DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

4 December 1991

Wednesday, 4 December 1991

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

COMMERCIAL TENANCIES BILL 1991

MR JENSEN (10.31): I present the Commercial Tenancies Bill 1991. I move:

That this Bill be agreed to in principle.

The legislation I have tabled today is the culmination of a long-term commitment by the Residents Rally, given during the election campaign and reiterated many times during the life of this Assembly. In tabling this Bill, I intend to look at the issues in the following order: Why we need the legislation; some history related to the proposals; and the main points of the legislation.

Firstly, why do we need legislation in this area of private rights and obligations and contracts? There are some people in the community who will ask this question many times. Some of these people will have the base motive of trying to maintain their own ultraprivileged financial position and the status quo. It is not in the nature of the resilient small business community to tell us all their troubles; nor is it in their interests, as the ears of the barons are listening and the time of reckoning is due to arrive, with the final sword stroke being in the landlord's hands when it is time for renewal of lease or review of the current rental.

Other States have seen fit to legislate in this very difficult area. For example, Western Australia, Victoria and Queensland, as well as South Australia, have all attempted to deal with this problem by specific legislation, with varying degrees of success. None of these States has gone sufficiently far in addressing the underlying problems: The illusory nature of tenants' rights - they cannot complain because they run the risk of the loss of their livelihood; the distortions produced in the calculation of fair market rentals, where only some commercial tenancies are included in the calculation; the introduction of legislation to provide for tenants who in future enter into leases but abandon all those currently in business.

Let us consider the argument by the landlord sector that this legislation will be bad for Canberra and that it will kill investment. How wrong they are. No, it is worse than that. It is a statement that is made to cover up the more likely impact that this legislation may well be good for Canberra - in fact, will be good for Canberra. It will be good for those who actively use real estate to create activity and employment. It will be good for those who are the users of the system. I am referring, of course, to the consumers, who bear the brunt of excessive rentals and business bankruptcies. Finally, and probably very strangely, it will also be good for business.

It is quite possible that the improved predictable nature of tenancies in Canberra will actually attract business from out of town. It will attract those businesses who want to set up long-term enterprises in Canberra, where they can exercise their speciality, invest heavily in the premises they rent, and build up local goodwill, secure in the knowledge that while doing the right thing they will not be capriciously evicted or ripped off by the greed of a few who would wish to profit from a business without putting in any real contribution. The opportunity for landlords to do this under the existing lack of regulation is available, make no mistake. The opportunity is all too often taken.

The needs of tenants are really very simple: Fairness, reasonable behaviour on the part of the landlord, and an end to the one-way bargain. While we here today are considering the needs of the tenants, the Australian Trade Practices Commission is considering the extension of the harsh and unconscionable behaviour provisions of the Trade Practices Act to commercial tenancy transactions, particularly commercial tenancy arrangements, which were identified in the Beddall report on small business in Australia by a House of Representatives standing committee, chaired by David Beddall, now the Federal Minister responsible for this area.

The problems of shopping centre leases were also identified by Mr Beddall in the same report. We understand that there may well be some reservations within the Trade Practices Commission about the adequacy of these general provisions to deal with the problem in this way.

The better business climate created by this Bill will be likely to attract business to Canberra, with an increasing demand for tenancy space - a boon to landlords. Unfortunately, landlords at the moment hold all the cards in this game, despite the current recession in Australia. A landlord will invariably find a willing tenant to fill the space, particularly in high traffic retail areas. However, the history of such a change is one of initial enthusiasm, followed by the harsh realities of business in a retail market, generally acknowledged as being overshopped in Canberra.

The need for legislation to control this arrangement between tenants and the landlord sector was identified in the early 1980s. This followed the preparation of an ACT draft business leases review ordinance. Who can forget the belated way in which Mr Whalan, then on his way out of government and out of the Assembly, tabled a partly doctored version of this legislation? It was clear at the time that the ALP were prepared to consider some regulation of this industry sector by legislation, despite recent moves by the current Attorney-General during Canberra Business Week to accept a code of conduct. The Bill we have before us today is much more professional than the badly edited version put up by Mr Whalan.

Members will no doubt remember the Nolan report - the report of a select committee set up by a Rally motion in the very early days of this Assembly. The Nolan report recommended that there be changes made, with the introduction of a code of conduct, backed by fair trading legislation, with the Government to legislate within six months if the parties had not reached agreement. That was some time ago; we still have not achieved that. I supported that recommendation because it was the only way to obtain a unanimous report, which was seen as being important at that time in the life of the Assembly if the committee system was to be taken seriously. However, we did make a start on the process, and this Bill is the culmination of that process.

The problem has been a burning issue between landlords and tenants for many years, as many of the latter struggle to obtain more than just their rent payments from the business. Stories of lost homes and the "take it or leave it" attitude of some members of the landlord sector were heard in camera during our hearings. Despite efforts to denigrate the survey done by the Rally, many now accept that there is a problem. While the Nolan report spoke about the introduction of a code of conduct, it would seem that recent attempts to establish this process have failed. One has to wonder whether the current process in the ACT, having had one false start, is needed or on the track.

The attempts to obtain a meaningful code in New South Wales have failed. I still have a copy of a document given to the select committee by a member of the staff of the New South Wales Government Minister responsible for this area, Mr Gerry Peacocke. At the time we were told that the code was imminent. We are still waiting. It would seem that it is dead and buried for the moment in New South Wales.

Might I draw members' attention to a letter from the Consumer Affairs Commissioner in New South Wales in response to my request for a copy of the regulatory impact statement and exposure draft of the retail tenancy leases code of practice. It is very illuminating. The letter is dated 4 October and is addressed to me as deputy leader of the Residents Rally. It is signed by Mr John Holloway, Commissioner for Consumer Affairs, and it says in part:

> Since publication of the above document during May this year, the Department has received over 40 submissions which raise a number of issues about the interpretation and impact of some provisions of the code.

It goes on:

> As a result, the Minister has directed the Department to prepare a paper on future options for fair retail shop leasing regulation.

We are still trying to achieve this code of conduct, which everyone said was imminent some months ago - some years ago, almost. Mr Speaker, I seek leave to table a copy of that letter and to have it incorporated in *Hansard.*

Leave granted.

Letter incorporated at Appendix 4.

MR JENSEN: It is now common knowledge that this attempt to establish a mandatory code in New South Wales has failed. The key to any code of conduct is the ability to make it work, especially if it is proposed to be a voluntary arrangement; that is, a tenant or a landlord can choose to remain outside the process, with the latter not being required to be registered. It would seem that it is now up to this Assembly to take up the challenge offered to us all by David Beddall's report, which also flagged the problem.

While government regulation of business is to be avoided wherever possible, it is needed to provide some certainty to all groups in this equation. These groups are important to the health of small business, and it is only when the playing field is level that equity will return to this arrangement. It seems that the only realistic way is legislation; hence this Bill today. It is important to reduce the amount of pressure on small business men and women, who seek only to obtain a fair return for their investment, a return that the landlord sector demand for themselves, often at the expense of the health, welfare and sanity of small business men and women - the backbone of the commercial and retail sector in any community.

Let me now turn to some of the substantive proposals in the Bill, which will now be available for comment from all those groups who have an interest in the issue. Firstly, in relation to application, the Bill is designed to apply to all commercial tenancies, which includes retail tenancies, of course. Definitions of commercial and retail tenancies are contained in the Bill, and it is appropriate to read them into the record today. Firstly, "commercial premises" is defined as:

> premises used or intended to be used, in whole or in part, for carrying on any profession, trade or business, and includes retail premises;

"Retail premises" is defined as:

> premises used or intended to be used, in whole or in part, for carrying on a business involving the sale or hire of goods by retail or the retail provision of services (whether or not that business is carried on with a view to profit) ...

This definition of retail premises has some exclusions which relate mainly to financial services and offices where surgery or professional services are the principal business. Examples of businesses not covered by these exemptions are chiropractors, architects, consulting engineers, dentists, legal practitioners, business consultants, real estate agents and tax agents, while barbers, beauticians, hairdressers, optometrists and pharmacists are covered by the legislation. We have used the lists of inclusions and exclusions from the draft New South Wales code I have already referred to.

Legislation in other States applies only to retail; but there will always be situations where items such as operating expenses of a building will, or at least should, be applied equally to all tenants in the building. These provisions are those relating to the right to renew when a tenant's site's specific goodwill is important to a retailer but only marginal to other service tenancies. The provisions relating to disclosure statements, where once again the retailer is in a very vulnerable position, if unexpected competition is imposed by the decision of a landlord, are also important. They are very important when a tenant is deciding whether to renew or seek a renewal of the lease.

In relation to excessive rentals, this Bill sets out the provisions which deal with the imposition of excessive rentals, that is, rentals that are more than a prudent business person would pay for premises. There is no attempt to protect a business person from his own folly in paying more than the proper rental, if that is the agreement. However, some of the provisions will alleviate the opportunity to have excessive rentals forced onto an unwilling tenant, who may well be forced to accept the arrangement if he wants to renew or continue, or face the loss of his home. These provisions are not entirely new; we have drawn on some provisions that already exist in other States.

The right to seek a renewal - and I emphasise "right" - is probably the most controversial of all the provisions, but the heading I have used provides a real clue. It is the provision which makes all other provisions workable. It provides a real opportunity for the tenant to insist on the rights given in the lease and rights given elsewhere in the Bill.

Consider the options for a tenant who, faced with a lease about to expire, is brought into a bona fide dispute with the landlord over some other aspects of the lease agreement. The tenant's rights become illusory because to insist on those rights is to lose the business altogether when the lease is not renewed. The mere implied threat of such a possibility is enough to make the tenant desist from complaining and swallow the bitter pill of an oppressive lease condition or excessive rent rises.

Our landlord sector has argued strongly for the right to renew their Crown leases, while the Liberal Party has reiterated their policy of leases in perpetuity. There are no suggestions of payment for the increased occupancy rights under Crown lease here. No, the Liberals would have to be consistent to allow very limited rights or at least the opportunity to be offered a renewal granted under this Bill. The Bill also provides for the tenant at least to be given an option to renew, with the landlord having the right not to make an offer if he proposes to change the mix in the centre. However, the tenant is at least to be offered some form of compensation for his part of the goodwill of the business - not all, of course, but that part which can be readily identified. The provisions for this are in clause 8 of the Bill.

The rent calculation provisions provide for increases in accordance with a number of options: Gross rental, where all operating expenses are paid by the landlord; net rental where operating expenses are divided equally between landlord and tenant; and net rental where the tenant pays all the operating expenses. I give you one example of an inequitable situation where a restaurant in Civic is required to pay the total amount of excess water for the whole building. I suggest that that is totally inequitable and needs to be looked at. Of course, for the tenant to get out of that arrangement, he would actually end up losing his business.

The rental provisions appear in clause 9. There is also a provision in subclause 11(7) to remove any ratchet clause; this allows rent to be reduced if the market rent actually goes down. There is always that possibility. There is also a requirement for operating expenses to be clearly specified and audited statements to be provided to tenants, with a requirement for both parties to recover any adjustments in a court of competent jurisdiction, if necessary.

The Bill also provides certain rights to both parties when an assignment of the lease is sought. However, the landlord also has a right to refuse an assignment, but only on good grounds. We have also provided for better control over bonds by making use of the facilities already established by the Rental Bond Board. A landlord can seek only two months' rent, which can also be made by bank guarantee. In such circumstances, there is no requirement to lodge the bond with the board.

Other areas of concern in the past, such as the requirement for key money to obtain a lease or a lease renewal, are outlawed by this legislation. All parties are required to pay their costs. The only exception is the requirement for the tenant to pay any reasonable costs incurred by a tenant who requires the assignment of a lease. Provision for a disclosure statement is very important, particularly for retail tenants, and we have included as a schedule the format used in Victoria.

This brings me to the final and very important section of the Bill, which deals with the settlement of disputes. It is not a large section, but I think it is a very important one. We have taken the course, which is becoming much more popular, is less confrontationist, and is used for settling residential tenancy disputes, of mediation in the first instance. The Minister or his delegate will be required to approve the appointment of mediators, and the Conflict Resolution Service that already operates in a number of areas, including the residential rental bond area, will be the obvious one in the ACT.

If the mediator cannot resolve a dispute, then the next stage is for the issue to be resolved under the provisions of the Commercial Arbitration Act of 1986, the parties paying any costs. The use of independent valuers is still required for any disputes on market rentals, and once again both parties will be required to pay their own costs, as is the case at the moment.

My closing remarks refer to the fact that the Bill does not create any retrospectivity by applying to any act or omission before the commencement of the Act, but the Act will apply to leases entered into before or after the commencement of this Act. The removal of certain practices that have been in place for some time is seen as an important protection for long-suffering small business people and will take effect from the day this Bill becomes law.

This Bill goes a long way towards helping to resolve some of the long-standing problems in this industry. We believe that it is a more effective way to resolve the issue than the continuance of the unequal process where the landlord sector holds all the aces and the tenant is required to comply. A code of conduct does not seem possible in the current climate, or even in the foreseeable future. There are many tenants out there who are hurting now and cannot wait for what seems to us to be a continued prolonging of the debate in an attempt to reach agreement on this important area.

I commend the Bill to the house and the community, and will be looking forward to comments from all sectors of the industry. I am sure that some parties will not necessarily agree with all of the proposals, but the time for proper regulation is long overdue.

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

RATES AND LAND TAX (AMENDMENT) BILL (NO. 4) 1991

MR COLLAERY (10.51): I present the Rates and Land Tax (Amendment) Bill (No. 4) 1991. I move:

That this Bill be agreed to in principle.

This amendment seeks to repeal that part of the Rates and Land Tax (Amendment) Act (No. 3) 1991 which took effect upon notification in the *Gazette* on 2 October 1991. The Bill does not purport to amend provisions that are not germane to the purpose of making residential properties exempt from land tax. Clause 7 of the Bill repeals, as a consequential measure, section 10 of the Rates and Land Tax (Amendment) Act (No. 3) 1991, which dealt with liability for land tax during the year 1991-92 as a consequence of the amendments made to that Act.

I stress that this Bill now being presented is not expressed to apply retrospectively from 2 October 1991, the date the Rates and Land Tax (Amendment) Act (No. 3) 1991 took effect. This avoids any suggestion that, contrary to subsection 65(1) of the Australian Capital Territory (Self-Government) Act 1988 of the Commonwealth and to standing order 200 of this Assembly, the Bill might have the effect of charging public money of the Territory. The amendment therefore amends the principal legislation, namely, the Rates and Land Tax Act 1926, which has traditionally exempted residential properties from the incidence of land tax.

When the Rates and Land Tax (Amendment) Bill (No. 3) was passed in this Assembly some weeks ago, it secured passage against the opposition of the Residents Rally. When the Government first proposed the land tax the Rally consistently called for full public consultation. We posed questions in question time about unintended effects and we called for an examination of those unintended effects, particularly those on tenants, both by way of rent increases and by the effect on the rental market by way of vacancy rates.

We remind the Follett Government that when the Queensland Government recently introduced a land tax on commercial landlords it introduced correlative legislation to prevent the tax passing on to tenants. Regrettably, the Follett Government did not introduce in its legislation any amendments to cushion the effect of its land tax on residential tenants. Despite this, the Government pressed ahead with the amendment. Regrettably, the Rally's caution on this matter has been proven correct. There have been complaints that there is no pro rata relief, so that landlords are required to pay the complete sum for a broken period.

It has also been pointed out by other landlords that they do not fit the ideological category of the landlord class which the Labor Left is happy to tax from a zero valuation point. For instance, a superannuant investing a $50,000 lump sum in a suburban home and at the same time borrowing $70,000 at 15.75 per cent is required to pay approximately $203 interest per week. After addition of rates, outgoings and land tax, the investment margin, even on the current rental market, is significantly reduced.

I invite members to drive into some of the traditional investment suburbs of Canberra, that is, Campbell, Griffith and Narrabundah, particularly La Perouse Street, where they will see investment homes for sale up and down those suburbs. The effect of this tax has been to push a number of small investors into selling because they can gain more by parking their money in a non-productive investment account. Only a few days ago the Real Estate Institute stated that investors comprised 26 per cent of residential sales on the Canberra market.

It is doubly unfortunate for Canberra, where the rental market is so tight and current vacancy levels are less than one per cent, that landlord investment may be impeded in its effect of easing the rental market. That the Follett Government land tax should needlessly antagonise the market is unfortunate. Whilst we concede that there may be some overreaction by investors, we stress that this is not a bullish market. Canberra investors are traditionally cautious and easily put off by target politics.

The Rally believes that there is nothing innately wrong in a superannuated Territory resident acquiring a second residence as a hedge against inflation and lower indexation of superannuation payments. Generally speaking, Territory landlords are not exploitive, and measures to deal with those who may be were recently introduced in amendments pressed by the Rally and the Alliance in government by way of the creation of the Rental Bond Board and the referral of the landlord and tenancy legislation to the community law reform group. There is, therefore, a strong basis for setting a value limit for the imposition of such a tax. Suggestions are that it be matched to the limit set in New South Wales and/or at a ceiling of $160,000 value.

We leave this proposed repeal amendment on the floor and await moves by both the Government and the Liberal Party to come to terms on this issue. The Rally would be prepared to support reintroduction of a land tax based on a sensible value ceiling, an equitable collection system, and the maintenance of current discretionary rulings by the commissioner for those forced to pay rent by reason of employment outside the Territory, together with the statutory exemption moved by the Rally during passage of the Bill for those on three years and less service abroad.

We believe that the tax, as introduced, was unsophisticated. It was an ideological knee-jerk and the Government now has sufficient reaction, the economic advising resources, the capacity and, we hope, the good grace to bring the tax, if repealed, back to this Assembly in a workable, non-ideological and acceptable form. We call upon the Liberal Party to assist us in that measure.

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

PROSTITUTION BILL 1991
Detail Stage

Clause 1

Consideration resumed from 27 November 1991.

MRS NOLAN (10.58): I have put forward an amendment in relation to clause 1. I understand that Mr Moore has put forward some amendments that will remove the licensing board from this Bill, and I will be withdrawing my amendment as I believe that the Bill now relates only to prostitution rather than to brothels and escort agencies.

Clause agreed to.

Clause 2

MR MOORE (10.59): Following the in-principle debate, a number of people expressed particular concerns, all with reference to the licensing board. In a series of negotiations with members following that debate, I agreed that it would be an appropriate methodology to remove the licensing board and go much more for a complete decriminalisation model.

I point out that, in spite of a number of attempts to approach the Labor Party, they have never been prepared to discuss this Bill with me, other than to say something along the lines of, "We think it should go to a law reform committee". They have had eight months to consider this and are making this decision on the basis that there is an election coming up. I find it an absolutely appalling approach and a reflection of where they are going.

Mr Berry: Nobody else in here would do that.

MR MOORE: Mr Berry interjects, "No-one else in here would do that". I think they could take a ticket out of the Liberals' book. They have a policy and they are sticking by that policy. They have been prepared to make compromises and to talk to me about problems with the Bill and to discuss it.

This series of amendments seeks to remove the licensing board from the original Bill - the aspect of the Bill that the Rally found difficult. I believe that Hector Kinloch's words were, "We cannot be seen to condone that licensing board". Up to six or seven minutes ago - two minutes before Mr Collaery's last speech - the best I knew was that the Rally were supporting the new form of the Bill. Now I simply do not know.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.01): Given that tirade against the Labor Party, it is necessary for the Labor Party to again state its position. The Assembly has voted in principle in support of this Bill, which I think indicates that there is general support for reform of prostitution law in this Territory. That is certainly the position of the Australian Labor Party.

Our problem, as stated last week, is that this is a very sensitive and difficult area of law reform. While the Assembly committee had said that changes were needed, we were not confident that the precise details of the model in the Prostitution Bill as presented were appropriate. We thought people should step back a little and let a degree of consultation and discussion take place about the forms of the model.

We are reinforced in that position by what has happened in the period since the debate last week. Mr Moore has now proposed a raft of amendments which basically go 180 degrees. We were confronted last week with a model that was very much the regulatory model, very much the state intervening, establishing a brothel licensing board and brothel licences - that whole very regulatory model which is in essence the Victorian style of approach. There have been some concerns expressed in Victoria that it would perhaps be better to go to a deregulatory model. Indeed, Labor members had indicated to Mr Moore that, on balance, we had more favour for a deregulatory model than for the very regulatory model.

Now we have had a 180-degree turn and we are presented with a set of amendments that would very much create the deregulatory model. That really highlights the problem. There is general agreement that the law needs attention, and we are presented within a week with two vastly different approaches as to how that reform ought to go. The problem we saw in this house and which we hope to correct later today, with a private member's Bill that had an unintended consequence in relation to BYO restaurants, highlights the problem of leaping in on the floor of this chamber to law reforms that are fundamental. There is no doubt that reform of the law of prostitution is a fundamental and sensitive area.

To be confronted within a week with two diametrically opposing proposals for reform reinforces the Labor Party in its view that reform is necessary, but we are not prepared to support either model today or next week. We think we need to have an extensive process of discussion and debate within the community on the appropriate legal regime for reform of prostitution law. To be confronted one week with the regulatory model and another week with the deregulatory model and told that we have to vote to change the law this week in a way that is totally different from the proposed changes to the law last week, to us, seems to be law reform on the run, and law reform on the run is fraught with a vast range of dangers.

I am not sure how extensive the community consultation has been on the deregulatory model as opposed to the regulatory model that was being proposed up until a week ago. This is an issue of sensitivity, an issue where reform is needed, where the community needs to come to grips with the appropriate legal regime to allow prostitution to operate within this community. We all accept that the old legal approach of saying that prostitution is unlawful and should be banned is hypocritical and has never worked here or in any other part of Australia or the world. So the law needs to come to terms with the fact that prostitution will continue to operate within the community, as it always has.

Having got general agreement to that proposition, we then need to look very carefully at the appropriate model for reform. When we are confronted with diametrically opposite models within a week, we have to say that this idea is not clearly enough thought through and we ought to delay deciding which is the appropriate model until there has been more consultation, more examination by, we suggest, the Community Law Reform Committee, because it comprises both lawyers and lay members of the community. Certainly, let us go ahead with reform of prostitution law, but let us ensure that the Assembly gets it right. Let us not rush, within a week, from one model to another.

DR KINLOCH (11.05): I would like to endorse Mr Connolly's remarks. First of all, though, I acknowledge the very considerable work Mr Moore has put into this. I hope he will also come to see the legitimacy and correctness of Mr Connolly's point of view that this is not a political matter. People say to me, "You are playing politics with it". Not at all; I see this as a matter to be treated very carefully indeed, not rushed into. The state of prostitution and procuring and pimping is what it is; it has been going on for a long time. I recognise that. We are not going to resolve all those matters overnight - certainly not before Christmas - and I see no need to rush into this.

I also endorse the suggestion of referring it to the Law Reform Committee. I made some inquiries about that and realise that that would be an excellent avenue. Of course, one does not condemn and must not condemn people who are

victims of this industry. Indeed, if one were condemning, and I do not do this either, one should condemn the men who make use of the victims of this industry.

One also would want to add - and I hope the Law Reform Committee will come to this - that there is need for considerable social reform and rehabilitative reform. As in the suggestions for New South Wales, there would be a rehabilitation board, an attempt to diminish the numbers of people in the industry, so that we can look after public health in a responsible way.

MR MOORE (11.08): The suggestion Mr Connolly made, which is supported at this stage by Dr Kinloch, is nonsense. It is based by Mr Connolly on a premise that these two versions are diametrically opposed. His whole argument followed the fact that these two systems are diametrically opposed. Nothing could be further from the truth. Mr Connolly is wrong. These are not diametrically opposed, on any possible suggestion.

The basic concept is very simple: One decriminalises prostitution. The debate then comes down to: Should we have a licensing system to ensure that those laws for regulation are kept, or should we allow them to be made in the normal way that laws are made and kept? That is the debate. They are not diametrically opposed at all - not in the slightest. They run parallel to one another.

There is a third system that runs parallel as well, and that is the system Mrs Nolan suggested: If you want to, you can have a Minister for brothels and do it administratively. That is another way of controlling the industry. Those three possibilities are there, and there is only a slight variation between them. Members of the Assembly are quite capable of looking at those three models and making a decision as to which of them is best.

Mr Connolly said that just in the last week we were suddenly trying to rush this through. Nothing could be further from the truth. Mr Connolly's debating style is very good and he is very convincing. But, like his diametrically opposed concept, nothing could be further from the truth. This legislation has been over two years in the making, with broad community consultation and open for discussion. That Mr Connolly chose not to look at it up until now is one issue; but to suggest that it has suddenly been sprung in any way is simply not true. So, the premises upon which Mr Connolly based his arguments are simply not true.

I urge the Labor Party to reconsider its position and not to delay this Bill, which has been the subject of a great deal of work in the community. We have a series of amendments that simply shift the emphasis from one form of regulatory system to a more standard form of regulatory system, one that applies in a normal way across the commercial world.

MR SPEAKER: The question is: That clause 2 be agreed to. Those of that opinion say Aye; of the contrary, No. I think the Ayes have it.

Mr Collaery: The Noes have it.

MR SPEAKER: Call a vote. Once again, members, I draw your attention to the fact that there is no amendment. When somebody is opposing a clause and there is no amendment, we go straight to the clause. There has been some confusion; so I will go back over this again. We are voting on clause 2. Mr Moore has spoken against clause 2, but no amendment was moved by him. So, we are voting for or against clause 2.

Question put:
That the clause be agreed to.

The Assembly voted -

AYES, 0	*NOES, 17*
	Mr Berry
	Mr Collaery
	Mr Connolly
	Mr Duby
	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Jensen
	Mr Kaine
	Dr Kinloch
	Ms Maher
	Mr Moore
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Stevenson
	Mr Wood

Question so resolved in the negative.
Clause 3

MR MOORE (11.15), by leave: I move:

Page 2, line 1, omit the definition of "Board".
Page 2, line 13, omit the definition of "determined fee".
Page 2, line 20, omit the definition of "licence".
Page 2, line 21, omit the definition of "licensed premises".
Page 2, line 23, omit the definition of "licensee".
Page 2, line 24, omit the definition of "member".
Page 3, line 3, omit the definition of "Tribunal".

Each of those amendments is associated with the fact that the Bill was originally drawn up with a licensing board, and they simply remove the licensing board in order to take account of the approach Dr Kinloch took about avoiding condoning prostitution. I have circulated to members a copy of the Bill with those matters struck out, so that members may see what we are doing.

MR COLLAERY (11.16): I wish to refer to Mr Moore's comments on clause 3, and in relation to clause 2. The Residents Rally policy, which was read into the record on 25 November, is that we support "removing prostitution as far as possible from the ambit of the criminal law, while retaining provisions against the exploitation of minors and the use of illegal immigrants". The Rally also believes that, correlative with that and contemporaneously with that, steps should be taken to reduce levels of demand for, and recruitment into, prostitution through social welfare reform. In adopting that policy, the Residents Rally adopts the recommendations in the report of the New South Wales Parliamentary Select Committee upon Prostitution in 1986.

