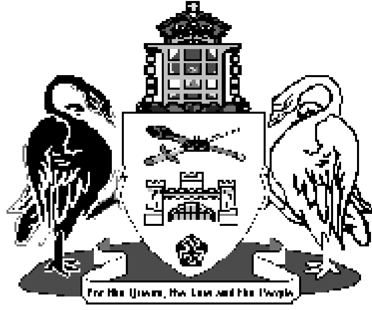

DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

5 December 1991

Thursday, 5 December 1991

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Thursday, 5 December 1991

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

AGENTS (AMENDMENT) BILL 1991

MS FOLLETT (Chief Minister and Treasurer) (10.31): I present the Agents (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

The Agents (Amendment) Bill 1991 represents the culmination of extensive work within the industry and government. The Bill amends the Agents Act 1968, which provides for the licensing and registration of real estate, business, stock and station and travel agents. The present law does not provide protection to persons who suffer a pecuniary loss as a result of the failure of a licensed real estate agent, business or stock and station agent to account for trust moneys or property received.

This Bill will provide protection in respect of licensed agents through the creation of a fidelity guarantee fund. It will not apply to travel agents, who are already protected by a national compensation scheme. The fidelity guarantee fund will meet claims for actual loss suffered by a client, less any amount recovered or recoverable from a source other than the fund. There will be no statutory limit on the amount payable in respect of any one incident of a failure to account. This will ensure that all clients will be treated equitably. At present all licensed real estate, business and stock and station agents are required to hold clients' moneys in a trust account at a bank operating in the ACT. These trust accounts do not earn interest.

Subject to this new legislation, the banks have agreed to pay interest on these trust accounts which, together with agents' licence, registration and administration fees, excluding those relating to travel agents, will form the income base for the fidelity guarantee fund. The fidelity guarantee fund will be administered by the Agents Board of the ACT, which is responsible for the administration of the Agents Act 1968. The fund will meet the cost of administering the Agents Act as it applies to the operation and the licensing and registration of real estate, business and stock and station agents.

Sufficient moneys will be allowed to accumulate to a level that will enable the fund's compensation obligations under the Act to be met. Any remaining funds will, subject to

ministerial approval of the amount, be made available for educational programs relating to real estate matters for agents and members of the public and to enable or assist persons to acquire or rent residential premises.

The Agents Board's banking, investment and financial reporting activities will be undertaken in accordance with the Audit Act 1989. Appeals from decisions of the Agents Board in respect of pecuniary loss or unclaimed trust moneys will reside with the ACT Administrative Appeals Tribunal. The legislation will give ACT residents immediate financial protection and provide the ACT real estate, business and stock and station industries with greater scope for development and a more stable environment.

I now present the explanatory memorandum for the Bill.

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

AUDIT (AMENDMENT) BILL (NO. 2) 1991

MS FOLLETT (Chief Minister and Treasurer) (10.34): I present the Audit (Amendment) Bill (No. 2) 1991. I move:

> That this Bill be agreed to in principle.

The Audit Act 1989 provides for the effective financial management of ACT public moneys. This Bill improves the administration of the Act and will enable the Government to ensure control of borrowings, improved investment factors and increased budget flexibility.

Dealing with borrowing powers, by way of this Bill the Government meets concerns expressed by the Australian National Audit Office and the ACT Auditor-General. The proposed amendments will ensure that all government agencies, including statutory authorities, are required to obtain the Treasurer's approval prior to undertaking any borrowings. Furthermore, the definition of the term "borrowing" will be amended to clarify the intention of the Act.

Turning to the use of synthetic products, the ability of any government to manage its debt liability is a major priority. Interest rate products known as synthetic products, such as interest rate swap contracts and forward rate agreements, have been developed by the financial market. The products assist borrowers and investors to better manage their portfolios and insure against adverse movements in the economic environment and interest rates. In order for the ACT to properly avail itself of such products it is necessary that specific powers be available. This Bill will allow the Treasurer to approve the use of certain synthetic products.

I turn to the matter of guarantees by the Territory. The Commonwealth Parliament is currently considering a number of amendments to the Australian Capital Territory (Self-Government) Act 1988, including the repeal of provisions which restrict the ability of the Territory to guarantee the obligations of a third party. The repeal of these provisions is in keeping with the ACT's transition to State-type administration. The Bill before the Assembly will empower the Treasurer to approve Territory guarantees and thus continue the operation of the guarantee mechanism once the Commonwealth provision is repealed.

Dealing with the transfer of funds, budget flexibility is an important factor in government administration. Under the existing provisions of the Audit Act, the capacity to move appropriated funds within the budget is limited. The Bill proposes a number of amendments that will allow the Executive to reorder priorities without compromising the overall integrity of the budget.

The amendments will allow the transfer of appropriated funds between divisions and subdivisions of a division. This means that surplus funds of one program can be transferred to another program, where this is required. Funds will also be able to be transferred to and from the recurrent and capital items of each program. All such transfers will be limited to 5 per cent of the amounts appropriated to the divisions by the annual Appropriation Act.

A substantial proportion of ACT finances are received from the Commonwealth by way of specific purpose payments. The amounts of these payments are often adjusted by the Commonwealth subsequent to the inclusion of estimates in the ACT budget. The Bill will allow the Executive to increase appropriated funds where payments from the Commonwealth are increased above the amounts estimated at the time of preparation of the Appropriation Bill. The important thing is that, where the levels of appropriated funds are adjusted by the mechanisms of this Bill, the Minister will be required to report such adjustments to the Assembly within six sitting days of the transfer.

In conclusion, the amendments will improve the financial management and administration of the borrowing and investment activities of the ACT and provide flexibility for the management of the budget.

I present the explanatory memorandum for the Bill.

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

GAS LEVY BILL 1991

MS FOLLETT (Chief Minister and Treasurer) (10.38): I present the Gas Levy Bill 1991. I move:

That this Bill be agreed to in principle.

As part of the 1991-92 budget, I announced the introduction of a levy on the sale of natural gas in the Territory. This Bill provides the legislative framework to enable the assessment and collection of the levy. The Bill imposes a levy of 1.75 per cent on the gross sales of natural gas made by an authorised distributor in the Territory. Currently, there is only one such distributor of natural gas, AGL Canberra Ltd. The Government has agreed with AGL that the company will initially absorb the levy so that there will be no increase in gas prices, which were frozen by my Government in 1989.

The introduction of the levy on the sale of natural gas is part of a wider package to regulate the distribution of gas, which will ensure that the ACT is provided with the best available service and an improved price regime. This measure will bring the ACT into line with New South Wales, which also regulates the industry as well as levying a fee on sales of natural gas distributed throughout that State. It is expected that revenue of $635,000 will be collected in a full year and will continue to increase as the reticulated gas network in the Territory expands.

I present the explanatory memorandum for the Bill.

Motion (by **Mr Kaine**) proposed:

That the debate be now adjourned.

Mr Collaery: Mr Speaker, Mr Jensen was on his feet before the Liberal leader.

MR SPEAKER: I am afraid, Mr Collaery, that I did not see Mr Jensen.

Mr Collaery: You looked only towards Mr Kaine, with respect.

MR SPEAKER: Order! That is because no-one else was there previously, Mr Collaery. It is normal, if people want the call, to advise me in writing first.

Mr Collaery: There has been no Liberal Whip we can work with today. Mr Speaker, please look down this way, too.

MR SPEAKER: Yes, I take your advice on that, Mr Collaery. I do apologise. I did not see Mr Jensen.

Question resolved in the affirmative.

TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1991

MS FOLLETT (Chief Minister and Treasurer) (10.41): I present the Taxation (Administration) (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

Mr Speaker, this Bill amends the Taxation (Administration) Act 1987. The Act provides a consolidated system for the administration of Acts dealing with taxation in the Territory, covering such matters as assessment, collection, recovery, prosecution and appeals relating to ACT taxes, duties, levies and fees.

This Bill will bring the proposed Gas Levy Act 1991 within the ambit of the Act to ensure that such powers that apply to other tax laws will also apply to the sale of gas.

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

DOG CONTROL (AMENDMENT) BILL 1991

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (10.42): Mr Speaker, I present the Dog Control (Amendment) Bill 1991. I move:

> That this Bill be agreed to in principle.

The Bill amends the Dog Control Act 1975 and will bring to the Canberra community long awaited amendments to the Dog Control Act 1975. The general aim of the amendments is to define clearly the responsibilities of dog owners, to provide appropriate penalties for offenders under the legislation and to provide some incentives for responsible dog ownership.

Members of the Assembly will be aware that problems in the community arising from poorly controlled dogs are frequently and widely reported. The effectiveness of the current legislation in dealing with this situation is limited by administrative difficulties and by unrealistically low fines. Administrative difficulties will be reduced by the introduction of on-the-spot fines, which will reduce the need for more complex and costly enforcement of the Act. There will also be a greater number of authorised personnel in related areas of the Parks and Conservation Service to enforce the Dog Control Act more effectively.

In developing the present package of amendments, there has been wide consultation with community and relevant bodies. The views of the community at large were sought via a survey, which resulted in over 2,000 responses.

Submissions were received from interested bodies such as the Royal Society for the Prevention of Cruelty to Animals and the Canberra Kennel Association. There is support for proposals to provide for greater control of dogs and better enforcement measures so as to ensure acceptable behaviour from dogs and their owners.

The Bill provides for more stringent controls, including requiring registration of dogs from three months of age instead of six months, and by the introduction of a licence to keep more than three dogs at a household. In addition, the Bill clearly defines the requirement to keep a dog securely contained on private property and under control by lead in a public place.

It also provides for designated exercise areas where a dog can be exercised if it is responsive to a competent person. The designated exercise areas will be declared by notice published in the *Gazette.*

Minor offences such as taking a dog within 10 metres of a designated swimming area or lake currently attract a moderate fine but require the full process of a court of law to enforce. We do not have the resources, nor do the courts have the capacity, to prosecute all such offences. The introduction of on-the-spot infringement notices will significantly streamline the process. Increased penalties are proposed for serious offences such as dog attacks, including those attacks in which a person is in fear of a dog but not actually bitten. A new offence for a dog attacking wildlife is included in the Bill.

Turning to the broader issue of registration fees for dogs, which are determined under the Dog Control Act 1975, a number of changes will be introduced to encourage responsible dog ownership. These changes will complement the provisions of the Bill. A discount registration fee will be available to owners whose dogs have demonstrated an acceptable standard of obedience through a club, such as the Companion Dog Club. The discount registration fee will also be made available to dogs registered with the Canberra Kennel Association or its affiliates and the Canberra Greyhound Racing Club. These organisations promote responsible ownership.

In addition, a seniors card holder owning a dog is entitled to the discounted registration fee. It is recognised that dogs play a valuable role in providing interest and companionship for the elderly. Where a dog falls into two or more of the categories attracting a discount registration fee, the registration fee will be lowered to reflect that fact.

The provisions of this Bill are consistent with the most recently updated legislation in the various jurisdictions around Australia. Authorised persons from other areas of the ACT Parks and Conservation Service will be utilised to provide additional resources for administration of the Act.

In summary, the proposed Bill and the measures that will be introduced on registration fees will ensure that the dog control regime in the ACT is better placed to meet the community's concerns. Its enactment will be accompanied by a community education campaign aimed at achieving a more responsible attitude to dog ownership.

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

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

PROCEEDS OF CRIME BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.48): Mr Speaker, I present the Proceeds of Crime Bill 1991. I move:

> That this Bill be agreed to in principle.

This Bill is an important addition to the laws dealing with crime in the Australian Capital Territory. It is based on the Commonwealth Proceeds of Crime Act and needs to come into effect before 4 March 1992, when the Commonwealth Act will cease to apply in the Australian Capital Territory.

This Bill will provide the Territory with proceeds of crime coverage in line with the Commonwealth and other States. The purpose of this Bill is to attack crime by confiscating from the persons involved in the crimes their profits and the instruments used in the crimes. If criminals are effectively deprived of the main reasons for their activities, that is, profits, then hopefully there will be less incentive for others to continue in their path. The Bill will have the added benefit of preventing the reinvestment of criminal profits in further criminal activity.

The Bill provides a mechanism for the tracing, freezing and confiscation of the proceeds of indictable offences committed against the laws of the Territory. The Bill confers on police powers to assist in following the money trail, requires financial institutions to retain documents necessary to preserve the money trail, and creates new offences such as money laundering and organised fraud. In addition, the Bill also provides the mechanism to enforce orders made under corresponding State laws which affect the freezing and confiscation of property located in this Territory.

A detailed explanation of the contents of the Bill will be found in the explanatory memorandum. I wish to refer at this stage only to the more important features of this Bill. Confiscation orders under the proposed legislation

may take the form of either forfeiture orders or orders for pecuniary penalties, or a combination of both, where this is appropriate.

Pecuniary penalty orders may be made against the defendant. These orders require the court to assess the benefit which the offender derived directly or indirectly from the commission of the offence, assigning a monetary value to that benefit and making a pecuniary penalty order equal to that amount. Once such an order has been made, it can be enforced as a civil debt and is provable in bankruptcy proceedings.

The legislation also contains provisions to enable courts to look behind the legal ownership of property to determine whether that property is subject to the effective control of the defendant, having regard to such things as shareholdings or directorships of companies, any trust that has a relationship to the property, family and business relationships and the like.

This Bill also provides for statutory forfeiture in limited circumstances. Where a person is convicted of a serious offence, defined to be a narcotics offence involving a traffickable quantity of drugs, an organised fraud offence or an offence of money laundering the proceeds of such drug trafficking or organised fraud, that person is liable to have all property which is the subject of a restraining order six months after the date of his or her conviction forfeited by force of statute, unless the person can establish that the property was lawfully acquired.

Restraining orders may be made under the provisions of the Bill. The court may direct that property specified in the order not be disposed of or otherwise dealt with by any person other than in accordance with the terms of the order or may require the Public Trustee to take custody and control of the property specified in the order. A court may make a restraining order where it is satisfied that there are reasonable grounds for believing that the defendant committed the offence alleged and that the property the subject of an application either is tainted property or may be required to satisfy a pecuniary penalty order.

Restraining orders may be varied by a court on the application of any person holding an interest in the property the subject of the order. Restraining orders may be registered on registers of title and, when combined with pecuniary penalty orders, give rise to a statutory charge over that property.

The Bill confers effective powers on police to gain access to documents relevant to following the money trail and transferring tainted property. The first of these new measures is a production order, directing a person who has property tracking documents in his or her possession or

control to produce such documents to a police officer or, alternatively, to make them available for inspection to such an officer. A breach of a production order constitutes an offence.

Where it is inappropriate to seek a production order, either because property cannot be identified with sufficient particularity or because there are grounds to believe that a production order is unlikely to be complied with or may prejudice effective law enforcement, a search warrant may be granted to search for and seize property tracking documents.

Another significant measure is the introduction of monitoring orders, directing a financial institution to give information over specified periods of time to law enforcement authorities about transactions conducted through accounts held by a particular person. Monitoring orders are available only in relation to serious offences involving narcotic drugs, organised fraud or money laundering the proceeds of drug trafficking or organised fraud.

As part of the process of enabling law enforcement agencies to follow the money trail, the legislation places a statutory obligation on financial institutions to retain certain records. Records which relate to the opening of accounts must be retained in original form for seven years after closure of the relevant account. All other documents necessary to reconstruct transactions in excess of $200 must be retained for a period of seven years after the transaction in original or some other form, including microfiche.

The Bill creates two new offences relating to money laundering. The first of these is a serious offence of engaging in money laundering where the person knows or ought reasonably to have known that the property is, in fact, the proceeds of crime. The legislation also creates a less serious indictable offence of laundering property which is reasonably suspected of being proceeds of crime. This offence is very similar to the offence of possession of goods reasonably suspected of having been stolen, which has proved to be an effective law enforcement tool against theft.

The legislation also creates a new offence of organised fraud, which is constituted by acts and omissions which constitute three or more public fraud offences from which the person has derived substantial benefit. This offence is specifically designed for persons who have been engaged in a pattern of conduct over a period of time from which they have benefited to the detriment of society, in particular directed against so-called white collar crime.

The Bill also provides for the problem of dealing with absconders. In certain circumstances a person who has absconded can be taken to have been convicted of an offence and be liable to confiscation proceedings. Before a

confiscation order can be made against an absconder, the court must be satisfied that the person has in fact absconded and that the person has either been committed for trial in respect of the offence or that a reasonable jury, properly instructed, could find the person guilty of the offence on the basis of the evidence put before it.

There is a special trust fund established to receive the funds generated under this legislation and apply those funds specifically to finance law enforcement and criminal justice activities in their fight against crime. This would mean that not only will criminals be denied their profits but those very profits will be reinvested in the fight against major crime. Available funds will also be used for drug prevention, education or rehabilitation, and victims of crime assistance and compensation.

These are the major features of the Proceeds of Crime Bill. The Bill will give to police effective and comprehensive means to carry on the fight against major crime.

I present the explanatory memorandum for the Bill.

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

PROCEEDS OF CRIME (CONSEQUENTIAL AMENDMENTS) BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.55): I present the Proceeds of Crime (Consequential Amendments) Bill 1991. I move:

> That this Bill be agreed to in principle.

This Bill is consequential on the Proceeds of Crime Bill, which I have just introduced. The Crimes Act 1900 contains a forfeiture provision which is additional to those contained in the Proceeds of Crime Bill.

The Bill amends the Crimes Act 1900 of the State of New South Wales in its application in the Territory to provide that articles confiscated pursuant to the Crimes Act be transferred to the Public Trustee. The Public Trustee shall, unless directed otherwise, sell and dispose of the articles. The proceeds of the sale will be used to meet the cost of the Public Trustee and the remainder paid into the Consolidated Assets Trust Fund. The intention of the amendment is to treat assets forfeited under the Crimes Act in the same way as that provided for in the Proceeds of Crime Bill.

I present the explanatory memorandum for the Bill.

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

PUBLIC TRUSTEE (AMENDMENT) BILL (NO. 2) 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.56): I present the Public Trustee (Amendment) Bill (No. 2) 1991. I move:

> That this Bill be agreed to in principle.

In May of this year, the Assembly passed two laws which commenced the legislative process of reform of the operations of the Public Trustee - the Public Trustee (Amendment) Act 1991 and the Administration and Probate (Amendment) Act 1991. The second Public Trustee (Amendment) Bill I am presenting today is the final legislative aspect of that reform process.

The ACT Public Trustee is a corporation sole established by the Public Trustee Act 1985. The main functions of the Public Trustee are to administer the estates of deceased persons, to invest estate funds pending distribution to beneficiaries, and to provide service to the public in relation to wills, including the drafting of wills. The purpose of the reforms to the Public Trustee is to increase the efficiency of the Public Trustee by allowing the trustee to operate on a more commercial basis and eventually to eliminate dependence of the Public Trustee on budget funding. Budget dependence is expected to be entirely eliminated by the 1994-95 financial year.

The reform package is designed to achieve the objectives of increasing efficiency and commercialisation without sacrificing the integrity of the Public Trustee's welfare role. The Public Trustee also carries out some activities which will in the future be performed by the soon-to-be-established Office of the Community Advocate and by guardians and managers appointed by the Guardianship and Management of Property Tribunal. These are the activities of acting as attorney and representing persons who are under a legal disability and holding property in trust for such persons; that is, intellectually disabled and mentally incapacitated persons. The Bills enabling the establishment of that office were passed by this Assembly on 17 October 1991.

The reforms involved in the guardianship, management of property and community advocate package are very significant in themselves, but in the context of the Bill I am presenting today they involve important improvements and reforms of some functions previously performed by the Public Trustee which will assist in enabling the Public Trustee to carry out a more commercial operation. The Public Trustee will continue a community service oriented role in this field by examining the annual accounts lodged by managers appointed to manage the affairs of incapacitated persons under the new guardianship and property management legislation.

I have taken some time to sketch out the context in which this Bill should be seen because, although it represents in itself a relatively minor and technical amendment of the Public Trustee Act, it is in fact an aspect of a much broader and more complex policy development and law reform process which has been some years in the making.

