraph on page 7 is a very good one in that it clearly points up the exploitation of women as prostitutes. This can happen even more evidently when prostitution becomes respectable and an attractive career choice.

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5330

However, what is proposed so cogently in paragraph one .is almost contradicted in paragraph four with a number of confused and incorrect arguments.

The third paragraph on that same page assumes there are no victims, but in the first paragraph it has been clearly stated that the prostitute is very much a victim. So too can be her customers .

11. "In fact, most people, whatever their views on prostitution specifically, do not support the enforcement of moral values by criminal penalties" (1st sentence page 8)

Again, it can be asked which moral values are being referred to.

12. "The rights ,of all parties should be examined." (2nd paragraph, page 8)

Certainly the rights of the general public should not be overlooked. It could be questioned whether prostitutes should be afforded status in society. Certainly their . dignity and status as persons should be upheld, but their status as prostitutes should hardly be promoted.

13. The last paragraph on page 8 examines the juxtaposition of politics and morality: Surely the two areas are not as far removed as the paper at times tries to suggest. Morality .is about what we ought to do ("Conformity to the rules of right conduct" Macquarie Dictionary). Politics is about what we should do for the good of society.

CONCLUDING COMMENTS

The complexity of the questions, before the Select Committee is recognized. The Legislative Assembly is to be commended for its efforts to consult the members of the community inthis delicate area.

It is to be hoped that any future legislation will not, result in prostitution being more widely, and more openly conducted in Canberra. Certainly it would be most undesirable for street prostitution to become part of the life of Canberra.

Finally whatever can be done by way of welfare resources, and counselling should be made available to enable prostitutes to change their way of life if that is what they wish to do.

Patrick P. Power

30 January 1991

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5331