On 25 November I clearly indicated the Rally's policy. There has been no change from it. The Rally's policy is that we do not support the extremes of the Victorian model, which purportedly set up a brothel licensing board, which was never proclaimed, and has had many unintended and deleterious effects, both on sex workers and potentially on the community. I drew attention to the element of clandestine activity that had recommenced in Victoria, and the general agreement that the legislation there was a disaster.

To the extent to which Mr Moore's Bill reflected the Victorian brothel board's standard, we rejected Mr Moore's Bill. Mr Moore has brought forward a number of amendments that effectively excise from his Bill the Victorian-style brothel board, and he takes us back to the deregulated situation in New South Wales. If I could quote from an informed study carried out by university researchers Sandra Egger and Christine Harcourt, in an article entitled "Prostitution in New South Wales : The Impact of Deregulation", which was discussed at a recent national women's conference I attended in Sydney, representing all the males of this Assembly, the authors said:

> The Victorian approach and the NSW approach thus represent the two extremes of contemporary approaches to prostitution. Both entail a recognition that the enactment of ... criminal offences has failed to eradicate the industry.

Then they differ thereafter. Mr Moore is introducing, by way of the excisions from his original Bill, what we can best work out to be the deregulated New South Wales model. We have never supported that. In fact, I said quite specifically in this chamber that we do not accept the law

being changed to the deregulated standard. I referred in my speech on 25 November to advice I had received in conversation with a New South Wales senior Vice Squad officer that the deregulated standard requires further review. That was a personal view expressed by that officer.

I believe that members should read this article on the impact of deregulation in New South Wales. I am wary about a referral to the Community Law Reform Committee, because it will put the issue too far onto the backburner. I believe that issues such as decriminalisation of marijuana for personal use and decriminalisation of prostitution, with the addition of social reform measures, do not require any further extensive study. In my view, it is a matter of our making a decision on the best possible reform and implementing it as a chamber.

We have said to Mr Moore for the past week that we in the Rally are totally overboard with work, that we have been unable to draw private members' legislation to fill in the gaps of our Rally policy, which we are bound to give due recognition to in the chamber. In effect, we have made it clear to Mr Moore that we need to see, subject to the provisions of section 65 of the self-government Act, the addition of support services to "deal with the social welfare aspects of recruitment, continuation in the industry, and the ever widening circle of people drawn into the industry by virtue of economic factors".

We concede that many sex workers are there for the profit and are not in the least in the industry because of economic problems. But there is plenty of anecdotal evidence that there is an element of economic compulsion in the employment of some of the women. I quote again from the report I referred to. The authors said, and this is a very involved and professional review:

> In the working class western suburbs of Sydney where unemployment is high, fifty per cent of female prostitutes were supporting school aged children. Many of these were single parents, but a significant number were in stable relationships with a long term partner experiencing severe economic hardship.

The Rally's view is that we cannot simply decriminalise and deregulate. The Rally is quite prepared to consider this; but we cannot, given our legislative program. We are not wimping on it; we cannot physically do this within the parameters Mr Moore has set for us. It takes an hour or so to go through his current amendments, which our conclusion is - it may be wrong - revert to the deregulated New South Wales extreme, as Mr Connolly said. We do not support that. We support decriminalisation.

My colleague Dr Kinloch and I take the view that, whilst we should not be running a brothel board as a government and we should never interpose ourselves as condoning and supporting that activity, we should not, as Dr Kinloch says, cast stones. We should not be putting a criminal judgment on those workers, most of whom are women, without punishing the men - if we are going to get into punishment, which we do not accept.

There are some minor issues about Mr Moore's amendments that we are still dissatisfied with, including a provision to deal with the non-use of prophylactics, and a recommendation made at the women's conference I referred to about the need to make it an offence for clients to remove or break a condom during service, as they say. They believe that those are issues that deal with their protection. They are occupational health and safety issues. Their request should be examined properly.

If we are to cast any stones in this, the two reports of Mr Moore's committee on the decriminalisation of marijuana and on prostitution came down after extensive and quite creditable study; but my personal view is that both reports should have come to us a lot earlier so that we could have acted on them. I am sure members will say that they had to do that level of research; but my strong personal view is that the decriminalisation of marijuana, for example, was a foregone conclusion years ago. The committee should have given it to us at a non-vulnerable stage of the sittings, when we had adequate time to consider it and judge community sentiment. They should not have left it as a sententious issue for some people - or at least one person - to exploit.

We believe that Mr Moore's Bill, if he can get it into order, could come back onto the agenda before we rise, or at any further sitting. We commit ourselves to that. Although we support the notion that someone needs to get this into proper working order, we do not necessarily believe that the Community Law Reform Committee is the only place it can go. If there is some way of providing for the necessary working structure to take into account the New South Wales experience, we would listen to it.

We would be very disappointed to hear any suggestions that the Rally is wimping on the issue. We stand on the record of wanting to decriminalise. I trust that the Liberal Party will speak to the issue too and make its position clear so that there is no political opportunism in the debate today.

MRS NOLAN (11.25): Mr Speaker, I cannot let that comment by Mr Collaery on this report go unnoted. As a member of the committee which handed down the report into prostitution - - -

Mr Connolly: In April.

MRS NOLAN: I was just going to say that that report was handed down in April 1991. Normal government convention is that governments respond to committee reports within a three-month period. It is unfortunate that that was not done. Had a response been tabled, one could have acted upon that response some time ago. The reality is that the report was not acted upon, and Mr Moore then took it upon himself to introduce legislation into the house.

I have to say that the legislation he introduced, in its original form, was not something I supported. It was not the position I supported in relation to the report when that was handed down, and I made my views quite clear in additional comments in that report. I accept that it is difficult to get a situation where all members and parties in this Assembly come to agreement, but the issue has been around for some considerable time. Law reform needs to be achieved in this area, and if we cannot get agreement on how that is going to be done the issue will go onto the backburner for another year or two, or it may never be acted upon.

If the Labor Party do not want it acted upon, that is their view. An enormous amount of work was put in by both the committee members and the committee secretary, and I think it is important that something be put in place before the end of the life of this Assembly. Even though further reforms can probably be done later, the amendments proposed by Mr Moore will go some way to addressing the issue. Further amendments can then be put in place next year which will better address the situation.

MR STEFANIAK (11.28): The Liberal Party has looked at this issue over the last 12 months. Indeed, on the last occasion I read out our policy, which was passed on 1 June. The prostitution part is in our police and justice policy, which is probably the best police and justice policy this Territory has seen. We recognise the situation in relation to prostitution. Our police acknowledge - - -

Mr Berry: Who wrote it, Bill?

Mrs Nolan: I did.

Mr Berry: No, the police and justice policy.

MR STEFANIAK: I wrote it, but Mrs Nolan certainly had input in relation to the prostitution part.

Mr Kaine: We have not seen the New Conservatives' policy yet.

MR STEFANIAK: As indeed did Mr Kaine, who made some very sensible amendments on the day. So, we have ended up with a very good policy. Mr Moore has taken out significant parts of this legislation, which caused problems to a number of people in the community and may well have caused some problems in the implementation of his Act.

What he is left with is a Bill that can be further amended but basically accepts what has been the status quo here for probably 15 years. I have a quite good knowledge - I was going to say that I have more knowledge of brothels than most of you people, but that would be taken the wrong way. I speak as someone who used to be in the prosecution section, where a number of briefs would come across from the police to prosecute brothels. Because of the Temby guidelines, many of them were not prosecuted; but I did do what I think was the last successful brothel prosecution in Canberra.

What I see here as a result of Mr Moore's further amendments is a piece of reasonable legislation that protects people from being exploited, protects children, and addresses some of the very important health issues. We have a couple of criticisms of it where we see that it can be further amended to be a better piece of legislation. I think some of his penalties are a little illogical, and accordingly the Liberal Party will be moving a number of amendments, largely in relation to rationalising the penalty structure.

All in all, we do not see any real problems and, indeed, we see, on balance, a positive good if this amended legislation is passed. We see no real reason for it to be fobbed off any further.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.30): I am concerned that words such as "fobbed off", "put on the backburner", and that type of rhetoric are being thrown around in relation to the Government's very sensible and cautious proposal to have a close look at this legislation. We went from last week, with a Bill of 42 clauses providing a regulatory licensing regime, to this week, with a changed Bill of 15 clauses proposing a deregulatory regime. They are fundamentally different.

The arguments Mr Collaery made are very sound ones. He was referring to a lot of the work that has been done at conferences and in research bodies around Australia, looking at these two models and trying to come up with a better model. I do not think this Assembly is going to come up with the best model by taking these sorts of amendments off the floor of the house, and I see no need for us to be rushing into this today.

The Government's intention, if this Bill is adjourned, is to fairly quickly get the Community Law Reform Committee to look at it, not asking the questions "Ought we to change the law on prostitution? Ought we to decriminalise prostitution?", but asking, "What is the best, most practical, most legally and socially sound model for that decriminalisation?". I think that would be a sensible course of action for us to take.

No doubt, when legislation is eventually passed by this Assembly to achieve that goal, Mr Moore's contribution will be clearly recognised. There is no doubt that Mr Moore has been pushing this issue very vigorously for many months. There is no doubt that the prime mover for amendment in this area of the law remains Mr Moore. But I do not believe, and the Government does not believe, that we need to be in a desperate rush to get a Bill to change the law on prostitution through this place by Christmas. That sort of unseemly haste, particularly when we are confronted with such a dramatic difference in the approach we are looking at this week from the approach we were looking at last week, is a recipe for bad law.

The fundamental responsibility we all have as legislators is to enact laws that are the best laws for the people of this Territory. Acting in a rush is not the way to achieve that. The suggestion Mr Collaery made, that we all need more time to look at this, is sensible. Our proposal as a government would be to get a community consultation process going on the best form of law reform to achieve the goal of decriminalisation. We have had fundamentally different models proposed within a week, and we could have another one next week. Mr Moore said that there was a third alternative. We might see that next week.

That is not the way to go about law reform on such a sensitive issue as prostitution, and the Government's view, as was stated last week, is that this ought to be adjourned. Last week you were looking at model A; this week we have been presented with model B; and that change in itself might be sufficient to convince members of the Assembly that we ought not to rush into this.

MR MOORE (11.34): I do need a chance to respond to some of those comments. If Mr Connolly and the Government and the Rally were really genuine about the need to ensure that we are passing good laws, they would be saying, "We recognise that we currently have bad laws". There is no doubt, with reference to prostitution, that in the in-principle debate everybody agreed that we currently have bad laws. To remove those bad laws and to provide some protection for children, some protection against advertising, to set out where brothels ought be, is not difficult to do. If it turns out that we need to go further than that, then obviously we would need more laws.

I could accept that kind of approach. I could have accepted the Rally coming in and moving some amendments to provide for what they want. Nobody else in the chamber has said that they support that, although I think, by and large, that if you had moved amendments you would have found reasonable support.

The truth of the matter, when it comes to the Rally, is that, in a conflict between paternalistic moralising and social control on the one hand and civil liberties on the other hand, the Rally finds a way to come down on the side of paternalistic moralising and social control.

Alternatively, they will find in a scheming way a method of somehow avoiding the situation. The methodology here is one of Mr Collaery's very favourite methodologies, one he has used constantly, and that is section 65 of the self-government Act. He wants to put these amendments, but the only way he can put them is to put them in breach of section 65. So, he will not be able to put them; therefore, it is better not to do anything. He gives us the chance not to come down on the side of civil liberties - because that is what this Bill is about.

The reality is that Mr Connolly continues to express this idea of a range of hugely different models, which simply is not true. We do not have a range of incredibly different models. We have had no moves whatsoever from the Government. They have had this committee's report on the table since April. They have been in government for more than the three months that is the normal convention period in which to respond.

Mr Collaery: Why bag us because we cannot draw your amendments?

MR MOORE: I have bagged the Rally, that is right; and now I am going to start bagging Labor, because I believe that both are responsible.

Mr Duby: Well, get to it.

MR MOORE: Thank you, Mr Duby, for that encouragement. The Labor Government, as the left wing of the Labor Party, wants to be seen as the social reformers in the ACT. But whenever it comes to actual social reform, it seems that they want to drag their heels. They are very enthusiastic about dragging their heels, coming up with nothing.

They have had the opportunity. The Bill has been tabled for some time. I made it very clear that I was open to discussion with all members. Ms Maher spent extensive amounts of time with me discussing the amendments. Mrs Nolan and Mr Stefaniak have also spent a tremendous amount of time asking me why I was doing this, what was the point behind it, how did it come out of the committee's report, and I have been only too delighted to provide explanations.

The reality is that this Bill in this form will simply remove the bad laws, although most of that is done in the Prostitution (Consequential Amendments) Bill. It also will provide for some protections where our community considers that they are absolutely necessary. We have bad laws now. The police are in an unenviable position. We are in a position to do something about it, and we ought to wear that responsibility. It fools no-one at all to say that we want to send this off for further consultation.

The people who are opposing this Bill going through are simply keen to ensure that they do not lose a few votes on one side or the other of what they see as their political spectrum, instead of thinking about what is best for the people of Canberra, what is best - and I refer particularly to Dr Kinloch - for people who are working in this profession.

When we try to pass legislation that deals with what is best for them, it ought not to be paternalistic and patronising. It ought to provide them with power to act on their own behalf, and that is what this legislation is really about. If you do not respond and go with it now, you are putting off for yet another half-year or more the ability to provide women with that power, in the vast majority of cases.

MR COLLAERY (11.39): It is unfortunate that Mr Moore has come so far and is faltering on the last steps. Let us get one thing clear: We are not going to do Mr Moore's law reform writing for him. We do enough as it is. We are just about single-handedly running the criminal law reform process in this Territory; I think that is obvious to anyone. I am not physically going to produce the amendments to the Occupational Health and Safety Act to include prostitutes as a designated work group, to define the diseases and other issues that are required. If we are going to introduce proper law reform here, we are not going to have the clause Mr Moore proposes, which states:

> A person shall not operate or manage a brothel which is situated other than in -
>
> ... Tuggeranong ...

The words quite clearly, in their collateral sense, give government accreditation to a brothel. We have made it clear from the start that we are not going to support legislation that legitimises brothel keepers until they are subject to removal of the police from their de facto regulation of the premises, the imposition of occupational health and safety reforms, and the amendments to the Moore Bill that are required.

Mr Moore wants to hot up the pace by bringing in a confusing set of amendments. It requires too much work for those of us under pressure. Mr Moore should adjourn it himself and get his act together, knowing what we want, and make sure that we do not simply deregulate and leave a vacuum, which will be the effect of this, as far as I can work out.

I move now to the Government. It is not a reformist government; Mr Moore should know that. You could not expect the Labor Party to assist you with this work. It is now self-help in this chamber. The Labor Party is not on about reform. We do not know the reasons for that, but it is not on about reform. The Rally is stuck with all its

other attempted reforms. This has now pushed our reform Bills down again. It is now a quarter to twelve on private members' business day, and prostitution has scooped the pool again. The fact is that it is starting to antagonise us.

I say to Mr Moore: You know what we want. Get the amendments drawn by our competent drafting office. Ask Mr Connolly whether he will be good enough to let you have the advice of his law officers, as he does occasionally for the Rally, and bring forward the necessary amendments. We are not going to vote today to set up operators and managers of brothels without the occupational health and safety provisions and the whole range of other issues that have been dealt with by the New South Wales study. That is the long and short of the issue. There is no gamesmanship in it.

I am not going to rise to the bait of the attack on the Rally. We will support Mr Moore if he brings forward a Bill that meets the parameters we seek. That includes Mr Moore getting the agreement of the Government not to plead section 65, and to bring in a provision for rehabilitation and counselling services of the nature that the Victorian collective is now getting together for itself, on some government grant they have got. As Mr Moore knows, the community development worker for the Prostitutes Collective of Victoria in St Kilda could be a model.

Bring forward a completed Bill; it is as simple as that. Do what we did with the marijuana issue. I share Mr Moore's concerns about the slow pace of reform on a couple of those issues. It is just unfortunate that he wants to pick a fight with us. Why should we complete the work he set out to do? He wants the credit for this reform. He should complete the reform. Give up on the Labor Party.

MR KAINE (Leader of the Opposition) (11.44): I must say that I find Mr Collaery's position a rather curious one. He seems to be saying, "Since this is not my legislation and it does not meet my criteria, I will not support it".

Mr Collaery: That is what the parliament is for.

MR KAINE: There are others in this parliament who find that the legislation does meet their criteria. Your legislation, which is on the private members' business schedule and is behind this one chronologically, ought not to jump it and take precedence. I have to say that to Mr Collaery. Something is not bad legislation just because it does not appeal to you. I am not swayed by your logic that, simply because you do not agree with the Bill Mr Moore puts forward, it shall not proceed. It is not logical, it is not an acceptable argument, and it is an argument - - -

Mr Collaery: But he needs our votes.

MR KAINE: He may or may not need your vote. We do not know yet, do we? Again, if you are suggesting that he should withdraw his Bill or do nothing in connection with it because he has not got your vote, I would have to say that the Rally does not control the Assembly; it never did, and it certainly does not now.

I am concerned, however, that the Government seeks to work with Mr Collaery to defer this. It is true that this Bill has been on the table for a long time. Mr Moore has done a lot of work. He has gone a long way to accommodating the views of other members of the Assembly. Hence, the legislation he is prepared to put to us today is greatly different from what he originally put forward. I thought this organisation was about trying to reach an agreed position so that we can pass a law.

I have to say that the Government seems to have contributed little to this process. They have sat there; they have done nothing. It is true to say that they are not a reformist government. In fact, I have said many times, and I repeat: This is probably the most conservative government in Australia. It takes no initiatives to change anything, and when other members of the Assembly take initiatives to change things the Government stands in opposition and says, "We are not going to change a darned thing". In other words, the status quo shall obtain.

I know that at the moment they are a little touchy about that because there is an election just around the corner and they do not want to antagonise anybody. Maybe that is a good excuse for not doing anything. But I do not accept that; nor do I accept Mr Collaery's argument. This Bill sets out to decriminalise prostitution.

Mr Collaery: What does it do for the social condition of the workers?

MR KAINE: First of all, this Bill - unless Mr Collaery or somebody is going to amend it - makes the people who work in this industry employees. The minute somebody becomes an employee, that person becomes susceptible to our laws on occupational health and safety. You do not have to have a new Bill to make employees susceptible to those laws. The occupational health and safety legislation is on the table and, when a person becomes an employee in an industry in Canberra, that law begins to apply to him or her. One of the problems at the moment is that these people are not considered to be employees.

Much of Mr Collaery's objection is based on rhetoric and on the simple fact that this is not his Bill and therefore he does not like it. I think we should get on with it, debate it and pass it as quickly as possible, rather than trying to defer it and delay it and, once again, not address the problem.

DR KINLOCH (11.47): I recognise Mr Moore's right to make moral judgments. We all have the right to make moral judgments, and he has done so. He has described the legislation presently on the book as bad legislation. It is his right to do that. I accept the moral statement he makes. He is also making a moral judgment in taking the attitudes he takes towards prostitution. That is his right and he should argue that, and the members of that committee should argue it. Similarly, others of us with different points of view have the right to put that point of view. I ask Mr Moore to refer again to Professor Eileen Byrne's paper about the problems of brothels and prostitution in Queensland. It is a very fine piece of work and it should be seen, it should be recognised, it should be taken into account.

I am sorry to hear our colleagues in the Liberal Party say that the legislation is acceptable. We are in a difficulty - Mr Moore knows how our discussions go on. I very much wanted to put a rehabilitation clause in the Bill.

Mr Moore: Why didn't you?

DR KINLOCH: We cannot; it is a money matter. It is not for us to do it. I would like to do it, but I would like it to be done very carefully. I would like to follow through some of the ideas of the Reverend David Oliphant, for example, who sees the need for social concern for the victims of the prostitution industry. That is a moral judgment. It is a judgment that people who are in certain conditions of life are in danger of degradation, either through their physical processes or through their psychological processes. I would want to see the kinds of things that are argued in the New South Wales discussion - at the very least, a rehabilitation board.

I think the Labor Party is very wise to ask us to hold off until we can do all these things. I do not see them playing political games in this matter. I think they have acted wisely in saying that here is something being rushed through without the sorts of caring additions that should be made. Could I ask them to make them? Perhaps by next week the Labor Party could make those, on advice. We would welcome them.

If there were in this Bill an avoidance of the condoning of prostitution, an avoidance of the condoning of state-licensed brothels, if there were in the Bill an attempt to put in something remedial and beneficial and rehabilitative, then I would want to support it. But I do not see those things in this Bill.

So, I come to Mr Moore's strange notion that some of us are interested in being paternalistic and others are interested in civil liberties. This is no time to have an enlarged debate on the nature of government. In the industrial West, most governments in the last 200 years have

essentially been what you might call paternalistic governments or maternalistic governments - parental governments. Take something like the pure foods and drugs Act. What a government does is ensure that the best possible circumstances exist for the material benefits in the society. Laws that we pass are all to do with improving the society.

I call on the Liberals to recognise that in this matter we should not merely decriminalise - that I agree with - we should also be remedial. If you wish to apply the word "paternalistic" to that, so be it: Everything we do is paternalistic. All the laws we pass are paternalistic. I reject that notion.

As for civil liberties, we are doing something, surely, to protect the civil liberties of people who are victims. We are trying to say to those victims, "No, you are not criminals". If there are any criminals - and I would not want to do this either - it is not the women; it is the men who make use of those services. The industry would not exist if it were not for the men who have not the balls to find their own satisfying relationships, who have to pay some poor woman for some kind of spasmodic ejection. I do not believe that we should support that. I believe that we should support the decriminalisation of the prostitutes, but that is not enough. You have to go beyond that. You must put in remedial measures to help them.

MR MOORE (11.53): It really requires me to say very little after Dr Kinloch's comments. I think he is condemned out of his own mouth. The irony and hypocrisy of the man in talking about people not having the balls to resist going into a brothel when he in this chamber has admitted that he has the same problem with gambling is just amazing.

Dr Kinloch: That is totally unfair.

MR MOORE: You have said it yourself. The reality is that the occupational health and safety reforms that are sought by the Rally are already in here, and I think the Leader of the Opposition has explained that quite well. By this legislation, occupational health and safety will apply in exactly the same way as it does to any other business in the ACT.

Mr Collaery: Where? Is there a contract of service? Is there a designated work group?

MR MOORE: The designated work groups will apply in exactly the same way, with the same numbers Mr Collaery has supported for some time, depending on the size of the business, as he would know from reading the occupational health and safety legislation, if he cannot remember it.

The Rally also drew attention to the fact that they could not possibly condone in any way a provision for prostitution to be restricted to Hume, Fyshwick and Mitchell. He referred to the amendment I have proposed and said - it was very difficult to follow his logic on this one - that the Rally could not support that because in some way it means that the Government condones the fact that there are brothels. I think that was the logic of the argument. If the Rally wanted to vote against this amendment in order to allow brothels to go anywhere in Canberra and were able to win that, then I can accept that. That is not a problem.

The final point Dr Kinloch made was the caring additions to the legislation that he believes should be there. The legislation does not preclude the establishment of any caring additions, whether done by amendment to legislation or added on before. If the Rally wants to lobby for that, that is quite within their power and a quite sensible approach for them to take. What Dr Kinloch seems not to be prepared to do is to empower the women who are in this situation to make their own decisions. If you want to establish something that influences the way they make decisions, I can accept that, provided you leave them with the power to make their own decisions about what they want to do and to act in ways in which they want to act.

Dr Kinloch: I do not disagree with that.

MR MOORE: If you do not disagree with that, the logical thing to do is to support this Bill. It is perfectly logical and it is perfectly reasonable.

Dr Kinloch: There are not those remedial measures in the Bill.

MR MOORE: Dr Kinloch interjects that there are not the remedial measures in the Bill. He is quite correct. There is no doubt about that. There is nothing in the Bill that precludes the remedial measures he is talking about, but the most important of all the remedial measures in helping people is to empower them. I think Mr Collaery would agree with me that the most important thing is to empower people, and that is the sort of argument he has been using on appeals in the Land (Planning and Environment) Bill.

Therefore, it seems to me that the logical thing for the Rally to do is to support this Bill in its current form and then to begin lobbying to get the things that Dr Kinloch wants in place administratively and to begin trying to implement the rest of their policy. Implement the first part of your policy, because you have now the opportunity to do it, and then implement the rest of your policy in due time.

MR COLLAERY (11.58), by leave: I simply want to stress that we are not prepared to introduce one part of our policy without the interconnected plank. Given a couple more weeks, we could have done it. If Mr Moore pushes this to a vote, he is the author of his own misfortune. He knows what is required and he somehow wants us to draw the amendments, although he desperately wants to get this reform through.

If he adjourns the debate, we will have a shot at it. He is wrong about occupational health and safety, and that requires another meeting and some other explanations. The Liberal leader is also wrong about that. Those complications were mentioned in a blithe manner.

The fact is that you are trying to create the New South Wales situation which, on the evidence of all the informed observers in New South Wales, has not worked. Much of Mr Moore's sentiment none of us could disagree with. If Mr Kaine wants to make an opportunistic dig at the Rally and a personal one at me about the logic of our argument, that is his business. If he wants to trade that way, he can. I am not going to respond. If the Liberals want to support this half reform, they can.

I agree with Mr Moore that decriminalisation is very important. Mr Moore knows that I was the prime mover in the reference for the creation of his own committee. I drafted the terms of reference of his committee up in the Rally room and I nominated Mr Moore when he was in the Rally to take this committee. Let us get that straight.

Mr Berry: A good choice, too, Bernard; a great choice.

MR COLLAERY: It was a good choice.

Mr Moore: That is a lie.

MR TEMPORARY DEPUTY SPEAKER (Mr Jensen): Order! Mr Moore, I request that you withdraw that interjection.

Mr Moore: I withdraw the word "lie" about the untruths that Mr Collaery has been speaking.

MR TEMPORARY DEPUTY SPEAKER: Mr Moore, I request that you withdraw unqualifiedly.

Mr Moore: If you insist on an unqualified withdrawal, Mr Temporary Deputy Speaker, I shall make an unqualified withdrawal.

MR COLLAERY: To adjust Mr Moore's memory, I will produce an extract from *Hansard* where a similar claim is made by the Rally and not refuted in any way by Mr Moore. It is short-term memory loss. As for the detailed terms of the reference, I do not know; but the idea of the committee, the original draft of the motion in this house, was prepared, as Mr Moore knows, up in the Rally room.

We are committed to the reforms. I regret that it took so many years - two, I think - to get some fairly basic reforms. Mr Moore is hardly the quick reformer he is trying to pass off today. This is an unfortunate stage of the debate. If Mr Moore wants this to go to a vote, so be it. He is leading himself into a dry gully on this one. What he should do is adjourn it. He should not have pressed the issue to get us to get it up again today for him unless we can fix up those issues.