If I may now turn briefly to the specifics of the Bill, you will see that it provides for the inclusion of the Public Trustee in the class of public authorities which are required under the Audit Act 1989 to keep accounts on a commercial basis, and removes the Public Trustee from the class it is in at present, which is not so required. This step is made necessary by the reforms to the Public Trustee.

As the Public Trustee moves to budget independence and a more commercial basis of operations, it is appropriate that the Public Trustee be required to account for the activities of the office in the more stringent form required of commercial operations. That will impose a small additional burden on the office, but it is the proper trade-off for the increased independence of the Public Trustee's Office and its increased freedom to operate commercially, which have been the objectives of the reforms.

I now present the explanatory memorandum for the Bill.

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

LEGAL PRACTITIONERS (AMENDMENT) BILL (NO. 3) 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.00): Mr Speaker, I present the Legal Practitioners (Amendment) Bill (No. 3) 1991. I move:

> That this Bill be agreed to in principle.

The Bill amends the Legal Practitioners Act 1970, which deals with matters relating to the legal profession. It is essentially a machinery measure with three predominant themes: The updating of references to the Solicitors Mutual Indemnity Fund; providing for the remuneration of the secretary to the disciplinary committee of the Law Society; and a general review of penalties in the Act.

The first theme is that the Bill will update references to the Solicitors Mutual Indemnity Fund. The Act prevents the issue of an unrestricted practising certificate to a solicitor unless the solicitor has paid the required indemnity fund contribution. The purpose of the fund is to

meet the difference between the extent to which a solicitor is indemnified under a policy of professional indemnity insurance and the solicitor's actual liability to members of the community.

The fund is constituted by the Legal Profession Act 1987 of New South Wales and is managed by a company conducted by the Law Society Council of New South Wales. Solicitors outside New South Wales may be covered by the fund. The amendments will simply update references in the Act from interim New South Wales legislation to the appropriate Act, which is the Legal Profession Act 1987 of that State.

The second theme relates to the remuneration of the secretary to the disciplinary committee of the Law Society of the ACT. The committee consists of five lawyers appointed by the Council of the Law Society and two non-lawyers appointed by the Attorney-General following consultation with the Law Society. The Act provides for a secretary to the disciplinary committee, who is also appointed by the council.

In response to a request by the Law Society, the Bill will enable the secretary, if he or she is a barrister and solicitor not employed by the Law Society, to receive remuneration. As is already the case with the lawyer members of the committee, the secretary is a practising lawyer, and it is reasonable that he or she be remunerated for the work of the committee. The Bill provides for the remuneration of the members and the secretary to be determined by the Commonwealth Remuneration Tribunal. The secretary will also be given the necessary protection against legal action presently conferred upon the members of the committee.

With regard to the expenses of witnesses appearing before the disciplinary committee, the Bill will remove the present link with the fees payable to persons appearing before the Public Works Committee of the Commonwealth Parliament, which are the same as those applicable to the High Court of Australia. This amendment will link the fees to the scale applicable to Supreme Court proceedings, which are also tied to the High Court scale. Thus the level of fees payable will not be affected; but this change is desirable in the general context of self-government, it being inappropriate to have a link to a Commonwealth parliamentary scale.

Thirdly, the Bill implements a general review of penalties for offences under the Act. Many of the penalties relating to offences have remained unchanged for up to 21 years. The remaining provisions of the Bill are essentially of a machinery and tidying-up nature, the more important of which I will briefly mention. A definition of "statutory interest account" is inserted into the principal Act in order to simplify the language used in the Act in relation

to such accounts. The Bill will make it possible for a queen's counsel for the Northern Territory to seek appointment as one of Her Majesty's counsel for this Territory.

The provisions relating to the consequences of bankruptcy in relation to tenure of members of the admission board and on the holder of an unrestricted practising certificate will be updated to bring them into line with current drafting practice. At present, the Act requires the Attorney-General to appoint the secretary to the Barristers and Solicitors Admission Board. The duties of the position are of an administrative nature and it is unnecessary for the Attorney to appoint the secretary. The Bill provides that the services of the secretary be performed by the Registrar of the Supreme Court or an officer nominated by the Registrar.

The Act was amended by the Commonwealth in 1990 in order to substitute the concept of "failure to account" by a solicitor for "defalcation". Several obsolete references to "defalcation" will be corrected and revised and a simplified definition of "failure to account" inserted.

The opportunity has also been taken to repeal or amend spent provisions, while an incorrect reference in the interpretation provisions to the title of the disciplinary committee will also be corrected. The references to the Companies Act 1981 of the Commonwealth will also be updated so as to refer to the new corporations law.

I commend the Bill to the Assembly and present the accompanying explanatory memorandum.

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

CRIMES (AMENDMENT) BILL (NO. 7) 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.05): I present the Crimes (Amendment) Bill (No. 7) 1991. I move:

> That this Bill be agreed to in principle.

The main purpose of this Bill is to enable the Executive to grant a pardon in respect of an offence or to remit a sentence imposed as a consequence of a conviction for an offence. At present persons seeking a grant of pardon or a remission of sentence rely on the Governor-General to exercise the royal prerogative of mercy. This power is exercised on the advice of the Commonwealth Minister responsible for Territories who, under the self-government Act, is required to consult with the Chief Minister.

This process is both slow and unwieldy - a state of affairs which is unjustifiable in cases where a person's liberty is involved. Furthermore, the ACT status as a self-governing entity makes it desirable that the power to grant pardons or remit sentences be available to its executive government. This is the situation in all other Australian jurisdictions. The grant of a pardon would occur only in the most exceptional of circumstances, such as cases where a mistake had occurred as to the identity of the offender. Sentences would be remitted in situations where it could be shown that the imposition of the original sentence would cause undue hardship to the offender - but again, in relatively rare circumstances.

The Bill also creates the power to make regulations under the Act and relocates one section dealing with dishonest use of computers to a more suitable part of the Act.

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

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

DISABILITY SERVICES BILL 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.07): Madam Temporary Deputy Speaker, I present the Disability Services Bill 1991. I move:

> That this Bill be agreed to in principle.

The Disability Services Bill represents a significant stage in the efforts of government to uphold the rights of people with disabilities through the provision of services which accurately respond to individual needs.

Assembly members may recall that the International Year of Disabled Persons 1981 generated enormous interest in the potential needs and problems of people with disabilities. It highlighted the general dissatisfaction with traditional service provision in the areas of accommodation, employment and living skills. Subsequent reviews of service approaches and extensive community consultation over the last decade have crystallised the view that institutional care is largely an inappropriate response to the needs of people with disabilities.

The Commonwealth Disability Services Act 1986 was a landmark piece of legislation emphasising greater protection for the rights of people with disabilities. It provided a legislative base for the provision of financial assistance to a range of disability and rehabilitation services. A statement of principles and objectives was provided by this Act to ensure that funding and administration remained focused on the achievement of

desirable outcomes for people with disabilities. The 1986 Commonwealth Act also accords proper recognition of individuals' rights and dignities and provides opportunities for the fullest participation in the community.

Assembly members will be aware that we in the ACT have also contributed to the process of reform in the area of people's rights and opportunities, particularly those who may be in some way disadvantaged. Passage of the Community Advocate Act 1991 and the Guardianship and Management of Property Act 1991 and the introduction of human rights and equal opportunity legislation bear testimony to this Government's commitment to the principles of social justice.

In the years since enactment of the 1986 legislation, however, it has also become evident that the lack of a clear delineation of responsibilities between the different levels of government has resulted in overlap and duplication of services. In addition, there are significant groups of individuals for whom no level of government has taken responsibility. In March 1989 the Social Welfare Ministers Conference noted the lack of coordination of disability services across Commonwealth, State and Territory governments. In the following year a Commonwealth-State working party was established to develop a national framework for funding arrangements and the operation of disability services.

Following the Special Premiers Conference of October 1990, the Commonwealth-State disability agreement was developed in the context of an overall framework for improving the workings of the Australian Federation. Following the nine months of Commonwealth-State negotiations and extensive community consultations, the Commonwealth-State disability agreement was signed by each head of government at the 1991 Special Premiers Conference. This set in train a new stage in the evolution of disability services nationwide.

Under the terms of this agreement, which was signed for the Territory by the Chief Minister, Ms Follett, the Commonwealth Government will administer employment and vocational training services for people with disabilities, recognising the Commonwealth's national responsibilities for employment services for the general community and the direct links with the income security system. A combination of support services for people with disabilities will be administered by the States and Territories, recognising their traditional responsibility in this area and the existing infrastructure to continue that responsibility.

Research, development and advocacy will be carried out by both levels of government, and both the Commonwealth and the States and Territories will be involved in cooperative planning. The framework for the provision of services for people with disabilities will be in accordance with the

principles and objectives as set out in the Commonwealth Disability Services Act 1986. All States and Territories are to introduce their own legislation to complement this Commonwealth Act.

The Bill I have introduced today does indeed mirror the principles and objectives of the Commonwealth legislation. It thereby serves to endorse and protect the rights of people with disabilities to dignity, autonomy and self-determination. The principles and requirements of this Bill are set out in schedules 1 and 2. Schedule 1 is a statement about the rights and responsibilities of people with disabilities.

Schedule 2 sets out the requirements to be complied with in relation to the design, implementation and funding of programs and services for people with disabilities. These requirements provide a framework for the appropriateness of a government or service provider to intervene or act on behalf of a person with a disability, and how such intervention should occur.

Broad community consultation will ensure that consumer groups, service providers, other community organisations and individuals in the ACT have had the opportunity to comment on the purpose, requirements and contents of this legislation.

One of the key features of the legislation is the definition of "disability". Under the legislation, disability in respect of a person means disability deriving from an intellectual, psychiatric, sensory or physical impairment or combination of these; where disability is permanent or likely to be permanent; and may or may not be of a chronic episodic nature; and where disability results in a substantial incapacity for communication, learning or mobility and the need for continuing support services.

Organisations and bodies eligible for financial assistance are also defined. The types of organisations which will be eligible for financial assistance under the Act will be broadly similar to those eligible under the Commonwealth Disability Services Act. The principles and requirements provide parameters for determining the eligibility of potential service providers. The legislation allows for direct funding to people with disabilities, as well as funding to community-based providers of services. Funded organisations which do not at this time meet the principles and requirements of the legislation will be allowed three years to undergo the appropriate changes to conform to the principles and requirements and thus be eligible for future ongoing funding. They will continue to receive support during the transition period.

I am committed to ensuring that the Government's own major service provider, Intellectual Disability Services (IDS) within the Housing and Community Services Bureau, upholds the principles and requirements of the legislation as it

strives toward a goal of timely, efficient and high-quality service provision. The Act will set the basic parameters, leaving administrative detail to be dealt with by means of guidelines covering, for example, terms and conditions of grants and transitional funding provisions. The Commonwealth-State disability agreement requires State and Territory governments to maintain, as a minimum, levels of effort as at 30 June 1989. Growth funds can be contributed by either level of government.

Under the agreement the Commonwealth will also be providing payments to the States and Territories under three categories. These include the transfer of existing services, which covers grant moneys and an additional amount to be determined regarding administrative overhead costs. In the ACT this transfer is approximately $2.825m recurrent at 1991-92 levels from the Commonwealth to the ACT.

The second category is funding of growth. The Commonwealth is committed to additional funding over each year of the agreement. In 1991-92 the ACT growth money is $175,000, increasing to $628,000 in 1995-96. The third category is transitional payments. Payments will be made available to the ACT to increase the overall quality of existing services. This will be $85,000 in 1991, increasing to $850,000 in 1995-96.

It is expected that the Bill will be commenced early in 1992. Bilateral negotiations between the ACT and Commonwealth governments regarding financial and administrative arrangements are continuing, and the passage of this Bill sets in place the basis for their successful conclusion. The agreement comes into effect only when all aspects of the Commonwealth-State disability agreement have been met, that is, legislation is in place and bilateral negotiations are complete.

In conclusion, the Disability Services Bill demonstrates the Government's commitment to people with disabilities living in the ACT, their families, carers and service providers. I believe that we are witnessing a constructive time of social reform where governments at all levels, together with non-government service providers, are working closely to provide a better quality of life for all people. With this legislation, the community at large will have at its disposal a flexible and responsible process for meeting the needs and aspirations of people with disabilities.

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

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

FIRE BRIGADE (ADMINISTRATION) (AMENDMENT) BILL (NO. 2) 1991

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.15): I present the Fire Brigade (Administration) (Amendment) Bill (No. 2) 1991. I move:

> That this Bill be agreed to in principle.

This Bill will amend the legislation under which the ACT Fire Brigade is established to make provision for certain members of the brigade who are compulsorily retired on reaching the age of 60 years to be paid a cessation benefit. Prior to 30 June 1991, all members of the ACT Fire Brigade were members of the Commonwealth superannuation scheme. The principal retirement benefit from the Commonwealth superannuation scheme is an indexed pension calculated on years of service and age on retirement. The pension rate reaches its maximum when a contributor retires at the age of 65.

On 1 July 1991 some fire brigade members elected to transfer to the new public sector superannuation scheme, which provides for a lump sum on retirement tailored to each contributor's needs. However, most members have elected to stay with the Commonwealth superannuation scheme.

With a compulsory retirement age of 60 years, this means that those members of the brigade who remain in the Commonwealth superannuation scheme are not able to attain the maximum pension available at age 65 to most other contributors to the Commonwealth superannuation scheme.

This Bill will provide for payment of a lump sum to those firefighters who continue their membership of the Commonwealth superannuation scheme and who are compulsorily retired on reaching the age of 60. The cessation benefit is related to each member's length of service and to the rate of pay immediately prior to retirement and is so constructed as to compensate the member for the reduced pension caused by the requirement to retire earlier than at age 65. Similar benefits have already been approved by the Commonwealth Government in relation to members of the Australian Federal Police and air traffic controllers in the Civil Aviation Authority, where a compulsory retirement age of 60 years also applies.

The negotiations leading to Government agreement to this legislation were concluded during the period of the previous Alliance Government under Mr Duby's ministerial stewardship. Members of the Fire Brigade who join after 30 June 1991 are not eligible to contribute to the Commonwealth superannuation scheme but are required to contribute to the new public sector superannuation scheme, and this Bill therefore will not be applicable to them.

The Bill has been prepared after consultation with the ACT branch of the United Firefighters Union of Australia and has the union's endorsement, both under the previous Government and under this Government.

Madam Temporary Deputy Speaker, I now present the explanatory memorandum for the Bill.

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

LAND (PLANNING AND ENVIRONMENT) BILL 1991
Detail Stage

Clauses 151 to 153

Consideration resumed from 4 December 1991.

MR MOORE (11.19): These clauses were the subject of an article in the *Canberra Times* on 27 November of this year by Rod Campbell. The headline was "Sweeping powers mooted for planning bodies". The reality is that the sweeping powers that are provided for in this part of the Bill simply are not necessary. I think that argument was covered quite well last night. I believe that it is appropriate for us now to continue and to draw attention to the fact that there would be problems with this.

Madam Temporary Deputy Speaker, I was speaking last night with a magistrate of the ACT. I am aware that demands are made on magistrates all the time, and I think it is important for us to determine whether this is a necessary task for magistrates to be encumbered with. If you are going to have these powers, if you are going to accept the powers, then it is important to have magistrates there. The real question is: Do we need the powers in this form in this Bill? At this stage it seems to me that they are entirely unnecessary and are entirely over the top.

At the end of my speech last night I drew attention to the fact that the Minister had tabled an amendment to these three clauses. In fact, the circulated amendment refers specifically to clause 151, the one which deals with the power of entry. I shall be very interested to listen to what the Minister has to say about his amendment, why it is that he has drawn it and how he believes it will assist.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.21): Mr Deputy Speaker, I am sorry; I did not quite hear all that Mr Moore said and I should have been fully attentive. I will reiterate very briefly a couple of points that I made yesterday. Bear in mind that the Scrutiny of Bills Committee found no problem with this. On their recommendation, I am moving my amendment to clause 151. It is in response to the Scrutiny of Bills Committee recommendations. Those recommendations are usually

incorporated into our legislation. Let me remind you also that last year, I understand - no, it was this year - the Attorney-General's Department had a look at this clause and agreed with it after proposing one amendment which has been incorporated into the legislation.

The matters in clause 151 are important if we are to run a panel or an inquiry. It does need certain powers. If a significant concern arises, the powers that some object to here will be needed. If you have not given us these powers, it will be no good starting an inquiry and saying, "We now need to search premises". You will have to stop the inquiry and start another one under the Inquiries Act or by some other means. You simply would not be able to have any effective inquiry at all.

I am a little surprised by people who have long expressed concern about some events, or perceived events, in the community and who would now seek to remove this quite important measure. I concede that it looks a little draconian in print; but, in fact, it will not be that. I repeat what I said yesterday: These powers of the panel will be used only for matters of the greatest importance, matters of great significance, such as major pollution or potential pollution - things of that nature.

MR KAINE (Leader of the Opposition) (11.23): Mr Deputy Speaker, I can see that this kind of provision can cause some concern in people's minds as to just what is intended. It does seem strange, on the face of it, in a Bill that talks about land management, that we are allowing police powers to people who are not police officers; but I accept that there is a justification for it.

What we are talking about here is inquiries instituted by the Minister. First of all, the Minister is not going to institute an inquiry unless there is a very serious matter to be inquired into. It is not the sort of thing that is going to be started off by a Minister every day in the week, and an inquiry is not going to be convened to deal with trivial matters. We are talking about situations where a significant, important matter arises that raises questions about something that has happened in the planning process. Under those circumstances I concede that, if you establish such an inquiry, it has to have the necessary powers to do its job.

I suppose an alternative to this would have been to say that when such an inquiry is needed we will convene an inquiry under the Inquiries Act. That would have put the same provisions into effect because, under the Inquiries Act, once an inquiry is initiated the inquiry has all the powers that we are talking about here. So, it might have been just as easy to do it that way, but I do not think that that is necessary. As I say, we are not talking about something that is going to be convened every day in the week; nor will an inquiry be set up into matters that are trivial. I am prepared to allow this through.

The Minister is correct; when we were in government we did take advice on this matter because we were concerned about it, and I am sure that the Minister is also. I suppose there is always the possibility, when you write something into a Bill like this and it becomes law, that it can be misused; but I think we have to assume that the people who will operate under this new law will operate in good faith, unless it is demonstrated otherwise. So, I am prepared to allow these provisions to go through. I think there is a case for them; but, as with other aspects of this Bill, I think that the Government, and certainly the Opposition, will keep it under review.

I have said before, publicly, that this Bill is changing in a very significant way the law relating to planning. It is a new benchmark. It is not going to remain static. From the day that this Bill is signed into law there will be motions to amend it. The dynamic process related to any law will continue; but it will continue from a new benchmark, and clearly this is one aspect of the Bill which, in the future, may cause such concern that people will seek to amend it in some way. If there is justification for doing that, then we, whether in government or in opposition at the time, will look at the circumstances and whether the Act needs to be changed. With that proviso, the Liberal Party in opposition supports these provisions.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.26): Mr Deputy Speaker, I referred to an amendment I had circulated. I did not actually move it. I now move:

Clause 151, page 68, line 34, add at the end the following subclauses:

"(3) Where an authorised person obtains the consent of the occupier to enter a place under subsection (1), the authorised person shall ask the occupier to sign a written acknowledgment -

(a) that the occupier has been informed that he or she may refuse to so consent;
(b) that the occupier has consented; and
(c) of the day on which, and the time at which, the occupier consented.

(4) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented to the entry of premises by an authorised person under subsection (1) and an acknowledgment in accordance with subsection (3) signed by the occupier is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.".

MR JENSEN (11.27): I still have some concern about this. I do not believe that I have been given a satisfactory answer as to what sorts of areas are covered by the definition of "defined decision" in relation to the commencement of an inquiry. If there is a serious problem, a major problem, then, as Mr Kaine suggested, an inquiry with the sorts of powers we are talking about here could be convened under the Inquiries Act. There is that facility available. In fact, you could even have a royal commission, if it were very serious, under the Royal Commissions Act. I have yet to hear from the Minister a satisfactory explanation as to how wide-ranging or how narrowly "defined decision" will be interpreted. Maybe it would be appropriate for the Minister to address that when next he rises.