Mr Moore: You did not mention that to me. You at no stage said that.

MR COLLAERY: Mr Moore has known the Rally's position since 25 November. If he wants our support on a Bill, he needs to draw it. We are doing our own work.

MR MOORE (12.01): I would like to clarify one small issue where Mr Collaery is very close to misleading this house. The detailed terms of reference - - -

Mr Collaery: I raise a point of order, Mr Temporary Deputy Speaker. That is an inference - "close to misleading this house". He is sailing too close to the wind with that.

MR TEMPORARY DEPUTY SPEAKER: Yes, I think you are right. Mr Moore, please withdraw.

MR MOORE: I withdraw. I point out that the detailed terms of reference for the Committee on HIV, Illegal Drugs and Prostitution in their initial form were drawn up by one Peter Wise, who was working in my office at the time.

Mr Collaery: Our office.

MR MOORE: He was working in my own personal office at that time. Later on he worked for you, and it was prior to the time that Jeannine Lee came to work for me. That is when they were drawn up, in very close consultation with me. All of us were going through a learning process at that time, but it turned out that they were very good terms of reference.

I point out one other thing. An arrangement was made and a particular time and date set for Mr Collaery to come and talk to me about the legislation over a week ago. Mr Collaery simply did not turn up - with no apology, no notification or anything. Working with the Rally is just impossible.

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

That the debate be now adjourned.

The Assembly voted -

AYES, 9	*NOES, 8*
Mr Berry	Mr Duby
Mr Collaery	Mr Humphries
Mr Connolly	Mr Kaine
Ms Follett	Ms Maher
Mrs Grassby	Mr Moore
Mr Jensen	Mrs Nolan
Dr Kinloch	Mr Prowse
Mr Stevenson	Mr Stefaniak
Mr Wood	

Question so resolved in the affirmative.

ORDER OF BUSINESS

MR TEMPORARY DEPUTY SPEAKER: Mr Moore, you may wish to move that order of the day No. 2 be postponed.

Mr Moore: No, Mr Temporary Deputy Speaker. I am quite happy to bring on order of the day No. 2, the Prostitution (Consequential Amendments) Bill. It is quite appropriate to decriminalise prostitution. Order of the day No. 2 is the consequential provisions legislation, and that would simply decriminalise prostitution. If somebody else wants to move the adjournment, it is up to them.

Mr Collaery: On a point of order, Mr Temporary Deputy Speaker: I think the Assembly has already resolved that this should be a cognate debate.

MR TEMPORARY DEPUTY SPEAKER: No, Mr Collaery, it is not a resolution; it is done by agreement.

PROSTITUTION (CONSEQUENTIAL AMENDMENTS) BILL 1991

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

That this Bill be agreed to in principle.

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

CRIMES (AMENDMENT) BILL (NO. 4) 1991
Detail Stage

Clauses 1 and 2

Consideration resumed from 27 November 1991.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.07): This is apparently what Mr Collaery refers to as his seizing the agenda for law reform. We are in a somewhat confused state here because we have his Bill and we have a series of other amendments to amendments to amendments to amendments, with a further amendment to amendments to amendments to the amendments foreshadowed today by way of a circulated amendment to the amendment to the amendment to the amendment.

So, it would be helpful if Mr Collaery could re-enter the debate at some stage and tell us just what is the current state of the law that we are considering by way of this vast initiative of reforms.

MR TEMPORARY DEPUTY SPEAKER: Just a moment, Mr Connolly. I believe that we are on clauses 1 and 2 of this Bill. I just confirm that for the house.

MR CONNOLLY: Yes, indeed. I think that is where we are. Part of the reason that Mr Collaery's agenda for reform is so complex and complete is that he often reforms himself on several occasions between the introduction of a Bill and the final debate on it.

The Labor Government has no particular difficulty with the issues relating to clauses 1 and 2; but we would like Mr Collaery to take us through to precisely the state of the amendments that he will be presenting before the house, because we really are in an extraordinarily confused position when a Bill is produced and then amended on at least five occasions. It is not conducive to a rational debate on law reform.

MR TEMPORARY DEPUTY SPEAKER: Mr Collaery, just for the record, can we clear up which group of amendments we are referring to?

MR COLLAERY (12.09): Yes. Mr Temporary Deputy Speaker, I move the amendments circulated today in my name. They are the ones - - -

MR TEMPORARY DEPUTY SPEAKER: We are on clauses 1 and 2, Mr Collaery. I just need to have some clarification as to which group of amendments you are referring to.

MR COLLAERY: They are the amendments circulated today in my name. The first one I wish to move is the one that inserts a new clause 2A which defines "X-film".

Mr Connolly: What about all the others?

MR COLLAERY: The previous amendments circulated are withdrawn, of course, Mr Temporary Deputy Speaker.

MR TEMPORARY DEPUTY SPEAKER: So, just to clarify it further for members, it would appear that we now have one circulated sheet of amendments. All the others have been withdrawn. Is that correct?

MR COLLAERY: One sheet - all the others can go into the waste bin.

Mr Temporary Deputy Speaker, I take the point that the Attorney makes, and I apologise for the convoluted manner in which these amendments have been presented. I am indebted to Mr Ken Crispin of queen's counsel for assisting to point out a number of anomalies in the original Bill, in particular the need to put in a provision, for a person charged with possession of pornographic material, to provide for the defence that he or she reasonably believed that the person depicted was not a young person. The Director of Public Prosecutions also pointed out a number of issues that led us to insert the "knowingly" provision as well.

On the question of interstate offences, the Director of Public Prosecutions pointed out - and I would have anticipated that the Attorney, by virtue of his law advice, would also have pointed this out - the unintended effects of this provision. I accept that that provision fails, and I accept that, at best, it can be reduced to rendering it an offence to transmit an X-film interstate or interterritory, knowing that possession is banned in that State or Territory. That is the upshot of my amendments. At this stage, no State or Territory, to our knowledge, bans possession, apart from an indistinct clause in Western Australia which has not been enforced. So, I formally move those amendments.

MR TEMPORARY DEPUTY SPEAKER: No, Mr Collaery; we have to take them in order.

Clauses agreed to.

Proposed new clause 2A

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

Page 1, line 9, after clause 2, insert the following new clause:

"2A. Clause 4 of the principal Act is amended by inserting the following definition:

'"X-film" has the same meaning as in the Publications Control Act 1989.'.".

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.13): This definition is necessary only for the purposes of Mr Collaery's proposed new offence of transmitting X-rated films interstate, which the Government will be opposing. The Bill essentially falls into two parts: There is the offence of possessing child pornography and there is the offence of sending videos around the country.

Mr Collaery: If the debate is lost, I will withdraw the other one.

MR CONNOLLY: Then, at this point we will debate the issue of the sending of X-rated videos throughout the country. If that is a convenient way for the Assembly to deal with it, I will explain why the Government does not think that this is a desirable amendment.

Essentially, we have a difficulty with Mr Collaery's proposal to make it an offence to do something in the ACT that is dependent upon the state of the law elsewhere. If the Assembly wanted to say that it is an offence to send an X-rated video out of the ACT, the Assembly could say so. One's liability to punishment or otherwise under the criminal law ought to depend on the state of the criminal law within one's jurisdiction - not on the consequences of one's conduct here in terms of the state of the law in another jurisdiction.

I understand what Mr Collaery is trying to get at with this proposal; he is saying that it is a "put up or shut up" for the other States. But it is a bad precedent, we would say. The criminal law normally says that an act is either an offence or not an offence; it goes to conduct. Further, a person is presumed to know the law, which we all know is a legal fiction because very few people, even the most eminent lawyers, will know what the law is in respect of every activity.

Mr Duby: We have split decisions in the High Court.

MR CONNOLLY: Indeed. As Mr Duby says, even High Court judges sometimes can disagree amongst themselves. The structure of the criminal law should be that it takes objective conduct and says that it is either lawful or unlawful, so that a person can know that their conduct is either lawful or unlawful. What Mr Collaery is doing here is saying that the particular conduct - that is, to send an X-rated video through the post - is either lawful or unlawful, depending upon the state of the criminal law in other jurisdictions.

There is a degree of uncertainty as to the state of the law in Western Australia. We know that no other State has purported to make the possession of an X-rated video illegal. Western Australia probably has purported to do that, but there is considerable doubt as to whether or not

the law in Western Australia actually has that effect. So, it is a high state of uncertainty. And a person's conduct in the ACT ought not to be an offence, depending upon such an uncertain state of the law in another jurisdiction. While the law says that one is presumed to know the law in one's jurisdiction, we would be creating a position where one is presumed to know the state of the law in every other State and Territory in Australia. And that is a bad law in principle.

So, the Government's opposition to this proposition is not an opposition based on support for or opposition to the X-rated video industry. If the Assembly wanted to say that it is an offence to send X-rated videos out of the ACT, we could have legislation proposing that, and we could debate that issue. Our opposition to this is based on the fundamental principle that we think it is bad criminal law to define an offence not by the objective conduct within this jurisdiction but on the consequences under the law of another jurisdiction.

For that reason, we would urge members to oppose the amendment to create a form of criminal offence which is unknown to the law in any other part of Australia. This would be a dramatic departure from the established canons of construction of criminal law. For that reason, we think it would be bad law, and I would urge members not to support it.

MR DUBY (12.18): Mr Temporary Deputy Speaker, the Attorney speaks very eloquently. I agree.

MR COLLAERY (12.18): Mr Temporary Deputy Speaker, the Gibbs committee, which is a committee of eminent jurists comprising the former Chief Justice of the High Court, Sir Harry Gibbs, Mr Andrew Menzies and Mr Justice Ray Watson, has been preparing for some time a report that should go a long way towards ensuring that there is a uniform criminal code throughout Australia - an endeavour that our Attorney, who just spoke, fully endorsed in this chamber some weeks ago.

When I have that report to hand - which will be in a few minutes, I hope - that report will disclose the fact that the committee fully accepts the notion of the modern need in this country to not treat each State and Territory as a foreign jurisdiction, but to have that uniform criminal code. The Labor Party can put this on the backburner if it likes. Labor members have not quoted one authority in law - not one bit of case law, as my colleague Mr Stefaniak can notice - to support this presumptive case. It can only be arguable. It is not an authoritative argument.

I accept that, once again, lay people in this Assembly can see it as most persuasive. Let them do that. There is a most eminent report that fully understands the need to give comity of recognition throughout Australia of other State

laws, and for us, as constituent parliaments, not to be putting through laws which clearly breach the spirit and intent of democratically passed laws in other jurisdictions.

If the New South Wales Parliament, or any parliament of this country, wants to ban possession of an article, or a substance, X-rated videos in this case - and I will come back to substances, because that utterly shoots down the Attorney's argument - surely it is right and proper for this parliament to recognise that.

Now I will come to substances. The fact is that provisions concerning the use, transfer and trafficking in narcotic substances are backed up by provisions in interstate laws that provide for the breaching of laws in other jurisdictions. I do accept the Attorney's statement that, at this stage of the development of our law, we would be making it an offence to breach a law of another State which is not punishable in this jurisdiction. But the fact is that this is a very highly defined and specified offence. It refers to X-rated videos. I could not think that any producer of X-rated videos, if this law is passed, would remain ignorant of the provisions in Canberra.

I cannot see how it could possibly be said that ignorance of the law would be the defence for that person, because a right-minded government would put this law in place, and I am sure that the citizens who oppose this trade - and, indeed, the Liberal Party - would bring that offence to the attention of those people who might breach the laws. It is up to an X-rated porn purveyor in Fyshwick or elsewhere to be conscious of whether another State parliament passes a law banning possession.

It is a most articulate, informed and aware community. We know that from the lobbying. I could not see how Mr Connolly's arguments, in this specific instance - we are not talking about esoteric law making interstate - could possibly hold any water.

MR TEMPORARY DEPUTY SPEAKER: The question is: That the proposed new clause be inserted. Those of that opinion say Aye - - -

MR COLLAERY (12.22): Mr Temporary Deputy Speaker, I would like to add some more comments if it is going directly to a vote. I might add that the Liberal Party, of course, has stated quite broadly that its policy is to ban the X-rated porn industry. I believe that it would be consistent with Liberal Party policy to support this amendment. I trust that the Liberals will understand that it is not an attempt to create a stunt; it is a real attempt to recognise the parliamentary sovereignty of those interstate if they wish to ban the possession of such material - and Western Australia, indeed, has a form of provision relating to possession. The immediate effect of this amendment, if passed, would be to put on notice those who want to transmit this material to Western Australia.

MR STEFANIAK (12.23): I am interested in the arguments that the Attorney made. The Liberal Party's initial position was that there may be some merit in this where another State has clearly enacted such a law. Certainly, our policy is to ban the sale and distribution of X-rated videos. We, of course, would have gone further than this. My understanding of this proposition is that Mr Collaery, in a roundabout way, is attempting to ban, maybe in respect of one or two States, the exporting from the Territory of X-rated videos.

I am a little bit concerned, though, to hear, just in the brief argument today, that the Western Australian law is in a state of flux and that it is difficult to say whether this material is prohibited there or not. Having a very good knowledge of the ACT courts and our criminal justice system, I can say that, unless the Western Australian law was absolutely crystal clear in terms of banning the possession of X-rated videos there, there would be no way that a supplier from the ACT could possibly be convicted under Mr Collaery's proposed law. I think that that really is almost just a statement of fact as to how our courts operate. It would be impossible to enforce this law here.

I note with interest what Mr Collaery says in relation to the Gibbs committee. In favour, I suppose, of Mr Collaery's arguments, it is the case that the States and the Commonwealth try to enact - and there are certainly moves being made in this regard - uniform laws in as many areas as possible, so that we do not have problems with eight different laws for eight different Territories and States. That is certainly just crazy. But, if this provision were to be enacted, I do not think it would have any effect until one or more of the States or the Northern Territory clearly prohibited the possession of X-rated videos.

I would certainly be grateful for any more information in relation to the Gibbs committee and any actual steps in relation to the other States enacting such a prohibition, in order to see whether this particular amendment would have any effect whatsoever. If that were the case, it would make our task here somewhat easier. I hope that members will have very few problems in relation to the rest of Mr Collaery's Bill, because it relates to knowingly possessing child pornography, which is something that I think all of us would find quite abhorrent. In fact, the people I have talked to in the X-rated industry in Canberra have found the use of child pornography quite abhorrent. I have had discussions with a number of people in the industry - including, of course, Mr Swan - on a number of occasions and they have all indicated their abhorrence at the use of children.

Certainly, I think it is a very proper and timely measure which would have broad community support and, I would hope, broad support within this Assembly. I commend Mr Collaery for bringing this amendment to the Crimes Act, in the form of this Bill, to this Assembly.

In relation to the eloquent arguments of the Attorney-General, I sometimes disagree with him on a number of points, but he has raised a point that concerns me. Mr Collaery has also raised some good issues in relation to this matter, especially in relation to the Gibbs committee, and I would certainly like a little bit more information in relation to proposed section 151A.

MR STEVENSON (12.27): I will be brief. It is well known how I fought tirelessly against X-rated videos in this town. However, I believe that there is a right way and a wrong way to go about things, and my advice also is that the ACT law should not be dependent upon the law of another State or Territory. Our law should stand on its own. For that reason, I could not agree with the particular proposed new clause as it is. I give notice that in a moment I will move an amendment to Mr Collaery's final insertion on the circulated sheet. It presently begins with:

> A person who transmits an X-film to a person in a State or another Territory ...

That is followed by:

> knowing that the possession of that X-film is prohibited by the law of that State or Territory ...

I would remove those words so that it said that a person who transmits such a film "is guilty of an offence punishable, on conviction, by imprisonment for 2 years".

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

> That the question be now put.

Question put:

> That the proposed new clause (**Mr Collaery's**) be agreed to.

The Assembly voted -

AYES, 9	*NOES, 8*
Mr Collaery	Mr Berry
Mr Humphries	Mr Connolly
Mr Jensen	Mr Duby
Mr Kaine	Ms Follett
Dr Kinloch	Mrs Grassby
Ms Maher	Mr Moore
Mr Prowse	Mrs Nolan
Mr Stefaniak	Mr Wood
Mr Stevenson	

Question so resolved in the affirmative.

MR TEMPORARY DEPUTY SPEAKER: Order! It being past 12.30 pm, the debate is interrupted in accordance with standing order 77, as amended by temporary order.

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

> That so much of standing and temporary orders be suspended as would prevent private members' business from proceeding until 12.45 pm.

A vote having been called for -

Mr Collaery: I will withdraw that motion.

Motion, by leave, withdrawn.

LIQUOR (AMENDMENT) BILL (NO. 3) 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.34): Mr Speaker, I present the Liquor (Amendment) Bill (No. 3) 1991. I move:

> That this Bill be agreed to in principle.

The Assembly recently enacted a Bill making it an offence to consume liquor in certain public places. The new provision creates certain exemptions, including the consumption of liquor at furniture or other facilities lawfully provided by the proprietor or lessee of licensed premises. Advice from the Government Solicitor indicates that the exemptions do not cover the consumption of liquor at furniture lawfully provided outdoors by the proprietor of a "bring your own" restaurant, or indeed within the restaurant itself. I am sure that this result was not intended by the proponent of the new provision.

The Government believes that it is clearly an unsatisfactory result for the consumption of liquor in a "bring your own" context, either outdoors or indoors, to constitute a criminal offence. I am sure that all members of the Assembly have enjoyed a glass of wine at a BYO restaurant, or perhaps attending a cafe, and would be horrified at the thought that the police would be moving in to arrest them. The Bill will correct this anomaly by extending the exemption to cover "bring your own" premises and outdoor facilities provided with the permission of the Department of Urban Services as part of the conduct of that business.

Mr Duby: It could increase licence fees.

MR CONNOLLY: Mr Duby suggests that there might be some licensing fees increase. I present the explanatory memorandum for this Bill.

Declaration of Urgency

MR BERRY (Deputy Chief Minister): In accordance with standing order 192, I declare that the Liquor (Amendment) Bill (No. 3) 1991 is an urgent Bill.

Question put:

That this Bill be declared an urgent Bill.

Question resolved in the affirmative.

Allotment of Time

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

That the following times be allocated for consideration of the Bill:

(a) for the agreement in principle stage - until 12.50 pm this day;
(b) for the remaining stages - until 1 pm this day.

Agreement-in-Principle Stage

MR STEFANIAK (12.36): I really hope that we do not need to go past my speech on this matter, because, as Mr Connolly said in paragraph 4 of his written speech, it certainly was not the intention of the proponent, the Liberal Party - nor, I think, of anyone else who supported my Bill - to in any way affect the operation of the very splendid BYO restaurants in our city. In fact, I have talked with Mr Connolly since the matter came to his attention - which was after the Bill was passed, because Mr Connolly and I over several months went through my draft Bill, as did other members - and this appears to have been something that escaped all the lawyers present, including, perhaps, even the drafters themselves.

Having checked it with the learned counsel in the office of the Parliamentary Counsel, David Hunt, QC, he advised me that, whilst what we passed last week almost certainly is okay, there is a possibility that BYO restaurants would be affected. He advised me that, to make the law absolutely perfect so that there could be no possible anomaly whatsoever, an amendment along these lines was sensible.

Accordingly, I indicated to Mr Connolly, and persons in the media who contacted me, that I, as the proponent of the Act, had no problems at all with this amending Bill. I was aware of the drafting of it and what was being put in. I have seen the words in the Bill that has been circulated.

They accord exactly with those that I was told that the Bill would contain. As a lawyer, I can see no problems with this. It ensures that the BYO restaurants are covered. The sidewalk tables and chairs that some of those restaurants use are also adequately covered.

Accordingly, as the proponent, I support Mr Connolly's proposed amendment. It is by consent, and that means that it also has the support of my party and, I trust, everyone else in this house.

MR DUBY (12.37): Mr Speaker, I rise as a non-legal layman, not versed in matters of law, to express my absolute amazement that this particular amendment is required. First of all, I say that I supported the original legislation. That legislation, of course, was drafted by Mr Stefaniak and, indeed, by the ACT drafting office.

I would just like to let the record show my disquiet with the fact that, in a piece of legislation which has been mooted for some months - not a matter of days as was made out - this obvious anomaly was not picked up by those whose job it is to pick it up. I would like to have an explanation as to why this glaring anomaly was not picked up. Frankly, if I had not trusted in the good offices of the people who proposed the Bill and assumed that it had passed through the Government Law Office for vetting for these matters, I dare say that some non-legal members of this Assembly would have picked it up, if we had analysed the wording of the legislation to that degree.

Naturally, I support the amendment. No-one would want to see a situation which is doubtful at law not be resolved; and, of course, we would hate to see it be resolved in the manner of a prosecution. But I would just like the record to show my absolute disquiet at this. This is not the first time that anomalies of a similarly simple nature have appeared in ACT legislation in the last 2 years, and I think it behoves the Attorney to ask the appropriate questions.

MRS NOLAN (12.39): Mr Speaker, I was not going to speak on this amendment Bill. Obviously, I support it. This matter was, however, something that I discussed with Mr Stefaniak at the very beginning of the process of formulating his amendment Bill. Originally, there were some changes that needed to be made. I can recall, on at least a couple of occasions, actually making sure that restaurants would be able to serve liquor on tables outside. I was given the undertaking that that was covered, and I assumed that he had sought and got the necessary advice. It is unfortunate that that necessary advice was wrong.

It is a little embarrassing, I think, that we pass the Bill and a week later we are making an amendment to cover something that all of us thought had been covered and was quite okay. So, I have to say that I am a little concerned as well. Obviously, I do not have any legal training

either; but this was something that was of concern to me because of the tourism industry, and I thought the matter had been addressed. So, it is unfortunate. I am glad to see that it has been fixed up as quickly as possible and, naturally, I support the Bill.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.41), in reply: Members have said that it is unfortunate that there has been an unintended consequence of a Bill that has been through this house. I would say that it has been through the scrutiny of the Scrutiny of Bills Committee; it was not picked up there. Obviously, Mrs Nolan discussed this very issue with the proponent of the Bill and thought that it had been covered. As I understand it, I think everyone assumed that "licensed premises" included a BYO; but, because of the peculiarities of the liquor laws in this Territory, that definition is not indeed adequate.

I think this episode is a timely reminder of the responsibilities of this Assembly when we are considering private members' Bills. It is a matter of some real disquiet to the Government that we often are in the sort of position that we were in this morning in respect of private members' business. We seemed to have a constant stream of amendments to other Bills coming in to us; the sands are constantly shifting. This Bill itself had some amendments on its way through.

Obviously, we have to be very, very careful in scrutinising all the Bills that come before this Assembly. A Bill that comes up through the Executive process has at least had the discipline of the Cabinet process, which is set out in the Cabinet handbook - it is circulated throughout agencies; it is pored over by a whole range of people with different perspectives. It is therefore perhaps less likely that these anomalous effects occur.

When we are debating private members' business, sometimes on the run, and particularly when we get amendments that are handwritten - scribbled out on the floor and then voted on - there is an obvious risk of this sort of thing occurring again. I hope that it will not. Certainly, the officers of the Attorney-General's Department have learnt a lesson in this; that there will have to be far more careful consideration of all private members' legislation as it comes through. But, given the vast raft of material that is being introduced - and, again, my desk has this morning accumulated a little pile of additional amendments to other private members' legislation - there is always, obviously, a risk of this happening. We have detected the error as quickly as we could, and we have acted to correct it.

Mr Moore: It is interesting, Mr Speaker, that - - -

MR SPEAKER: Mr Connolly, in fact, has closed the debate on this issue.

Mr Connolly: I did ask whether anyone wanted to speak.

MR MOORE: I seek leave to make a very brief comment.

Leave granted.

MR MOORE: I thank members, and I accept that Mr Connolly did do that. The issue that he raised that I wanted to make a point on was the difficulty private members have in putting business together. What it really emphasises is the need for Parliamentary Counsel not to be the government's counsel, but to be the parliament's counsel. I believe that, in the Second Assembly, we should move to ensure that the Parliamentary Counsel is the counsel of the parliament, not the counsel of the Executive. Similarly, we should move to ensure that members of the parliament have access to officers of the Law Office in a direct way - obviously, in a controlled way - or something to that effect.

Mr Collaery: Non-policy advising.

Mr Jensen: They do not provide policy advice, Michael.

MR MOORE: Not for policy advice, but for - - -

Mr Collaery: Yes - non-policy advice.

MR MOORE: Yes, I mean non-policy advice. I accept that there have been a number of occasions when governments, both Alliance and Labor, have made the Parliamentary Counsel available to us. And I would be the first one to say that Mr Connolly himself gave priority to the Prostitution Bill - the very one that we debated today - in terms of going through Parliamentary Counsel. But I think that is something that the Second Assembly ought to look at, and it should set up a situation whereby Parliamentary Counsel is, as of right, available to members of the parliament.

MR STEFANIAK, by leave: I think a few people are getting a little bit off the track here, Mr Speaker. And I think a few very dedicated public servants might be somewhat unfairly maligned here. I point out to members - and I do so as a legal practitioner of 15 years' experience in the courts - that it is quite often that you see problems with legislation, government as well as private members' legislation. The Motor Traffic (Alcohol and Drugs) Ordinance in Canberra took about 10 years after it came into operation before it settled down into anything like some degree of workability. There were constant problems with that particular ordinance, and that is just one case in point. I have personally found probably about half a dozen instances in the ACT over the last 10 years where there have been problems with legislation and things have had to be redrafted - and I am not Robinson Crusoe in that regard.

In relation to this Bill, this is a very small, minor amendment. I think it revolves around the word "licence". The Government Law Office, the Parliamentary Counsel, the other lawyers in this place and I all saw no problem. There is still an argument as to whether indeed there really is a problem. However, BYO people in fact have what is called a permit; and it was the liquor board, I think, that brought this to Mr Connolly's attention. The amendment has been moved.

I would like to put on record that, whilst I would criticise some public servants and some people in some areas of government for not perhaps having as much professionalism and competence as I would like to see, this is certainly not so of the Parliamentary Counsel. I have had a few Bills drafted there over the last couple of years, and I have found the officers of the Parliamentary Counsel's Office, led by David Hunt, QC, to be thoroughly professional and very competent and dedicated individuals.

I would hate anything in this debate to be taken, or possibly taken, as a slur on that office and that very competent team of professionals who work there and provide this Assembly with some very good legislation. I would also remind members that we are all human. And one of the benefits of having an Assembly, as opposed to what we used to have 10 years ago - that is, a Federal government - is that if there is some slight problem, as we have seen here, it can be fixed very quickly. This was fixed within a week or so. The legislation is not due to be gazetted until about 11 December; so this amending Bill will go in with it, and we will end up with very, very good legislation.

In the past in the Territory, we have seen a lot of ordinances which have had a lot of problems. That will never completely go away. But the fact that we do have this body means that we can nip some potential problems in the bud and save a lot of court time and a lot of expense further down the track. So, I just think it is very appropriate, given that a few people are going off on a few tangents, that that goes on the record. Let us get on now and pass this sensible minor amendment.

MR JENSEN, by leave: Mr Speaker, I endorse the remarks made by Mr Stefaniak and Mr Connolly in relation to the support provided to the Assembly by the staff of the Parliamentary Counsel's Office.

Mr Kaine: We are debating the Bill, not the Parliamentary Counsel.

MR JENSEN: Mr Kaine, please!

MR SPEAKER: Order! Members, please reduce the noise level.

MR JENSEN: I do not think any of us would suggest that we do not get good service from that group. I think it is excellent. However, the point that I think Mr Moore was making was in relation to the nature of the assistance that is provided. It is not able to provide us with assistance with research into points of law. Under current arrangements and instructions, it is able only to provide drafting on instructions. That is one of the problems that we have, and it may be something that the next Assembly will have to look at in the future.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Sitting suspended from 12.49 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Government Employees - Canberra Raiders Fundraising

MR KAINE: I address a question to the Chief Minister and Treasurer. Is it a fact that on a recent weekend fundraiser for the Raiders a number of senior officers of the ACT public service assisted and were paid out of public funds to do so? Is it correct that the Commonwealth Public Service Commissioner has declined to approve those payments - and, obviously, quite properly? If the answer to those two questions is yes, how many public servants were involved, how much in public funds was involved and what is being done to recover it?

MS FOLLETT: Mr Speaker, I thank Mr Kaine for the question. I have no information on the matter that Mr Kaine has raised. I will undertake to investigate it and provide him with a full reply.

Federation Square - Traffic Arrangements

MR JENSEN: My question is directed to Mr Connolly in his capacity as Minister for Urban Services. I would like to express my concern about motorist safety in regard to access and exit roads onto the Barton Highway at the Federation Square tourist development. In my view, the exit roads have insufficient merging space for traffic entering the Barton Highway. The Barton Highway is a busy thoroughfare and, as a consequence, we feel that the present arrangement is a potential needless risk to motorists using the Barton Highway and O'Halloran Place.

My question is: Can the Minister advise why it appears that sufficient merging provisions were not included in initial planning and construction of the Gold Creek access road and, more recently, O'Halloran Place? Can the Minister advise what action is being taken to redress what appears to be a potential problem?

MR CONNOLLY: I was not out there for the opening on Sunday, but they were open for trading on Saturday and my wife and I went out and had a look around Federation Square. I must say that I did not form the impression that Mr Jensen seems to have formed, that there is a major problem there; but I will ask my department to have a look and report back to me. We have a number of people who are experts in the area of appropriate merging lanes and so on. I will ask them for their considered opinion.

Health Budget - Staff Reductions

MR HUMPHRIES: Mr Speaker, my question is addressed to the Minister for Health. It concerns the monthly statement for October, which he released the other day. It is a fairly simple question, so he should be able to answer it. In fact, it requires a yes or no answer. Do the amounts predicted for salaries and wages for the year to date - that is, $35.4m approximately for the hospital services program and $11.6m for public and community health - take into account and reflect the projected staff cuts which the Government has announced?

MR BERRY: Of course, the detail that Mr Humphries requires - - -

Mr Humphries: It is very simple.

MR BERRY: It is not as simple as he tries to make out. If Mr Humphries wants some detailed information about those sorts of issues, it would be far better to place the question on notice, and he knows it. It is all right to put a bit of political intent into these questions; but, if you want detail about such complex issues as those sorts of costings, which were provided to Mr Humphries, I am happy to examine the detail.

In relation to the staffing cuts that Mr Humphries refers to, I have informed him that there has been a long consultation process going on with the union movement. The process of identifying the staff that must be shed to meet the budget savings will be finalised early in the new year.

Mr Humphries: We have heard all this before. This is very interesting, but it is not relevant to the question.

MR BERRY: You will find this very interesting because it is about 75 per cent complete. I thought you were interested in those sorts of figures.

Mr Humphries: I am not. I am interested in the figures I have asked about.

MR BERRY: Okay, I will drop that one. You are not interested in the question you asked yesterday, then?

MR HUMPHRIES: I ask a supplementary question, Mr Speaker. The Minister has once again not indicated whether he is going to take this question on notice or not. I would appreciate it - - -

Mr Berry: Well, if you want to put it on notice - - -

MR HUMPHRIES: You can take it on notice.

MR SPEAKER: Order! Address your comments through the Chair, please.

MR HUMPHRIES: Mr Speaker, I ask the Minister: If he will not answer my question now, will he take it on notice?

MR BERRY: Indeed.

Fairbairn Park - Noise Pollution

MR MOORE: Mr Speaker, my question is directed to Mr Wood as Minister for the Environment and results from a letter which I understand he has from Mr Ron Murnain of the Ridgeway. I have copies of some of the replies that Mr Wood has sent previously to Mr Murnain. He accepts that people on the Ridgeway in Queanbeyan are treated equally insofar as they are affected by things that occur in the ACT. Mr Murnain points out that noise direction notices with effect for 12 months have been served by the Environmental Protection Service on Fairbairn Park Control Council and one of the operators, Canberra Automobile Racing Association, following a race on 22 September. For a body corporate there is a fine of $5,000 for exceeding permissible limits and, for a natural person, a fine of $1,000. Mr Murnain also points out that on Sunday, 1 December, just last week, the people of the Ridgeway were not able to reach the Environmental Protection Service in spite of phoning for 2 hours. They also monitored the race with their own equipment, which they claim to be sophisticated equipment. I believe that Mr Wood has a copy of the results. First of all, are you satisfied that the Environmental Protection Service is appropriately available under such circumstances and is fulfilling its function appropriately? Secondly, what are you doing to protect the people of the Ridgeway from this noise pollution?

MR WOOD: Mr Speaker, I do not know whether I have "a" letter from Mr Murnain. I have a very large number of letters from that gentleman, and that is fair enough. The community he represents sees a problem. They report it to me and, in terms of all the requirements of the Act, we

respond to those problems. This matter has been continuing for quite a long time. I believe that the Environmental Protection Service and other agencies of the ACT Government have been attending to the matter.

It is quite clear that the complaints have not been settled to the satisfaction of Mr Murnain, although I do think the people he represents would acknowledge that there has been considerable improvement in the noise coming from Fairbairn Park. It is my understanding that a bank was required to be built there as a sound abatement measure. Time will tell whether that has had any success. Certainly, when I was nearby recently, I saw evidence of that bank being constructed.

As to the non-availability of the EPS on a Sunday afternoon, I do not know what the former arrangements were. I think we do have measures in place to see that officers are available at weekends, because noise pollution complaints do come in at that time. There is an after-hours phone number. The letter from Mr Murnain has passed through my hands. I have referred it to the department. It should be over there by now, I believe, and I will respond quite rapidly to it.

MR MOORE: I ask a supplementary question, Mr Speaker. Mr Murnain has also requested that we organise a meeting with you and your officers, Mr Wood. You have always welcomed such requests. Mr Murnain actually requested that of Ms Follett, but I accept that it is your responsibility. Would you be happy to facilitate such a meeting that includes whichever members would like to attend?

MR WOOD: Yes, that was part of the letter, and he will get a reply saying that I will do that. I do not know when I will do it. It will not be in the next week or two. I am sure members would agree, given not only the sittings of the Assembly but also the fairly heavy load in our diaries at the moment; but I will be indicating in my reply to him that I will meet him as soon as possible.

Sports Facilities Coordinator

MR COLLAERY: Mr Speaker, my question is addressed to the Minister for the Environment, Mr Wood. I ask Mr Wood what the assigned duties of the new sports facilities coordinator, or the unit thereof, now apparently located within the Minister's Department of the Environment, Land and Planning are. If there is such a unit, who are the people involved and what is its role?

Mr Wood: What is the name again?

MR COLLAERY: Sports facilities coordinating unit. We understand that the position is occupied by the former OIC of the Sport and Recreation Office, Mr Peter Conway.

MR WOOD: Mr Speaker, it is true that sport is administered within my department, but it is the responsibility of my colleague Mr Berry. If he prefers to answer this question, I will leave it to him.

Mr Collaery: We were told that it was in your department.

MR WOOD: That is correct, but Mr Berry is the Minister.

MR BERRY: I think it is best that I take the question on notice and provide a full answer to the member in due course.

Aidex - Demonstrations

DR KINLOCH: My question is directed to the Attorney-General and arises from Aidex. I know that many answers have been given, but I hope he will bear with me. Would the Attorney-General bring us up to date on the circumstances of those police and demonstrators who were injured? Are they now in good shape again, are there any still in hospital and in what way could we help them? Secondly, cases have been brought to my attention of alleged - and I stress "alleged" - police brutality and of alleged brutality from one segment of those who were protesting about Aidex - that is, both sides. What measures are being taken to investigate these charges?

MR CONNOLLY: To the best of my knowledge, no victim of Aidex violence is still in hospital, although there were some broken bones, certainly among police officers, and I gather that there are police officers with their arms in slings and the like, recovering from broken bones.

I have received and other members have received copies of allegations of police brutality. I have said to everyone who contacts my office with complaints along those lines that there is a statutory complaints mechanism in place for complaints against police. I direct correspondents' attention to that formal complaints mechanism. I note that Senator Tate has said the same thing when he has been asked the same question. I am sure that the Ombudsman's office and his investigation staff will do their duty in relation to any complaints.

Playing Fields and Parks - Watering

MR STEVENSON: My question is addressed to Mr Bill Wood and concerns playing fields and parks. There are many people - - -

MR SPEAKER: I would ask you again, Mr Stevenson, to refer to members by their surname rather than bringing in the Christian name at every opportunity you get. You are the only one that does this consistently. Please proceed.

MR STEVENSON: My question concerns public parks and playing fields. There are many people in the Belconnen community in particular that are concerned that parks and playing fields have not had sufficient water for some while, to the degree that the grass has actually died. So, I would ask: What has been the policy in this area? Has the policy changed recently and, if the parks are not going to be watered correctly, what is seen as the logical outcome of that?

MR WOOD: Mr Speaker, it is true that a number of ovals - some 15 neighbourhood ovals and some non-playing surfaces adjacent to ovals - are getting less water. This is certainly due to the dry season we are having, but is also an outcome of the recent budget. Budget funds were reduced in response to the tight circumstances; but, to be fair, it was also a water conservation matter. The two are locked together. We clearly acknowledge that we had to reduce funds, and this is one way of doing it. We anticipate that there will be a saving of a quarter of a million dollars in the current financial year as a result of that, and a very large saving in water.

You indicated that the grass on ovals had died. I believe that the grass is dry. I do not know that it is dead. I think a drop of rain would rapidly green that grass. I believe that it should be maintained at a reasonable height. It is not dead but will quickly regenerate when we get a little more rain.

Lake Burley Griffin - Powerboats

MRS NOLAN: Mr Speaker, I ask my question of Mr Connolly, although I am not 100 per cent sure that, in fact, it concerns his portfolio area. However, I will leave it for him to pursue the matter with another Minister, if necessary. I refer Mr Connolly to his promise some weeks ago to pursue the matter of use of Lake Burley Griffin by steam and electrically powered boats. I remember that he promised that he would pursue it with his Federal colleague Ros Kelly. I ask the Minister what has happened in relation to that. While I recognise that it is a Federal issue, I know that he did state that he would pursue the matter.

MR CONNOLLY: I have not had any response of late on that, but I certainly raised the matter quite vigorously with a senior member of Mrs Kelly's staff and indicated that there was a strong local feeling in Canberra that this would be a sensible course of action. I have not got a response on that. I will pursue them again; but I have certainly raised the matter with some vigour and would hope that we could get a satisfactory response from the Federal Government to match the satisfactory response from the Labor Government, which allowed the lakes of Tuggeranong and Belconnen to be opened to steam boats.

Mrs Nolan: I assume that you will follow up again?

MR CONNOLLY: Yes, I will.

Casino Proposals

MR KAINE: I address to the Chief Minister a question in connection with the casino. The processes that the Alliance Government set in place were to have been completed with a decision by the end of November. Could you tell us how many proposals were considered by the Government for the establishment of a casino, and when does the Government intend to announce the outcome of that process?

Mr Moore: It is Glebe Park, behind the Parkroyal.

MS FOLLETT: I defer to Mr Moore, Mr Speaker. I think Mr Kaine well knows the process for the selection of a casino in the ACT, and he knows that that process is one that has been conducted at arm's length under my Government, as it was under his Government. I am following the same timetable that was set in place by Mr Kaine when he had responsibility for the casino matter, and I am confident that that process is proceeding. I expect to receive a report from the interdepartmental committee on the matter any day now and will be happy to make an announcement once I have that material in front of me.

Career Education

MR HUMPHRIES: Mr Speaker, my question is addressed to the Minister for Education. Is it the case that the Minister's department is abolishing the position of career education consultant and merging this function with the existing position of work experience coordinator? How does the Minister justify this move when the Career Education Association of the ACT, representing teachers who provide career advice to students, has condemned the move as a short-sighted measure, coming at a time when high youth unemployment means that we should be devoting more, not fewer, resources to career education?

MR WOOD: Mr Speaker, the position is pretty much as Mr Humphries described it. It comes down to priorities. There is a much diminished number of consultants compared with some years ago. As priorities change within education, if our assessment is that there is a need for consultancies in other areas we obviously can meet that need only by taking a consultancy from another area. If the budget conditions are such, we may simply have to remove a consultancy, although I do not think that is the case on this occasion. We simply cannot sustain expansion. I think it is fair to say that in most agencies these days, if you want to run a new program, you look at your existing program and say, "What is there of a lesser priority?". There is no doubt that I and everybody else would give a high priority to careers education, but there is a small number of other matters that have a very high priority that we must meet.

MR HUMPHRIES: I ask a supplementary question. Mr Speaker, given the concerns of organisations such as the Career Education Association and others working in this field that this is a move which is short sighted, will the Minister agree to review the decision he has made?

MR WOOD: I have had the same approaches from the Career Education Association. Yes, they would regard it as short sighted, and so would the science professional group if I removed a science consultant, and so on. There is no question about that. That is their view.

I am seeking to have an assessment from the department of how we can proceed with the Careers Expo, which is a very important annual event. I am asking whether the removal of that careers adviser will have any effect on that. The expo is run by a very large number of educators from across all sectors. The careers adviser had a role in it. I want to ensure that there has been no critical loss to the committee that runs that important Careers Expo. I was asked about a review, but at this stage that is all I would commit myself to.

Arms Exhibitions

MR COLLAERY: My question is directed to Mr Connolly as the Attorney-General. I ask the Attorney whether the direction he issued to the Natex Trust relates only to exhibitions aimed primarily at arms displays and arms sales and does not exclude the technological aspects relating to the arms trade. In fact, the direction to Natex is ambiguous and does not exclude further Aidex exhibitions, differently named, that relate to electronic and other exhibitions.

MR CONNOLLY: I do not have with me a copy of that direction, which was of course tabled in this place, so it is in the public domain. The intention of the direction was certainly clear - to prevent future arms exhibitions at Natex. There is obviously a difficulty here. We would be most enthusiastic about an information technology exhibition at Natex which might feature a range of new computer programs - that is, computer technologies. Some of those would obviously have a defence application. That would be fine. But we do not want weapon systems exhibitions or defence arms bazaar type activities in Canberra. We have said that repeatedly. It is a view that seems to be shared by everyone in this Assembly - - -

Mr Stefaniak: Except the Liberal Party.

MR CONNOLLY: Apart from the Liberal Party, as Mr Stefaniak says. I notice that David McNicoll in this week's *Bulletin* has suggested that the Duntroon cadets should have been let loose to carry out some demonstrations of unarmed combat on the protesters at Natex; that it would have been very useful practice. That no doubt is a view that would be shared at least by some members of the Liberal Party.

But the Government's position is clear. We do not want arms bazaars in Canberra. Our vision for Canberra does not include our being a centre for the international arms trade. We do not want to have a bar of arms, defence, weaponry focused exhibitions. Obviously, there is a potential, in any technology shows, for there to be defence applications. That is fair and proper.

MR COLLAERY: I ask a supplementary question. The Attorney may have clarified it in his last few words, but I seek clarification in terms of the direction issued under section 6 of the Natex Act. Is the Attorney clarifying the situation by saying that technology exhibitions which may have a defence application will be permissible and are outside the scope of the direction issued to the Natex Trust?

MR CONNOLLY: As long as it is not focusing on weaponry it is permissible. There was rhetoric from some of the organisers at Natex that there was not a gun in sight. I did not actually go out there, but I did see the interesting show bag that Mr Stefaniak brought back into the chamber. It featured a particularly attractive brochure for a particularly interesting looking aeroplane and pictures of cluster bombs, anti-personnel bombs and other interesting trinkets and optional extras which were being promoted. There was a clear weaponry focus in Aidex as it was planned this year. We do not want weapons exhibitions and arms exhibitions in Canberra, and those are the terms of our direction.

Arms Exhibitions

DR KINLOCH: Again, my question is addressed to the Attorney-General. There is some worry, in that I hear it said that there is some attempt to go to the Commonwealth to see whether the Commonwealth can support some kind of arms bazaar. Can we have the assurance of the Government that it will go to its Commonwealth colleagues and urge that no such exhibition take place in Canberra?

MR CONNOLLY: We have certainly said that it is the view of this Government that there should be no such future exhibitions in Canberra. We always acknowledged that, if the Commonwealth Government was determined to have an arms bazaar, it could no doubt do it on Defence land and there is little that we could do to prevent it. We have also said that, if the Commonwealth did want to get around our ban, we would expect the Commonwealth to pick up the full tab of providing perimeter security and keeping the peace.

While claims were made that we were missing and passing up a wonderful opportunity to make money for Canberra, I am not aware of any other States that have been particularly enthusiastic for this type of activity. If any other State wants to host Aidex, it can do it with our blessing. We do not want it.

DR KINLOCH: I ask a supplementary question, Mr Speaker. I am worried about the possibility of exhibitions getting in under the counter, so to speak. Can we be quite clear that there will be no such exhibition of which the sole or primary purpose is the displaying, whether for sale or otherwise, of arms, armaments and munitions?

MR CONNOLLY: Again, without having the text of the precise terms before me - and I will look at it - we consistently say that we do not want weapons fairs; we do not want arms bazaars in Canberra. That remains our position.

Health Centres - Private Practitioners

MR HUMPHRIES: My question is addressed to the Minister for Health. I ask the Minister what the Government's policy is with respect to the letting out of premises in health centres in the ACT to private medical practitioners - that is, non-salaried medical practitioners. In particular, why has the Minister's department refused to let out space to one doctor who retired from the City Health Centre earlier this year and who wishes to continue to practise within that general area of the ACT?

MR BERRY: I am just trying to look for some of the detail on that.

Mr Humphries: You can take it on notice again.

MR BERRY: No, I can give you an answer which I am sure you will be very pleased with. A member of the medical profession did, indeed, ask for some rental space in, I think, the City Health Centre. I do not think he was the only one either; there may have been more. An assessment was made of the cost of the space in that medical centre and subsequently it was decided that there was no space available for him to rent, as I recall.

Mr Humphries: That is not his version of events.

MR BERRY: I will check that, and, if that is not an accurate reflection of events, I will keep you up to speed on it; but that is my understanding.

Mr Humphries: That means that you will take it on notice, does it?

MR BERRY: Yes, sure.

Horse Agistment Facilities

MRS NOLAN: My question is directed to Mr Wood. I refer the Minister to a previous question to him - and, indeed, to some discussion that I have had with him - in relation to Reynolds paddock in Hall. I understand that during those discussions the Minister indicated, as did his advisers, that there would be alternative agistment facilities available once those people were instructed to remove their horses from that particular paddock. I ask the Minister: What replacement agistment facilities are available for those horse owners who have now been instructed to remove their animals from Reynolds paddock in Hall?

MR WOOD: The position, as I recall it, is that an additional area is being reclaimed for use for agistment for horses. I assume that that is proceeding because I have had a letter of complaint from the lessee, whose lease is being terminated. I guess that there is probably a three-month notice on that. So, obviously matters are progressing. He will have three months. The time must be drawing to a close by now; but that would the reason, I expect, for the delay. I will come back to you with the precise information about that.

MRS NOLAN: Mr Speaker, I ask a supplementary question. I ask whether Mr Wood can ensure, then, that those people who currently do have horses agisted on that particular paddock are notified of what procedures are being put in place, because currently they are of the understanding that they must remove their horses and that there is nothing else available for them.

MR WOOD: I think that their expectation would be that a new place is to be provided. It is fair enough to expect that they be kept informed about that. There may be some difficulty in the interim period in locating their horses, but I will suggest to my officers that they advise the interested horse owners.

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

Health Budget - Staff Reductions

MR BERRY: Yesterday, Mr Humphries asked a question in relation to staffing arrangements in Health. He will be pleased to know that, on my own initiative, I have sought some further information which he will certainly find helpful - and it might stop him complaining a bit.

Mr Humphries: I doubt it.

MR BERRY: Well, it will not stop him complaining, but I will give him the answer anyway. I started to give Mr Humphries this information earlier, but he stopped me. It seems as though he does not want it today.

The process of identifying the staff that must be shed to meet the budget savings will be finalised early in the new year. It is about 75 per cent complete now. This timetable will have all the staff identified in time to meet Health's budget target. Fifty-seven are in the process of accepting or have accepted voluntary redundancy. The remaining reduction not achieved through attrition will be met through redeployment to Calvary or elsewhere in the ACT Government Service, or possible further voluntary redundancies.

Policy Plan Changes

MR WOOD: Mr Speaker, I will have another go on a question, if I may. Yesterday Mr Jensen asked me for some details about the Planning Authority actually checking the areas proposed as investigation areas. It is a fairly long answer so, if I can, I will table that.

MR SPEAKER: Mr Wood, do you want that just tabled or included in *Hansard?*

MR WOOD: I seek leave to have it incorporated in the *Hansard*, thank you.

MR SPEAKER: It is just a straight typographical thing, is it not? There are no charts or whatever?

MR WOOD: Yes; no problem.

Leave granted.

Answer incorporated at Appendix 5.

Horse Agistment Facilities

MR WOOD: I also advise Mrs Nolan that, in the last minute, I have been informed that what I said was correct. The lessee of that land, however, has been offered the opportunity to run the horse agistments, and I believe that he is happy to do so. So, we will give the people the details of that.

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

MRS GRASSBY: Mr Speaker, I present report No. 21 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. I seek leave to make a brief statement on the report.

Leave granted.

MRS GRASSBY: The report I have just tabled details the committee's comments on eight pieces of subordinate legislation and 24 Bills. I commend the report to the Assembly.

LAND (PLANNING AND ENVIRONMENT) BILL 1991
Detail Stage

Clause 43

Consideration resumed from 3 December 1991.

MR JENSEN (3.04): I seek leave to move my three amendments together, Mr Speaker.

Leave granted.

MR JENSEN: Also, may I clarify a point. My note about my amendment No. 33 says "omit 'Minister', substitute 'Executive'". I would like to take out that first part of No. 33, I think. We have already discussed that earlier. I do not see any point in proceeding with that. My amendment No. 33 will now read: "Subclause 43(1), page 20, line 6, omit 'public servant', substitute 'suitably qualified and experienced person'". Amendments Nos 34 and 35 remain as they are.

MR SPEAKER: Mr Jensen, others may have been able to follow you, but I am afraid I could not. The situation, as I understand it, is that you have withdrawn your amendment No. 33?

MR JENSEN: No, part of amendment No. 33, Mr Speaker. Delete the first part which reads "omit 'Minister', substitute 'Executive'".

MR SPEAKER: All right, but you are still going to go on with "public servant", et cetera.

MR JENSEN: Yes, that is correct. I move:

(33) Page 20, line 6, subclause 43(1), omit "public servant", substitute "suitably qualified and experienced person".

(34) Page 20, line 14, subclause 43(1), omit "12", substitute "6".

(35) Page 20, line 21, subclause 43(3), after "Planner" insert ", if a public servant,".

Mr Speaker, these three amendments relate particularly to the appointment of an Acting Chief Planner. The legislation, as it is currently written, provides that the Minister - we will not get into the debate about who should do it - can appoint only a public servant to act as Chief Planner. We believe that there is no reason why it should be confined to a public servant. It may well be that a suitably qualified and experienced person could fill that role. I am not sure whether that is going to be accepted.

Mr Wood: Yes.

MR JENSEN: Okay. The next one may be a little more difficult for the Government to accept. It is my amendment No. 34. Currently the Minister will be able to appoint an Acting Chief Planner for 12 months. The Rally, at this stage anyway, seeks to have the period reduced to six months as opposed to 12 months. My amendment No. 35 relates to amendment No. 33, so I will not speak any further on that. I await with interest the Government's response to my amendment No. 34.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.07): Mr Speaker, the Government accepts the first of those amendments. Mr Jensen's amendment No. 33 is fine. I wonder whether Mr Jensen would accept my assurance that if this goes in, as we agree, he will need to take out his amendment No. 35. The two are not compatible, I am advised. What you are doing with your amendment No. 35 is assuming that the position will be a public servant's position. You want it broader than that, I understand. The two do not go together, I am informed.

As to the other one, the 12 months provision is a pretty consistent one across legislation. Six months, you would not be surprised to know, is not really a long period when it comes to selecting senior officers. I could not be confident even that we can fill the position of the Chief Planner, which we are about to do, within that six months. Quite a long time has been involved in organising it. All the proper processes have to be observed. There can be complications and confusions. So, the Government will reject the second amendment in this current list of amendments because in our view what is proposed is consistent with other legislation. You may comment on that third amendment. It does not go.

Mr Jensen: Yes, I will comment on that.

MR KAINE (Leader of the Opposition) (3.08): Mr Speaker, we agree with both Mr Jensen and the Government on the first of those three amendments. As for the second, we agree with the Government that a 12-month period appears to us to be a reasonable time. I do not know what Mr Jensen has in mind in trying to cut it down. I do not see any objection to an Acting Chief Planner acting in the job for up to 12 months, and that is what the Bill provides.

I disagree with the Minister on the third one. The first amendment merely says that the appointee must be a suitably qualified and experienced person. That can include a public servant. I do not think we can say that no public servant is suitably qualified or experienced; there must be some who are. So, you have to admit of the possibility that that person may well be a public servant. Then Mr Jensen's third amendment is quite appropriate and apposite. It provides that, if that person happens to be a public servant, then certain things flow from it. So, I think it is not mutually exclusive and it is a sensible amendment.

MR JENSEN (3.09): That is correct, Mr Speaker. That is my reading of it. That is the reason why it is put. It flows on, I would suggest, from the first of those amendments because if the person who is acting as Chief Planner is a public servant he will continue to be paid the remuneration. If he is not a public servant, obviously some other arrangements would need to be made. I think that was the reason for that going in.

In relation to the period of six months, I note the comments by both of my colleagues; but might I suggest that in the case of an appointment as important as that of Chief Planner of the ACT, particularly now that we have agreed that the Chief Planner is directly responsible to the Minister, the quicker we make those sorts of arrangements within the appropriate bounds the better, and a six-month period is not inappropriate.