In relation to the Scrutiny of Bills Committee, I am not quite sure whether it is the responsibility of that committee to look at these sorts of issues from a policy point of view. We are talking about this type of inquiry from a policy point of view.

Let us get it straight. There are occasions when proper inquiries with such powers of search and seizure will be required simply for the reason that, unfortunately, out there in this society there are groups, organisations, companies, or whatever you want to call them, who seek, for financial reasons, to avoid their responsibility to protect the environment. I am sure that if I did a bit of research in the library I could come up, very quickly, with at least half a dozen situations where these sorts of problems have been identified. I see Mr Wood thinking that we are shooting at shadows on this one. I can assure you, unfortunately, Mr Wood, that there are organisations out there who, purely for financial or monetary reasons, are not prepared to accept and acknowledge their responsibility to the environment.

Unfortunately, if we are to maintain and protect our environment, there is a cost. A cost is there and it has to be paid. That is why these organisations and groups seek to avoid that. As I said, I am waiting with interest to see what the Minister says on this one, before we take a final view on any amendment moved by Mr Moore.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.31): Mr Deputy Speaker, if I understand Mr Jensen, I will give him the detail of where these provisions are to be found. The types of activities that could face an inquiry are set out in Part II of the Bill, at clause 18, on plan variations; Part V, clause 165, on the granting of leases, and clause 198, on the plan of management; and Part VI, clause 234, a controlled activity. Then, of course, there is the general power under the environmental impact processes.

As to the policies or the principles behind this - I think those were the words that you used - I have to say, given the significant matter that would generate such an inquiry, that I cannot think of one event in recent years in the ACT that would trigger such an inquiry.

Mr Jensen: I can.

MR WOOD: If you can, I do not know whether you identified it. I did not hear it.

Mr Jensen: I mentioned it yesterday.

MR WOOD: Which one was that?

Mr Jensen: The National Aquarium.

MR WOOD: The National Aquarium. Well, that could have been one. If you want an inquiry, you may, during the course of that inquiry, want to look at books. At the outset of the inquiry you may not have that view, but you would not want to interrupt that inquiry - I think this is a response to Mr Kaine's question - and start again under a completely different provision and Act, if you suddenly discovered that you needed to have powers of search. I think that inquiries requiring this sort of measure would be few and far between.

Amendment agreed to.

MR MOORE (11.33): Mr Deputy Speaker, I apologise; I was distracted for a minute. Having passed that amendment to clause 151, that certainly improves clause 151. But the reality is that that now provides for two options. One is that somebody can agree to have their place searched. If that agreement is above board, it can be searched.

But, if they do not agree, the panel of one person - this one person that the Minister has appointed - can then go and grab a magistrate late at night and say, "Look, I have this great idea. I have found a terrible group of planning activists who are greenies". Can you imagine that the new magistrate we are talking about is Magistrate Stefaniak. He hears this and very, very carefully weighs whether a warrant is necessary or not necessary. The arguments presented to the new Magistrate Stefaniak - bearing no relationship necessarily to you, of course, Mr Deputy Speaker - are just so compelling that he can see no choice.

Of course, he is not presented with two sides of the argument. When a single person who is a panel appointed by the Minister decides that he wants to get in and get some information, he will present the arguments as best he can. A magistrate who has just been woken up at 2 o'clock to hear this important information is likely to get the impression that it is important.

That is what we are doing on planning matters. It really is quite extraordinary. It is totally over the top. If it really is such a serious matter - Mr Wood has already said that it will be used only when it is such a serious matter; he has already indicated that to us - then establish an inquiry under the Inquiries Act.

Mr Wood: But you may not know at the outset of your inquiry that that is going to be required.

MR MOORE: I appreciate the interjection because it saves us standing up and sitting down and so forth. Mr Wood interjects that you may not know at the outset of the inquiry that you are going to need to do this. But surely the need, in terms of the sort of inquiry that we have established, is simply not there. Why, on the one hand, would an inquiry along these lines require an investigation of this nature into somebody who is objecting? I cannot think of a single reason.

Why, then, would we need to use it for somebody who is proposing a development? It might be, for example, a perfume factory out at Hume or something along those lines. One of those was debated here in this Assembly a couple of years ago, as I recall. In that case it is a very simple matter to say, "Unless you provide the information, sorry, your development is not going ahead". You have the greatest of all of those levers. The only reason the person is involved is that they want to get their development up. So, they can provide the information. There simply is no need to provide such extensive powers, and this Assembly should be very careful where it applies extensive powers.

Mr Berry: You have said it about four times, Michael; we are supposed to be hurrying it.

MR MOORE: Mr Berry interjects that I have said it about four times. That is quite right. I did so, because it is such a significant matter.

MR STEVENSON (11.37): Mr Berry did interject and say that Mr Moore had said it about four times. I think Mr Moore was quite right in saying that it needed to be said - and said again.

Mr Berry: It would be for you, Dennis, but not for anybody else.

MR STEVENSON: Mr Berry says that it would be for me and not for anybody else. The logicality of the remark - - -

Mr Berry: You are a bit slow off the mark sometimes; that is all.

MR STEVENSON: It is either that I am a bit slow off the mark, Mr Berry, or your comments are rather obtuse and difficult to understand. The point is that this does give fairly extreme powers to officials who should not have those powers. It is a trend in Australia, and certainly in Canberra, that more and more powers are being given not to police but to people involved in the bureaucracy, and it will not augur well for individuals who get caught up in this process.

It is all very well saying, as some of the members in this Assembly have said, "Look, let us give them the powers. If there is any problem later on, we will do something about it". I would suggest that, firstly, we do not give people powers that are liable to be abused. If there are serious matters that need to be attended to, there are already powers within our society to attend to them. They should not be given in this case. I will vote against the clauses and for Mr Moore's proposal.

MR COLLAERY (11.39): I am addressing the amendment moved by Mr Wood as well, because it has not been passed yet.

MR DEPUTY SPEAKER: Yes, it has.

MR COLLAERY: But the provision, as amended, has not been passed.

MR DEPUTY SPEAKER: That is right.

MR COLLAERY: So, I am addressing it as a whole. Last night I said everything that I wanted to say generally about the provision. I exemplified the fact, I remind members, that under a previous Minister, and at the instigation of someone we all know, I had the experience of being raided on a day when I was going to the Federal Court on a community legal issue, the Rocky Knoll matter. My own premises were raided in a politically-inspired raid - - -

Mr Connolly: But were you complying with the law? What did they find?

MR COLLAERY: I certainly was complying with the law and nothing was ever found that suggested otherwise. Those raids were politically motivated to pressure me out of community work, and I could not believe it. As a long-term practising honest solicitor, to have my premises raided and to have my staff subjected to that still scars me to this day. It was an outrage perpetrated by a former person of influence in this Territory because the Residents Rally at that time were centred around my legal practice. I will never forget it.

The fact is that these provisions can be misused, Mr Wood. I hope people know what this amendment says. It gives and takes away. Take for example a person who desperately wants a controlled activity approved; they want to have a business approved at their home. As if they are not going to sign anything at the door to consent to let the Government come in - - -

Mr Berry: This falls into the category of being tedious and repetitious, I think.

MR COLLAERY: Mr Deputy Speaker, Mr Berry is interjecting, saying "tedious repetition". This amendment was given to us at the close of business yesterday and I have not addressed it yet.

MR DEPUTY SPEAKER: If you address it, as amended, Mr Collaery, that is fine. We have heard all about Rocky Knoll.

MR COLLAERY: There is no tedious repetition. I challenge Mr Berry to spell both of those words.

The fact is that this provision says that an occupier can consent. You have an occupier in a weak position. He wants a concession from the Government and is hardly in a position, at that stage, not to sign a consent. It is not expressed in this section whether the consent relates to a time or whether it is a consent at large.

I suggest that, as with clause 50 of the Bill that was passed yesterday - we did not pass it; we opposed it - in no time there will be a successful legal challenge to this nonsense. I expect that, if the provisions are passed, they will be challenged because they do not state a time. Those familiar with the law of search and seizure know that you cannot require those consents at large these days.

It does not say when and for what the occupier is to consent. It says:

> ... the authorised person shall ask the occupier to sign a written acknowledgment -

(a) that the occupier has been informed that he or she may refuse to so consent;

(b) that the occupier has consented; and

(c) of the day on which, and the time at which, the occupier consented.

It is the day and time when the occupier consented. Silence, as far as I read it - although I will stand corrected on my perusal of it - is just what we are consenting to, for the next 10 years? For any time of the day and night? Forever? It is extraordinary. Those of us who are familiar with the courts' decisions, as you are, Mr Deputy Speaker, on warrants issued under section 10, know full well how this is going to fail on challenge, in my view. But so what? It should not even be put up.

Then it goes on to state that it is material in proceedings if the Government cannot produce a signed consent. But even if it cannot present a signed consent, Mr Deputy Speaker - you will be amused by this - it is still rebuttable. So, really, you get back to the situation where you could have an argument that they really consented, with nothing in writing. What I am saying is that the whole clause, as amended, is faulty. It is bad law. It is doubly sad that a Labor Government would be party to this.

It is only a year since I was with some people from South Africa with Mr Berry who talked about the search and seizure activities of the South African police in South Africa.

Mr Berry: You have never been with me on the issue of South Africa.

MR COLLAERY: We were there with some people from the ANC and others. You were there, Mr Berry. We all agreed about those horrible powers, and here you are introducing them yourself. Shame on you, Mr Berry! I think the workers will see through it.

MR JENSEN (11.44): Mr Deputy Speaker, may I very briefly make one suggestion that might solve this. I wonder whether the Minister would consider adding, when we go back to the definitions, as has been agreed to, at the end of the definition of inquiry, the words "or an inquiry established under the Inquiries Act 1991". The definition of inquiry relates only to an inquiry established under part of this Bill. I think that would solve some of Mr Moore's problems.

Mr Wood: You could still do it.

MR JENSEN: No, it does not. It is quite clear in the Bill that "inquiry" means just what it says. It does not mean that sort of inquiry established under another piece of legislation.

Question put:

That the clauses, as amended, be agreed to.

The Assembly voted -

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

Question so resolved in the affirmative.

Clauses 154 to 157, by leave, taken together, and agreed to.

Clause 158

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.49): Very quickly, we do not need to say "Territory Plan". It is well defined elsewhere and "Plan" is sufficient. I move:

Page 71, line 33, omit "Territory".

Amendment agreed to.

Clause, as amended, agreed to.

Clause 159 agreed to.

Clause 160

MR JENSEN (11.50), by leave: I move:

Page 73, line 19, subclause 160(4), omit "pursuant to subsection (5)", substitute "in Schedule 1E".
Page 73, lines 20 to 26, subclauses 160(5) and (6), omit the subclauses.

These two amendments relate to the inclusion of the schedule which provides for the criteria for the direct grant of a lease. It provides for the direct grant of leases for commercial, industrial and tourism purposes. It provides also for the direct grant of leases for national and local associations.

The only difference is an addition to the draft disallowable instruments that were prepared. I think they were very similar to the ones prepared by the Alliance Government. These were prepared and tabled by the Minister, Mr Wood. The addition is the requirement for the grant to be in the public interest. In clause 1 it says, "demonstrate to the Minister that the proposal is in the public interest". I think that is important. We have already discussed this. I commend to the Assembly the inclusion of these criteria in the legislation, for the same reasons that I have given in the past.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.51): Mr Deputy Speaker, the Government opposes Mr Jensen's amendments. I think we have been down this track; we have argued it. It is perhaps even less appropriate to have schedules here than elsewhere. They are appropriate disallowable instruments. They can be well attended to in that way, if you have any concerns. You are cluttering up the Bill. You are imposing a rigidity that is not needed. It is no advance on anything. We do not do this in a whole range of areas; I do not think we need to do it here.

Amendments negatived.

MR JENSEN (11.53), by leave: I move:

(71) Page 73, lines 27 to 30, subclause 160(7), omit the subclause, substitute the following subclause:

"(7) Subject to subsection (8), where the Executive grants a lease under paragraph (1)(d), it shall cause -

(a) a copy of the lease;
(b) a statement of the amount (if any) paid for the grant of the lease; and
(c) a copy of any agreement collateral to the lease;

to be laid before the Legislative Assembly within 5 sitting days after the day on which the lease is granted.".

(72) Page 73, line 31 to page 74, line 3, subclause 160(8), omit the subclause.

I understand that the Government has agreed to accept my amendment No. 71, the first one.

Mr Wood: We have agreed to No. 71, not No. 72.

MR JENSEN: Okay, fine. I guess that we will have to vote on it.

MR DEPUTY SPEAKER: If we have agreed to No. 71 relating to subclause 160(7), could we vote on that now?

MR JENSEN: Yes, I am quite happy to vote on that.

Amendment No. 71 agreed to.

MR DEPUTY SPEAKER: We will now deal with amendment No. 72.

MR JENSEN (11.54): If we leave subclause (8) in, it says that "subsection (7)", which we have just amended, "does not apply in relation to a lease granted under paragraph 1(d)". That is a direct grant to an applicant for a lease. It seems to me that that is even more reason why this should apply to the direct grant of a lease. In fact, that is the amendment that we have just made - that a copy of the lease, a statement of the amount, if any, paid for the grant of the lease, and a copy of any agreement collateral to the lease are to be laid before the Assembly within five sitting days after the day on which the lease is granted.

For the life of me, I cannot understand why the Government is prepared to apply to the direct grant of a lease different principles from those it is prepared to apply to all the other issues that are there. The way I read it, it is just incomprehensible that the Government should seek to support the non-tabling of direct grants.

Mr Berry: All right; we heard you the first time.

MR JENSEN: Mr Berry, more of that and I will just keep saying it.

Mr Berry: You said that you would not.

MR JENSEN: Keep it cool. Stop interjecting and we might get on with it. I think it is important and I cannot understand why the Government is not prepared to accept this. I will be very interested to hear what they have to say, as I will be to hear what Mr Kaine has to say.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.56): Mr Deputy Speaker, we are going to oppose this. I do not need to go into the detail.

MR MOORE (11.56): In an area of leasing where there has been a tremendous amount of criticism, whether fair or not, here is a chance, in terms of open government, simply to provide that the Assembly be informed when a special lease is granted. There is nothing particularly difficult about that. It is really just a matter of being open and providing information. I can understand, although I disagreed, why the schedule was rejected before, and I think that that is not so serious a matter. In this case it is simply a matter of information, of keeping things open and straightforward. To oppose this is to oppose the whole concept of open government with reference to leasing.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.57): Mr Deputy Speaker, I would draw the Assembly's attention to the broad agreements that I understand have been reached on the timetable today to do this. I am trying to be as quick as I can about things.

Mr Moore: I have not agreed to a timetable. I have said that I will sit as late as you want, to finish it.

MR WOOD: Well, let me tell you this: If this legislation does not go through today it will not go through. The arrangements that must follow from this will preclude consideration next week. We have to get the consequentials done. Today, at some stage, is the deadline. If you want to sit through to 12 o'clock or 1.30, that has to be.

Mr Jensen: Give us your reason, Bill.

MR WOOD: The reason, quite simply, is that the way you have worded it means that it includes all leases, including residential leases. It is a sign that things have been done too quickly, and we cannot sustain that.

MR COLLAERY (11.58): Mr Deputy Speaker, if the Government wants increased accountability to it by its bureaucrats, can the Minister assure - - -

Mr Berry: One speaker per party.

MR COLLAERY: Mr Deputy Speaker, I ask you to rein in Mr Berry. He interrupts all of us. He objects to our speaking in this house.

MR DEPUTY SPEAKER: Mr Collaery, when he gets out of hand I will rein him in.

MR COLLAERY: Well, he is constantly carping. He wants no debate in this house. He wants to run it like some kangaroo court. The more he interjects, the more we will talk. I will have a policy of saying 50 more words every time Mr Berry interjects and blocks us.

MR DEPUTY SPEAKER: Mr Collaery, just stick to the point.

MR COLLAERY: Mr Deputy Speaker, the subdivision approvals that can be done as special subdivisions should be known to government. They should be known to the Ministers. What we are trying to get, following the leasehold administration of this capital during the early 1980s, is increased accountability by the decision-makers in the administration to government. This will aid Mr Wood because this would have to come forward to his notice when these decisions are made down in the back rooms of government. That is the simple basic philosophy behind it. I think the other reasons were adequately ventilated.

MR MOORE (11.59): Mr Wood's argument is that this was too quickly drafted and therefore is entirely inappropriate. If he has found a problem with it in the discussions that have been going on over the last couple of weeks, I find it incomprehensible that the matter was not raised - unless he has some further agenda, and I do not believe that he has. I cannot understand, if you have some difficulty, why that matter was not raised with Mr Jensen, as, indeed, several matters were raised with me that have caused me to come up with a compromise to some of the amendments that I have raised. If there is a problem, let us take care of it.

Why should we be told, after two years, when we are two-thirds of the way through this planning legislation, that we are going to rush this through tonight? If you think it is important to get it through, fine; we sit here, and we keep sitting, until it is done.

Mr Berry: No; until you get your own way.

MR MOORE: Mr Berry interjects, in a most "burlish" way, that we sit until we get our way.

Mr Jensen: "Oafish", I think, is the term. Bullying tactics.

MR MOORE: It would seem to me that there is no need for bullying tactics. We have accepted the vote of the Assembly again and again where things have not gone Mr Jensen's way and where things have not gone my way. We have made compromises. We still intend to speak to the particular clauses or about the particular problems we have. I believe that it is fair to say that in speaking to these we have been very careful to avoid repetition. Time and time again I have heard Mr Jensen stand up and say, "This matter has been covered". Time and time again I have said the same thing; that where this matter has been covered I am not going to repeat it. It is not good enough to have Wayne Berry think he can push people into completing this.

Mr Berry: I think you are trying to block it.

MR MOORE: Mr Berry once again unfairly interjects and says, "I think you are trying to block it". I have just this minute said that I am prepared to sit here until whatever hour, until it gets done. It is not a question of trying to block it. It seems that the Labor Party is trying, for some reason, to get ready to guillotine this debate because it is not going their way enough.

MR JENSEN (12.01): Mr Deputy Speaker, we might be able to solve the problem if I am prepared to amend my amendment to subclause 160(8). If we delete subparagraph (a) and retain subparagraph (b) in the subclause - - -

Mr Wood: By interjection may I say that we are trying to write an amendment here at that point.

Mr Moore: That is a more cooperative way of doing things. That is positive.

Mr Wood: Well, we could do it now. We are not going to be able to do this - - -

MR JENSEN: Just amend it. We will accept it and get on with it and have a vote.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.02): I will have an amendment for you in a moment. Let me point out that we can do this on a great number of clauses. I am talking here for a moment to fill in time.

Mr Kaine: That is what everybody else has been doing, Bill. Feel free.

MR WOOD: Exactly, Mr Kaine. I come back to the problem of this great pile of amendments that you presented to us at the very last minute. We spent every available minute we could trying to discuss these matters, trying to find resolutions, and I am not about to take blame for not wanting to talk about these things. So, bear with us. I want to get this through today. It is urgent that it go through today.

I cannot respond on each and every one of these and write them into the legislation. We know that there is going to be a number of amendments coming up next year and this would have been one of them. Mr Deputy Speaker, I will move an amendment to subclause 160(8) and I will pass that around.

MR COLLAERY (12.03): Whilst that is being done, Mr Deputy Speaker, I will respond to Mr Wood. We do appreciate the lengthy consultations and the ongoing assistance provided by Mr Wood's knowledgeable advisers and the parliamentary drafting office. We are grateful for that. We just explain generally to Mr Wood that the pressures in the Rally have been sustained on a daily basis now for several months. It is a matter of resources. We will not raise the resources issue again.

Mr Kaine: If you have internal stresses, Bernard, that is your problem. We do not have any in the Liberal Party.

MR COLLAERY: Mr Kaine has his six staff members and has produced fewer than six amendments. That is an issue. Let us have that on the record.

MR JENSEN (12.04): In the interests of this issue, I am prepared to withdraw my amendment No. 72 to enable Mr Wood's amendment to go through.

Amendment No. 72, by leave, withdrawn.

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

Page 73, line 31, subclause 160(8), omit the subclause, substitute the following subclause:

"(8) Subsection (7) does not apply in relation to a lease granted under paragraph (1)(d) following the development of land leased pursuant to a lease expressed to be granted for the purpose of enabling the lessee to develop the land comprised in the lease for subdivision and resale.".

MR MOORE (12.04): Mr Deputy Speaker, while that is being circulated, I think it would be in the best interests of the house that we use the time. I seek the leave of the house to table a copy of a discussion paper on solar energy and solar cogeneration of electricity.

Leave granted.

Consideration interrupted.

CONSERVATION, HERITAGE AND ENVIRONMENT - STANDING COMMITTEE
Paper

MR MOORE, by leave: I present the following paper:

Conservation, Heritage and Environment - Standing Committee - Discussion Paper - Solar Energy and Solar Cogeneration of Electricity, dated November 1991.

I have indicated to members that I will not be talking on it now. I think it is a useful one. I understand that it will be circulated shortly.

LAND (PLANNING AND ENVIRONMENT) BILL 1991
Detail Stage

Clause 160

Consideration resumed.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.05): Mr Deputy Speaker, let me briefly explain this amendment. It removes the exemption of directly granted developer leases from tabling in the Assembly but retains the exemption in respect of the individual leases sold following development of the land. I think that is what you wanted. Do you want me to say any more about it?

Mr Jensen: That is fine.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 161 agreed to.

Clause 162

MR JENSEN (12.06): I seek leave to move my amendments Nos 73 and 74 together.

MR DEPUTY SPEAKER: What about No. 75? Do you want to move that together too?

MR JENSEN: No.

Mr Wood: We will agree to No. 75 but not to these two.

Leave granted.

MR JENSEN: I move:

Page 74, line 25, subclause 162(3), omit "pursuant to subsection (4)", substitute "in Schedule 1F".
Page 74, lines 26 to 32, subclauses 162(4) and (5), omit the subclauses.

Once again, this relates to the criteria for the granting of a lease to a community organisation. We continue with our view that this should be included in the legislation as a schedule.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.07): We have argued this. This seeks a further schedule. We do not support this process.

MR DEPUTY SPEAKER: I thank members for their commonsense and brevity.

Amendments negatived.

MR JENSEN (12.08): I move:

> Page 74, lines 33 to 34, subclause 162(6), omit the subclause, substitute the following subclause:

"(6) Where the Executive grants a lease under this section, it shall cause -

(a) a copy of the lease;
(b) a statement of the amount (if any) paid for the grant of the lease; and
(c) a copy of any agreement collateral to the lease;

to be laid before the Legislative Assembly within 5 sitting days after the day on which the lease is granted.".

I do not think we need say any more on that.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 163

MR JENSEN (12.08): I move:

Page 75, line 9, subclause 163(1), after "desirable", insert "and in the public interest".

Mr Kaine: We accept, if it is in the public interest. There is no need to talk to us.

Mr Wood: Are we considering only your amendment No. 76?

MR JENSEN: Yes.

Mr Wood: We will not argue about it. We think it is already there.

Amendment agreed to.

MR JENSEN (12.09), by leave: I move:

Page 75, line 14, subclause 163(2), omit "pursuant to Subsection (3)", substitute "Schedule 1G".
Page 75, lines 16 to 19, subclauses 163(3) and (4), omit the subclauses.

The reasons are the same. This is another schedule. This one applies to the granting of special leases. We could argue that this is very important. I have added there, once again, that the applicant must demonstrate to the Minister that the proposal is in the public interest. We think it is important for that to be included.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.09): The Government disagrees. Our arguments hold.

Amendments negatived.

MR JENSEN (12.09), by leave: I move:

> Page 75, lines 22 to 23, subclause 163(5), omit the subclause, substitute the following subclause:

"(5) Where the Executive grants a lease under this section, it shall cause -

(a) a copy of the lease;
(b) a statement of the amount (if any) paid for the grant of the lease; and
(c) a copy of any agreement collateral to the lease;

to be laid before the Legislative Assembly within 5 sitting days after the day on which the lease is granted.".

I understand that the Government supports this. I do not think any further comment is necessary.

Mr Wood: Yes; agreed.

Amendment agreed to.

MR JENSEN (12.10), by leave: I move:

> Page 75, line 25, subclause 163, add at the end the following new subclauses:

"(7) The lessee under a lease to which this section applies shall not, for a period of 5 years after the day on which the lease is granted -

(a) assign or transfer the lease;
(b) sublet the land comprised in the lease or any part of it; or
(c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the Executive and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection shall be of no effect.

(8) The Executive shall not consent to the lessee under a lease to which this section applies -

(a) assigning or transferring the lease;
(b) subletting the land comprised in the lease or any part of it; or
(c) parting with possession of the land comprised in the lease or any part of it;

> unless it is satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given, as the case may be, is a person who satisfies the criteria of eligibility specified pursuant to subsection (2) in respect of the class of leases in which the lease is included.".

This is a little more complicated. We are seeking to make sure that organisations and groups granted a lease under section 63 - it is normally given to them only; they are not required to bid for it competitively - are not able to transfer, assign or sublet for a period of five years after the day on which the lease is granted.

The Government have an alternative under this amendment. They can consent to such a transfer; but, if they do give consent, they are required to do certain things. They are required to ensure that this information is made available and that everyone is fully aware that a lease has been assigned to someone under concessional conditions. There may be very good reasons why it should be given under concessional conditions. We do not have a problem with that, provided everything is out in the open and is above board.

I understand that the Government is not going to accept this proposal. I would be interested to hear how the Minister proposes to get around this potential problem of people being given direct grants of lease for a reduced price and then finding within a year or so that they cannot keep it up or that they go broke, whatever the case may be. We end up finding that they are able to get themselves out of trouble by flogging off the lease at a greater price than they paid in the first instance. I think it is appropriate for these subclauses to go in.

MR KAINE (Leader of the Opposition) (12.12): Before the Minister responds, I indicate that the Liberal Party supports this amendment.

MR MOORE (12.12): It is a very interesting and sensible amendment, Mr Deputy Speaker. I think the only question that I would ask is why they have limited it to five years. I think five years is a short time. I am prepared to support it. I think that Mr Jensen has tried not to be over the top about this and has presented what is a very reasonable time, five years. It could easily be argued that a 10-year period for a preclusion like this would be appropriate when there is room for the Executive to move. I think this is very reasonable. It should be seen as a very reasonable amendment - obviously, Mr Kaine has seen it as such - and I would urge the Government to accept it.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.13): I am not sure that this addresses the problems that have been raised. It takes us back to the outdated CALA provisions. I can understand the desire to impose a rigidity here because of concerns that people have had over the way matters were dealt with some years ago. But let me assure you that there are still processes that ought to be involved and they are well written into the legislation. It is the expectation that leases granted cannot be turned over very rapidly. If a lease is to change, it has to follow the process, as I said; but I think the provisions we are incorporating here are better. I indicate that the Government is opposing this amendment.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 164

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.14): Mr Deputy Speaker, I move:

> Page 76, line 19, paragraph 164(4)(a), omit "Territory".

This is quite minor.

Amendment agreed to.

MR JENSEN (12.14): I move:

> Page 76, line 23, subclause 164(4), add at the end the following paragraph: "(d) the appropriateness of the timing of the grant of the lease.".

This amendment is to the clause headed "Authority to consider proposed leases". I think it has been suggested in the past that the Planning Authority may not have any responsibility whatsoever for indicating whether they consider it is appropriate or not to grant a lease. It seems to us that there are going to be times and situations where it is not appropriate, from a long-term planning point of view, to grant a lease.

What I am suggesting here is that the Planning Authority, before it makes a recommendation to the Executive under subsection (3) in relation to the proposed lease, should be required to consider whether it is appropriate for the lease to be granted. That does not necessarily mean that the Government has to accept that advice, but I think it is not inappropriate for the Planning Authority to give its suggestion to the Minister in relation to the appropriateness from a planning point of view.

What we have to remember here is that there are two types of development as far as we are concerned. There is properly planned, well-thought-out development, and there is developer-driven development. Consider the sorts of problems that we have seen develop in Civic over the years. I think people from the NCDC now freely admit that they got it wrong. A fine example of an inappropriate development that went wrong is the car park across the road here. At the time it was thought that there were going to be problems associated with car parking.

I think anyone who walks around Civic, up past the TAFE or across to the Lakeside, will see quite clearly that maybe that decision was inappropriate at the time. That is why we think it is important to add this paragraph to subclause 164(4) to provide a requirement for the Planning Authority to consider this in making its recommendation to the Executive. I encourage members to support it.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.17): Mr Deputy Speaker, I understand what Mr Jensen is saying, but predominantly it is for the Land Division to determine the appropriateness of the timing. It is not necessarily a planning matter to the degree that Mr Jensen claims it to be. It is the Land Division that handles leases. It is as simple as that. We oppose this amendment.

MR MOORE (12.17): Mr Deputy Speaker, it seems to me that this is a very sensible amendment by Mr Jensen and that the comment by Mr Wood reflects a lack of understanding of an overview by Mr Wood. I accept that it is the Land Division that does that, but what planners ought be about is long-term planning and trying to determine just when things occur within the planning. That is an absolutely critical part of planning. Our discussion on the Territory Plan and the zoning system within the Territory Plan indicates that the current thinking is away from that. The critical responsibility of planners is to ensure that development occurs at the right time. This is a very important and very sensible amendment.

MR JENSEN (12.18): I rise briefly to get on the record my amazement at the statement by Mr Wood. I fully endorse the comments made by Mr Moore. We are talking here about land planning and development. That is what we are really talking about. To try to separate the two and say that one does not relate to the other, I think, as Mr Moore said, is to completely misunderstand the whole situation of proper planning and development to which all of us in this Assembly are committed or should be committed.

MR WOOD: (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.18): Mr Deputy Speaker, I suppose that again it is haste. The Planning Authority does these things; it is a matter of course. There is no question about that. The Land Division, nevertheless, is the one that writes out the lease at the end of the day.

Question put:

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

The Assembly voted -

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

Question so resolved in the affirmative.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.23): I move:

Page 76, line 25, paragraph 164(4)(c), omit "Territory".

This is purely a machinery thing.

Amendment agreed to.

MR JENSEN (12.23), by leave: I move:

Page 77, line 33, after subclause (10), insert the following new subclauses:

"(10A) The Executive shall not grant a lease under subsection (9) or (10) unless -

(a) all the advice provided to the Executive under subsection (10) by the Authority is made available for inspection by members of the public;

(b) the Executive has by notice published in the *Gazette* and a daily newspaper, that it is the intention of the Executive to grant a lease under subsection (10); and

(c) the lease and any agreement collateral to the lease, to include the amount of premium paid, shall be tabled in the Assembly within 5 sitting days of being approved.

(10B) The Executive shall make copies of the advice referred to in paragraph (10A)(c) available for public inspection during office hours during the period and at the place specified in the notice.

(10C) Where the Executive grants a lease in reliance upon its powers under subsection (10), it shall cause -

(a) a copy of the lease;

(b) a statement of the amount (if any) paid for the grant of the lease; and

(c) a copy of any agreement collateral to the lease;

to be laid before the Legislative Assembly within 5 sitting days after the date on which the lease is granted.".

This amendment, No. 82, circulated in my name, relates to some additions to clause 164, which requires the Executive to go through a process when they are granting leases under subclauses (9) and (10). We are talking here about granting special leases and leases in special areas. That is why we think it is appropriate in this case for the Executive to go through the process of granting a lease after they have advised, by a notice in the *Gazette* and a daily newspaper, that they are proposing to grant a lease under subsection (10), and for the lease and any agreement collateral to the lease, et cetera, to be tabled in the Assembly. The Government has already agreed to some parts of this process, but I am not quite sure whether they agree to the processes I am suggesting here with the three additional subclauses.

I am also saying that the Executive should make available for public inspection copies of the advice referred from the authority to them. When they grant a lease under subsection (10), they should be required to go through the process of laying the lease before the Assembly with appropriate collateral information.

MR KAINE (Leader of the Opposition) (12.25): I think this is another case where the Residents Rally has gone right over the top, placing all sorts of obligations on people to advertise in newspapers and make things available for inspection. This again is a case where Mr Jensen has changed his ground. His first proposal on this issue was to allow the Assembly to disallow a lease. I was totally opposed to that. I do not see how you can be negotiating a lease and then have somebody in the Assembly saying, "No, we are going to disallow that".

Mr Jensen: That was an aberration. That slipped in when I was not looking.

MR KAINE: I do not know how it slipped in, but that was what you told me that your amendment was going to be. This one is totally different and it goes way beyond what was originally envisaged in the original amendment. Analysing what is now before the Assembly as an amendment, it is simply a matter of notifying and advising people of what has happened.

If Mr Jensen were prepared to put forward an amendment which merely said that upon granting a lease that lease and agreed collateral and all that sort of stuff should be tabled in the Assembly within five sitting days, I would go with it. That ought to be sufficient. If it is tabled in the house it becomes public property and anybody that knows about it can find out. I do not know why we want to go into all this business of making it available for inspection and copying. It is just right over the top.

Mr Jensen: We will go with that.

MR KAINE: I suppose I can word an amendment to Mr Jensen's amendment, but it would be better if Mr Jensen reduced it to the simple statement that these documents shall be laid before the Assembly within five sitting days. If he does that, I will support him; otherwise, I will not.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.27): I note what Mr Kaine says. I think it is a sensible way to go. It is useful to have it tabled in the Assembly. If I keep talking for another 30 seconds, the appropriate amendment will be available. I certainly agree that there is too much here. We do not have to go advertising in newspapers and the like. It is more than we need.

MR JENSEN (12.28): Mr Deputy Speaker, will it be possible for me to formally remove two of the proposed new subclauses in my amendment and just leave (10C) and renumber it (10A)?

Mr Berry: Pull them all out. Are they really important?

MR JENSEN: Yes, they are. One of them is, anyway.

MR DEPUTY SPEAKER: We have an amendment coming, anyway, Mr Jensen.

Mr Moore: That is sensible. We will renumber (10C) to be (10A). That is easy.

MR JENSEN: Yes.

Mr Kaine: It needs to be reworded. It is not as simple as that.

MR JENSEN: Mr Deputy Speaker, can I amend my amendment?

MR DEPUTY SPEAKER: I think you can, Mr Jensen, yes.

MR JENSEN: I seek leave to amend my amendment.

Leave granted.

MR JENSEN: I move:

> Omit proposed new subclauses (10A) and (10B).

Amendment agreed to.

Amendment, as amended, agreed to.

Mr Moore: I raise a point of order, Mr Deputy Speaker. Having agreed to Mr Jensen's amendment to his amendment, I believe that we should then have voted on the amendment. My understanding is that you did not do that.

MR DEPUTY SPEAKER: I did. I said that the question was that Mr Jensen's amendment No. 82, as amended, be agreed to.

Mr Moore: We had not agreed to the amendment first.

MR DEPUTY SPEAKER: We did that.

Mr Moore: As long as we have, okay.

Amendment (by **Mr Jensen**, by leave) negatived:

> Page 77, line 36, subclause 164(11), omit all words after "by", substitute "the Executive".

Clause, as amended, agreed to.

Clauses 165 to 167, by leave, taken together, and agreed to.

Clause 168

MR JENSEN (12.32): I move:

> Page 80, line 2, paragraph 168(2)(b), after "171", insert "where the lease is granted for an amount that is appropriate having regard to the public interest".

Once again we believe that this is appropriate where we are talking about special leases.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.32): The Government opposes this amendment. It is one that we do not see having any value. Someone wants to determine what is in the public interest. I do not know whether that is encompassed in the definitions or not, but it does not really add anything to it. It is implicit right through

the legislation that everything we do is in the public interest. You can write into every clause, if you like, that it be in the public interest. It is almost an offence to say that we have to do this all the time.

MR MOORE (12.33): I understand Mr Wood's reaction as far as the public interest is concerned, but it has been a long-term understanding in terms of our leasehold system that certain decisions are taken in the public interest. The public interest can sometimes be in conflict with a particular development interest, or the particular interest of a leasehold.

Mr Wood: Well, there is conflict everywhere.

MR MOORE: Mr Wood interjects that there is conflict everywhere. That is the very point that Mr Jensen is making by this amendment. Where there is conflict, what has to be taken into account, what has to be given a high priority and what has to be made clear to people by this legislation is that the decision is taken with priority being given to the public interest. It puts an emphasis and a tone in the legislation that is appropriate.

Mr Wood said earlier that we could add public interest to every clause. That has not been done; nor is it necessary; nor is it appropriate. The leasehold system, though, is designed specifically to be in the public interest. It has not been used in the public interest on many occasions, as history would have it, and therefore it is appropriate for this Assembly to add those words, "the public interest".

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.34): Mr Deputy Speaker, the public interest has been very carefully explained in a great amount of detail in the clauses leading up to this.

Amendment negatived.

Clause agreed to.

Clause 169 agreed to.

Clause 170

MR JENSEN (12.35): I move:

> Page 81, line 4, at the end of the clause, add the words: "being a lease that does not permit a change in the purpose for which the land is used or an increase in the subdivision or development rights".

This is, I believe, a rather important amendment. It seems to us that there is a potential, if we are not very careful, to lose an opportunity for betterment, particularly in relation to the subdivision of residential land. I understand that the Government is aware of this

issue and problem. In fact, it was suggested to me that this might be a bit too hard to do at this time. I think it is important, in the debate today, to put the issues on the table so that people will know what we are talking about and so that we do not have a situation later where people say, "Well, why didn't you do something about it when you knew that there was a potential problem?".

The problem is that out there in the ACT at the moment are a number of leases that just have upon them the term "residential purposes". Nothing else; no more, no less. It just says "lease for residential purposes". The plan provides that residential purposes in a residential planning land use zone can cover a number of things, ranging from single residential right through to a three-storey house. What we are talking about here is the potential for someone to take a lease that just says "residential" - nothing else; no more, no less - and then divide it up into three or four blocks. They can build a three-storey house in accordance with the provisions of the plan. It is not inconsistent with the plan. It is not a problem.

We are losing here, it would seem. We are now finding that that land has more than a single residential house on it. It can go to three or four. In the case of large blocks, as we have seen from the way that the Housing Trust have divided their blocks, it can go to six. This is increasing quite considerably the value of the land without any need to change the lease. This is the problem we have. That is the reason why we have moved to add to this clause the words "being a lease that does not permit a change in the purpose for which the land is used or an increase in the subdivision or development rights".

What we are trying to do here is this: If someone wants to change the development rights, to increase the value of the land by complying with the residential or planning land use zone conditions, which, as I said, allow you to go from single to three-storeys, provided they meet all design and siting criteria, a further residential lease can be granted, to commence on the date of the lease; but in this case it will be a lease that does not permit a change in the purpose for which the land is used or an increase in the subdivision or development rights.

So, if there is any increase in redevelopment rights, it is not just a simple matter of letting them build; they have to seek a surrender and the regrant provisions, we believe, would enable the appropriate betterment charges to be levied, because of the increase in value being granted, and returned to the people and the Treasury of the ACT. That is why we have brought this forward. I am not sure that it is perfect, but people can at least see what we are trying to do.

Mr Wood: It sure is not.

MR JENSEN: I am sorry, Mr Wood, but that is the best we could do in the circumstances. I hope that you will take it on notice.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (12.39): It is not perfect, Mr Deputy Speaker. What Mr Jensen is setting out to do, as I understand it, is lock up every residential lease in perpetuity, pretty well, as a residential lease, precluding the possibility of any change at all.

Mr Jensen: No, I am not doing that at all.

MR WOOD: Well, you seem to be saying that. It is my understanding of what you said and of what is written down here. You indicated that it was not perfect, and I do not think we should be writing into this legislation something that is not perfect. There is provision in the draft Territory Plan for greater usage or a wider range of usage than you like. I am not sure that it is very different from existing provisions. If you have concerns about that, you should address it through modifications to the draft Territory Plan. This is certainly not the place to do it.

MR MOORE (12.40): I believe, Mr Deputy Speaker, that Mr Jensen's intention is appropriate; but, as the amendment is worded, there is a problem. Perhaps we could get around the problem by using the term used in the draft Territory Plan. Therefore, I move the following amendment to Mr Jensen's amendment:

> Omit the words "subdivision or development rights", substitute "number of dwellings".