I would hate to see a person appointed temporarily to that job for much longer than six months. I think it is better in the circumstances of that position to get the person appointed and on the job as quickly as possible. I guess that was the reason for that. I am obviously not going to die in a ditch over it. We will not be calling for a division on it.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.11): Mr Speaker, we have substantial agreement on Mr Jensen's amendment No. 35. It is really irrelevant because it is covered in other ways. It is covered under the Acts Interpretation Act. It does not really need to be there; but, like you, we will not die in a ditch over it.

Ordered that the question be divided.

Amendment No. 33 agreed to.

Amendment No. 34 negatived.

Amendment No. 35 agreed to.

Clause, as amended, agreed to.

Clauses 44 and 45, by leave, taken together, and agreed to.

Clause 46

MR JENSEN (3.12): I seek leave to move my amendments Nos 36, 37 and 39 together because I think they are related. Amendments Nos 38 and 40 are not related to those first three.

MR SPEAKER: I think the idea would be to do Nos 36 and 37 together first, Mr Jensen.

MR JENSEN: All right. I will follow that course, Mr Speaker.

Leave granted.

MR JENSEN: I move:

Page 21, line 13, subclause 46(1), omit "The Chief Planner", substitute "A person appointed to be the Chief Planner or to act as Chief Planner".
Page 21, line 16, subclause 46(2), after "Chief Planner", insert "or a person acting as Chief Planner".

These amendments flow from amendments to clause 43. My information is that the Government has accepted both No. 36 and No. 37.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.13): The Government agrees.

Amendments agreed to.

MR SPEAKER: We now come to Mr Jensen's amendment No. 38.

MR JENSEN (3.13): Yes, that is correct, Mr Speaker. There is some dispute, I believe, between us and the Government and its advisers in relation to pecuniary liability. As this matter has been raised by my colleague Mr Collaery, I will formally move the amendment and defer to him. I move:

Page 21, line 18, subclause 46(2), before "in", insert the words "or pecuniary liability".

MR COLLAERY (3.14): There has been considerable debate as to whether the words "pecuniary interests" include pecuniary liability. Mr Speaker, you would be well aware of that because, as you know, members of this Assembly have not always declared their pecuniary liabilities in their statement of pecuniary interests.

Mr Connolly: What did you say?

MR COLLAERY: That is a fact. I can think of one notable example where there was no declaration made of liabilities. It does not concern anyone in this chamber. The fact is that the expression "pecuniary interests" is usually taken by lay people to mean assets. The lawyers among us realise that you should include liabilities in it. Even though the law is clear, we believe that the language is confusing to all but those in the know.

We think that these people taking these appointments should not be in a position to argue that they did not know and did not declare the very large loan they owe to a company that may relate to one of the planning issues. Although the words are, in technical legal terms, superfluous, as no doubt the Attorney will agree, the words "or pecuniary liability" put beyond doubt the obligation on planners. We are not going to call upon "Diana Ditch" to assist us with this. I am sure that is unnecessary. But we believe that it should be beyond doubt. That is why we have moved this amendment.

MR KAINE (Leader of the Opposition) (3.16): Mr Speaker, this is the sort of pointless debate that we get into sometimes on matters that are really not of great consequence. I am not a lawyer; I am a lay person. But when I read the words "pecuniary interests" I assume that it means all kinds of pecuniary interests. It does not mean only positive ones; it means negative ones as well. When I made my declaration as a member of this Assembly I included all my liabilities as well as my assets. If I am capable of making that interpretation - I am not all that smart - I am sure that a lot of other people are as well. So, I think that it really is rather pointless.

The point is that it does not need to be built into the legislation. When an officer is asked to make his statement of pecuniary interests he can be given a written information sheet that says, "This is what we mean; these are the sorts of things that you have to say". I do not think it needs to be built into the legislation to achieve that end. We would do much better to get onto some of the substantive and fundamental issues in this planning Bill than arguing this kind of nonsense.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.17): Well said, Mr Kaine. Mr Collaery is right. This does not change the meaning of "pecuniary interests", which means either liabilities or assets. The case that Mr Collaery raised should have been dealt with, if he had a concern, at that time. It is not the answer to change things here and in a host of other pieces of legislation. If you had a worry, you should have raised it then. No doubt you did, or maybe you did; but do not, some time down the track, attempt to change legislation. I do not think that is the answer to the problem. We know what it means. Let us hold to the meaning that we understand.

MR COLLAERY (3.17): Mr Speaker, I am pleased that Mr Wood has made those comments. On the extrinsic test, I think it is clear now what the provision means and I think we have achieved our objective. Frankly, we are growing tired of Mr Kaine's empty rhetoric on issues like that. It is unnecessarily - - -

Mr Kaine: Well, you should see what I wrote against your next amendment.

MR COLLAERY: Mr Kaine, who has introduced next to no legislation in his whole time in this chamber, takes petty points, Mr Speaker. All we wanted was for Mr Wood to make the statement he did, and we are satisfied with it. We do not press the issue any more.

Mr Wood: Do you want to withdraw it now?

MR SPEAKER: Mr Collaery, do you wish to withdraw the amendment?

MR COLLAERY: No, Mr Speaker.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.18): I just wonder whether Mr Collaery would reconsider withdrawing because, as he says, the position is now clear. Mr Wood has indicated, as the Minister, what the intention of the provision is. It would be unfortunate if *Hansard* and the *Minutes of Proceedings* record a vote on an amendment to cover liabilities. It would be helpful if, in fact, the amendment were withdrawn so that it is abundantly clear that it covers liabilities and that there is not a record appearing of the Assembly rejecting the extension to cover liabilities.

MR JENSEN (3.19): No, Mr Speaker, we want the amendment to proceed; but we will not call for a division.

MR SPEAKER: I think, Mr Jensen, you are fully aware of how that will be recorded in the *Hansard* - that the vote of the house was against your quite worthwhile amendment. That is all we are saying.

MR JENSEN: Yes.

Amendment negatived.

MR SPEAKER: The next question is Mr Jensen's amendment No. 39. You will need to seek leave because you have addressed this clause a number of times, Mr Jensen.

MR JENSEN (3.19), by leave: I move:

> Page 21, line 18, subclause 46(2), omit "the Chief Planner", substitute "he or she".

It is self-explanatory, and I will sit down.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.19): Mr Speaker, I will not be long, but I am going to complain about it.

Mr Jensen: Well, it did not come from me. It was consequential.

MR WOOD: Consequential? Well, I am not sure that we really need it. It is quite clear what it is. To substitute "he or she" there really slows us down. This slowing down of the process is what worries me, so I will not slow it down any more.

Amendment negatived.

MR JENSEN (3.20), by leave: I move:

Page 21, line 19, add the following subclause:

"(3) A referendum in this section to the pecuniary interests of a person shall read as including a reference to the liabilities, including any contingent liability, of the person.".

I have already spoken to this issue. I will resume my seat.

Amendment negatived.

Clause, as amended, agreed to.

Clauses 47 and 48, by leave, taken together, and agreed to.

Clause 49

MR JENSEN (3.22), by leave: Mr Speaker, I move:

Page 22, line 11, subclause 49(1), omit "Minister", substitute "Executive".
Page 22, line 13, subclause 49(2), omit "Minister", substitute "Executive".

This matter has been lost. I just seek to have those amendments recorded because the Rally still maintains its position.

Mr Wood: You are not going to fight it every time, are you?

MR JENSEN: I am not saying any more.

Amendments negatived.

Clause agreed to.

Proposed new Division 4A

MR JENSEN (3.22): I move:

That the following division be inserted in the Bill after Division 4 of Part II:

"Division 4A - Planning Advisory Committee

Subdivision A - Preliminary

Interpretation

"49A. In this Division, unless the contrary intention appears -
'Committee' means the Planning Advisory Committee established by this Division;

'Chairperson' means the Chairperson of the Committee;
'member' means a member of the Committee.

Subdivision B - Establishment, functions and powers

Establishment

49B. The Planning Advisory Committee is established by this section.

Function

49C. The function of the Committee is to advise the Authority, at the Authority's request or of its own motion, about matters relating to planning in the Territory.

Ministerial directions

49D.(1) The Minister may give the Committee general directions in writing about the policy and objectives it should pursue in the performance of its function.

(2) The Minister shall cause particulars of any directions to be published in the *Gazette* within 14 days after the directions are given.

(3) Directions not published in accordance with subsection (2) cease to have effect from the expiration of the 14th day after they are given.

Powers

49E. The Committee has power to do all things necessary or convenient to be done for or in connection with the performance of its function.

Subdivision C - Constitution and meetings

Constitution

49F.(1) The Committee is constituted by no more than 5 members, appointed by the Minister in writing.

(2) The performance of the function or the exercise of a power of the Committee is not affected by reason only of a vacancy or vacancies in the membership of the Committee at the time of that performance or exercise.

(3) A retiring member is eligible for re-appointment for 1 term initially, and for a further 2 terms after the expiration of 3 years following the expiration of the initial re-appointment.

Expertise and experience of Committee members

49G. In making appointments under subsection 49F(1) or subsection 49P(1), the Minister shall seek to ensure that the following disciplines are represented amongst the members of the Committee:

(a) town planning;
(b) architecture;
(c) engineering;
(d) landscape architecture.

Terms of appointment

49H.(1) Members hold office as part-time members.

(2) A member holds office -

(a) for such period, not exceeding 3 years, as is specified in the instrument of appointment; and

(b) on such terms and conditions (if any) in respect of matters not provided for by this Division as are determined in writing by the Minister.

Chairperson, Deputy Chairperson

49I. The Minister shall appoint from the members -

(a) a Chairperson of the Committee; and
(b) a Deputy Chairperson of the Committee.

Remuneration and allowances

49J.(1) A member shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply -

(a) in relation to remuneration - if there is a subsisting determination relating to the remuneration to be paid to members; or

(b) in relation to an allowance of a particular kind - if there is a subsisting determination relating to an allowance of that kind to be paid to members.

(3) In subsection (2) -

'determination' means a determination of the Remuneration Tribunal of the Commonwealth.

Leave of absence

49K. The Minister may, by writing, grant leave of absence to a member on specified terms and conditions as to remuneration or otherwise.

Disclosure of interests

49L.(1) A member who has a direct or indirect pecuniary interest in a matter which, to his or her knowledge, is being considered or about to be considered by the Committee shall, as soon as practicable, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Minister otherwise determines, the member shall not -

(a) be present during any deliberation of the Committee with respect to that matter; or

(b) take part in any decision of the Committee with respect to that matter.

Resignation

49M. A member may resign his or her office by writing signed by the member and delivered to the Minister.

Termination of appointment

49N.(1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If a member -

(a) is absent, except on leave granted under section 49K, from 3 consecutive meetings of the Committee; or

(b) without reasonable excuse contravenes subsection 49L(1);

the Minister shall terminate the appointment of the member.

Acting members

49P.(1) The Minister may appoint a person to act as a member -

(a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the member is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that -

(a) the occasion for the appointment had not arisen;

(b) there is a defect or irregularity in connection with the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

Convening meetings

49Q.(1) The Chairperson, or, if he or she is unable to do so, the Deputy Chairperson, shall convene such meetings of the Committee -

(a) as the Chairperson or the Deputy Chairperson considers necessary for the efficient performance of its functions; and

(b) as the Minister directs by notice in writing given to the Chairperson or the Deputy Chairperson.

(2) Where the Chairperson or the Deputy Chairperson proposes to convene a meeting of the Committee, he or she shall, not later than 5 days before the date of the proposed meeting, give each member a notice in writing specifying -

(a) the date, time and place of the meeting; and

(b) the matters to be considered at the meeting.

Procedure at meetings

49R.(1) The Chairperson shall preside at all meetings of the Committee at which he or she is present.

(2) Where the Chairperson is not present at a meeting the Deputy Chairperson shall preside.

(3) Where the Chairperson and the Deputy Chairperson are both absent from a meeting, the members present shall elect one of their number to preside.

(4) The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.

(5) At a meeting, a quorum is constituted by a majority of the members currently appointed to the Committee.

(6) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

(7) The member presiding at a meeting has a deliberative vote and, in the event of any equality of votes, a casting vote.

(8) The Committee shall keep minutes of its proceedings.".

I appreciate that this debate was won and lost yesterday, but there is one issue that I want to put on the record. It was a matter that Mr Wood probably will recall because he was present at a public meeting last night where the issue of the possible - - -

Mr Wood: Not the committee that you have specified here.

MR JENSEN: No, that is correct, Mr Wood, and that is the point that I am about to make. In fact, the committee in which I was involved in the past in relation to planning advice to the Territory Planning Authority was of the type that was discussed at the meeting last night. In view of the comments that were made last night at that meeting, which to me seemed eminently sensible, I am raising this matter today to see whether the Minister will undertake to take on board the points that were raised with a view to establishing a more broadly based community advisory committee to the Planning Authority along the lines that were suggested. It seems to me an eminently sensible opportunity.

As Mr Wood said last night, many of the comments that were made at that meeting last night were very sensible and very well thought out. I think they were most appropriate for community participation in what is, after all, a very important aspect of the planning of our city. Mr Wood may seek to respond to my comments along these lines when we were talking about this particular proposal. I accept that I do not have the numbers; but, maybe as a compromise, Mr Wood may seek to encourage the establishment of a committee similar to the one that was suggested last night.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.24): Mr Speaker, I was at that meeting last night. My view has not changed. That meeting last night was, as you would be aware, very keen about the issue of West Belconnen. When these matters arise there is every opportunity to consult with that community. You would also know that the Follett Government is very accepting of the idea of neighbourhood groups and of consulting with them. Our actions have consistently shown that.

I do not have any anxiety at all about the level of consultation between the Government and the community or, indeed, between the Assembly and the community. Nor do I have any anxiety about the level of consultation between the Planning Authority and the community.

I think the particular case of an advisory committee to the Planning Authority is not the same as a Youth Advisory Committee or the host of other advisory committees we have. I see it as a further impediment that Mr Jensen is seeking to put on what is already a very open, consultative and free system. It is simply unnecessary.

Proposed new division negatived.

Clause 50

MR MOORE (3.25): Mr Speaker, clause 50 is an entirely inappropriate clause. In fact, clause 50 was the subject of a substantial part of a speech given by Alan Bradbury of Macphillamy Cummins and Gibson at the ACT planning and leasehold administration seminar in which he gave a brief comparison with New South Wales planning legislation and procedures. He drew attention to the fact that this provision mirrors section 35 of the EPA Act in New South Wales and said that it is likely to be effective in precluding challenges to the validity of the plan on most grounds. Note that the provision also includes plan variations. I think that is an important thing. Alan Bradbury went on to say that the courts have shown great reluctance to give effect to provisions which exclude judicial review. Then he quoted a series of cases, Mr Speaker, to verify that perspective. I am delighted to make this copy of his speech available to any members who would like to see it.

The important thing here, I think, is that any provision in the plan cannot be questioned after three months. It may well be, Mr Speaker, that there is something that is inappropriate in the plan and that it ought to be challenged. Of course, the court is the method by which we get an arbiter in a challenge. This is an entirely inappropriate provision.

In discussion with Mr Wood and his officers after I had raised the issue it was pointed out to me that perhaps the compromise could be that, if a provision of the plan was challenged and something had been built, it would not necessarily need to be pulled down. I have to agree, Mr Speaker, that that would be an intolerable situation and entirely inappropriate. It is something that the Minister raised with me and I agree.

The solution, therefore, is perhaps to redraw the provision. I accept that that is the solution. If the provision is going to be redrawn, then it is appropriate for us to remove it from the legislation because, as I see it, it has unintended consequences. The department and the Government will have plenty of time to bring it back on. They will have plenty of time to redraw it because the earliest that we can see this legislation being brought into effect is in a couple of months' time. Most likely, it will be towards the end of March or 2 April. That being the case, there is another three months after that for this matter to be brought before the parliament and corrected to the satisfaction of the parliament.

I think it would be inappropriate for us, to use Mr Connolly's words this morning, to pass a bad law. This would be passing bad law, and I grant that I am using that term quite freely. If this is left in the legislation it may well mean that any provision within the plan can no longer be challenged after the first three months.

It is highly unlikely that in the first three months of a plan somebody is really going to understand its impact. That is the real point about this. People start to understand the impact of a plan once developments occur, once they have started to have an impact on society. It is, as Mr Stefaniak put it this morning, a situation like some of the motor traffic regulations - it has taken nearly 10 years to get them right.

Similarly with the plan, it will be quite possible that one provision of the plan is inconsistent with another provision, or is inconsistent with the principles that guide the plan. This may come to light only following a particular environmental disaster or a particular building that causes some problem. But, having found that that problem exists, it is appropriate that the provisions in the plan can be challenged, and that they can be challenged where there is a fair arbiter, namely, in the court.

For us to pass this clause would be entirely inappropriate, Mr Speaker. I think it is important that members realise the ramifications of this clause. I do note, Mr Speaker, that Mr Jensen wants to see this clause omitted; so I presume that he will also wish to speak on it.

MR JENSEN (3.32): Yes, but I will not speak for long because most of the points have been made by Mr Moore. We proposed to remove the division. The point really is that in a very complex document like the Territory Plan, or a major variation to the plan, it is quite possible that three months could well elapse before people realise that there is a potential problem from a legal point of view in the provisions of the plan or a variation to the plan. Effectively, what we are talking about is a plan or a plan variation. They basically are the same thing.

We are concerned that this provides almost a statute of limitations, if you like, in that after three months that is it; there can be no more legal challenges raised in relation to the validity of a provision of a plan. The point is well made that three months is not sufficient time for people to assess whether there are some problems with the plan. We could find ourselves in some difficulty and the community would not be able to challenge, if I read this clause correctly.

Mr Wood may be able to throw some light on the issue. It may be appropriate for him to respond to the points raised both by me and by Mr Moore. Then maybe my colleague Mr Collaery could comment further.

MR KAINE (Leader of the Opposition) (3.34): I can appreciate the concern expressed by Mr Moore and Mr Jensen in this matter, but it seems to me that if you do not have some such provision the plan has no value of any kind. If any provision in the plan can be challenged at any time it removes the certainty that the plan is intended to provide

in terms of the way the city is to be planned and how it is to be developed. I can see the dilemma; but I do not see any way, other than this kind of provision, of building that sort of certainty in there.

I suppose it can be argued that three months is not long enough. I am not here being an apologist for the Government - I am sure the Minister can defend himself - but it seems to me that the plan is right now going through a very exhaustive test of scrutiny by the community. The period for that scrutiny has already been extended. I would have thought that there is adequate opportunity for people to give that plan any degree of scrutiny that they wish. Even after they have done that and the plan is put into place, they still have a further three months in which to challenge any provision in it.

It seems to me, on the face of it, that that is reasonable, and once that period has expired people who have a concern for the plan, either in administering it or in carrying out operations under it, are entitled to some sort of certainty that what they are doing is not going to be challenged after they have, in some cases, spent a considerable amount of money. Somebody could come along and say, "No, I do not like that and I challenge the provision", and the best that could happen under those circumstances is that there is an injunction and everything stops while we go to a court hearing or something to determine whether the appeal is a good appeal or not.

That concerns me, I think, more than the probability that one or more citizens at some future time might be aggrieved and feel that they should have appealed against the provision but did not do so. I think on balance I would have to support the Government's view on this because of the ramifications of leaving it open.

Mr Berry: Now we are in trouble.

MR KAINE: Yes, you are in trouble. If you take this provision out nobody has any protection and there is no certainty in the plan whatsoever, I suspect.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.37): Mr Speaker, this is a matter about which Mr Moore and I had a quite long debate. We understand his arguments, where he is coming from; but we were not able in that period to come to any agreed wording. He argued that we should take it out and, if necessary, fix it in the time that certainly is available. It is just as logical to say, "Leave it in and, if it needs fixing, fix it later".

It is certainly the case that this is one of the measures that arose out of the widespread support for certainty in the provisions. It is also the case that it is a means of providing security to people who may have taken certain

action based on what the plan says and then do not want to face difficulties afterwards if that part of the plan is deemed to have been wrong.

It is a measure that I think has to stay there. We may continue the debate about some of the wording of it. But bear in mind too that the plan, at any stage, can be amended by variation. That is not exactly what Mr Moore was talking about, I do not think; but it certainly covers a lot of that area.

MR COLLAERY (3.38): Mr Speaker, I come slightly unprepared for this.

Mr Moore: Get yourself organised. You have a party of three people. Delegate the work.

MR COLLAERY: Mr Moore makes capital of being unprepared. I have been upstairs and I have come down onto the floor. We are ready with our argument. In our view, clause 50 may conflict with the appeals process because it says:

> The validity of a provision of the Plan shall not be questioned in any legal proceedings except those commenced within 3 months ...

There is a wide appeals process against plan variations; yet, when you look for the definition of "plan", you find that it may well include variations to the plan. For example, you will find in the Bill references to "a provision of the plan". For example, at clause 29 - I draw members' attention to it - it says:

> A Plan variation, or a provision of a Plan variation ...

So, clearly, there is a duality about the concept.

What you are promising further on in the Bill, Mr Wood - through you, Mr Speaker - is a proper appeals process; yet you are cutting it off at clause 50. I believe that the Minister needs to seek further advice on this matter. He needs to assure the house that if there is a variation to the plan - I am sure Mr Kaine will be interested to hear this - it was always the intention of the Bill to allow an appeals process. What is the meaning of "a provision of the Plan" in clause 50?

I foreshadow an amendment. If clause 50 is going to stand as it is, we foreshadow an amendment - it is being copied now - that will, in effect, add the words "or of any provision of a plan variation".

MR SPEAKER: Order! Mr Collaery, I suggest that you move that amendment if you wish to do so. We are about to vote on the clause.

MR COLLAERY: Mr Speaker, I need not repeat the arguments made about why a plan cannot be questioned in any legal proceedings. Surely the answer is to narrow the form of legal proceedings rather than to say, baldly, "any legal proceedings". Does this mean that you would support a view that, if there was an illegality found in the National Capital Plan, now that it is down we could not challenge it? The wide-sweeping words of that provision, "any legal proceedings", are extraordinary in my experience. "Any legal proceedings" covers prerogative writs; it covers a whole range of issues. It does not refer to just third-party review. Anomalies may well be found, particularly in the early years of the plan. What you are saying is "any legal proceedings".

Surely, as Mr Kaine correctly points out, builders and developers should not be put in a position where they act to their detriment, and we support that view. There should be certainty. There must be certainty to those people who put their money out and act to their detriment. But there are other issues in the plan that do not relate to building and development approvals, that relate to variations at large, and the words "any legal proceedings" therefore are too wide.

The provision has not been thought through, in our view. It may conflict with the other processes promised and it does not answer the question - I wait for the Minister's advice - as to why we cannot have a review of a variation. Or have the draftspersons themselves forgotten to reflect the very intent of what they do? Does this provision embrace variations? You will see in the Bill, at clause 4, a definition of "Plan", and on page 5 a definition of "draft Plan variation". It says on page 5:

> "variation", in relation to the Plan, includes the revocation of the Plan and its substitution with a new Plan.

That refers to a revocation and substitution. Then we need to deal with partial variations to provisions, changes to any provisions. I ask the Minister whether he is going to assure this house that there will be review if there is a change, a partial change, to a provision at all.

MR MOORE (3.43): Mr Speaker, I think it is important at this point to refer to the attitude of His Honour Justice Mahoney, JA, in a decision of the New South Wales Court of Appeal in the North Sydney Municipal Council v. Lycenko and Associates in 1988. This is not my own perception of this, because I must say that I am referring back to the speech of Alan Bradbury again. I think it is very important to listen to this. I particularly would like to draw the attention of the Leader of the Opposition to the opinion of this justice, where he deals with this. He is a man of some standing in judicial planning circles. I am quoting from his judgment:

> To place the validity of an instrument made at the initiative of a Minister or otherwise by the executive government beyond examination is a matter of constitutional significance. It is, in my opinion, to be done only if there be serious reasons why what the Minister or his department does should not be able to be questioned and if there is no other way in which what is sought to be achieved can be achieved.
>
> There are reasons why a planning instrument should not be open to attack for reasons which go to formalities and technicalities and not to the substance of what has been done.

I think that is the point that the Leader of the Opposition was raising before. It is a valid point too. The judge continued:

> And if planning instruments may be set aside, for reasons which do not go to the substance of them, long after they have been made, public and private inconvenience may result.

That is a point that I have been trying to make and that is why I have argued that this particular clause does more than I believe that it was intended to do. I think this is important:

> There are legislative provisions in other areas to ensure that inadvertent informalities or technical errors may not be relied on.

He goes on to say:

> In the present case, s35 -

we have said that section 35 of the EP Act reflects clause 50 here -

> purports to put beyond question any matter going to the validity of a planning instrument, and makes no distinction between defects of form and defects of substance.

Then he talks about the present case. It is also interesting to note that Alan Bradbury, in his comment, went on to say:

> Legislative provisions which preclude judicial review altogether have met with little success before the courts.

So, he would also argue that provisions like this anyway are going to meet with very little success before the courts. Later on he argues - I think it is an appropriate argument - that, if you are going to put in a provision of this nature, then you ought to allow the court to decide

the time, and there will be some debate. As I say, that is what he argues. I have not argued that. I have argued that we should be removing the provision and putting the onus back on the department to renew the provision.

As I see it, if the Liberal Party are not prepared to support this and are prepared to support the Government on this clause, I think it would be appropriate at least for the Minister to indicate a commitment to begin the redrafting of this clause to ensure that it is drafted in a satisfactory way.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.47): Mr Speaker, I will not give that commitment to redraft it; I will give a commitment to examine it further. That is as far as I will go at this stage. I have been trying to catch up with Mr Collaery. I am not sure about the relevance of clause 29 to this case at all.

Mr Collaery: It is just an example.

MR WOOD: Well, I am not sure it is much of an example. I think you have looked for a clause where we see both "Plan" and "variation". The "provision of a Plan variation" comes into it. I think it is a long bow that you have drawn. Nothing that has been said changes my mind about this and I do not think that the amendment adds anything either. We do not have appeals against draft variations, in any case.

MR COLLAERY (3.48): Mr Speaker, I formally move that amendment circulated in my name:

> Page 22, line 27, add the words "or of any provision of a Plan variation.".

We are not convinced from the Minister's statement that the position is clear. What we are seeking to have clarified to us - the Minister has his legal advisers - is whether the validity of a provision of the plan, where it says that in clause 50, refers to variations. It does refer to a variation to a provision - where a provision is changed.

Say that you have a provision in the plan that has been standing for five years and there is some change to the provision. The essential provision remains there, but there is a change to it. It may affect someone or some party. It could even be a builder. It could even set new standards for builders. Does that mean that the builders themselves cannot challenge? We do not want to get into a mindframe of thinking always about the resident out there. We will not press the point if the position can be clarified to us.