I think that the difficulty that Mr Jensen has identified is one that we should take on board and perhaps that achieves the goal that Mr Jensen wants.

Remember that what we are talking about - I think it is most important - is a lease where the term of the residential lease is to expire within a period of 30 years and the lessee applies to the Executive for the grant of a further residential lease of that land. We are talking about a specific incident. I think that this does not preclude the grant of a lease being a lease that does not permit a change in the purpose for which the land is used or an increase in the number of dwellings.

In other words, it will require somebody to seek a change of purpose and not be able to do it at that time. They will need to seek a change of purpose in the lease, which is a perfectly normal and perfectly reasonable thing to expect. In other words, we are prepared to grant the continuation of the lease as it is - there is no problem about that - but if you want to change the lease you have to go through the normal other procedures that exist. I think that is what Mr Jensen is trying to achieve.

I think it is perfectly reasonable to expect people to follow the normal procedures instead of using this basic, almost automatic residential renewal - which I accept and I agree with, but not as a means of changing the nature of the lease, because it seems to me that we will wind up without the betterment tax. Whether you think the betterment tax should be 50 per cent or 100 per cent is another debate. Nevertheless, the community is entitled to its share of the change in the purpose of a lease.

MR KAINE (Leader of the Opposition) (12.43): Mr Deputy Speaker, I oppose both Mr Jensen's amendment and Mr Moore's amendment of the amendment. People are seeing phantoms behind every bush and thinking that we have to close off every possibility of anybody ever doing anything with a residential block. For instance, I am sure Mr Moore has not thought his amendment through, because, as I understand it, that would prevent dual occupancy on a block, and that is already a law and it is already something that people are entitled to. This would preclude that, as I see it.

Mr Moore: No, it would not.

MR KAINE: Well, you say that you cannot increase the number of dwellings on the block. It is a case of trying to prevent people from doing anything with their piece of ground. I read this clause of the Bill as being very specific - to virtually grant lessees of residential property leases in perpetuity. That is what it does, whether you call it that or not. Now you want to go back on that. You want to say, "Well, you can have a lease in perpetuity, but you cannot actually do much with it after you have got it". I think that is a backhanded way of control. There are other ways of controlling what people can do with a lease. To try to build it into here, in amendments that have not been thought through as to what the consequences are, I submit is inappropriate. I do not support either of them.

MR JENSEN (12.45): Mr Deputy Speaker, could I very quickly give an example of the problem that I see at the moment. Out there in the marketplace at the moment we have, from a residential point of view, two types of leases. One just says "residential"; the other lease, such as my lease, says, "single residential". If you are allowed to have multi-density residential, your lease will say that. But there is a considerable number of leases out there that just say "residential".

The point that I am making is that, if I have a single residential lease and I want to convert it into more than one residence, I am required to surrender, obtain a regrant and pay the appropriate betterment accordingly. In fact, you could argue that because I have a single residential lease I am being discriminated against, because if I want to put more than one house on my block I am required to pay betterment. But if Mr Wood has a lease that says "residential only" - nothing else - and he wants to put

three houses on his block, Mr Wood, as I read it, and I think it is the way it comes out at the moment, does not have to pay any betterment. That is the problem we have, and all we are trying to do is to resolve that issue.

Mr Wood: You are not doing it; you are not achieving it.

MR JENSEN: Maybe we are not, but I think it was important to get it on the record. I am interested to see how Mr Wood proposes to resolve this very important problem. I do not care what anybody says; there are enough sharp people out there at the moment to take advantage of every loophole you can drive a truck through. Look at the tax laws; look at how people have used and abused the tax laws. As soon as they find a loophole, through it goes. You can bet your bottom dollar that this sort of loophole will be picked up and a truck will be driven through it. In fact, there will be great lines of trucks driving through it unless you do something about it straightaway.

MR KAINE (Leader of the Opposition) (12.47): Mr Deputy Speaker, I presume that I can speak twice?

MR DEPUTY SPEAKER: Yes, you can.

MR KAINE: Mr Jensen has stirred my memory again. What he is purporting to do here is to add to your lease when you renew it a constraint that does not exist now. There is no such constraint on the leases that people have today. What he is saying is that when you come to renew it we are going to put a constraint on your lease conditions that does not exist now. Why? If he wants to put in this proposal that he has in mind, there must be another way to do it, and you should be applying it to all residential leases, including current ones, if that is your intention.

Mr Jensen: That is what it does.

MR KAINE: No, this is only when you come to renew it. It does nothing for existing leases until they come up for renewal, and you are saying that you can have a renewal of your lease provided you accept this new constraint. So, it does not do anything for existing leases until such time as they come up for renewal. If you want to achieve your objective and to impose this constraint on residential leases, you should be doing it to all residential leases and you should be doing it in some other way. This does not achieve your objective. It is discriminatory, in fact, and it relates only to people whose leases run out. A lot of leases do not run out for a long time; so it is going to be a long time before you can catch a lot of people if your objective is to catch people who want to do other things with their property. Think it through.

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

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

Clause agreed to.

Clause 171

MR KAINE (Leader of the Opposition) (12.49): We have just had an interesting debate about lease renewals and the imposition of constraints on somebody at the time of renewal of a lease. I think that we have now reached an important stage in this debate. I move:

> Page 81, line 20, omit paragraph (g), substitute the following paragraph: "(g) the lessee pays such fee fixed by the Executive for granting the further lease as does not exceed the cost of granting the lease.".

My amendment is to delete the words at subparagraph (g) of clause 171 and insert in lieu the words that appear at subparagraph (d) of the preceding clause that we have just endorsed. I believe that a lease of land is a lease of land and it does not matter whether you have a house on it or whether you have a business on it. When it comes to renewing it, since we have now agreed that people on residential land should have an unfettered right to a renewal of their lease when the time comes, why would we seek to impose a greater constraint simply because a piece of ground has a business being conducted on it?

What this is is a disincentive to business. What it does is to say to people who have a very enterprising business on their block of land, and because of their enterprise they have turned that block of land and that business into something more valuable than it was before, that when they want to renew we are going to make them pay for that. It is a disincentive to business and what it will do is to cause people to think, when they are getting close to the expiry of their lease, "Should we be moving our business over the border to Queanbeyan where we do not have to pay this kind of premium periodically when our lease runs out?".

If we go on to the next amendment, incidentally being proposed by Mr Jensen, if we accept that amendment, which he has foreshadowed, he is saying, "Every 50 years we are going to make you pay through the nose because you are running a successful business, at the outside, because we will not give you a lease that is more than 50 years; it may be only 30 or 25 or 20, and every time your lease runs out we are going to hit you, the businessman who is making Canberra into a prosperous place, for another charge". In my view, that is absurd and it creates two classes of leaseholders. Quite frankly, I can see no justification for it - no justification whatsoever.

It confuses the issue between leasehold management on the one hand and revenue raising on the other. They are two different things and I believe that we have to separate them. We already catch the business people who are running their businesses out there through land tax; we already

catch them through betterment tax every time they seek to enhance their business and build a bigger building or do something to make their business and the piece of ground more attractive. We catch them coming and going. We catch them by a whole range of taxes that all businesses in Canberra have paid, such as payroll tax, financial institutions duty, stamp duty - it goes on and on. That is how you get revenue from your private sector. That is legitimate and it is done everywhere.

But now we are saying that we are going to go further than that. Because we have you on a piece of leased land, we are going to nail you every 20, 25, 30 or so years for an additional premium on the piece of ground that you are using. I believe that it cannot be justified. I believe that it is irrational. It is illogical. Quite frankly, I do not support the clause as it stands. I think that we must seriously consider the impact of this on business.

The Chief Minister constantly talks about fostering the private sector, as I do, because that is where our future lies in terms of job creation and that is where our future lies in terms of it generating increasing revenue to run this Territory. This is another punitive condition that we are going to impose on business, another disincentive to business. I would like to see the Chief Minister and Treasurer for once support her contention that we rely on the private sector, support her contention that she wants to see the private sector thrive and prosper, and remove this iniquitous new tax that is going to be imposed - not just once, but every time the piece of ground comes up for lease renewal.

I repeat that, if people like the Residents Rally have their say, that will not be every 99 years; it will not be every 50 years; it will be every 15 years or 20 years. They seem to have in their mind this idea that no business must ever prosper, no business must ever make a profit without our creaming some of that off and paying it to the community. I think it is an absurdity. Those businesses pay their dues now and I do not accept that this is a legitimate way to go about raising additional revenue. I will not support it and I commend my amendment to the Assembly.

MR MOORE (12.54): The comments by Mr Kaine show that he believes that residential and commercial leases should be the same. There is a very basic difference between the two. That very basic difference is that one of the leases is used as a basis for raising revenue and the other one is for people to live. That is a major difference. In terms of freehold land there is probably very little difference. We grant a lease for a particular purpose, and one purpose is to allow people to live; another lease, the commercial lease, is there to allow people to raise revenue. That is a very important difference. Revenue and the leasehold system are inextricably linked.

For some reason, the Leader of the Opposition wants to separate the two, which simply is not logical and certainly is not acceptable to me. When I hear people in the business sector saying how badly off we are in Canberra through having a leasehold system, it makes me think time and time again of what is the most profitable property trust in the country and has been for years. It is the Capital Property Trust based on the leasehold system in Canberra. Perhaps everybody else should adopt our system so that their businesses can be just as profitable. I should say, before sitting down, that I accept that a lot of the credit there is due to the people who run the Capital Property Trust. I accept that and in no way mean to demean their contribution as well.

MR HUMPHRIES (12.56): Mr Kaine's amendment has the effect of providing that businesses in the ACT operate on a similar basis to businesses in other parts of the country. That is the fundamental reason why we ought to be supporting this amendment. It is about putting business in the ACT on a reasonable, sustainable and comparable basis with other businesses in the nation.

There is quite clearly, Mr Deputy Speaker, a problem with the inability of people from outside the ACT to translate their understanding of what happens in other places to what happens in the ACT. It seems to me that we serve our community very poorly if we do not ease that confusion and provide for a similar basis for commercial and residential leases to operate.

Mr Moore draws a distinction between commercial leases and residential leases. He seems to think that people are entitled to some certainty and security in respect of residential leases, but in respect of commercial leases, on which not only they but others who work on those leases depend for their livelihoods, they ought to be treated differently. I do not understand that at all. It seems to me that there is an even stronger case, surely, for providing that certainty in the case of commercial leases, just as there is for residential leases. It is about providing a secure basis for business to operate in this Territory.

Some of us getting immersed in this debate might forget that we are talking about strengthening the ACT's land system as a basis on which to make this community prosper - not just in terms of having attractive landscapes and beautiful settings for our homes and so on, but in making it a viable place for people to live and work - and that requires, in my view, very clearly, that we give commercial tenancies the same kind of security that one would enjoy in other places in this nation.

Mr Moore: It is not the commercial tenancies.

MR HUMPHRIES: Well, commercial leaseholders. They should have the same kind of security that they would enjoy if they had a similar leasehold or a similar piece of land on a similar basis in other places in Australia. I think it is important for us to bear in mind that we are trying to treat ACT leaseholders, in a commercial sense, differently from those in other States, and I think that that is quite improper. We have no evidence as to why that should be the case, no reasons for that being the case, and I urge that the Assembly support Mr Kaine's amendment.

MR COLLAERY (12.59): I will make some brief comments. Members should be aware of the great irony of this issue, because it was on this issue that Mr Kaine committed harakiri and lost his Government. People should know that he lost government over this, against advice, even from within his own camp.

I cannot believe that the Liberal Party is still pressing this issue. Business leaders I speak to are very unhappy with the Liberal Party at the moment. They are not pressing this issue; they are pressing issues like payroll tax, stamp duties, and the rest, as the Chief Minister well knows. They are not pressing this issue to us. They know that they will never convert us, or the Labor Party, and they see the reality of it.

Mr Humphries: Whom do they agree with - you or us?

MR COLLAERY: I can accept the symbolism that probably is why Mr Humphries got up, and I accept that politically you have to say these things; but let us put something on the record. I invite you to read the *Financial Review* these days. Increasingly, throughout Australia, governments are granting 50-year, 60-year and 99-year leases to business, to commercial interests, for CBD sites. Most of the casino tender issues in the country at the moment are on leases. So, the Liberal Party cannot even get its own business case straight.

Mr Kaine: Do not address the gallery, Mr Collaery; you are here to address us, not the gallery.

MR COLLAERY: They look better, Mr Kaine. The fact is, Mr Deputy Speaker, that the Liberal Party cannot even formulate their own case. They never put anything on the table to demonstrate the essential difference between residential and commercial land.

Mr Berry: Come on; that is enough. We understand.

MR COLLAERY: The essential difference, Mr Berry, is that commercial land is defrayed in its capital costs through an actuarial basis on the basis of the use the land is put to. It is as simple as that. It is for that reason - it has nothing to do with the Canberra leasehold system - that business has no problem in accepting tenders for 50, 75, 60 and 99-year leases in Brisbane, particularly in Queensland

these days, which is a very bullish property market. So, there is no logic whatsoever and Mr Kaine clearly is speaking for a vestigial element of the commercial leaseholders in this town. He is speaking for a few people who still maintain this purist absolutionist argument. It does not apply commercially any more elsewhere in Australia.

I invite the Liberal Party to tell us why casino operators are willing to go on on short-term leases in other parts of the country. Does it do something to their business? The fact is that we have hit you on the bullseye on this. Let us hear what your real answer is and what the real reason is. You are playing for votes from a few benefactors to the Liberal Party. That is the real reason.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (1.02): Mr Deputy Speaker, for the record, the Labor Party opposes this. We do so on well-established philosophical grounds that I do not need to repeat.

Question put:

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

The Assembly voted -

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

Question so resolved in the negative.

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

Sitting suspended from 1.08 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Government Service - Staff Numbers

MR KAINE: I address a question to the Chief Minister. Could I refresh the Chief Minister's memory of a statement that she made in answer to a question on 18 September 1991, when she said that, while I - referring to me - did not achieve my target of 3,000 in staff reductions, I actually presided over something of an increase in staffing during the time that I was in government. I draw her attention to

the answer to a question which she has provided to me within the last couple of days in which she repeats statistics, which incidentally were also provided to the Estimates Committee, which show that from 1 July 1989 to 1 July 1990, for part of which year I was presiding over a budget and a program that she had put in place, the numbers of public servants on the payroll actually increased from 21,563 to 21,856. But for the period 1 July 1990 to 1 July 1991, when my budget and my programs were in place, the number of public servants on the payroll actually reduced from 21,856 to 21,414. Does Ms Follett agree now that her statement earlier was wrong? If not, how can she substantiate the assertion that staff increased during my period in the Chief Minister's position?

MS FOLLETT: Mr Speaker, obviously, I do not have with me the figures that Mr Kaine has in front of him; but Mr Kaine, during the period he was in government, made repeated assertions that he would reduce the size of the public service by some 3,000. In fact, Mr Speaker, I think it is not appropriate that those kinds of generalised assertions be made, especially when the outcomes they contain cannot be achieved. Mr Speaker, the point that I have made repeatedly is that, in the budget that I have brought down this year, we have set a target reduction in a specific area of the administration, namely, the support area. We will achieve that - and we will achieve it for budgetary reasons, not for the kinds of ideological reasons that Mr Kaine made his assertions.

I think the Liberal Party, as exemplified in Mr Kaine's statements, and now of course in Dr Hewson's statement, has made no secret of the fact that they wish to see the public sector in the ACT drastically reduced. They have made those statements repeatedly, in the face of the obvious fact that the public sector provides roughly 50 per cent of the employment in the ACT and that the wholesale reductions that both Mr Kaine and Dr Hewson speak of would be disastrous to the ACT economy.

Mr Speaker, I maintain my point that Mr Kaine had the intention of reducing the public service by some 3,000 positions.

Mr Kaine: Over five years.

MS FOLLETT: Mr Kaine now says that that was to be over five years, but he does not deny that he had the intention of reducing the ACT public sector by that number of positions. I repeat that that stands in stark contrast to the Labor action on the matter, which was budget driven, which was an action undertaken to achieve a much more streamlined and efficient public service and which was certainly not driven by the kind of ideological sabre rattling that both Mr Kaine and Dr Hewson exhibit.

MR KAINE: I ask a supplementary question, Mr Speaker. Does the Chief Minister now acknowledge that her assertion that the numbers actually increased when I was in government was wrong? I can table the figures if you dispute that.

MS FOLLETT: Mr Speaker, if Mr Kaine wishes to table the figures, we should ask him to do so.

Electoral System

MR STEVENSON: My question is addressed to Mr Connolly. I refer Mr Connolly and members to the motion moved by Mr Moore on 21 November that this Assembly call on the Federal Parliament to discard the discredited d'Hondt system and to provide the Senate electoral system for the 1992 ACT election. Will Mr Connolly, on behalf of this Assembly, brief ACT Senators Margaret Reid and Bob McMullan to support the replacement of the remodified d'Hondt system with the Senate system of optional preference voting below the line for the February 1992 election?

MR CONNOLLY: Mr Speaker, that has nothing to do with any of my portfolio areas of responsibilities and, as such, is not a proper question.

Interim Planning Legislation

MR JENSEN: Mr Speaker, my question is directed to the Chief Minister. I remind the Chief Minister that the Interim Planning (Amendment) Bill (No. 2) was passed by this Assembly on 25 November 1991 and has been given Act No. 77/1991. Can the Minister advise whether the Act has been gazetted?

MS FOLLETT: To the best of my knowledge, no, it has not, Mr Speaker. But perhaps you would be in a better position to advise me whether you have dispatched it to me for gazettal. I do not believe that you have.

MR SPEAKER: I do not believe that I have, Chief Minister.

MR JENSEN: That is very interesting. I ask a supplementary question, then. Why has this Act not been gazetted some 7 working days after it was approved by the Assembly? As I understand it, you are the person responsible for signing gazettals.

MS FOLLETT: I thank Mr Jensen for the question. As Mr Jensen says, it is the case that I sign gazettals. I sign them on the advice of the Speaker. To the best of my knowledge, I have not received notification from the Speaker that that Act should be gazetted.

Government Service - Staff Reductions

MR HUMPHRIES: My question is of the Chief Minister. Can the Chief Minister confirm the thrust of comments made by Mr John Wilson of the Trades and Labour Council on today's morning news on the ABC? In particular, can she confirm that her Government has reached agreement with the Trades and Labour Council that no blue-collar workers will lose their jobs under the Labor Government? Will she also advise the Assembly of the terms of any agreement that she has reached with the Trades and Labour Council, and will she advise what jobs or positions and what portfolio responsibility that undertaking covers?

MS FOLLETT: I defer to Mr Berry.

MR BERRY: Mr Speaker, staffing across all sectors of the Government Service is a matter of concern to the trade union movement. But the Government has made it clear to the unions - and I have been involved in some negotiations with the Labour Council on this score - that those staffing reductions which were anticipated in the budget should be achieved in administrative positions and that services should not be affected. There was no agreement that blue-collar workers would be excluded from the process.

MR HUMPHRIES: I ask a supplementary question, Mr Speaker. If Mr Berry says that, in fact, there is an agreement that no blue-collar jobs will be cut, does the Minister acknowledge that, if 275 jobs should be cut out of the health system, white-collar workers in those circumstances would include doctors and nurses? Does the Government intend to include those non-blue-collar workers within the terms of its exemption as agreed between the Government and the TLC?

MR BERRY: There is no exemption. You were not listening.

Cyclists - Safety Helmets

MRS NOLAN: Mr Speaker, my question is addressed to Mr Connolly in his capacity as Minister for Urban Services. Mr Connolly, under the Federal Government black spot funding program, of which we are a part, compulsory safety helmet wearing for cyclists was to come into effect on 1 January 1992. Can you advise me why the Government has not as yet introduced legislation which will make it compulsory for cyclists to wear helmets as of 1 January?

MR CONNOLLY: I thank Mrs Nolan for the question. Certainly, 1 January next year was the deadline for a range of initiatives on the black spot program. Some of them have been introduced and passed, and some remain to be passed. I met with Minister Brown some months after coming into government and discussed with him our intention still

to meet those commitments, but he was well aware of the position of the Assembly - that we had a lot of legislation to get through; that the Government had just changed; that we were in a minority situation.

Given the sparkling progress that we are making so far this week on the planning legislation and the enormous backlog of legislation that we now have, I do not expect that safety helmet legislation will be in place for a 1 January commencement, and I have advised the community accordingly. It is still our intention that bike helmets be made compulsory here, as they are in the States; but I do not think we are going to meet the 1 January deadline.

MRS NOLAN: I ask a supplementary question, Mr Speaker. When is it likely that helmets will be made compulsory?

MR CONNOLLY: I expect that it will be shortly after the next Assembly meets, given the current state of this Assembly and the legislation now in place.

Government Service - Staff Numbers

MR COLLAERY: My question is directed to the Chief Minister in her capacity as Minister in charge of the public service. On 6 August, Chief Minister, I placed on notice questions relating to the number of employees in each division and branch of each department and agency, and the breakdown by classification level, permanent or casual, full- or part-time. I have asked you since, on notice, when you are going to answer those questions. With the exception of the Health Department, which did provide a response, why have these important questions not been responded to as of today?

MS FOLLETT: I apologise to Mr Collaery for taking a while to answer those questions on notice. Mr Speaker, it is certainly my intention and the intention of all of the Ministers that all questions on notice be answered before the last sitting day of this Assembly. I will certainly ensure that that is the case for all members' questions, not just Mr Collaery's.

MR COLLAERY: I ask a supplementary question of the Chief Minister. I point out to her that, given the long parliamentary recess, if we can call it that, before the election, the provision of responses on the last sitting day will not open those responses up to parliamentary scrutiny by way of any further legitimate questions on them. So, by way of supplementary request, I ask the Chief Minister whether answers that will be provided can be provided in time for members to raise questions about them in the public interest?

MS FOLLETT: Mr Speaker, I think I have answered the question. I have said that they will all be answered before the last sitting day; but I am not able to give an assurance beyond that, given the very short time that is available before then.

Police Costs - Aidex and President Bush Visit

MR STEFANIAK: Mr Speaker, my question is directed to Mr Connolly in his capacity as Minister for police. During the recent troubles at Natex, I understand that the ACT was up for about $300,000 in police wages and overtime. In the light of the forthcoming visit by President Bush of the United States and the security arrangements needed for that, will the Minister assure this house that the ACT will not be up for any additional costs for policing and that the costs will be borne by his Federal colleagues?

MR CONNOLLY: I thank Mr Stefaniak for the question. I am expecting to be briefed by the police shortly about the final costing of Aidex and, as I have previously indicated, I will make those figures available to the house, probably in the sittings next week. The forthcoming visit by President Bush will be somewhat different to the Aidex exercise. The expectation had always been that the Aidex protest would be a peaceful protest, and we were somewhat surprised at the level of violence that was offered. Thus, there was a need for a higher level of police response than had been anticipated.

The Bush visit has been planned for for some months. It was, of course, expected originally that it would be taking place around about now, I think; but Mr Bush cancelled the original dates for domestic reasons. So, the police have much more time to plan. It is expected that Australian Federal Police members from all over Australia will be coming to Canberra to provide backup which will be paid for by the Commonwealth Government. We will share a component of the costs, but only a similar component to what any State will bear.

I understand that Mr Bush is also visiting Melbourne for a day and Sydney for a day. But I expect that the major additional costs, the costs for extra police from out of the State, will be borne by the Commonwealth Government. Should there be any contrary advice or advice from the police that there are problems, I will of course raise the matter with Senator Tate as a matter of urgency.

MR STEFANIAK: I have a supplementary question, Mr Speaker. Will the Minister also assure this house that if there is any trouble - and hopefully there will not be anything like the trouble there was at Aidex, but if there is trouble along those lines - he and his Government will not wait three or four days before they actually give some backing to the police; and that they will act immediately?

MR CONNOLLY: This Government never meddles in operational procedures. Throughout Aidex, the police exercised their operational discretion as they ordinarily do. I would not advise police to act sooner or later than their judgment dictates.

Government Service - Staff Reductions

MR DUBY: My question is addressed, I believe, to the Chief Minister. It is about staffing and redundancy matters. Mr Berry seems to be the person who is answering those questions. Could I have clarification as to whom I should address that question to?

Mr Berry: Ask the question first.

Ms Follett: It depends on what the question is.

MR DUBY: It has to do with the recognition of staff made redundant by the reduction in staff levels of the ACT Government. Can the Chief Minister provide figures - obviously, she will not have them on hand - as to how many staff have actually been identified as being surplus to requirements? Can she provide a breakdown of positions? I do not want names, of course; I am talking about positions. Can she state whether they are white-collar workers or blue-collar workers?

MS FOLLETT: I thank Mr Duby for the question, and I acknowledge his concern about staff who might find themselves in that position. I think it is true to say that the budget requirements that have been passed by this Assembly for all areas of the ACT administration have involved those areas in a continuing process of negotiation with the trade unions and affected staff. At this point, I think it would not be possible to answer the kind of question that Mr Duby has asked about specific numbers and classifications of staff. I suspect that, in fact, it will not be until the conclusion of this whole process - that is, at about budget time next year - that we will be able to look back and see whether budget targets across the administration were achieved by staffing measures or by other measures. Many areas are utilising other measures.

With the best will in the world, I do not believe that it is possible to give Mr Duby the detail that he seeks at the moment. I can only say that it has, of course, been a consultative process, one which has been not without pain in all areas of the administration. I know that members are aware of the commitment to observe the provisions of the RRR award, which applies in these matters. Members would also be aware of the Government's intention not to have an undue impact on certain classifications of employees, mostly those in EEO identified groups. I acknowledge Mr Duby's concern, but I am afraid that we will have to wait some time before we will be able to give the overview and the breakdown that he seeks.

MR DUBY: I have a supplementary question on that, Mr Speaker. Given the fact that my office has been contacted by people who have received, in effect, notification that they are surplus officers and that they have a certain time either to find alternative employment or to take a package, I fail to understand why the Chief Minister cannot provide this Assembly with a list of the number of people who have received such notification as at the close of business today. That, to me, is a perfectly reasonable request. Can you please explain to me why you cannot provide me with definitive lists of the numbers of people who have been identified as surplus to requirements and who have received notification to that effect?

MS FOLLETT: Mr Duby has asked a different question in his supplementary. If he wants the figures as at today, then of course I will take the question on notice and provide what information it is possible to provide.

Jury Service

DR KINLOCH: My question is addressed to Mr Connolly as Attorney-General. I am not entirely sure whether the premises of my question are correct. What is the present and what will be the future legal status of Canberra citizens aged over 60 in connection with the jury system in the ACT courts? I ask this because I am assuming - am I assuming wrongly? - that somehow or other people over 60 are to be given too easy a way out of jury service, when of course they are the people who are best qualified to be jurors.

MR CONNOLLY: I would not say that they are best qualified to be jurors. I would say that people over 60 are as qualified as any other members of the community to be jurors. There is a problem in relation to juries at the moment, because under the Juries Ordinance persons over 60 have an automatic exemption. The power to make laws with relation to juries will pass to us when we have responsibility for the courts. Juries operate only in relation to the Supreme Court. You cannot have a jury in a magistrates court. At the moment we do not have legislative power in relation to the courts and, therefore, juries. I would expect this Assembly to look at that next year.

Dr Kinloch would be aware that, during debate on the human rights package, the Government indicated that it did think age discrimination was an issue that needed to be addressed. Obviously, a law of this Territory which discriminates by saying that a person over 60 is to be treated differently to any other person in relation to jury service is inappropriate. So, it is something that I think this Assembly will be looking at next year when we have power to make laws with relation to juries.

Gun Laws

MR MOORE: My question is also directed to Mr Connolly. Mr Connolly, you have certainly presented the notion that the ACT has some of the most advanced gun laws in Australia, and I think that is quite correct. During President Bush's visit, will those laws be breached by the President's security guards if they carry automatic weapons?

MR CONNOLLY: The gun laws in this Territory certainly are among the most advanced. I am expecting that Foreign Affairs will want to discuss with the ACT police the security arrangements in relation to - - -

Mr Collaery: You should not have mentioned it. You broke all of the rules.

MR CONNOLLY: Mr Moore, obviously, I should not answer your question. Mr Collaery says that I broke all of the rules. He is raving in the corner over there. The position has always been well understood. With senior head of state visits, on some occasions the Federal Government does permit people providing close personal protection to be armed. It is a matter for the Federal Government, to be handled by the Minister for Foreign Affairs. As I said, that is a matter which the Federal Government will no doubt deal with appropriately. But it is obviously a matter that agitates deeply - - -

Mr Jensen: What about the confirm or deny principle on security issues?

Mr Duby: What are you supposed to do - neither confirm nor deny that he is nuclear armed or something?

MR CONNOLLY: We do not know whether the United States has nuclear capacity; perhaps I should say that. But I can certainly say that I would doubt that close personal protection officials would be nuclear armed.

Electoral System

MR STEVENSON: My question is directed to the Chief Minister. Earlier today I gave notice of a question concerning the electoral system for the 1992 election. As the Chief Minister understands, this Assembly passed, I believe unanimously, a motion calling on the Federal Government to replace the remodified d'Hondt system with the Senate system of voting. Would the Chief Minister, on behalf of this Assembly, brief ACT Senators Bob McMullan and Margaret Reid to take advantage of the Australian Capital Territory Self-government Legislation Amendment Bill that will be debated in the Senate next week to move the necessary changes to ensure that the Senate system is in place for the coming election?

MS FOLLETT: Mr Speaker, I fail to see how this comes within my portfolio responsibilities. I would have thought that the conveying of a motion from this Assembly would have been as much a matter for you as it is for me, Mr Speaker. Are you going to brief them? Perhaps you would like to answer it?

MR STEVENSON: Could I ask a supplementary of the Speaker, please?

MR SPEAKER: Mr Stevenson, I have forwarded a letter - the Clerk can confirm that - on behalf of the Assembly as requested. The letter has been forwarded; but, as for briefing the senators, I do not believe that that is a responsibility that can be tied to anyone in particular. Maybe you would like to do it.

City Health Centre

MR HUMPHRIES: Mr Speaker, my question is directed to the Minister for Health. I refer the Minister to an answer to a question he gave yesterday in which he indicated that a particular doctor had been refused the right to rent space in the City Health Centre because no space was available. Can the Minister confirm that, as of November, which is when the doctor sought space, the immunisation room in the City Health Centre was empty for eight half-days a week, the speech therapist's room was empty for four half-days a week, the second doctor's room was empty for five half-days a week and the Women's Health Service also had space available on four half-days a week? I ask the Minister: Why is it not possible to reorganise all that available empty space in the centre to make room for one more doctor, particularly given that the demands being placed on the City Health Centre for GP services are not being met at the present time? If that is not possible, why is it not possible to have a share arrangement instituted with one or other of those services presently in the City Health Centre?

MR BERRY: I think Mr Humphries is a very impatient young man. Yesterday he asked me a question which I said I would take on notice. I said that I thought there was not any space there but that I would check into it and get back to him. Really, there is no obligation on me to get back to him today; but, being my usual agreeable self, I have made a special effort.

Mr Collaery: Table it.

MR BERRY: I am not going to table this. I am going to deal with this question, because it is one that Mr Humphries obviously wants to have answered. I heard all those suggestions that some rooms did not have a person in them. They would not be empty; they would have other things in them. They would not have a person in them for particular times over a given period.

In the past, the Board of Health has let surplus space in buildings that it controls to private health practitioners. Community Health, in particular, has a number of health centres where private tenants are collocated with salaried staff. Due to the reduction in the number of buildings being controlled by Community Health, the number of private tenants has also been reduced. Mr Humphries would remember that he closed down the Weston Creek Health Centre; so that gave us a reduction in space.

No current private tenant has been refused a renewal or extension of lease. Where space becomes available, service delivery departmental staff have priority over the leasing of the space to a new private tenant. That is my answer to Mr Humphries' questions of yesterday and today.

Mr Humphries: That was yesterday's question. What about today's question? You are a day behind.

MR BERRY: No, no. Mr Humphries asks me whether I am aware that certain rooms within certain health buildings were partly empty, or empty for part of a day, or had no people in them for part of a day. No, I am not aware of when people walk out of various rooms around departmental - - -

Mr Humphries: You should have found out.

MR BERRY: He says that I should have found out - in fact, that I should have found out before I got the question. No doubt, he is looking at the most efficient Health Minister this place has ever seen, but predicting the questions is not among my charming attributes.

Shooting Incident

MR COLLAERY: My question is addressed to the Attorney, Mr Connolly. I ask the Attorney whether, given his daily confidential incident reports from the Australian Federal Police, he will confirm or deny that there was a shoot-out in Richardson last night and that that shoot-out included the shooting-out of windows of empty houses. To his knowledge, were the police able to attend the scene within a reasonable period?

MR CONNOLLY: Mr Collaery premises a question on a confidential daily situation report which Attorneys receive from the Federal Police. It is indeed a confidential situation report which Attorneys receive from the Federal Police, and it is most inappropriate for me to answer questions as to what may or may not have been in such a report.

MR COLLAERY: I ask a supplementary question, Mr Speaker. In view of the Attorney's response to my question, I ask him why he revealed from a similar briefing sheet details about the US President's intended itinerary.

MR SPEAKER: That is not the same question, basically, Mr Collaery.

MR CONNOLLY: I am delighted to answer. It is a stupid question. I revealed nothing about the US President's itinerary, other than the fact that he is coming to Canberra. I suspect that the KGB, if they continue to take an interest in such things, are aware that he is coming to Canberra, because it has been trumpeted on the front page of every newspaper in Australia, as has the fact that he is going to Melbourne and Sydney. In relation to security arrangements, I said simply that the question of whether or not his close personal protection team are armed is a matter that is sorted out between Foreign Affairs and the American Government.

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

Government Employees - Canberra Raiders Fundraising

MS FOLLETT: Mr Speaker, I had a question without notice from Mr Kaine yesterday. Mr Kaine asked whether it was 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. He went on to ask about the Commonwealth Public Service Commissioner's attitude. As I said yesterday, I am unaware of any such event occurring. I have been advised, however, that it may be relevant that the ACT Auditor-General has been inquiring into a matter involving the administration of Bruce Stadium during the term of the Alliance Government in 1990 and that the Auditor-General has sought the advice of the Commonwealth Public Service Commissioner on the principles involved in that matter. If Mr Kaine wishes to have further details, I will endeavour to provide them.

Construction Employees Redundancy Trust

MR BERRY: On 3 December Mr Collaery asked a question in relation to the Construction Employees Redundancy Trust. He asked whether funds paid into the Construction Employees Redundancy Trust by Canberra building workers on building sites have gone to an interstate fund and, if so, whether they form any part of the $1.5m donation referred to in the current royal commission in New South Wales into the building industry. It seems that his MPI today has something to do with this question as well. Perhaps my answer to his question will answer his concerns in relation to the MPI and he might consider withdrawing it in the interests of economies on time.

Contributions are made to the Construction Employees Redundancy Trust Fund on behalf of employees by some Canberra employers. There is some competition about this, because the AFCC and the MBA have a different position, in the ACT at least, in relation to this matter. The MBA are opposed to it, and there is some competition about the issue. At the end of the day, the redundancy payments are paid either by award agreement or, as an alternative, into the CERT Fund. They were referred to in a *Financial Review* article of 2 December 1991. As I have said, this action of paying into the CERT Fund is one option to fulfil award obligations regarding redundancy payments.

The ACT Government does not have any information about whether funds contributed to the Construction Employees Redundancy Trust Fund on behalf of Canberra building workers were included in the donation referred to in the article. Such information would be in the hands of the trustees of the funds. Whilst some observations have been made during the royal commission, I think it would be most inappropriate to take a position in relation to those observations while the matter is still the subject of proceedings before the commission.

CERT is an industry operated trust established in New South Wales. It is not under ACT government control or covered by ACT legislation, although we understand that there are ACT representatives on the board of CERT. I also understand that the MBA is now part of the construction industry reform agency. They signed up yesterday, I think. Maybe the ACT branch did not sign up, but I understand that the MBA elsewhere have signed up. This fund is completely unrelated to the ACT Long Service Leave Board - that has to be made very clear - which is covered by ACT legislation and is regularly audited by the ACT Auditor-General. The ACT Government has signed the Federal Government's reform strategy which will, inter alia, look at the operation of such funds.

I think that basically answers the question and the concerns which are raised in relation to the MPI. I suggest that Mr Collaery consider withdrawing the MPI.

Sports Facilities Coordinator

MR BERRY: In a question yesterday Mr Collaery, in raising an issue, mentioned a government employee, Mr Peter Conway.

Mr Kaine: Mr who?

MR BERRY: Mr Peter Conway. This seems to be a leftover of old competition between Mr Collaery and Mr Conway. What I am about to say will straighten the issue out, I am sure. Mr Conway has been seconded to a position in the Department

of the Environment, Land and Planning for six months. His principal tasks will be to develop and facilitate liaison arrangements with sport and recreation organisations in the ACT, to promote and market ACT sport and recreation activities and to ensure maintenance of close links between government and the racing industry.

Mr Conway has a relevant background in relation to sport, recreation and racing and will make a useful contribution to the tasks which are needed to be dealt with. Mr Conway will be responsible to the secretary of the department.

Mr Kaine: What salary is he being paid, as a matter of interest?

MR BERRY: You should have included that in your question yesterday and you could have got an answer. The arrangements for Mr Conway's secondment were made according to the usual public service procedure. This is not a ministerial appointment and no Ministers were involved in the arrangements.

Parking Tickets - Taxis

MR CONNOLLY: On 26 November Mr Duby asked me a question concerning complaints from taxi drivers about inflexibility of parking inspectors. I have been waiting for an after question time period when Mr Duby was present, but I will give the information now anyway.

The complaint that Mr Duby outlined has been investigated by Parking Operations, and I am told that the cab driver in question had been warned earlier that very day concerning an identical offence at the same location, which was outside Canberra Lada on Bunda Street immediately opposite the cinema taxi rank. That is a very dangerous location for vehicles to park in, because it forces buses leaving the interchange to mount the traffic island in the centre of the street to pass vehicles parked there. The driver had been warned of the dangerous nature of the place at which he was setting down disabled passengers. He had been let off the first time, but when it happened the second time that afternoon he was issued with a ticket.

In October of this year Aerial Taxis and Parking Operations began a trial involving the use of special stickers by taxi drivers conveying disabled persons. The stickers are displayed on the dashboard of the taxi and allow the taxi to use disabled parking zones while assisting persons to and from appointments. I am told that this scheme has been well received both by taxi drivers and by disabled patrons.

Board of Health Business Rules

MR BERRY: Mr Stefaniak is not here at the moment to listen to this enthralling answer to a question which he raised on 3 December.

Mr Collaery: If you are short of time, why are you not tabling this?

MR BERRY: He asked for some information on the business rules which are in place in relation to the funds of the Board of Health. This will be very short, Mr Collaery. The rules cover increased salary costs due to award variations, alterations in significant indices such as patient mix where they are outside the control of the board, variations in activity levels outside the control of the board and variations to the funding requirement of the Commonwealth supported programs. I am sure that you will all agree - he said, as they applauded - that they represent an essential improvement on the rather uncertain arrangements that were applied previously. I now table these rules.

Interim Planning Legislation

MR SPEAKER: During question time Mr Jensen asked a question without notice of Ms Follett concerning the gazettal date of the Interim Planning (Amendment) Act (No. 2) 1991. I inform members that once a Bill is passed by the Assembly there are a number of arrangements and checks that are made to ensure that the Act is accurate and available to all citizens of the Territory through the Commonwealth Government Bookshop after it has been forwarded through the Speaker to the Chief Minister for gazettal.

The Act mentioned by Mr Jensen is being processed in a normal manner and is expected to be forwarded to the Chief Minister for gazettal next week. The workload on the secretariat staff in the last few weeks has been exceptionally heavy; yet normal processing times are still being achieved at this time, to the credit of all involved.

PAPER

MR BERRY (Deputy Chief Minister): For the information of members, I table the following paper:

> ACT Rural Fire Service - Rural Fire Control Manual, dated November 1991.