MR KAINE (Leader of the Opposition) (3.49): Looking at this thing, I can understand, as I said before, the concern that the members of the Rally and Mr Moore are expressing because it says "shall not be questioned in any legal proceedings". I do not know how far that goes or quite

what it means, and I understand the concern. But I accept the Minister's undertaking that he will further examine this matter. If he would do that in conjunction with the rest of us, so that we can collectively look at the thing to see whether it can be improved and we can understand just what it means, then I would be satisfied.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.50): We will go through this debate. I think we want to move through here now. I am quite comfortable with this, but we will be examining it in due course. In the meantime I will oppose the amendment and the further amendment.

Amendment negatived.

Clause agreed to.

Clauses 51 to 54, by leave, taken together, and agreed to.

Clause 55

MR JENSEN (3.50): This is the first opportunity that I have had to talk about what I believe to be a fundamental issue in relation to this type of legislation, and that is schedules versus regulations, even if those regulations are disallowable instruments, which the current proposals are. One of the problems is that, despite something being a disallowable instrument, it is still captive of the Executive, captive of the Government. It is not possible for other members of the Assembly to seek to amend these sorts of provisions as would be the case by way of private members' business if they were part of legislation. I probably need leave to move my amendments Nos 45 and 46 together to save time. They are related.

Leave granted.

MR JENSEN: I move:

Page 25, line 29, paragraph 55(1)(a), omit "determined criteria", substitute "criteria specified in Schedule 1A".
Page 25, lines 32 to 35, subclauses 55(2) and (3), omit the subclauses.

It seems to us that if we put something as important as the criteria for the assessment of the heritage significance of places, which is what this clause refers to, in the legislation as a schedule, it is quite clear what people are talking about and that the only way to change those criteria, because they are of such significance I would suggest, is by a substantive change to the legislation. Regulations, as we know, are disallowable instruments in the context of the legislative process; but if, for example, the Government put down an instrument to vary

these particular criteria on 16 December, if we were sitting on that day, or even the 17th for that matter, that document would not be able to be disallowed until the Assembly came back into operation again.

When we are talking about heritage matters and environmental matters, the most important thing to remember is that three months can be an eternity in this sort of area. How long does it take to demolish something if the criteria are changed by regulation? I can tell you how long it takes to demolish something. It takes a couple of hours to demolish a house. I have seen it happen in this city, and it is a bit too late, when we come back three months later - - -

Mr Kaine: We got a ball by ball description from Mr Collaery over the radio one morning.

MR JENSEN: That is true, Mr Kaine.

Mr Wood: What has that to do with this?

MR JENSEN: It is to do with heritage significance. It is to do with changing the heritage significance by regulation which would enable a change to existing criteria.

Mr Wood: Through this Assembly?

MR JENSEN: No, it is not, Mr Wood. As I understand it, unless you correct me otherwise, although it is a disallowable instrument, it still takes effect and continues to take effect until it is disallowed. For a period of three months, as I said, that particular change takes effect. When we are dealing with environmental issues - - -

Mr Wood: This is paranoia.

MR JENSEN: It has nothing to do with paranoia, Mr Wood. If you read any commentary in relation to environmental impact assessments, any commentary on the problems associated with environmental impact proposals and processes within Australia, you will find that this is one of the issues that are continually commented on - the problems associated with the time factor in relation to damage that can be done to the environment and to our heritage if these sorts of things are not properly handled within legislation as opposed to regulation.

That is why I continually argued for this to be put into a schedule while I was in government. I lost that argument there, but I have continued to argue. I continued to argue in my comments on the legislation in the joint planning and conservation committees, and I will continue to argue it here today. If we get to the situation where I have the ability to amend this legislation, as the responsible Minister, I will seek to do just that. That is a commitment I will give to the community. To us it is the

most fundamental aspect of the need for this sort of very important information to be maintained and controlled by the Assembly, not by ministerial or Executive fiat, subject to disallowance, as is the case here. That is why we will continue to move for these very important criteria to be included as part of the legislation.

I also understand that there is some division within various groups of parliamentary counsel around Australia about schedules versus regulation. I think some concern has been expressed in the past about the amount of information that goes into regulations. I will give you a prime example - the environmental assessment Act, a Federal Act. Three-quarters of that Act is made up of regulations. Most of it is as prescribed. There is very little at all in the actual legislation.

That is one of the concerns and one of the issues raised when people talk about the deficiencies in the environmental impact legislation that applies in the Commonwealth. There are very few pages; it is all regulations. That is what people are concerned about.

When we are talking about heritage, when we are talking about environmental issues, it is too late, Mr Wood; the damage has already been done and it cannot be returned. Once an endangered species is lost, that is it - bust, finish, the end. Once a heritage house is lost, that is it as well. It is gone; it is finished; it cannot be replaced.

I think we have seen enough examples, not just in Canberra but throughout Australia, of where these sorts of attempts have been made to get around very important aspects related to heritage. If we are serious about protection of our heritage and our environment, it is important for this sort of information to be clearly laid down in legislation which requires exhaustive debate before being changed rather than being able to be changed by the swift stroke of a pen, be it by Mr Wood or anybody else.

MR KAINE (Leader of the Opposition) (3.57): In this case, and I will not take quite as long to say it, I agree with Mr Jensen. I think that his amendments ought to be adopted, and my reason is very simple. One of the objectives in putting this new Bill on the table was to inject into the process an element of predictability. Therefore, there should be as little left to individual decision from time to time as possible. Removing the ability of a Minister simply to determine something and putting in the Bill the criteria which would govern the Minister's decision anyway is a good thing.

I had some reservations when I first saw the criteria. My first question was: Whose criteria are these? Are these Mr Jensen's criteria and where do they come from? I then spent a considerable time going through his proposed schedules. This particular one seemed to me to be a very

sensible statement of what the criteria should be. That removes from the Minister an area of discretion, an area in which there could be injected some lack of predictability as to the outcome. For that reason I support Mr Jensen in this case.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (3.58): Mr Speaker, I can take Mr Kaine's point and say that the criteria that have been suggested might be very sensible, and perhaps they are; but that does not mean to say that putting them firmly into a schedule is the way to go. We can have these criteria; they will be there, under ministerial discretion, and they will be as good criteria. Your argument will hold, whichever way you go.

What you have done is to give yourself a vote of no confidence; that you would be capable of some pre-emptory action, some destructive action, which I reject anyway because I do not think anybody in this Assembly would connive, which is what it would have to be, in order to change some criteria - - -

Mr Kaine: It would just be human error, Minister.

MR WOOD: No, it would not be human error. A set of criteria would be clearly established and it would need connivance in order to change it to get the bulldozers in to knock down a house. The reverse case applies. What you may well have done by establishing what appears now to be a sensible set of criteria, putting it down there so that it cannot be changed rather more expeditiously, is to leave out something sensible, leave a loophole there that you cannot fill in quickly enough to accommodate a particular circumstance that might arise.

I think you have done this the wrong way around. I do not know whether there are loopholes. If there are, some people here and there will find them. But you have built further inflexibility into this system that is quite undesirable. I am a little concerned that here and there throughout this planning legislation the Liberals are opting for a more rigid line, the concrete line of the Residents Rally.

Mr Kaine: For a very sensible outcome. If I am being attacked from both sides I must be doing something right. That is all I can say.

MR WOOD: Well, I think you have made quite a mistake on this occasion. You would well know that throughout legislation here and elsewhere the term "determined criteria" and the use of regulations is a common, successful and well accepted means of proceeding. You now say that that is not satisfactory. I am very surprised.

This legislation is now starting to get very rigid and I think that creates problems for everybody in this community. It is not a problem necessarily for one side, if there are sides, more than another side. I suggest that you should rethink this.

MR MOORE (4.01): It is ironic that Mr Wood should now be suggesting that suddenly the plan is getting rigid. Not 10 minutes ago we were debating clause 50 and he was saying that it has to be flexible. I think the argument is provided for a particular time. The amendment is a good amendment. It was moved by Mr Jensen and is supported by Mr Kaine, for very sensible reasons. There are certain areas where it is appropriate to provide certainty. That is the consistency of the argument that Trevor Kaine has put, and I accept that that is an appropriate way to argue.

In this case, where we are talking about criteria for the assessment of the heritage significance of places, surely we can set out a set of criteria that are open and available to everybody. They are clear; they are part of the Bill. That is what Mr Jensen has done, and credit to him for doing so.

If you have a problem with something in the schedule, then the appropriate method is to present an amendment to the schedule. It can be all done above board, it can be done in the open, and we can understand what the criteria are. We would not expect - I think Mr Jensen would agree - to see a constant run of changes to the criteria for heritage significance. We expect it to be fairly constant. If it does appear that there is a problem, then it is unlikely that that would happen more than once or twice as part of the teething process, in which case an amendment will have to come back to the Assembly. I think it is a very good amendment and I am happy to support it.

MR COLLAERY (4.03): I agree with previous speakers on the non-government side. Mr Speaker, I want to address the Minister in terms of the approach he is taking today. We have all heard the words "trust me", some of us more than others. Think back to Mr Wood's response on clause 50. We asked a series of detailed questions. We asked for advice. We know that he has a room full of lawyers out the back. We have given sufficient time for the advice to be brought into the chamber and we are not receiving that advice. Mr Wood has to provide to us reasons, not simply say: "Trust me; this will work this way; we will fix it up later; we can do that". We asked specific questions. We did not get clear answers.

Again Mr Wood makes a number of claims about this issue. We are going to discuss this Bill again tomorrow. It is going to take quite a while to get through. I think there needs to be a different approach. I think the eminent lawyers advising Mr Wood are in a position to answer our queries if we can slow the issue up slightly on some of the clauses.

I think Mr Wood wants to get through. Once he perceives that he has the numbers on an issue, he decides not to give us the detailed response which a number of us sought, for example on clause 50. I think the Minister should understand that there is no great legal impediment arising out of the proposal put forward to put into the Act some minimum criteria.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.05): Mr Speaker, I chose not to continue protracted debate on clause 50. I thought that we could have been here all day on that. We were agreed, in any case, that we were going to re-examine it. So, trying to get this Bill through the house, it is pretty sensible that I do not carry on endlessly and uselessly in the face of some comments here.

Mr Jensen might clarify for us where his assessed criteria come from. Mr Collaery referred to a room full of lawyers. One wonders whether this came from a Federal Act and whether, in incorporating this, you have left unstated the administrative backup that appears to be necessary for it. It may be that on their own these are not of great use.

MR JENSEN (4.06): I am very pleased to rise to my feet, Mr Speaker, and indicate to the Minister where I obtained those from. The Minister may recall tabling in this place at the time the legislation was tabled a group of disallowable instruments which it was proposed to bring forward as part of the legislation. That is where that came from. He will find, if he looks at that pile of documents, that that is where that particular one has come from. I have made no changes to it whatsoever. I suspect that it was probably exactly the same instrument that was tabled by Mr Kaine as Chief Minister and Planning Minister at the time that the Bills were put into the place.

From what I can see and what I can understand, that is a very satisfactory definition of heritage significance and places. It seems to have gone through the process and to have been accepted, because there was no comment on it over a period of time. That is where it has come from, Mr Wood. If there are any problems associated with that, I guess they must go to the people who drafted the proposed instruments that were tabled in this place by you.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.07): Well, you have said it; you have identified it, and thank you for that. It came down as a draft. I acknowledge that. I think that it was appropriate for that purpose. I think you are taking a risk, the sort of risk you claim you want to avoid, by incorporating this without being quite certain of all the ramifications attached to it.

Question put:

> That the amendments (**Mr Jensen's**) be agreed to.

The Assembly voted -

AYES, 8	*NOES, 7*
Mr Collaery	Mr Berry
Mr Humphries	Mr Connolly
Mr Jensen	Mr Duby
Mr Kaine	Ms Follett
Dr Kinloch	Mrs Grassby
Mr Moore	Ms Maher
Mr Prowse	Mr Wood
Mr Stefaniak	

Question so resolved in the affirmative.

Clause, as amended, agreed to.
Clauses 56 and 57, by leave, taken together, and agreed to.
Clause 58

MR JENSEN (4.14): This is my amendment No. 47.

MR SPEAKER: And No. 48?

MR JENSEN: No; I believe that they are different, Mr Speaker. I do not believe that they are related. I move:

> Page 26, line 22, subclause 58(1), omit "lessee of land on which a place is located", substitute "person".

Mr Speaker, this amendment relates to the inclusion of a place in an interim register.

The legislation as it reads at the moment only allows for the lessee of a piece of land to seek to have a place included on the interim Heritage Places Register. My amendment will provide an opportunity for a person who is not just a lessee of the land to apply in writing to the Heritage Council for the inclusion of a place in an interim Heritage Places Register.

What you have to remember is that that does not necessarily mean that that particular application will be accepted. It has to go through the process of assessment by the Heritage Council, et cetera, and it goes through the process within the Assembly. It has to be accepted by the Heritage Council and subsequently the Minister and the Assembly before being included on the Heritage Places Register. The problem is that, as it is written at the moment, the legislation does not allow organisations or people with a particular knowledge and experience on an issue to nominate a place for inclusion on the register. We believe that it

is important for this opportunity to be given to people other than the lessee. I can assure members that, in my experience and to my knowledge - and I am speaking specifically in relation to Aboriginal sites - in Victoria in the past there have been occasions when Aboriginal sites have been identified and very quickly bulldozed and destroyed by the farmer in question. As soon as it has been identified, down she goes, and that is it - thousands of years of history is lost in the blink of an eyelid.

In these sorts of circumstances, we are talking about heritage, and particularly places - it could be a geological place; it could be a natural place. If we look at the criteria that we will pass very shortly when we get to the schedules, we see that one of the criteria for the assessment of places for their heritage significance is:

> a place which is a significant habitat or locality for the life cycle of native species; for rare, endangered or uncommon species; for species at the limits of their natural range; or for district occurrences of species;

What we are really talking about here, I would suggest, is an opportunity for an organisation such as COG, the Canberra Ornithologist Group, to indicate that it has located the habitat for a particular rare bird. That may be located on someone else's property; but it is, I would suggest, very important to the heritage. I would dare suggest that we have a responsibility to ensure that, if at all possible, we retain the habitat for that particular bird - because of the very fact of its being endangered - and there should be an opportunity for a responsible organisation such as that to at least seek to ensure that the future of an endangered species like that is retained.

There are a number of other endangered species around the ACT which I think we have to remember - the legless lizard, the moth, synemon plana.

Mr Berry: The Residents Rally.

MR JENSEN: No, Mr Berry, no way. We will be out there fighting and, I can assure you, we will be back here next year. There are a number of these sorts of species and it is very important for them to be maintained. Not just the lessee, but also others with an appropriate knowledge, interest and responsibility, should have at least the opportunity, which they do not have at the moment, to seek to have an item registered on the heritage register.

We would not suggest that every site, without question, should be preserved. It is a bit like heritage in our cities. We are not saying that every house built in 1926 in the ACT should be maintained because it is a heritage building. In relation to the built environment, we are

really talking more about a representative sample. For example, it could be argued that the mostly steel Beaufort House in Canberra - the only one of its kind left, as I understand it - is in fact, part of the heritage of this city, and it is appropriate, I would think, for that to be retained.

Because of this, an organisation such as the Institute of Architects, for example, may seek to have that particular location identified and retained on the register. This Bill does not allow for that to happen, and I think it is important, if we are to maintain and retain any aspect of our heritage, that we widen, beyond just the lessee of the land, the range of people who can apply for the inclusion of a place on the interim register.

It is not even clear to me whether, in fact, the Government, under this legislation - and Mr Wood and his departmental officials may care to correct me on this - has the ability to raise with the Heritage Council whether such a site could be identified. In fact, clause 56 does not refer to clause 58. It says that the Minister can issue directions, but only under clauses 68 and 72.

It appears to me that the Minister cannot, in fact, direct the Heritage Council to at least take under its wing a nomination for a place's inclusion on a heritage register. That is why the Rally has proposed this amendment to subclause 58(1) - to ensure that we widen the opportunities there for the protection of our heritage, bearing in mind that we still have to go through a process before the final decision is made.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.21): I am not going to argue about this, Mr Speaker. I am not sure that that was the intention of this clause, but you would know that the procedure allows for any person to make a recommendation or to advise the Heritage Council and for the Heritage Council to take the matter on board. I can live with this amendment. I do not think it does anything to change the situation that currently exists or that is envisaged in this legislation. So, it can go ahead.

MR JENSEN (4.22): Can I just raise a point of clarification, please, Mr Speaker, in relation to the ability of the Government. I presume that "person" can be taken to apply to the Government.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.22): Yes.

Amendment agreed to.

MR JENSEN (4.22): I move:

> Page 26, lines 26 to 30, subclause 58(2), omit the subclause, substitute the following subclause:

"(2) An application shall be accompanied by a statement of the reasons why the applicant considers that the place should be included on the Heritage Planning Register.".

I understand that the Government accepts this amendment. It relates to a statement of reasons why the applicant considers that a place should be included on the register. I think it is totally appropriate. It is more than our just saying that we want something; I think people should be required to provide reasons.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.22): Mr Speaker, I do not think Mr Jensen has the correct title there. The second last word should be "Places". It should read, "... on the Heritage Places Register". You can take it as read or correct it by whatever means you can use, Mr Speaker.

Mr Jensen: Do you want me to read that into the record, Mr Speaker?

MR SPEAKER: You should move an amendment to your amendment.

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

> Omit "Planning", substitute "Places".

Amendment, as amended, agreed to.

Clause, as amended, agreed to.

Clauses 59 and 60, by leave, taken together, and agreed to.

Clause 61

MR MOORE (4.23): Mr Speaker, my amendment relates to what is probably just an unintentional omission. I move:

> Page 28, line 36, subclause 61(2), before "newspaper", insert "daily".

This is just a simple amendment which will mean that people will know where to look. In the current situation, it would apply to publication in the *Canberra Times.*

MR COLLAERY (4.24): Mr Speaker, Mr Moore should be aware that the accepted terminology is "a newspaper circulating in the Territory". To restrict it to a daily newspaper is to exclude business going to the *Chronicle*, the *Valley View* and other community newspapers. I do not think Mr Moore intends that, but I want to point out to him - - -

Mr Moore: It does not exclude it. It means that it must be in at least the daily newspaper.

MR COLLAERY: I see. Okay, I take it that there will be two advertisements, in other words.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 62 agreed to.

Clause 63

MR JENSEN (4.25): I seek leave to move my amendments Nos 49 and 50 together.

Leave granted.

MR JENSEN: I move:

Page 30, line 28, paragraph 63(1)(a), omit "and".

After paragraph 63(1)(b), add the following word and paragraph: "; and (c) it would be in the public interest for the Territory to acquire the place.".

I understand that the first one would have been picked up in the redrafting of the Bill by the Clerk, but I have moved it on the basis of the way that it was proposed. All I am proposing here is an important additional criterion for when the Executive may, on behalf of the Territory, acquire a place listed on the Heritage Places Register. I think it is important to provide this sort of distinction and to give the Government or the Executive the opportunity to apply one more test in relation to whether to acquire a place, such as Calthorpes' House, for example - or the house that Mr Connolly proposes to sell in Griffith very shortly - that test being whether in fact it is in the public interest to actually put it onto the register. I think that is an interesting criterion that should be applied.

Members will see that criterion come up a little later on when we are talking about some of the schedules that I have attached to this legislation. I think it is important that we put this test in place, because it also provides the Executive with an opportunity to explain why something is or is not in the public interest. It may enable it to justify why it has decided not to take an action when such a matter is raised with it.

MR KAINE (Leader of the Opposition) (4.27): I do not disagree in principle with what Mr Jensen is doing. But this is another case where he has almost talked himself into it and then talked himself out of it again, because the amendment that he first circulated was simply to add, "(c) it is in the public interest". He is now proposing to add, instead, "it would be in the public interest for the Territory to acquire the place". In other words, he has taken out a very specific statement and he is putting in a conditional one.

Who is going to determine whether it would be or not? If Mr Jensen was prepared to go back to his original amendment, which simply said "it is in the public interest", then I would support him. But I think these extra words, and the change in the words, make it less desirable than it was before. He might like to think about that.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.28): Madam Temporary Deputy Speaker, I understand that the words that Mr Jensen wants to include are already in the schedule that he has had the house agree to.

Mr Jensen: No, not in that schedule.

MR WOOD: Are you sure of that?

Mr Jensen: Yes.

MR WOOD: The whole thrust is there.

MR JENSEN (4.28): Can I just make a point of clarification, Madam Temporary Deputy Speaker. This wording was actually provided to me on advice. That is why it appears the way it does. I am quite happy to accept the amendment and, if it is necessary, I will move an amendment to my amendment. I do not know whether or not that is possible. Alternatively, Mr Kaine may like to move the amendment.

MADAM TEMPORARY DEPUTY SPEAKER (Mrs Grassby): You have to seek leave to do that, I understand, Mr Jensen.

MR JENSEN: In that case, Madam Temporary Deputy Speaker, I seek leave to amend my amendment by deleting the words "would be" and substituting "is".

MADAM TEMPORARY DEPUTY SPEAKER: Could you read it aloud, please, Mr Jensen, so that we can all hear what the amendment is?

MR JENSEN: Yes, I will read it aloud:

> After paragraph 63(1)(b), add the following word and paragraph: "; and (c) it is in the public interest for the Territory to acquire the place.".

Leave granted.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.30): I am not going to oppose that. I do not think it changes anything.

Amendments, as amended, agreed to.

Clause, as amended, agreed to.

Clauses 64 to 68, by leave, taken together, and agreed to.

Clause 69

MR JENSEN (4.31): I seek leave to move my amendments Nos 51 and 52 together.

Leave granted.

MR JENSEN: I move:

Page 34, line 25, subclause 69(1), omit "knowingly", substitute ", without reasonable excuse,".
Page 34, lines 31 to 36, subclause 69(2), omit the subclause.

This amendment, as now proposed, was provided to me on advice. That is why, in fact, we propose replacing the word "knowingly" with "without reasonable excuse". It relates to the protection of unregistered Aboriginal heritage places.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.32): That is agreed, from our side anyway.

Consideration interrupted.

ADJOURNMENT

MADAM TEMPORARY DEPUTY SPEAKER: Order! It being 4.32 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.

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Clause 69

Consideration resumed.

Amendments agreed to.

Clause, as amended, agreed to.

Clauses 70 to 80, by leave, taken together, and agreed to.

Clause 81

MR JENSEN (4.32): I move:

> Page 40, lines 17 to 21, subclause 81(2), omit the subclause, substitute the following subclause:

"(2) The Minister shall not make a declaration under subsection (1) without:

(a) considering the views of the Heritage Council;
(b) obtaining the agreement of any relevant Aboriginal organisation.".

I am at a bit of a loss here, because I did have agreement from the Government to my amendment No. 53 and to my proposed amendment No. 54 which I will move when we consider clause 82. But the Government subsequently provided an amendment which, I think, was circulated yesterday. I was advised late yesterday afternoon that the Government had, in fact, changed its position on this; so we will have to muddle through on this one. Initially it was indicated that there would be a change to amendment No. 54, so a subsequent amendment No. 54A was proposed. But I am now advised - unless I get a contrary note from the Minister - that this one is to be withdrawn.

These amendments deal with restricted information. The definition of "restricted information" in clause 51 of the Bill, which refers specifically to Aboriginal heritage, is quite clear. I think it is important for me to just define for the record what we are talking about in relation to restricted information. If you will just bear with me, I will find the definition. I had it here a moment ago.

Mr Wood: Page 23.

MR JENSEN: Yes. Restricted information is defined, on page 23, as follows:

> "restricted information", in relation to an Aboriginal place, means information which is the subject of a declaration under subsection 81(1).

That is the subclause that we are talking about at the moment. It reads:

> Where, in the Minister's opinion, the public disclosure of particular information about the location or nature of an Aboriginal place would be likely to have a significant adverse effect on -
>
> (a) Aboriginal tradition; or
> (b) the heritage significance of the place;
>
> the Minister shall, in writing, declare that information to be restricted information for the purposes of this Act.

This, of course, comes up under the Heritage Objects Register, which I will get to later on as well. This amendment has been proposed because it is my view, and the view of others that I have spoken to, that the Aboriginal organisation that has custody of this restricted information should provide agreement for its release.

I know that Mr Wood will argue that this would make it very difficult for a lessee who has an area on his or her property which contains, as far as the Aboriginals are concerned, a sacred site for all intents and purposes and there is information related to that sacred site which should not readily be made available to the community. It would seem to me that in such a case it would be sufficient for the lessee to know that the location of the site on his or her property is, in fact, restricted information.

I do not believe that more than that would be necessary in cases when we are dealing with traditional information. Those of us who have had some dealings in this area are aware of the sensitivity which the Aboriginal community has with respect to this particular sort of information, particularly in those areas of a more traditional nature. We should never forget that, although the members of the Aboriginal society living in the ACT at the moment no longer live in some of the more traditional ways in which their brothers and sisters in parts of the Northern Territory, Queensland and Western Australia live, that does not mean that they do not have the same sorts of affinities, spiritual contacts and relationships with areas within their Dreamtime.

We have to remember that, well before we came to this place, members of the Aboriginal nation, if you like, and the tribes that lived in this area moved through this area freely before borders were put in place. I would suggest that this is still relevant to those societies who live in

our city, albeit in a non-traditional way; they still have a relationship and an affinity with the land and the various locations that we are talking about. So, it is our view that there should be a requirement for the agreement of the relevant Aboriginal organisation to the release of restricted information.

The fact that a site is restricted is not necessarily, I would suggest, critical; but I think further information may be a difficulty and I think we need to think very carefully about it. That is why we propose that there be a requirement for the agreement of any relevant Aboriginal organisation before a Minister makes such a declaration. That is why I originally pushed for the inclusion of an Aboriginal advisory council made up of three members representing the local Aboriginal community in this area, generally known as the Ngunawal people.

However, I accept that the proposal that was put to me - to use the words "any relevant Aboriginal organisation", as we now have in this amendment - would meet that criterion. I accepted that, and that seems okay. But I will be interested to see whether the Minister retains his view that restricted information should be made available, even though the traditional holders, if you like, of that information are not happy with the release of that information.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.40): There is no difference of opinion on most of these matters around this Assembly. We all want the same outcomes. The difference arises in Mr Jensen's very prescriptive approach. What he may do in this circumstance, with this amendment, is excite the curiosity of a lessee, saying, "Look, there is something there which I cannot tell you much about" - and leave it at that. I believe that that is unsatisfactory. I believe that these matters proceed effectively when you inform people properly and expect that you will get their cooperation. If you go only so far, and exhibit a degree of suspicion about what a lessee may do, you are going in the wrong direction and you are likely to create trouble.

A further problem with Mr Jensen's amendment is that he talks of a "relevant Aboriginal organisation". There is not, in the ACT, to my knowledge, the great range of Aboriginal organisations or differences amongst Aborigines that you find in other places. Nevertheless, the term "relevant" could impose difficulties upon us. You might get more than one opinion there and create difficulties. I think we should hold to the original clause.