CONSTRUCTION EMPLOYEES REDUNDANCY TRUST
Discussion of Matter of Public Importance

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

> Actions by the Follett Administration in expending public monies to augment the Combined Employees Redundancy Trust at a time of severe financial restraint upon community services especially Home and Community Care.

MR COLLAERY (3.10): Mr Speaker, this matter of public importance focuses upon the financial priorities of the Follett Administration and the extent to which its industrial relations policies undermine the chance of there being an effective building industry agreement. Briefly, despite the self-confident assertions of the Minister for industrial relations, Mr Berry, a few moments ago, the situation is that the ACT Government, the Follett Government - in stipulating in certain contracts for government works, particularly at the Gordon Primary School site, that contractors shall pay $41.60 per week per employee to the Construction Employees Redundancy Trust Fund - has, in effect, since it is providing a fee for its own contractual services, charged itself more than the required award payment.

The particular agreement which is placed into the schedule of industrial requirements by ACT Public Works reads as follows:

> Redundancy agreements
>
> 8.1: The Contractor must comply with the provisions of building industry redundancy pay scheme agreements reached from time to time between the Australian Federation of Construction Contractors ("AFCC") and either or both the Australian Council of Trade Unions ("ACTU") and the unions representing the Contractor's personnel working on the Site, or other redundancy pay scheme acceptable to the relevant unions and the superintendent.

In other words, as a precondition to taking a contract and getting a construction agreement, a contractor has to comply with agreements which are, in effect, over-award agreements. In requiring an over-award agreement for an ACT public works building site, the Government in effect charges to itself that extra sum. I will come back to that.

The second issue is that, as Mr Berry correctly said earlier, the money has gone out of the ACT to the CERT in Sydney. Members will recall that in this house during question time recently there was mention of an issue arising before the royal commission into the New South Wales building industry about a gift of funds from CERT to the Federal Government made in alleged breach of the fund's own trust deed. The trust deed, of course, required distribution of funds from CERT, moneys taken from contractors in the ACT and nominally assigned to workers, to be distributed as follows: For administration costs, training schemes, health and safety facilities, and direct payments to workers.

So, there are two interrelated questions in this matter of public importance, Mr Speaker. First, why has the cost to the Government of a building project been inflated by the Government itself and, secondly, has all of this benefit flowed to the employees involved or has it gone through a revolving door by virtue of a three-year, half million dollar a year payment in breach of the trust deed? Mr Speaker, I do not intend to explore the latter issue before the matters are resolved at the New South Wales royal commission. However, the Government is not bound by sub judice rules in taking action it may wish to take to protect those funds. I will come back to that later.

Employees and employers alike should have an equal interest in this matter. Employers properly resent being pressured into above-award payments that are not set through the normal wage fixation principles and the national guidelines. Equally, employees are having their anticipated benefits siphoned off into a project to which the trust deed gives no cognisance. This is a very serious matter, Mr Speaker. Over and above this, you have the competing priorities of government. The Government decides to pay more for the building of the Gordon Primary School, when there are calls upon government funds for the home and community care program, for example. We need to assign government funds to capital works projects to assist in community services or to relieve government funds generally to support recurrent expenditure on such programs as we need for our rapidly ageing population.

So, the philosophical question here is: Why has this Labor Government decided to enrich one small sector by direct government persuasion by virtue of the schedule of industrial requirements to contracts when there are strong calls upon it elsewhere? The subject needs to be introduced by a historical overview. In 1988 the Industrial Relations Commission heard an application concurrently with the national inquiry into the building and construction industry and subsequently approved the introduction of termination, transfer and redundancy provisions in the Federal building and construction award.

Mr Speaker, the IRC, in effect, adopted a subsisting Federal metal industry award which provided redundancy compensation of up to eight weeks' pay once a threshold of four years' employment was passed. Those of us residing in Canberra at the time, those of us advising subcontractors and contractors and those of us familiar with the union movement knew that it was a general push at that time in the very strong building market.

The other award issue, of course, is the $20-a-week redundancy payment that had been successfully developed under the industrial relations guidelines and become part of an industrial award. Mr Speaker, shortly after this Assembly was formed the issue came up in this house in the context of an apparent dispute between the Master Builders Association, as Mr Berry correctly mentioned earlier, and the Australian Federation of Construction Contractors. Regrettably, those differences, to some extent, still continue. If the proper role of government in industrial relations is to promote harmony for the betterment and enrichment of all, Mr Berry's statement earlier that he could wipe his hands of the issue because it was an issue in Sydney is an extraordinary comment.

Mr Berry: That is not what I said.

MR COLLAERY: You will get your chance to reply, Mr Berry.

Mr Berry: No, I did not say that.

MR COLLAERY: I will stand corrected if you can prove that.

Mr Berry: That is good. I hope you stand corrected.

MR COLLAERY: At that time both the Residents Rally and the Liberal Party pressed for the creation of an ACT based scheme such that the moneys accruing to account were not siphoned off into interstate coffers. It appears that the statements that both the Residents Rally and the Liberal Party made on 25 October 1989 in this house were prophetic.

I go back to the overview. The matter finally came to a head before the IRC on 19 October 1989, when the potentiality for double dipping by employees - that is, by both taking a lump sum and backing up later - was removed. Commissioner Grimshaw decided, in effect, that any period of service during which contributions are paid into an agreed fund would not count as service for the purposes of the award. Once that quarantine arrangement was achieved, it appears that the matter went off the political agenda in this Assembly; but, of course, it has not been lost sight of by both employees and employers.

The situation that appears to have developed, subsequent to Commissioner Grimshaw's ruling in the IRC, is that at all AFCC controlled sites employers pay to CERT. On the other hand, if one uses the award based computation of the

maximum of eight weeks' pay after four years' service and capping it, the weekly payment for employees is still around the $20 mark. In fact, some actuarial computations put it at $19.20, I am advised.

Despite this and despite the national wage fixation principles which Mr Berry in another speech in this house has endorsed, a package was issued for the Gordon Primary School by his colleague the Minister for Urban Services, Mr Connolly, who is ministerially responsible for this, which required through the schedule of industrial requirements, which I earlier quoted into the record, an effective payment of $41.60 per week per employee from all contractors. As Mr Berry well knows, this initiative by the Government has not stopped there.

There appears to be some endorsement by the Minister for industrial relations and other concerned parties for bringing the civil engineering sector within the building and construction payment circuit for these purposes. I am advised that potential civil engineering contractors have not responded to recent tender arrangements, for that reason.

Mr Speaker, it is incumbent upon the Minister for industrial relations, Mr Berry - himself a long-time union boss - to explain in the public interest just what the background to this matter is. Why has the Government, through the schedule of industrial requirements, pressed for the redundancy payments required by the AFCC?

I stress that there may be an historic background to this. There may have been a requirement over some time. On the best advice available to me, this is a new requirement at the Gordon Primary School site since the advent of the Follett Government. Of course, we want to see whether that is the case and whether Mr Berry can make a clear response to what appears to be a new move on this issue.

In responding, the Minister also needs to advise the house what steps he proposes to take to deal with those recent revelations before the royal commission in Sydney. As Mr Roger Gyles of queen's counsel, the commissioner, said in referring to these payments from CERT to a Federal fund:

> The only respectability it gets in my eyes is that some people may imagine it is going to the workers. The thought that it is going to the AFCC or the Building Trades Groups means that it is no more or no less than a tax.

Mr Speaker, surely the Government must act now to create a secure statutory fund in the Territory. The Rally commends, as it did once before in this house, the Long Service Leave Board, which of course operates effectively in this Territory. Members have had to hand recently the clear and unambiguous report by the Building and Construction Industry Long Service Leave Board chairman, Mr Bob Yeomans. I commend that report to members.

The Rally believes that that board is the appropriate up and running body to take on this task now that those revelations have been made in Sydney. There should be a swift move by this Minister, if he is interested in protecting the interests of the workers and the original purpose of the trust deed and the redundancy scheme. At the same time, the Government should indicate whether it is prepared to legislate to bring this about, because it is within its powers in the self-government Act, on our interpretation. Additionally, we call upon the Minister to explain to us the arrangements that led to clause 8 in the schedule of industrial requirements being issued by the ACT Public Works office.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.22): I must say that when the Government saw this MPI this morning we were all scratching our heads to try to make head or tail of what Mr Collaery was on about. I think our bewilderment and puzzlement was probably matched by the media, as I look at the strikingly empty media gallery behind Mr Collaery for this MPI. As I look at the packed rows of opposition benches, I notice that only Mr Humphries remains present for this alleged MPI.

It seems to be premised on some strange view that there is some sort of impropriety or conspiracy going on that involves the Labor Government, that somehow or other involves an improper action by the Follett Administration in expending public moneys. Oddly enough, home and community care programs are tacked on the end. I suppose the assumption that one is meant to draw from this is that, by expending public moneys in the way that Mr Collaery finds unsatisfactory, we are somehow taking money away from the home and community care program. I see that Mr Collaery is so interested in his MPI that he himself is now leaving the chamber, which probably indicates the validity of this whole thing.

The bottom line is that construction work within the ACT, in both the private and public sectors, includes requirements under the building industry awards - and there is a range of such awards - for payments by contractors into a number of funds for workers' benefit arrangements. There are four funds in the ACT: CERT, MERT, NRT and BUSS - Construction Employees Redundancy Trust, Mechanical Electrical Redundancy Trust, National Retirement Trust and building union superannuation scheme. Payments into those funds are made at regular periods, based on meeting the requirements of the award.

The Australian Federation of Construction Contractors, I understand, uses CERT; so, when AFCC contractors are awarded public works contracts they pay contributions into CERT. The ACT building industry agreement covering CERT, which is the AFCC agreement, includes this provision:

> Accumulated contributions will be paid to a worker if the employee is made redundant. Interest on the funds will be used to defray administration costs. Any surplus will be distributed at the discretion of the trustees. In the ACT it will be either allocated to assist industry training or other general industry purposes.

So, in effect, surplus funds are directed to industry development and training. I would have thought that everyone involved within the ACT construction industry - clients who are purchasing building services, builders themselves and employees - would agree that there is a need for more emphasis on training and that everybody benefits to the extent that any surplus funds are spent on training.

The ACT Government has, of course, criteria for selecting private contractors and project managers to carry out major public works through the tender process. The selection for each project is based on relevant criteria which include overall costs, best value for money, financial and technical capabilities, and so on. I am sure that everyone is aware of that type of process.

Membership of a particular redundancy fund is not a selection criterion, but contractors are all required to comply with the award provisions. There is no discrimination on the basis of industry associations when selecting contractors for a particular project. Of course, it would be most improper if there were. Some ACT public works contracts are awarded to AFCC members; some are awarded to members of the Master Builders Association; some are no doubt awarded to members of Confact; and some probably are awarded to builders who are members of no such association. But all builders who are awarded contracts are required under the award to make payments into one or other retirement fund.

Some of the tenderers who are successful make their payments into CERT. That seems to cause Mr Collaery much agitation. CERT funds are applied in accordance with the building industry agreement. I really fail to see what this action by the Follett Administration in expending public moneys to augment CERT means, given that all the Follett Administration does, like the Kaine Administration before it did, is to award contracts on the basis of objective criteria to builders to complete works. Some of the builders who are successful tenderers no doubt contribute to CERT. To that extent, indirectly the Follett Government expends public moneys that go to CERT - as did the Kaine Government, as will any government - just as some funds also find their way into MERT, NRT or BUSS, whichever superannuation or long service leave fund happens to be used by a particular builder.

The suggestion that that, in some sense, is at the expense of community services I find bizarre, in the extreme, as Minister for Community Services. It is really somewhat infantile to suggest that we are reducing or in some way affecting the home and community care budget, which is a budget under strain in an area where there is a large unmet demand. If we had more money at hand, if the Government were not in such a tight financial position, we could no doubt find many worthwhile ways of spending money in home and community care programs. But to suggest that a contribution by a public works contractor to the Construction Employees Redundancy Trust takes money away from home and community care is a suggestion so bizarre as to hardly warrant any further comment.

Mr Speaker, this is a foolish MPI. The press clearly regard it as not of any importance at all. It is based on simply incorrect premises. The only way that the ACT Government expends public money is by paying the appropriate tender price to the successful tenderer, who may or may not be an AFCC member and who may or may not contribute money to CERT. But, in any case, there will no doubt be payments into one or other of the employment funds because, under the award, retirement provisions must be made.

Mr Collaery raised comments made before a royal commission. I would have thought it more sensible to wait until the royal commission reported before agitating this issue. He would be aware, I presume, of the building industry reform agreement which was signed by me on behalf of the ACT Government a couple of days ago. Every State and Territory government is a party to that, as are the major industry associations and the relevant trade unions in the building industry. That maps out a constructive process for reform of the building industry. I can assure the Assembly that this MPI is a matter of no importance at all, because it is based on a series of incorrect premises.

MR HUMPHRIES (3.29): Mr Speaker, I have to say that, having looked at the information that has been given to me, I am not at all convinced that everything in the garden is as rosy as the Attorney-General seems to make out. Certainly, if one were to listen to the mellifluous words that the Attorney-General uses, one would come to the conclusion that there was no contention about redundancy schemes and about compulsory superannuation schemes within the ACT building industry. That is far from the case. We have not had any indication of that from the Attorney-General, although Mr Berry, as Minister responsible for industrial relations, indicated that there was some contention between groups such as the AFCC and the MBA in this Territory. I think that ought to be acknowledged.

In that light, we have to decide what the appropriate thing for the ACT Government to do would be. Is it appropriate for the ACT Government to enter that scene, that dispute, and say, "We will effectively enforce one side of this argument against the other, because we see it as either in

the interests of the Territory or in the interests of some other political objective that this Government subscribes to"? It seems to me, Mr Speaker, that the former would be a good reason why the Government could intervene, but the latter would certainly not be a good reason. I fear that, in fact, the Government has intervened for the latter reason rather than the former. Let me say at the outset - - -

Mr Collaery: It will not even concede that it has intervened.

MR HUMPHRIES: As Mr Collaery says, they do not seem to concede that there is any tension between these two views. They simply assume that the natural and prevailing view ought to be what has been worked out between the Trades and Labour Council, apparently, and the Australian Federation of Construction Contractors, apparently with the agreement of the ACT Government. The issue really has to be faced up to. Is this the most appropriate arrangement to govern building contracts and tender processes in the ACT? Mr Connolly has not said whether that is the case or not.

Mr Connolly: The long-term industry review strategy will involve some changes.

MR HUMPHRIES: He can add comments through another member of his party if he wants to speak. But he has not addressed that point so far; neither has Mr Berry. That is the point which gives me some concern. Let me say at the outset that I am fully in favour, and my party is fully in favour, of agreements such as CERT. The concept of that agreement is a good one. It provides for some security to workers in an industry which, unfortunately, tends to be somewhat unstable in the sense that many small contractors are here one year and gone the next.

Clearly, it is of value to have an ongoing scheme which guarantees workers some payments on separation. But it is not desirable to have schemes which, in various ways, provide for distortions in what ought to be principles of public policy in the ACT. Mr Collaery made the point that the contribution which is demanded under the CERT scheme of $41.60 per worker per week is very great. Indeed, it is. Mr Connolly, in particular, did not refer to the appropriateness of that payment and the appropriateness of the level of that payment. There is no doubt that that payment is approximately double what could be expected under the relevant award. The question needs to be asked, Mr Speaker: Why is it double what could be expected under the relevant award? What is the relevance of that arrangement with respect to ACT building contracts?

The other point, of course, is that the Government has effectively written membership of CERT into the tender process. That also gives me some concern. I have here part of the tender documents applicable to the building of Gordon Primary School, to which Mr Collaery referred. The provisions of that arrangement include, at paragraph 8.1:

> The Contractor must comply with the provisions of building industry redundancy pay scheme agreements reached from time to time -

I emphasise the words "from time to time" -

> between the Australian Federation of Construction Contractors ("AFCC") and either or both the Australian Council of Trade Unions ("ACTU") or the unions representing the Contractor's personnel working on the Site ...

It may be that the successful tenderer is not a member of the AFCC, is not part of the AFCC's arrangements. Why should that tenderer be bound by agreements between the ACTU or the TLC, on the one hand, and the Australian Federation of Construction Contractors, on the other?

Mr Collaery: Because this Government is into restrictive trade practices; that is why.

MR HUMPHRIES: Mr Collaery interjects that the Government appears to be into some kind of restrictive trade practices. Although I do not always agree with Mr Collaery, I have to say that it sounds suspiciously as though that is the case. An exclusive agreement of the kind not countenanced or condoned by the Trade Practices Act is being worked out here between the Government and the Trades and Labour Council, with the involvement of the Australian Federation of Construction Contractors.

The Alliance Government also entered into discussions with those bodies with respect to these sorts of arrangements. We spoke with all of the parties in this dispute, and I would not pretend that we were not sympathetic to at least considering the arguments of all sides in this matter. But I think it is wrong of the Government to conceal the details of the arrangements that it appears to have worked out with these bodies. I think the least the ACT public should receive is a copy of the memorandum of agreement between the Government and these bodies which spells out the arrangements which are to be pursued as a matter of public policy by agencies and statutory authorities within the ACT. That, I think, is our right and the right of the community, but we have not seen it.

I return to the appropriateness of payments under the CERT scheme. They are, as I indicated, well above the awards or what could be expected under the awards. They are also clearly of a nature which gives rise to some concern about the purpose for which they are to be used. I do not know whether the money is appropriately expended once it is paid into this CERT Fund. I assume that there are statutory arrangements that govern this kind of agreement, this kind of fund, and that therefore the money is appropriately dealt with.

Mr Connolly: I will get you details.

MR HUMPHRIES: The concern that Commissioner Gyles in New South Wales has raised about this matter is not something that I lightly put to one side. In his view, as Mr Collaery indicated, it is obvious that the size of this weekly payment is such as to give rise to the impression that it is not so much a contribution to a fund for separation purposes but rather, in effect, a tax. That raises further questions which, frankly, are unanswered at this stage.

I remain concerned about the arrangement here. I heard Mr Connolly say that he intends to table documents. I look forward to receiving those documents and to studying them very carefully. I think that arrangements of this kind entered into ought to be carefully scrutinised before the event, not afterwards. I am not aware that any details of these arrangements have previously been tabled in the Assembly. I regret that these tender documents have been circulated and that presumably contracts have been let without that having happened. But, of course, we have to expect that with this Government.

Mr Speaker, I look forward to being able to study those documents to see whether, in fact, arrangements are in place in the ACT, or are proposed in the ACT, which are restrictive and which ought not to be countenanced by this Assembly.

MR SPEAKER: The discussion appears to have concluded.

MR JENSEN (3.38): Just before we conclude this matter, I think I should put on record that it seems to me that the Government has provided no responses whatsoever to the substantive matters raised by my colleague Mr Collaery. It seems to me that there are those who are seeking to sweep this matter under the carpet, and I think we may have to wait for further developments in this area.

Mr Connolly: You were not here for the debate, Norm. How would you know?

MR JENSEN: I was listening.

PLANNING AND ENVIRONMENT LEGISLATION
Declaration of Urgency

MR BERRY (Deputy Chief Minister): Mr Speaker, pursuant to standing order 192, I declare that the Land (Planning and Environment) Bill 1991 is an urgent Bill.

MR SPEAKER: No debate is allowed on this.

Question put:

That the Land (Planning and Environment) Bill 1991 be declared an urgent Bill.

The Assembly voted -

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

Question so resolved in the affirmative.

Allotment of Time

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

That

(1) The following times be allotted for consideration of the Land (Planning and Environment) Bill 1991:

(a) for the remaining stages of the detail stage - until 5.30 pm this day.

(b) for the reconsideration of the following clauses and the remaining stages of the Bill - until 6.00 pm this day:

Clauses to be reconsidered:
Clause 2 (as amended);
Clause 4;
Clause 5;
Paragraph 7(3)(e);
Clause 10;
Clause 14;
Clause 127 (as amended); and

(2) (a) if any amendments are moved or circulated by the Government for consideration during the detail stage, the Speaker shall, at 5.30 pm this day, put forthwith a question that the Government amendments be agreed to; and

(b) if any amendment moved or circulated by Members for consideration during the recommendation of any clauses after the detail stage has been completed, the Speaker shall, at 6.00 pm this day, put forthwith any question requisite to dispose of the business before the Assembly.