MR JENSEN (4.41): If the Minister looks at page 23 of the Bill - I presume that it must be there, where he assisted me before - I think he will find that there is a quite clear definition of what a relevant Aboriginal organisation is.

Mr Wood: Yes, but we have defined the term.

MR JENSEN: Okay, and that is effectively what we are doing. Originally, when I proposed an Aboriginal council, it was put to me that that was not necessary and that we could use the definition of "relevant Aboriginal organisation". That is why I accepted that advice and I moved that way.

Let us just get a couple of things straight in relation to restricted information. Although, as I have already indicated, the Aboriginal community in this area does not live a strictly traditional lifestyle, a lessee - who could be male or female - could hold a lease over a property on which a location is identified as particularly related to the male or female.

In other words, it is a sacred site relating to males or females. It would be inappropriate under the tribal laws and practices of the Aboriginal people for that information to be made available to a person who is not of the same gender; and that is the sort of problem that we run the risk of encountering with this legislation.

It is probably just something to keep in the back of your mind when you are dealing with these issues of Aboriginal tradition, particularly in a place such as the ACT where the tribal influences are no longer overtly present. But I would suggest that the nature of the Aboriginal community and its relationship with the land, which is different from ours, is quite clear; the Aboriginal people see things differently because to them the land is more than just property. The land is their society.

Amendment negatived.

Clause agreed to.

Clause 82

Mr Wood: You will not move your amendments to this clause now, will you?

MR JENSEN (4.44): No, I do not think there is any point in moving my amendment No. 54, Madam Temporary Deputy Speaker; so I will withdraw it.

Mr Wood: Or No. 55.

MR JENSEN: I will just clarify that.

Mr Wood: We are left here with No. 54 anyway. It was a consequential - - -

MR JENSEN: I think amendments Nos 54 and 54A were consequential on amendment No. 53. That is the way it was put to me. I would still like us to take a vote on it, so I will formally move amendments Nos 54 and 54A circulated in my name. I seek leave to move those amendments together.

Leave granted.

MR JENSEN: I move:

Page 41, lines 8 to 13, subclause 82(1), omit the subclause, substitute the following subclause:

"(1) The Territory, the Executive, a Minister or a Territory Authority shall not publish, or cause to be published, any restricted information about an Aboriginal place unless -

(a) the publication takes place with the consent of a relevant Aboriginal organisation; and

(b) the publication is

(i) for the purposes of this Part or Part II;
(ii) in accordance with subsection (2); or
(iii) in accordance with prescribed procedures.".

Page 41, lines 14 to 19, subclause 82(2), omit the subclause.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.45): I am not sure about amendment No. 54A; that is all.

Mr Jensen: It is a consequential amendment.

MR WOOD: Right. I did not have it here. We are against both of them.

Amendments negatived.

Clause agreed to.

Clauses 83 to 107, by leave, taken together, and agreed to.

Clause 108

MR JENSEN (4.46): I move:

Page 51, line 7, at the end of the clause, add the following new subclause:

"(8) The minutes of the meetings of the Heritage Council shall be available for inspection by members of the public unless a certificate of exemption is granted by the Minister.".

I think this is self-explanatory. All I am really saying is that the minutes of the meetings of the Heritage Council should be made available for inspection by members of the public unless a certificate of exemption is granted by the Minister. I understand that the Government will not accept this. All I am really doing is trying to make sure that members of the community do not have to go through the process of FOI if they wish to look at the proceedings of the meetings of the Heritage Council. Heritage can be a very vexed subject, I think, and there is always the potential for the need for FOI.

We all know that the charges for going through the FOI process have been increased quite considerably. I think it is now something like $200 for a private citizen to make an application and it is sometimes very difficult to get an application accepted as being in the public interest. I certainly tried it; and, in fact, in the end, we did not proceed. The Government changed, in fact; so it was not necessary. But, in this case, I think it is important that the minutes of the Heritage Council be available for public inspection, and I think that this would provide an opportunity, in certain circumstances, for the Minister to grant an exemption in much the same way as is provided for under FOI.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.47): There is nothing in the legislation that precludes the Heritage Council from releasing its minutes, and I am sure that it would be open about it. At the same time, bearing in mind some of the matters that the Heritage Council will consider, from time to time, in the interests of maintaining free speech within that forum, it might deem it appropriate not to, and I am not sure that Mr Jensen's amendment covers that.

It is another requirement which I do not think we need. The procedures will work well. I do not know why we need this. It does not add anything to the legislation and it takes something away from the way in which this sort of body would normally operate.

Amendment negatived.

Clause agreed to.

Clauses 109 to 111, by leave, taken together, and agreed to.

Clause 112

MR JENSEN (4.49): I move:

> Page 53, line 13, omit "the prescribed period", substitute "28 days after the day on which the decision that a preliminary assessment be required is made.".

This amendment relates to the words "within the prescribed period" in clause 112 of the Bill. Under the subheading "Directions", this clause provides:

> The relevant Minister in relation to a defined decision, or the Environment Minister, may, by written notice to the relevant proponent within the prescribed period, direct the proponent to prepare a preliminary assessment of the environmental impact of the relevant proposal.

That is what it says at the moment. Looking at the information that was tabled by the Minister in relation to determined criteria in matters to be prescribed when the legislation was tabled in this place, the time period proposed to be allowed for this clause was 28 days. All I am seeking to do is to place that figure of 28 days into the legislation just to, if you like, put into place the decision that has already been taken. I will be interested to listen to comments by the Minister as to why he thinks that is not appropriate when, in fact, he was proposing to prescribe that himself.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.50): Madam Temporary Deputy Speaker, this is the fairly standard procedure that has tended to operate in these matters. It has been clear during this debate that Mr Jensen does not accept the standard procedure and, I suppose, why should he? We do not have to accept the way it has always been. I acknowledge that.

These are the sorts of pinpricking, unnecessary arrangements that we go through. It is this sort of amendment that is just bogging down this Bill. Not only are you clogging up the passage of the Bill; you are making it very difficult to get through it all. It is just not necessary.

MR KAINE (Leader of the Opposition) (4.50): Madam Temporary Deputy Speaker, in this case I support Mr Jensen. I had hoped that the Minister might, if he did not agree with it, say why 28 days was not long enough, because one of the things that we are doing in this Bill is putting timeframes on things - times within which actions must be

taken. I would have thought that this was another place where you would want to say that it has to be done within a certain, or a reasonable, time.

Mr Wood: It would have been said elsewhere. Twenty-eight days would be the likely period. There is no problem on the days.

MR KAINE: My position is that, if the 28 days time limit is not unsatisfactory to the Government, then I support it, because, again, it puts some predictability and certainty into the process.

Question put:

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

The Assembly voted -

AYES, 9	*NOES, 6*
Mr Collaery	Mr Berry
Mr Humphries	Mr Connolly
Mr Jensen	Mr Duby
Mr Kaine	Ms Follett
Dr Kinloch	Mrs Grassby
Ms Maher	Mr Wood
Mr Moore	
Mr Prowse	
Mr Stefaniak	

Question so resolved in the affirmative.

Clause, as amended, agreed to.

Clause 113

MR JENSEN (4.58): I move:

Page 53, line 16, omit "prescribed by the plan", substitute "specified in Schedule 1B".

This is a difficult problem, I think, and I am not quite sure how we are going to do it. This amendment was the best that I could come up with in the circumstances. Clause 113 provides for mandatory preliminary assessments to be conducted where a defined decision is of a class prescribed by the plan. The problem that we have at the moment is that the plan, as it exists - until the plan is approved and passed through the Assembly - - -

MADAM TEMPORARY DEPUTY SPEAKER: Mr Jensen, I am finding it a little bit difficult to hear you. Members, do you think we could have a little bit of quiet in the Assembly?

MR JENSEN: I would be happy for members to sit down and be quiet, Madam Temporary Deputy Speaker.

MADAM TEMPORARY DEPUTY SPEAKER: Thank you, Mr Jensen.

MR JENSEN: Crack the whip, Madam Temporary Deputy Speaker. The problem is that the plan will not, I would suggest, be in place before this legislation commences operation, if the legislation is to commence operation on 2 April. At the moment, the plan is a pile of documents that is as high as this desk, and in not too many places does it provide the sort of information required for a mandatory preliminary assessment. The Minister may be able to indicate to us how he proposes to get around this particular problem. When I was seeking a way around the problem, it occurred to me that, if it was not possible to prescribe classes for defined decisions, there would be a gap between the time when the legislation begins to operate and the time when the plan takes effect.

My understanding at the moment is that the environmental assessment process is not triggered by any of our own legislation. We are currently using - and correct me if I am wrong - the Federal legislation in relation to environmental impact proposals. This is the problem that we have. Frankly, I have some difficulties with some of the ways in which the Federal legislation operates because, as I have already indicated, the majority of it is in the form of regulations.

We have already seen, in the ACT, a development proposal that was changed drastically - one which, in fact, could have had a major effect on the environment of the Murrumbidgee River, and, of course, the Murray-Darling-Murrumbidgee river system. I am referring, of course, to the National Aquarium. The initial proposal was changed quite extensively to increase the amount of development as it related to potential for environmental damage.

Under the proposals that exist at the moment for the Federal legislation, there is no way that there is a requirement for this sort of substantial change in the development conditions and for proposals to require additional environmental impact assessments and statements. That was one of the problems, and that is one of the problems that we face at the moment.

So, I turn my mind to how best to ensure that mandatory preliminary assessments can be conducted in that period between the passage of this legislation and when the Territory Plan comes into effect, bearing in mind that the public consultation process for the Territory Plan does not close until 20 March. If you can tell me that the Territory Plan is going to be finalised and go through this Assembly by 2 April, I am afraid you are a better man than me, Gunga Din, because I do not believe that that is possible at all. I suspect, going on some of the discussions that I saw take place last night at a public meeting in Belconnen, that the Territory Plan will not be approved in its final stage until well into the second half of 1992.

So, I think we have a potential problem here in terms of a gap between the two taking effect. So, what I did was take the information that is currently identified in the draft Territory Plan and, because it refers to predominant land use zones, residential, et cetera, I have used my definition in schedule 1B, 1.2, which is as follows:

> Definitions and locations for areas and spaces are those used in and identified by the National Capital Plan dated December 1990.

All those are identified quite clearly in the plan. Even town, group and local centres are clearly identified. In the draft Territory Plan, the particular schedule within the plan refers to "Commercial 'A'", "Commercial 'B'", or commercial in general. To equate to "Commercial 'A'", I have used the term "town centre"; "Commercial 'B'", I have called "group or local centre". That is because that is how, within the Territory Plan, those two aspects of commercial activity within the ACT are identified.

All other areas, with the possible exception of plantation forestry, are clearly identified and defined, if you like, in the National Capital Plan. We all know that the ACT cannot do anything in its plan that is inconsistent with the National Capital Plan. So, that was the way I got around what I saw to be a potential problem.

In relation to section 3 of the schedule 1B that I have attached, which relates to this clause, all I have done is take from the Territory Plan those sections related to industry proposals. I think it is a straight take, because I think that is what we are proposing. Section 4, of course, is the same situation.

So, that was the best that I believed could be done in the circumstances. It was unfortunate that, because of the time factor, it was not possible for officers of the Law Office and the department - who had, might I say, worked untiringly with me in a short period, because of the pressures of work on each of us - to see whether we could resolve some of these issues. It was unfortunate that we never got down to this part.

At the time it seemed that it would not be possible to get the schedules. But it would seem now that there has been a change, and, in fact, it is likely that the majority of the schedules, if not all, are going to be accepted on the numbers in this Assembly.

So, on that basis, I thought it was important to explain why schedule 1B is proposed the way it is and why we believed that it was important to make that very important change to the planning legislation to ensure that we do not run into the sorts of difficulties that may take place. I will be interested in the comments from Mr Wood on this issue.

MR MOORE (5.06): I have some problems with this amendment. I think, conceptually, Mr Jensen has recognised a series of problems, and I think that those problems do need to be dealt with. However, I think that the system of dealing with them in these schedules is not an appropriate way to deal with them. Taking the schedule from the draft Territory Plan means that we have a schedule that is really open for discussion. And while we have a draft Territory Plan open for discussion, we, as an Assembly, would be put into an inappropriate position if we suddenly make parts of it law. I think that is the effect of Mr Jensen's approach on this particular issue.

I want to emphasise that I think it appropriate that he has drawn our attention to these problems. I can understand why he went about it this way, and I think that it was a quite innovative way to go about it. I am also aware of the amount of work that has been done in this area in the last little while by Mr Jensen and, in fact, Mr Wood's officers and most people who are involved in planning. Because of that, I feel that it is inappropriate to support this particular amendment. In fact, this is the first of Mr Jensen's amendments that I have not supported. By and large, I think that they are indeed entirely appropriate. Mr Jensen has done very well, actually, in this chamber with his amendments.

Mr Jensen: I finally got a cartoon.

MR MOORE: Mr Jensen has been waiting for a long time to be drawn by Geoff Pryor. I think, therefore, that it is better that we turn back to the Minister. I understand that he has a reply to Mr Jensen on his particular concerns.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.08): I mention a couple of aspects of this matter. Mr Jensen indicated that he was trying to overcome a problem and I think he suggested, maybe, that what he was proposing might not be perfect. I think that has proved to be the case. He has a concern on the basis that the plan will not be available for a while yet, and that is certainly the case. But my clear understanding, Mr Jensen and Mr Moore, is that it does not matter if the plan is not in place for some time, because the concerns that Mr Jensen has can be accommodated by clause 112, whereby the Minister may take such action as you can read in that clause. It may be, of course, that that does not satisfy Mr Jensen - - -

Mr Jensen: You can drive a truck through that, Bill.

MR WOOD: I cannot win on these matters with you. But, beyond that, it is not appropriate to deal with this at this stage. We will address these matters in greater detail as well in the consequential legislation.

But, further than that, I do not think we should intrude a schedule in this way. The links between the Territory Plan and this Bill, particularly the schedule which prescribes the classes of proposals requiring mandatory preliminary assessment, have been provided so that the proposal can be simultaneously assessed for consistency with planning policy, along with the requirement for environmental assessment. This assists both the Planning Authority and the proponent in proposal evaluation, and I think we have to consider both those entities, Mr Jensen. To break the integrated approach to planning and environmental assessment by severing the links between the Bill and the Territory Plan by placing this schedule in the Bill makes no positive achievement. It adds a deal of bulk to the Bill and, also of some concern, it removes the early integration and consideration of environmental matters in the development of proposals.

MR KAINE (Leader of the Opposition) (5.11): A little while back we talked about attaching a schedule and I said that it should be in there. So, it might seem now that I am being ambivalent, because I am now going to say that this one should not be. But I think I can justify my position. The earlier one was a fairly specific statement, it was not very long and it had to do with a quite specific matter. I think it was possible to state quite succinctly the things that needed to be said and therefore it added something to the Bill.

This is a little different. What we have is page after page after page of very prescriptive information. What I am worried about - and I think that Mr Wood may well have referred to this in connection with my earlier support of the other list - is that, when you get to this length of specifying so much information and it then becomes a statutory obligation, it is more a question of what is inadvertently omitted which can cause you a lot of trouble than what is inadvertently included that can cause you trouble. It concerns me that putting a schedule of this detail and of this order of magnitude into the Bill, therefore making it statutory in nature, is likely to cause more trouble than enough.

I take the point also made by the Minister that the necessity for this in connection with the plan is one thing and the necessity for it in the Bill is another. So, I have real difficulty with the amendment, and I was hoping, again, that the Minister might explain his position. Mr Jensen made the point, of course, that if you do not put it in the Bill there is a gap. Until the plan is in place, there is a big question mark against all this. I wonder whether the Minister can perhaps ease Mr Jensen's concern and mine by telling us how he is going to ensure some consistency in the approach to the development and carrying out of these preliminary assessments unless this is set down somewhere and people know in general terms such things as when one is needed.

I think that is probably the main purpose of this; to specify when a preliminary assessment is required in connection with different classes of proposals. It is very complex, and how can somebody out there in the community know when a preliminary assessment is required and when it is not, if we do not promulgate this information in some way? I think that is the problem. If the Minister can explain how we can get around that, then I would opt not to include this schedule, on balance.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.14): The schedule of the draft Territory Plan will guide the Minister in making the decisions he will be making under clause 112, the one immediately preceding this one. It is that schedule that will be the guide and that process also allows that degree of certainty that we have been seeking, for all people, in that period of transition. It is a difficult period and that process that I have just described - with respect to Mr Jensen - is, I think, a better process than the one that he is seeking to impose here through this amendment.

MR JENSEN (5.15): I accept the comments made by Mr Kaine, Mr Wood and Mr Moore in relation to this and I accept that what I did in this amendment was not necessarily the best answer. But I guess I will use the streaker's defence - it was the best idea that I could come up with at the time in the time available. I am pleased to note that Mr Wood has indicated that he will be using clause 112 to decide what is required, and that he will be using what is effectively this schedule, because it came from the Territory Plan, to assist him in making those decisions.

However, I would also like to pick up the point that Mr Kaine made in relation to the need for certainty between when this legislation takes effect and when the Territory Plan finally comes into place. It seems to me that, in this case at least, it may be appropriate for the Minister - and perhaps I have done it in a somewhat lengthy form - to provide some form of determination or some form of document, which is, in fact, tabled in the Assembly and made available to the general public and the community, setting out what the Minister considers to be those areas for prescribed classes for defined decisions.

I accept that we do not necessarily need all this information; but I would be encouraged if the Minister could give an indication that he will provide some information, and probably table it in this Assembly, to give a lead to the community and the developers in the ACT as to where we are going to go in this very important area of the requirement for mandatory assessments. I have already made the point that in the Federal legislation there is so much prescribed that you might as well not have the legislation. The legislation is just a series of

clauses that say what is going to be prescribed. That is the problem and that is the concern that commentators have in relation to environmental assessment processes. I think it would behove the Minister, and enable me, Mr Kaine and others in the community to sleep a little easier at night, to provide a better schedule of information to guide us in that area.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.17): Yes, I will do that. I do not think I will do it by way of determination, Mr Jensen. That is probably not the way to proceed. I will issue a media statement - I do not know how much the media will run that; it is probably a bit exotic for them - indicating that I will be guided by the - - -

Mr Jensen: A statement in the Assembly will do.

MR WOOD: All right. I may do it here. We will make that quite clear.

Amendment negatived.

Clause agreed to.

Clause 114

MR JENSEN (5.19): I move:

> Page 53, line 20, omit all the words after "of", substitute "the matters specified in Schedule 1C".

This amendment deals with the information that should go into a preliminary assessment. The information on which this document was based, which is schedule 1C, has come from a National Capital Development Commission document and is currently used in conjunction with the preparation of preliminary assessments. The only addition I have made, on advice, is clause 3.3, to provide for information on the potential impact on the non-human biological environment. That is the only addition that has been made to that document, with the exception of things such as "ACT Government or authority or agency".

Once again, this is an important document because it provides the headings for what should go into a preliminary assessment. It provides a basis on which preliminary assessments can be referenced by groups and organisations. Mr Wood no doubt heard last night at a meeting we attended some criticism of the environmental impact assessment that was made on the West Belconnen project. I think it is appropriate to ensure that all the information in relation to preliminary assessments is quite clearly identified. I commend the amendment to the Assembly. I do not think there is any point in labouring the issue further.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.21): The Government opposes this, on the grounds that it is putting into a schedule matters that need not be there, and it is particularly inappropriate in this circumstance. I know that it reflects Mr Jensen's desire, perhaps based on his experience, although I am not sure that it is soundly based, and his wish to tie everything down rigidly.

To attempt by the proposed schedule to predict the matters to be addressed in a preliminary assessment takes away the project-specific assessment criteria that exist in the current clause and in all other legislation. The amendment takes away, inevitably, flexibility in assessment. I do not think this is in the interests of the community, who would benefit from a concise and precise preliminary assessment focused on the potential impact of a proposal. I will be accommodating the concerns of Mr Jensen, I think, when I issue administrative guides to people who need to know these things.

MR KAINE (Leader of the Opposition) (5.23): This is the third of the schedules Mr Jensen is proposing to add. I have no objection to this one. At the top it says, "This is merely a format". I do not mind prescribing a format in a Bill, as long as it goes no further than that. It is not all that prescriptive and, as a format for a preliminary assessment, I think it is acceptable. I support it.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.24): I still argue that it is unnecessary. I will be issuing the guidelines and they will do the job.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 115 agreed to.

Clause 116

MR JENSEN (5.25): I have already spoken on the issue of purchase and I will not labour the point. I move:

> Page 53, line 34, subclause 116(1), omit "and purchase".

Amendment negatived.

MR MOORE (5.26): I move:

> Page 54, lines 1 to 3, subclause 116(2), omit the subclause, substitute the following subclause:

"(2) A proponent who has published a notice pursuant to subsection (1) shall -

(a) make copies of the preliminary assessment available for inspection and purchase at the places and times specified in the notice; and

(b) give a copy of the preliminary assessment, without charge, to the Librarian, ACT Library Service and to the Conservation Council of the South-East Region and Canberra (Inc.).".

I should start by pointing out that originally I asked the drafting office to include a provision to make a copy available to the Library Service and the "peak conservation body". They were not able to find a satisfactory way to include the "peak conservation body" that would not cause problems later. In the end, I felt it better to identify the current peak conservation body for the ACT, the Conservation Council of the South-East Region and Canberra (Inc.). If that body dissolves for some reason, then I am given to understand by the Parliamentary Counsel that it would automatically be replaced by another body taking its position.

One of the possibilities I am trying to deal with is the ability to make copies of a preliminary assessment available to members, not just on the basis that they can purchase them or get them from a library. The assessment may well be a very thick document and, in responding to it, it is not enough to read it and put it back. My draft Territory Plan here, for instance, has tags on it and is highlighted and so on, which is not an appropriate way to treat something in a library.

It is important that people who are interested have a copy available. The people who are clearly going to be most interested are those in the peak group involved in environmental issues. On face value, it would appear that to purchase such a document would be a reasonable thing, and certainly this Assembly, from its previous votes, would consider it to be a reasonable thing. However, it did occur to me that if I did not want the environmental body to comment too closely on a proposal, or a series of proposals, my methodology would be to take a series of photos - say, 15 to 30 photos - and include them in an assessment, which would be a perfectly sensible and reasonable thing to do. Having done that, you colour photocopy those at, depending on the size of the page, anything up to $3 or $5. That could make for a preliminary assessment that costs somewhere between $100 and $150.

That methodology would be available. One way around that is to identify which copies should be made available, without going to extremes. The attempt here is not to go to an extreme but simply to say that the proponent must

provide two copies, and be quite specific about those two copies. One goes to the peak environmental group, so that other environmental groups who work within that group can have access to it, and one is made available to the Library Service. I think it is a perfectly reasonable amendment, and I seek members' support for it.

MR JENSEN (5.30): I am not quite sure - and I would be interested in the comments of Mr Wood's advisers on this - whether what Mr Moore has done is reduce to two the number of copies that are going to be made available. It seems to me that that could be a bit dangerous. We could have an organisation, a proponent, who is proposing a commercial development, a commercial operation. It seems to me that the requirement to comply with environmental impact assessment legislation is a legitimate part of the operation of that business, and that is a tax deductible process. If they are required to produce a number of documents, that is a cost and it will be built into the proposal.

If the proponent wants to carry out a project, it is incumbent on the proponent to ensure that the community consultation process is properly followed. I am not sure that the provision of a couple of copies to the library will meet that criterion. I would be concerned that the proponent could do just that and nothing else. The proponent could say, "I have complied with the legislation. I do not need to do any more. That is all you are going to get". That would be a worry to me.

As I have already indicated, if you look at subclauses (3), (4) and (5), where there is information relating to the fixing of the maximum price for this copy of a preliminary assessment, the proponent is able to be reimbursed for only the cost of actually producing the copy, not for the actual preparation and conduct of the preliminary assessment. While I see what Mr Moore is trying to get at, we have to be careful that we are not restricting the availability of the copies.

I take this opportunity to reiterate my concern, particularly in relation to environmental impact assessments and statements, that if we are not very careful groups and organisations, particularly developer organisations, who have a bad record in this area will seek to avoid their responsibilities and follow the very letter of the law. I believe that they will seek to reduce the availability of information to the community so that the community is not able to comment. I have some concerns about Mr Moore's amendment, but I do not think it is worth a division.

MR KAINE (Leader of the Opposition) (5.33): I thought Mr Moore's amendment was quite a good one, except in one respect, and I have prepared an amendment to it which is now being circulated. I had difficulty with the notion that lots of copies will be made available for inspection and purchase, which I agree with, but one organisation is

specifically mentioned in the legislation as receiving one free. I do not think it is appropriate to make that specific prescription, and I therefore move as an amendment to Mr Moore's paragraph (2)(b):

Omit all words after "Service", in proposed subparagraph (2)(b).

In other words, I am removing the words "and to the Conservation Council of the South-East Region and Canberra (Inc.)". I do not believe that it is at all appropriate to mention a specific organisation in a Bill in that way. I do not think it is at all appropriate to deal with that organisation any differently from literally dozens of other organisations who would have just as much interest in the subject. It is almost a specific discrimination in favour of this organisation, and I oppose it. Apart from that, I thought Mr Moore's amendment was acceptable, and I will support it.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.35): I note Mr Kaine's concern. I point out that the conservation council is a peak body. It encompasses a great number of other bodies. This clause does, however, presuppose that the conservation council is going to continue forever. If some factor arises whereby the conservation council does not exist any more, there is nowhere for a copy to go.

Mr Kaine: Or even reconstitutes itself in some way.

MR WOOD: If it reconstitutes itself under a separate name, if we want to be meticulous about it we may need to amend the legislation. I am not sure that that need happen, however. We are prepared to accept the full impact of Mr Moore's amendment. I note that we are giving this to a body, but it is a peak body and covers a wide range of groups.

Mr Jensen: It has an excellent library.

MR WOOD: I think it is an easy way of circulating information. Mr Jensen makes the point that it has an excellent library that is well used by a wide range of people. So, it is a sensible arrangement, and we will be supporting the full amendment.

Amendment (**Mr Kaine's**) to amendment negatived.

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

MR JENSEN (5.37): Madam Temporary Deputy Speaker, I do not think my amendment is appropriate now because the amendment to subclause 116(2) has been lost. I think it is probably appropriate not to proceed with amendment No. 62.

Clause, as amended, agreed to.

Clauses 117 and 118, by leave, taken together, and agreed to.

Clause 119

MR JENSEN (5.38): I move:

> Page 55, lines 16 to 18, paragraph 119(a), omit all words after "are" (second occurring), substitute "specified in Schedule 1D".

This is another schedule. This one relates to the content of public environment reports and environmental impact statements. I have made my point. This information was taken from what I consider to be an appropriate source document. It is a companion to schedule 1C, and I commend it to the Assembly.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.38): I would assert that this is an unnecessary addition. I suppose I can go over the same arguments we have had before. The schedule proposed adds nothing to the matters already prescribed in the regulations and it takes away the ability to develop project-specific directions. I think this is damaging as it takes away some of the Minister's ability to take into account concerns raised during earlier consultations. Once again, it locks it in and does not allow adjustments towards the end of processes. I think we should reject it.

Question put:

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

The Assembly voted -

AYES, 4	*NOES, 11*
Mr Collaery	Mr Berry
Mr Jensen	Mr Connolly
Dr Kinloch	Mr Duby
Mr Moore	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Kaine
	Ms Maher
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

Clause agreed to.

Clauses 120 and 121, by leave, taken together, and agreed to.

Clause 122

MR JENSEN (5.45), by leave: I move:

> Page 56, lines 12 to 26, paragraph 122(1)(b), omit the paragraph, substitute the following paragraph:

"(b) specify where, in the opinion of the Environment Minister based on reasonable grounds, the environmental impact of a proposal which is the subject of another defined decision is relevant to the environmental impact of the relevant proposal - sufficient details of the first-mentioned proposal to enable the proponent to assess the potential combined effects of the proposal.".

> Page 56, lines 27 and 28, subclause 122(2), omit the subclause.

I proposed some changes to paragraph (b). What we have before us is a recommendation that was given to me by the officers from the Law Office in relation to what would achieve my aim. All we are talking about in the amendment is a saving of time. If a proponent has been required to do an environmental impact assessment and seeks to modify the project, and there is another related project, this would allow the proponent to have to conduct only one environmental impact assessment. What we are really talking about is deleting subparagraphs (i), (ii) and (iii) from this clause.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.48): This is one of the problems we have when we move rather quickly through things.

Mr Jensen: Are you complaining now?

MR WOOD: You left everything so late; you drowned us with amendments at the last minute.

Mr Jensen: You drowned me with lots of other work, Mr Wood - lots of planning work.

MR WOOD: You cannot avoid that problem. If we had a chance to sit around a table and talk in detail about this, my advice would be that you are simply removing a few useful clauses and replacing them with an amendment that duplicates what is in subclause 120(2). You seem to be taking us backwards in this matter. I was not able to hear all that you said, but you might look at that and think about it. We are opposing it. We think your concerns, such as I heard, are more than adequately covered. This amendment shows one of the difficulties of rushing things towards the end, and I would ask you to think about it.

Amendments negatived.

Clause agreed to.

Clause 123 agreed to.

Clause 124

MR JENSEN (5.50), by leave: I move:

Page 57, line 29, paragraph 124(1)(a), omit "and purchase".
Page 57, lines 36 and 37, subclause 124(2), omit "and purchase".
Page 58, lines 1 to 25, subclauses 124(3) to (6), omit the subclauses.

I do not think I need to comment any further on these amendments. We have been through this argument before.

Amendments negatived.

Clause agreed to.

Clauses 125 and 126, by leave, taken together, and agreed to.

Clause 127

MR MOORE (5.50): I move:

> Page 59, lines 4 to 8, subclause 127(1), omit all words from and including "The" to and including "persons", substitute "The Environment Minister may, in relation to a proposal that has an environmental impact, by giving reasonable notice in a daily newspaper, convene a meeting of persons who have an interest in the proposal".

The way the clause is currently worded, the Environment Minister does not have the ability to act in broad consultation. Under this amendment, the Minister can contact people he believes, on reasonable grounds, to have an interest and who will be directly affected by the proposal.

I think it is important to draw an example, and it is one I may use again. There was some concern not so long ago about the casuarinas next to section 52, the Boulevard theatres, when the development of a hotel, which did not proceed, was going ahead. As it turned out, the developers did the right thing and made it quite clear that they would move to preserve those casuarinas. Had it been the other way round and had the Minister wished to consult, I think we would have been in strife. There is nobody who could really claim that they are directly affected by the removal

of those casuarinas, apart perhaps from somebody who could claim that they ate lunch there and therefore their shade would go. It may well be that that would prove not to be acceptable.

This clause is about consultation. The clause is entitled "Consultation", and I believe that it is appropriate, therefore, that the Minister should be prepared to do that in an appropriate case. I point out that the amendment does say, "The Minister may". I have not taken a hard line on this at all. The amendment reads:

> The ... Minister may, in relation to a proposal that has an environmental impact, by giving reasonable notice in a daily newspaper, convene a meeting of persons who have an interest in the proposal.

It is a clause that facilitates, not a clause that compels. As such, I think it deserves the Assembly's backing.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.53): I want slowly to oppose this amendment. I understand what Mr Moore is saying. We had some discussion about this, and if we had more discussion I think matters could improve further. Bear in mind that we are trying to get people who are most concerned about a matter around a table together.

Mr Moore: Take the casuarina example; you cannot.

MR WOOD: Yes, but in this instance you may expand the group involved to such an extent that you get nowhere at all. I understand what Mr Moore is saying. I could look at some words and some changes, but I do not think we have the time to do it now. On that basis, I am going to oppose Mr Moore's amendment; but I indicate that it is one of those matters we will put on the agenda when more amendments are being developed in the new parliament next year. I repeat: I do not think we want to mess the waters more by inviting people who perhaps are extraneous to the need, to confuse matters.

MR JENSEN (5.55): Once again, I get the distinct feeling - I am surprised, actually - that Mr Wood has some concern about the difficulty of community involvement in planning matters and matters that affect the community.

Mr Wood: I do not.

Mr Moore: It is not reflected in the way you are acting on this one.

MR JENSEN: I am sorry, Mr Wood; but, as Mr Moore interjects, it is not reflected in the way you are dealing with the issues that are being brought forward. I suggest to you that it is quite legitimate for Mr Moore to put this forward, and we fully support it. All Mr Moore is

suggesting is that in an important planning development proposal it is appropriate for the community to be given an opportunity to participate in the process. They do not have to turn up, but they should at least be given the opportunity.

I would have thought that these days any developer or proponent worth his or her salt would have been prepared at least to put the issues on the table and have them considered and debated in the full glare of a public and open forum. That is what it is all about - the open processes of planning and development. It was brought forward by Mr Ted Mack in North Sydney and it worked quite well. It provides a perfect opportunity for the proponent of any proposal to put the issues on the table, out in front, and let the community look at them. If the community can knock them down, so be it. In the long run, it will probably cost them less money.

From a balance sheet point of view, if I were a proponent I would like to know as early as possible whether I was going to have some major problems with the community. There would be nothing worse than getting halfway down the track and finding suddenly that you have all sorts of litigation and attempts by the community to stop your proposal. If you were prepared to put everything on the deck from the beginning, from day one, and have an opportunity to discuss it with the community, things would go much more smoothly. It is unfortunate that Mr Wood seems to be decrying - - -

Mr Wood: No, you have got it wrong.

MR JENSEN: I am sorry, Mr Wood; but that is the impression that is coming across to us. You seem to be decrying the importance of public consultation and the role of the community in planning and development issues in this city. If we go further down the path of public consultation and involvement of the community, we will end up with a much better planning system. It is unfortunate that the Government is not seeking to support this proposal by Mr Moore.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.58): The heading at the top says "Consultation".

Mr Moore: Yes, and then it goes ahead and does not do it.

MR WOOD: Maybe the heading is wrong; maybe we should change the headings. Clause 127 was designed for a specific purpose. In keeping with accepted practice these days, it was designed specifically for conflict resolution, if you like, a round-table meeting.

Mr Jensen: What is wrong with that?

MR WOOD: You want to extend it into a broad public meeting. If you vote this down, you will be removing a good, specific proposal to try to resolve matters. In subclause (2) there is reference to the outcomes of the meeting. You can see the design built in there for some resolution to be effected. I do not have any objection to calling public meetings. I or someone else as Minister will be able to do that. It is not a problem.

We are not saying, and I do not believe that I said so when I first spoke on this clause, that we are against consultation. If we had headed this clause "Round-table conference", maybe Mr Jensen would not have baulked at it.

Mr Collaery: You will see; you have been sold a pup.

MR WOOD: I can never overcome this conspiracy theory. I do not know that I can ever argue around that. Why do you not acknowledge that in these procedures it is a sensible measure to get the parties together? Mr Jensen, there is no inhibition in this legislation on my calling a public meeting. I repeat: That can be done, and this is not a crafty design to prevent that.

Mr Jensen: Have a careful look at line 7.

MR WOOD: I am not talking about this. This clause is not designed as a public meeting clause. Will you understand that? On the second occasion that I rose here, I started by saying that this was a specific clause for a specific purpose. We are just a little confused about it. I do not know offhand what the explanatory memorandum said, but it might have explained the purpose of this. It is nothing like being sold a pup. It is an accepted way, a good way, of working through procedures. You are taking it wrongly and you are going to mess it up if you carry on.

MR MOORE (6.01): Mr Speaker, I think I should reply to Mr Wood in this way: Originally, when I approached this particular clause, I had suggested that what should be deleted was the words in line 7 where it says "the Minister believes on reasonable grounds to have an interest that would be directly affected by the proposal". I was going to remove that and say "on reasonable grounds to have an interest in the proposal". Why is it that it has to be narrowed down to "directly affected"? That really is the important point.

If he were prepared to accept that we could simply delete "that would be directly affected by" and insert "in the" - it would read "have an interest in the proposal" - then I think that would be acceptable because that still allows the Minister to decide - - -

Mr Wood: I can accept that.

MR MOORE: In that case I will circulate an amendment to that effect, Mr Speaker.

MR COLLAERY (6.03): Mr Speaker, when we interjected and said "sold a pup", what we meant was: Had the words "directly affected" been explained to the Minister? His own Labor Party platform and policy is to allow the widest possible grounds. The words "directly affected" import a narrowness that the bureaucrats in this town have always wanted to impose upon those of us in the community.

The words "directly affected" mean that the conservation council itself cannot claim to be a party unless its headquarters or something to do with it adjoins the affected property. It is an antithetical clause that has been fed in there and that will have long-term consequences. It reduces what is called the locus standi of the parties back to the narrow grounds that we fought for so many years to knock out. Since the Minister appears to be consulting further on the matter, I will hold my comments.

MR MOORE (6.04), by leave: Mr Speaker, presuming that the world's fastest photocopier can do its task at the rate at which it normally operates, we could be here to any hour. I have accepted what Mr Wood has proposed as a compromise and I will move that amendment. I should point out that it has always remained within the power of the Minister to arrange this. I have not changed that in my original proposal, I should point out. The effect of that amendment will be that the clause will now read:

> The Environment Minister may, by giving reasonable notice to the proponent of a proposal that has an environmental impact and any other person the Minister believes on reasonable grounds to have an interest in the proposal, convene a meeting of such persons for the purposes ...

I think that that is perfectly acceptable because it does not preclude the Minister from inviting other people, whereas in its original form people who had an interest were not able to be there.

I think it is important to take that case of the casuarinas again. It would have been very difficult to show that you had an interest in those casuarinas, particularly a direct interest, and that you would be directly affected by those. It would be quite easy for the conservation council, as an example, or somebody who is an arborist, to indicate that they did have a direct interest in that particular proposal. So, Mr Speaker, I urge members to support this new amendment. I believe that it is appropriate for me to withdraw my original amendment.

MR SPEAKER: Yes.

Amendment, by leave, withdrawn.

MR MOORE: The new amendment in my name, in the scrawly handwriting, has just been circulated. I move:

Page 59, line 7, subclause (1), omit "that would be directly affected by", substitute "in".

MR COLLAERY (6.06): We would be interested in hearing from the Minister how he interprets the word "interest". It has been narrowed by the lawyers over the years, and often it has been narrowed in environment concepts to bring it back to direct effect. Although I accept the bona fides of the Minister on this matter, I think the extrinsic record has to show the intention of the legislature.

I know what Mr Moore intends. He intends that people with a reasonable broad interest in the proposal should be consulted. There is a double-header there. The Minister can filter out by finding reasonable grounds. Well, we cannot do much about that. Secondly, some legalistic bureaucrat can suggest a standard for an interest. That interest could range as wide as one of the authorities on that, which was the *Hail Mary* case, where Mr Justice Wilcox said that clergymen had an interest in the showing of a film that purportedly expressed a blasphemy. That is one of the wider grounds in judicial review. There are very narrow interpretations too, and courts vary on it.

I think it will be an aid to us to understand what the Minister wants to tell the Assembly about what the interest is. I just pose an example: Would the interest embrace the legitimate concerns of a conservation council?

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (6.08): It is strange that a lawyer is concerned about legalistic bureaucrats.

Mr Collaery: This is a lawyer who lost thousands of dollars at Rocky Knoll. I have every interest in it.

MR WOOD: I think you should attend to lawyers, Mr Collaery. The word "interest" means that. I would take the ordinary meaning of the word; that "interest" means someone who has an interest. If you are aware of proposals for development at West Belconnen, a person who has an interest is the sort of person who turned up at a meeting I went to last night.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 128 to 139, by leave, taken together, and agreed to.

Clause 140

MR MOORE (6.10): Mr Speaker, this is a matter we debated earlier. I have accepted the Minister's bona fides and therefore I shall not be moving the amendment circulated in my name about advertising on a Saturday in a public newspaper.

Clause agreed to.

Clauses 141 to 145, by leave, taken together, and agreed to.

Clause 146

MR MOORE (6.10): Mr Speaker, I will not be moving my amendment No. 6 star or my amendment No. 7 star, because they will not be necessary. Instead, I have circulated an amendment, which I have signed, and it has at the bottom:

> This amendment to replace M. Moore's star amendments 6 and 7.

MR SPEAKER: Is that your signature, Mr Moore?

MR MOORE: That is my signature. You can be absolutely sure of that, Mr Speaker. It was done with my own hand, unlike other occasions. Mr Speaker, I move:

> Page 66, lines 6 to 13, subclause 146(1), omit the subclause, substitute the following subclause:

"(1) A panel may hold a special hearing of the inquiry in order to consult with -

(a) the proponent;

(b) any other person that the panel believes on reasonable grounds to have an interest directly affected by the proposal; and

(c) any other person the panel considers appropriate:

for the purposes of -

(d) clarifying the proposal; and

(e) discussing ways in which the proposal could be modified in order to reduce or eliminate any potential environmental impact.".

Mr Speaker, the effect of this is very similar to the previous situation; but in this case it empowers the panel to make a decision, rather than the Minister. I believe that the arguments that were run previously apply to this. My understanding is that the Government will accept this.

Mr Wood: Yes.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 147 to 150, by leave, taken together, and agreed to.

Clauses 151 to 153, by leave, taken together

MR MOORE (6.13): I am going to seek an informal opinion of the members of the Assembly as to whether or not they think this is an appropriate spot to adjourn.

Mr Berry: Press on regardless.

MR MOORE: I know that Mr Berry wants to press on regardless, but he may not have the numbers on this occasion. We are now talking about the power of entry, search warrants, and the powers of search and inspection. These are quite extraordinary powers, Mr Speaker. I asked my staff to get some more information from the library, but the library is closed. That does make the situation more difficult for me. I do think that this is an appropriate time to deal with the other issue that Mr Wood had and I think that we should proceed with the debate on this matter on the next day.

Mr Berry: This is a 30-second job. It will come on immediately debate on the Bill is adjourned.

MR SPEAKER: Mr Moore, could I propose that you postpone this clause and that we go on with others?

MR MOORE: No, I think it applies to the whole lot. I have to tell you, Mr Speaker, that I am glad you offered, but I am ready to pack it in. I will test it by a motion that I move - - -

Mr Berry: You cannot.

MR SPEAKER: You have already spoken.

MR MOORE: I cannot do that? Because I am already speaking. Ha, tricky! Do not worry; I can do it on the next one, should I need to.

In that case I will certainly raise the issues with reference to these powers of entry. Some of my opinion on this has been expressed publicly. There was a significant article in the *Canberra Times* with reference to these rather extensive powers that are lifted almost directly from the Royal Commissions Act and the Inquiries Act. Whilst I accept that they have a most important and appropriate place in a Royal Commissions Act, I have great reluctance about seeing them in a Bill of this kind.

Of course, they do present a double-edged sword. On the one hand, if we think that some developer will need to be inspected and that power of entry, search warrants and power of search and inspection will need to be granted to a panel - which may be a single person, do not forget - then I suppose that needs to be tempered with the fact that this can be turned back the other way as well. It may well be that these powers can be applied to a group like, for example, the Belconnen Community Council's Planning Committee. They may well find that all of their notes are taken. If they attempt to contravene the panel, then they are up for either $5,000 or imprisonment for six months.

Having dealt with planning matters and having dealt with this sort of issue for some years, I cannot, for the life of me, think of any piece of information that I may have that somebody would want to take for benefit that would result in a prison sentence, in any prison sentence. It is most extraordinary and most inappropriate.

Mr Collaery: Yes; you cannot be put in prison for debt any more, Michael.

MR MOORE: I cannot be imprisoned for debt. I am glad Mr Collaery mentioned that. On the other hand, if I refuse to provide some of the leaked documents that have come to me over the years in terms of planning appeals, I may well find myself in prison because they might in some way identify the officer who had leaked them to me. I think, therefore, Mr Speaker, that these clauses need to be rejected. They are entirely inappropriate.

Should a panel of this nature need to be convened, if there really is a problem of this nature, there is a facility to do it under the Inquiries Act or under the Royal Commissions Act. It is a decision of the Assembly, of course. It seems to me that there is simply no need for somebody to have to seek a warrant which can specify a particular hour during which an entry is authorised at any time of the day or night. If I want to be colourful I can certainly conjure up great pictures of an SS uniform with the SS removed and PP in a nice italic form in its place - the same sort of italic form that the Residents Rally used perhaps - the PP being the planning police. What could be achieved by that?

On the other side of the coin, Mr Speaker, should the panel decide that they want to get information from the developer they can say, "If you do not want to provide the information, your development does not go ahead". It is a much easier way than threatening somebody with a $5,000 fine or a six-month imprisonment penalty. I urge members to look very seriously at these three clauses and try to determine whether we really need them. I believe that we do not.

MR COLLAERY (6.20): Mr Speaker, for the record and from the Alliance historic viewpoint, and to again demonstrate how issues within a bureaucracy survive the vicissitudes of politicians, when these provisions came before the Alliance Cabinet we had a very strong protest by the ACT Law Society. The ACT Cabinet resolved to ask that these matters be re-examined to see whether they complied with conventional civil liberty standards. We left government, to the best of my knowledge, before the matter came back. The provisions have survived and I wonder whether the Labor Government - I know the Cabinet convention - was in any way acquainted with the fact that the previous Government had had a difficulty with that draft.

Mr Berry: You had lots of difficulties.

MR COLLAERY: Here is a left wing, union-backgrounded person making light of search and entry and seizure. That is amazing.

Mr Berry: No, no; I said that you had lots of difficulties.

MR COLLAERY: I sure did. Let us put one thing on the record. One morning some years ago, in my section 10 solicitor's premises, when I was robing to go to court, I was raided. On the very morning that I was going to the Federal Court to argue the Rocky Knoll matter, my office was raided. I was raided, back door and front door. It was timed. It was a deliberately bureaucratically inspired or politically inspired - I withdraw "bureaucratically inspired" - raid and visit upon my premises.

So, if a prominent leader of the Rally, as I then was, who was giving an adviser to a former Federal Minister a hard time politically on issues, can be so blatantly raided, how would these provisions be used if that member ever got back into government? I wonder. The fact of the matter is that a lot of us have some grim experience about the manner - - -

Mr Connolly: What were they raiding you for?

Mr Jensen: Section 10 compliance. It is the truth.

MR COLLAERY: It is the absolute truth. There were members of the community present when that raid occurred and there was an attempt by those bureaucrats to identify members of the public in my home early in the morning. It was an outrageous intrusion on my lifestyle. Some weeks before, another gnome got me out of bed in my premises.

Mr Berry: You were in breach of your lease, weren't you?

MR COLLAERY: Too right, I was in compliance with my lease. On another occasion, Mr Berry - through you, Mr Speaker - when I was about to go down to Cooma court to prosecute a member of the Morosi family over the Mount Oak affair and the matter had been cancelled, I was again visited. It had

been widely said in the newspapers that I would be in Cooma that day and bureaucrats chose to visit my place and poke around in a wardrobe and waste government money on a non-issue. So, Mr Berry, you want to know those of us who fought real battles. We have not seen you at many real battles, have we? You have been driving the bulldozers, not standing in front of them. Is that not correct?

Let us face it; these provisions are offensive to many of us who have had the sting of the unbridled government that swept this town in a certain era under a certain adviser. The fact is that the provisions have been opposed by the ACT Law Society, and they have been opposed by me previously. We stand opposed to them. They are too much for what they seek to do. I agree completely with Mr Moore. They are appropriate in the Royal Commissions Act and the Inquiries Act - Acts introduced by the Alliance. They are not appropriate to this. They can be misused. Similar powers, much weaker powers even, have been misused for political motives in the past.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (6.24): Mr Collaery is right in what he said. I can say this because I have noted the considerable concern about the clauses we are now debating. For that reason I have taken particular interest. It is the case that a referral was made back to the Attorney-General's Department, questioning this clause. The information that came back to me was that there was one reservation and that was that the panel could initiate a warrant without going through the magistrate. That was modified to the provision we now have in the Bill. Other than that, the Attorney-General's Department said that there were no problems about civil liberties in the Bill.

It does look draconian, I agree, in these simple terms; but let us look at the circumstances in which these clauses would be used. They are not used for normal planning inquiries. I think someone suggested that they would be. That is a misreading of the clauses. The inquiries are inquiries into potential or actual environmental impacts. The inquiry provisions are included in Part IV of the Bill for that reason. The intention has never been to provide for inquiries into building design and siting applications. Let me repeat that: The intention has never been to provide for inquiries into building design and siting applications, but to inquire into impacts on the natural, social, built and economic environments of major import, major factors and major concerns.

Inquiries may deal with sensitive issues where it may be in the public interest to obtain information if it is being withheld from the inquiry and is necessary to an inquiry making proper recommendations. The need for these actions would have to be ratified by a magistrate before the powers could be exercised. That was the one change that was made. The power of search and entry has been provided to protect the public interest, not to invade the privacy of individuals on trivial matters.

For example, we could have a large industry in the ACT, maybe one that is not here now, that could have been causing, could continue to be causing, major environmental damage. Obviously, the management of that organisation may want to protect its interests in the face of what could be negligence claims, and it may have in its records information that it would not voluntarily release. It is that sort of circumstance that is being encompassed in this Bill. In a different case, there may be a circumstance where someone has declined to show a pecuniary interest in some very important matter, and this provision is necessary to elicit that information.

Let me repeat - I think it is important to do so - that the intention of these clauses is to provide for inquiries into matters of major import. They are not the day-to-day matters that may have been suggested. The thought that someone with "SS" written on their T-shirt, or whatever was suggested, is going to go into any person's home is simply not sustainable.

MR JENSEN (6.28): I think we have to be very careful here in relation to what we are talking about and what sorts of inquiries can be conducted. As I read this part of the Bill, it refers to a defined decision. An inquiry can be conducted into a defined decision. I had that a minute ago.

Mr Moore: On page 51, clause 110.

MR JENSEN: Thank you. It says:

> "defined decision" means a decision of the Territory, the Executive, a Minister or a Territory authority about a proposal, being a proposal in relation to which a Minister is empowered under Part II -

which in fact is clause 18 -

> V -

which is in fact clauses 165 and 198 -

> or VI -

which is clause 229 -

... ...

(a) to direct that an Assessment be made; or
(b) to establish a panel to conduct an Inquiry

... ...

I think we have to be very careful of what we are talking about here. We have to go back into the legislation to make sure what an inquiry is all about. Looking at schedules 2 and 3, which relate to controlled activities, it could be quite possible for an inquiry to be conducted under this legislation into the use of residential land for the carrying on of a profession, trade, occupation or calling on the land. An environmental impact assessment might be quite appropriate because there might be, for example, a panel beater or a garage operating in a local area. So, it would be quite possible for that to come within these requirements. It would be mandatory under the Territory Plan for an environmental impact assessment to be conducted.

I think we have to be very careful before we stand up in this place and say that the powers for an inquiry are very limited. I have a little concern about that. That is why we are being a little cautious in relation to this matter.

MR MOORE (6.31): Mr Speaker, I will move that the debate be adjourned.

Mr Wood: No. Why?

MR MOORE: You have just circulated - - -

MR SPEAKER: You have already spoken to the question.

Mr Wood: Yes, all right. I have just circulated some amendments to clause 151, Michael. They are a little way away.

Mr Collaery: Why was this not circulated earlier?

Mr Connolly: You people run them off like printers.

MR SPEAKER: Order! Mr Moore, do you wish to proceed?

MR MOORE: All right, I will seek leave of the Assembly to move an adjournment, Mr Speaker. We are debating clause 151. Mr Wood has just circulated a significant amendment to clause 151 and I believe that it is an appropriate time to break anyway. It will be something that we will need to consider in detail.

Leave granted.

MR MOORE: I move:

> That the debate be now adjourned.

Question resolved in the affirmative.

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

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning): Mr Speaker, pursuant to the Interim Planning Act 1990, I present the following papers:

Interim Planning Act - Approvals of variations to the Territory Plan -
Griffith, Section 96, Block 1,
Forrest, Section 24, Blocks 4 and 5.

This variation involves a proposal to extend the Capitol Cinema at Manuka onto the adjacent car park and to build a parking structure on an existing car park in Bougainville Street, Forrest, opposite the Manuka Village Shopping Centre. This parking structure is to accommodate the parking generated by the new cinema development and also that which the cinema will displace.

Last week the Government sought the recommendations of the Planning, Development and Infrastructure Committee on this variation within the spirit of the recent amendment to the Interim Planning Act. However, the committee declined to consider that variation - - -

Mr Jensen: That is rubbish. We sent you a letter.

MR WOOD: I am sorry; I cannot read the letter that Mr Kaine sent back to me. This morning the Chief Minister and I inspected the sites involved in this variation and, after considering the recommendations of the ACT Planning Authority, the Executive decided that the variation be approved.

MR SPEAKER: Mr Wood, may I advise that you should have sought leave to make a statement. You did not request that.

MR WOOD: Retrospectively, may I have leave?

Leave granted.

MR JENSEN, by leave: Mr Speaker, I think it is important to get on the record that the Planning, Development and Infrastructure Committee did not make a decision not to consider this, and it did not make a decision not to look at it. There was no decision made one way or the other. We did, in fact, send a letter to the Government indicating that the Government should make a decision. We did not

necessarily say, as Mr Wood has implied, that we did not consider that we would have an inquiry into this matter. Mr Wood attempted to give the committee one day to report on this and he might find, if I have anything to do with it, that he might regret what he has just done. Might I say in closing that my colleague Mr Collaery formally wrote out a motion of disallowance just one second ago.

ADJOURNMENT

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

That the Assembly do now adjourn.

Assembly adjourned at 6.36 pm