MR MOORE (3.44): Mr Speaker, this is a most appalling and disgraceful situation. We have been debating some aspects of this Bill for five years, and it comes to the Assembly and a declaration of urgency is carried by a Labor-Liberal combination. Mr Speaker, at this point I express my appreciation of your own vote in attempting to protect members' rights.

We have a situation where members have worked well on this Bill. They have debated carefully and have constantly refrained from filibustering. There has been no filibustering and no obfuscation at all on this Bill. This Assembly last week refused - appropriately - to apply this sort of procedure to what was the human rights and then no name Bill, until it became the Discrimination Bill; yet we now have a situation where we are about to cut debate.

The obvious thing in this situation is for me to move a number of amendments. I seek leave to move my two amendments together.

Leave granted.

MR MOORE: I move:

Paragraph 2(a), omit "5.30 pm", substitute "11.30 pm"; and
Paragraph 2(b), omit "6 pm", substitute "6 am, December 6".

Hopefully, we will not need to reach those times. I do not expect that we will.

MR DUBY (3.47): Mr Speaker, the house, not three minutes ago, passed a motion that this Bill be considered an urgent Bill. The will of the house has been expressed. For Mr Moore now to be moving amendments to this motion that follows as a result of that earlier motion is, frankly, a waste of time. The majority of members have spoken, and they have said that this is urgent. What flows from that is that this Bill will be dealt with this evening at the times specified. It is well known. I think that to attempt to amend this motion is not in keeping with the spirit of the motion that has just been passed. I certainly will not be supporting this amendment to Mr Berry's motion.

Mr Berry: Why didn't you vote yes as you said you would? Your soul will not be cleansed by this turnaround.

Mr Collaery: I would take care, Wayne. You might not be around in two days. I would take a lot of care.

Mr Connolly: Mr Speaker, I raise a point of order. There is some muttering from the back there - "Mr Berry, you might not be around in two days; just take care. Take a lot of care". This is extraordinary.

MR SPEAKER: Come on, Mr Connolly, let us get on with it. Please choose your words carefully, members.

MR BERRY (Deputy Chief Minister) (3.48): Mr Speaker, the word "recommendation" in clause 2(b) of the motion I moved should read "reconsideration". Mr Speaker, I seek leave to alter the wording.

Leave granted.

MR BERRY: This issue arises because of legislation on the run. A mound of amendments have been passed and altered during the course of debate on this issue. Members have been informed by the Government as early as this morning that we are keen to get through this business today, by 7 o'clock. We have agreed with all members that we will conclude the business in this chamber by 7 o'clock today.

Mr Moore: That is a lie.

MR BERRY: It is an agreement that I intend to stick to, even if Mr Moore does not.

Mr Moore: It is a lie.

MR SPEAKER: Order! Mr Moore, I would ask you to withdraw that.

Mr Moore: Mr Speaker, he has just claimed that he has agreement from all members. Quite clearly, he does not have agreement from all members. I withdraw saying "a lie".

MR BERRY: Mr Speaker - - -

MR SPEAKER: Order! Yes, Dr Kinloch?

Dr Kinloch: Mr Speaker, he certainly did not have my agreement on that matter.

MR SPEAKER: Order, Dr Kinloch! Mr Berry is closing the debate.

MR BERRY: Mr Speaker, I did circulate a letter which was the result of a government business meeting which demonstrated a general agreement to the extension of sitting times to 7 o'clock. If members now want to repudiate any position that they had in the past, let them rise and do so. But certainly my understanding was that there was no difficulty with stretching the sitting time out to 7 o'clock.

This issue is about getting on with the business in this house. Members have already been informed that we do not wish to repudiate the earlier position that has been taken by the Government and a range of other members. It is inconvenient for this Assembly to say to the staff of this place that we should sit into the early hours of the morning, as has been suggested by Mr Moore. It is a silly position - - -

Mrs Nolan: It costs money.

MR BERRY: Aside from it costing money, it is a silly amendment and it should not be sprung on people at short notice like this. This motion is about getting the Bill dealt with, and getting it dealt with quickly. Members have not shown a willingness to deal with this issue quickly up until this point. We have had four days of sitting on this issue. That is unprecedented, and there has been tedious repetition on many of the issues.

Mr Moore: There has not.

MR BERRY: I heard you in one speech this morning say the same thing four times, Mr Moore; so let us not kid ourselves. I think this motion warrants the support of the house. We will be opposing the amendments.

MR SPEAKER: Members, unless leave is granted to do otherwise, the debate on this issue is closed. Do you wish to seek leave, Mr Jensen?

Mr Jensen: Yes, Mr Speaker.

Leave not granted.

Mr Jensen: I was just about to move an amendment to the motion. Am I allowed to move an amendment to the motion or not?

MR SPEAKER: No, not without leave.

Mr Jensen: Hang on, Mr Speaker. There is a motion before this Assembly. I would have thought it is appropriate to be able to amend a motion like this.

Mr Connolly: If you want to debate the Bill, let us get on and debate the Bill.

Mr Jensen: No, I want to amend the motion. I want to put a sensible time limit on it. That is what I want to do. Frankly, I think Mr Moore's amendments are not sensible and I was proposing to put a sensible time limit on it; but, if the members do not want to hear it, fine.

MR SPEAKER: The Assembly members do not wish to give you leave. You may seek to suspend standing orders, but you cannot - - -

Mr Jensen: What is the point, Mr Speaker?

Question put:

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

The Assembly voted -

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

Question so resolved in the negative.

MR JENSEN: Mr Speaker, I seek leave to move a motion to amend Mr Berry's motion. All I am seeking to do is extend the period by half an hour in the case of the 5.30 period and an hour in the case of the 6 o'clock period.

MR SPEAKER: Is leave granted?

Mr Berry: No.

Ms Maher: Yes.

MR SPEAKER: Leave is granted?

Ms Maher: Yes.

MR JENSEN: Thank you, Mr Speaker. I move that clause 1(a) be amended by omitting 5.30 - - -

Mr Berry: I said no.

MR SPEAKER: Order! Mr Berry, I have to be able to hear it. I have been looking at your lips and they did not seem even to move.

Leave granted.

MR JENSEN: I move:

> Clause 1(a), omit "5.30", substitute "6"; clause 1(b), omit "6", substitute "7".

Mr Berry: The count comes after 7. That means that we conclude about 7.30. It has to be 6.30, Norm.

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

> That the question be now put.

Mr Kaine: Can we be clear what his amendment is?

MR SPEAKER: Yes. The question is that in clause 1(a) we omit "5.30" and substitute "6"; and in clause 1(b) we omit "6" and insert "7". In fact, Mr Jensen, those two times are mentioned in clause 2 as well. Would you take account of that when you write the amendment out.

Mr Berry: What about 6.30, Norm? You will lose it if you do not go for 6.30, I am telling you.

Mr Jensen: What is wrong with 7?

Mr Kaine: Some of us have other commitments that we have entered into.

Mr Berry: If you go for 7 you will lose; that is what is wrong with it.

Mr Jensen: We all have commitments.

Mr Wood: Well, 6.30 you can have.

Mr Berry: You have no choice.

MR SPEAKER: Mr Jensen, are you prepared to withdraw your amendment and move an amended one?

Mr Jensen: Yes, Mr Speaker.

MR SPEAKER: Thank you. Will you just rephrase your amendment to omit "5.30" wherever occurring and insert "6", and, where "6" occurs, insert "6.30", because the times appear in clause 1 and in clause 2.

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

> Omit "5.30" wherever occurring, substitute "6"; Omit "6" wherever occurring, substitute "6.30".

Motion, as amended, agreed to.

LAND (PLANNING AND ENVIRONMENT) BILL 1991
Detail Stage

Consideration resumed.

Clause 171

MR JENSEN (3.58): Mr Speaker, I move**:**

> Page 81, line 21, after "land", insert "for a term not exceeding 50 years that is".

I do not think we need to make any further comment on this, because the issue was raised during the debate on my amendment No. 85. The Rally believes that for commercial leases this is not an inappropriate period for a lease extension. Commercial areas often change their use quite considerably and over a much shorter period because of the very nature of their operations. Anyone who has been out to Fyshwick will know what I mean. That is why I have proposed this 50-year period, and I do not think it is inappropriate. It is well in excess of the requirement for commercial mortgages, which is one of the issues that people are concerned about. Naturally, the price required to be paid will reflect the term of the lease.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.00): Mr Speaker, the Government opposes this amendment. It has been a long-term policy that up to 99 years is the provision that applies. Some flexibility is allowed for within that, and that is what we propose to keep.

Amendment negatived.

Clause agreed to.

Clauses 172 to 182, by leave, taken together, and agreed to.

Clause 183

MR MOORE (4.00): The nature of my proposed amendment is to facilitate a 100 per cent betterment tax. This matter has been debated in this Assembly at length on previous occasions. As has been my approach right through the debate on this Bill, I do not intend to labour the point any more than is necessary to make my point, which is that the leasehold system, in contrast to the freehold system, is specifically designed to facilitate returning the profit from speculation on land to the community as a whole. The only way to tap into profit from speculation is to charge 100 per cent betterment tax.

That is not to interfere with a developer's right to develop and to make a great deal of profit - as much as they want - on the development done on the land. I have no difficulty with people making profit under those

circumstances. Profit out of speculation on the land, though, is anathema to the leasehold system, and I think it is appropriate that we have 100 per cent betterment tax. Therefore, Mr Speaker, I move:

> Page 87, lines 19 to 21, paragraph 183(b), omit all the words after "amount", substitute "equal to the increase in the value of the lease that would result from the variation".

MR KAINE (Leader of the Opposition) (4.02): I believe that Mr Moore would expect that I would oppose this amendment. Quite clearly, this amendment would simply kill off redevelopment of some areas of land in the ACT. There would simply be no likelihood that some of the run-down areas of Canberra would ever be redeveloped under such a regime.

I think that the Forrest bowling club is a classic example. There would be no redevelopment of the Forrest bowling club if the bowling club could not get sufficient return from redeveloping that block to allow it to redevelop its facilities. I think that that is denying a club that has been in existence since 1927 the right to continue in existence. I do not believe that that is reasonable. I do not believe that it is rational and I think that - - -

Dr Kinloch: Using public land for private profit.

MR KAINE: It is not public land, Dr Kinloch. It is leased land, just like the block that your house is sitting on. If you want to remove lessees' right to have some interest in their land, we will apply the same rules to the bit of land that your house is sitting on and see how you like it.

Dr Kinloch: I would agree to that.

MR KAINE: It is a very interesting argument. Dr Kinloch is prepared to declare a leased piece of land public land when it belongs to somebody else. This is the real NIMBY syndrome. If it is somebody else's lease, it is all right to declare it public land; but you do not believe that your own is.

I believe that the regime of betterment tax put in place by the Alliance Government last year - and I remind Dr Kinloch that he was a member of that joint party room and that he agreed to the regime of betterment tax that we put in place - provides sufficient return to the community for the community's interest in the piece of land, depending on the nature of the redevelopment, how long the lease has been held and whether it is a concessional lease or not. I think it is a very sensible regime. It does not kill off the likelihood of redevelopment of land that sometimes can run down beyond the control of the lessee, and this proposal would simply do that. I think, frankly, there is no rationality or anything else behind it, and I oppose it.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.04): Mr Speaker, the Government opposes this amendment. The matter of betterment remains one that the Government keeps under active consideration.

MR COLLAERY (4.05): Mr Speaker, this is a very vexed issue in the Canberra community, and Mr Moore, of course, is one of the great proponents of it. Mr Kaine said that the Forrest bowling club could not afford to redevelop on this basis; but, even under our own guidelines that the community presently operates under, the betterment for the Forrest bowling club on our calculations is in the region of 83 per cent. The implication that we got from Mr Kaine's speech was that the betterment would cripple the club. The fact is that, if it can afford to go ahead with the development at 83 per cent, then perhaps the example that Mr Kaine chose really did not support his case that strongly, because it is only a margin of 15 to 17 per cent on the amendment proposed by Mr Moore.

The Rally, of course, in government, has understood, firstly, the very strong community pressure for there to be a retention of concessional leases in the public domain. That is one of the reasons why the betterment for concessional leases starts at 100 per cent and moves down the scale, such that, even though the lease at Forrest was issued in 1982 or 1984, from memory, it is still 83 per cent.

The other issue not addressed by Mr Kaine, of course, is the scale of development on blocks. One of the reasons why the Rally has reached some accommodation on this issue is that, if we are going to not have the leasehold system administered in the manner in which we want it to be administered because we are not going to be in government in our own right, the higher the betterment the greater the scale and intensity of development to recover the payment of betterment.

So, there is a contradiction in this issue; that is, if we are in a position where we cannot achieve what we want to achieve on betterment, then to work some other measure that may result in increased and more intense development, particularly on concessional community sites, which are often jewels in the planning order, could work some disadvantage. We, of course, stand by those betterment decisions made previously. We would like to move to an optimum situation; but we know that the vote is going to be lost today, and I will not prolong the debate.

MR MOORE (4.07): Mr Kaine, in mentioning the Forrest bowling club, of course, drew on a particular situation that Mr Collaery has clarified in some ways. But, quite clearly, in that case, the profit was made out of the buildings being built, out of the work being put in and out of the productivity. I have no difficulty with that. I think, "Good on them", and I think that providing

incentives where that can be done is great because that actually provides employment and other things. Speculation on land does not provide employment and so forth; it provides a profit for a small number of people within our society, instead of spreading that money across our society in general.

In the case of the Forrest bowling club, of course, that public land, given for a public use - namely, that of operating a bowling club open to any member of the public who wishes to become a member of that club - could well have been made available, for example, to the tennis club. Under a 100 per cent regime, it may well have been - we do not know - that we would have seen that piece of land retained for community purposes.

Question put:

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

The Assembly voted -

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

Question so resolved in the negative.

Clause agreed to.

Clauses 184 to 190, by leave, taken together, and agreed to.

Clause 191

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

Page 90, line 15, paragraph 191(b), omit "Territory".

Clause, as amended, agreed to.

Clauses 192 to 195, by leave, taken together, and agreed to.

Clause 196

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

Page 92, line 7, subclause 196(1), omit "Territory".

Clause, as amended, agreed to.

Clause 197 agreed to.

Clause 198

MR JENSEN (4.16): I move:

Page 92, lines 16 to 18, subclause 198(1), omit the subclause, substitute the following subclauses:

"(1) Where, at any time before a draft Plan of Management is approved under paragraph 202(a), the Conservator requests the Minister to arrange for an Assessment to be made or an Inquiry to be conducted, about any aspect of the draft Plan, the Minister shall -

(a) direct that an assessment be made; or

(b) establish a panel to conduct the inquiry;

whichever the Minister considers appropriate.

(1A) The Minister may, at any time before a draft Plan of Management is approved under paragraph 202(a) -

(a) direct that an assessment be made; or

(b) establish a panel to conduct an Inquiry about any aspect of this draft Plan.".

Basically, what we are doing here is providing some flexibility for the Minister while still requiring him to take certain action when he receives a request from the Conservator to initiate an assessment or an inquiry.

The point that I want to make very briefly is that the Conservator is a statutory officer who is appointed under the Nature Conservation Act and who has certain statutory responsibilities in relation to the protection of nature in the ACT. When a statutory officer such as the Conservator requests of the Minister that an assessment or an inquiry

be conducted, we believe that it is appropriate that at least some action be taken by the Minister to have the matter examined, because we believe that an officer such as the Conservator, because of his responsibilities, would not make such a request lightly.

What I am proposing here is, in fact, that the Minister be given some flexibility in that, if he is asked to conduct an inquiry, as opposed to an assessment, the least that he has to do is conduct an environmental impact assessment. It is on that basis that I have moved this amendment, which would amend subclause 198(1) and insert subclause 1A. This would provide a degree of flexibility to the Minister to enable him to at least direct an assessment to be made, or to establish an inquiry about any aspects of the draft plan.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.18): Mr Speaker, the Government opposes this amendment. I understand what Mr Jensen is getting at, but it is not satisfactory in its present form. Mr Jensen says that it is for greater flexibility, but in fact it provides less flexibility. Substituting the word "shall" for the word "may" does not exactly go down the path of greater flexibility. This is not right in its present form and should be opposed.

MR JENSEN (4.18): Mr Speaker, I will just respond quickly to that. It seems to me that what the Minister is seeking to do in respect of the process of conducting environmental impact assessments in the ACT is not learn the lessons from commentaries made on existing environmental impact legislation around Australia. I direct members' attention to a commentary on this area by Mr John Formby. It is entitled "The Australian Government's Experience With Environmental Impact Assessment". It comes from *Environmental Impact Assessment Review,* 1987, Volume 3, pages 207 to 226.

One of the key issues throughout this document is concern about ministerial or administrative discretion. He says on page 210:

> ... the action minister need do nothing more than ensure that any final EIS and any suggestions or recommendations made by the administrating minister are "taken into account".

Throughout the Federal Act we have this issue of ministerial discretion, and the comment about the problems associated with environmental impact assessments has always been that the bureaucracy, for obvious reasons, seemed to have some concern about giving the Minister too much power and requiring the Minister to exercise discretion all the time in relation to this. It seems to me that what is important in the protection of the environment is to remove these sorts of discretionary steps and to require proper

assessments to be taken. As I have said, when we have a Conservator, who is a responsible statutory officer, who seeks to have an inquiry or an assessment, the least the Minister can do is to have an assessment conducted.

Amendment negatived.

Clause agreed to.

Clause 199

MR JENSEN (4.21): I move:

Page 92, line 32, after subclause (1), insert the following subclause:

"(1A) The Conservator shall make copies of a draft Plan of Management to which this section applies available to an appropriate Committee of the Legislative Assembly.".

This amendment seeks to insert a new subclause which would require the Conservator to make copies of a draft plan of management to which this clause applies available to an appropriate committee of the Legislative Assembly. I do not think I need to say any more about what we believe to be the role of the committees of the Legislative Assembly in this area. We think that it is appropriate for committees to look at these issues, particularly issues in relation to environment and conservation, and that is why we have proposed what we consider to be a very important amendment to this legislation.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.21): Mr Speaker, the Government opposes this amendment. Again, it would tend to take responsibility out of hands of certain people ahead of the time when that needs to happen. We have had this argument on other matters, so I will not say any more.

MR KAINE (Leader of the Opposition) (4.21): Mr Speaker, the Liberals will support this. The Bill provides that the Conservator shall make copies of his draft plan available to the public. There is no reason why he should not also make it available to the Assembly's committee. The thing that troubles me about this, however, is that there is an implication that the committee, having received it, is actually going to do something about it. If the committee is required or obliged to do something about every piece of paper that hits it as a result of this legislation, and particularly of the amendments that Mr Jensen is putting forward, the committee is going to be working 365 days a year on planning variations, and that is not going to work. But, for information only, if the members of the committee have time to read it, I do not mind.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 200 and 201, by leave, taken together, and agreed to.

Proposed new clause 201A

MR JENSEN (4.23): I move:

Page 93, line 17, insert the following new clause:

"201A. Where the Conservator submits a draft Plan of Management to the Minister under section 201, the Minister shall, within 7 days of receiving the draft Plan, forward -

(a) a copy of the draft Plan;

(b) a copy of the reports referred to in paragraphs 210(a) and (b) relating to the draft Plan; and

(c) all other documents relating to the draft Plan submitted to the Minister by the Conservator;

to an appropriate committee of the Legislative Assembly.".

This is a requirement for the Conservator, when submitting a draft plan of management to the Minister, to forward all the documentation to an appropriate committee of the Legislative Assembly. Once again, I reiterate that we do not have a review system within the ACT, and this is a very appropriate use of the resources of the Assembly by way of its committees. We will continue to support this proposal.

MR MOORE (4.23): The advantage of this proposal is that the information would be publicly available. Whatever the committee, it could work in the same way as the Public Accounts Committee works when it gets reports from the Auditor-General: Where it is necessary to investigate further, the committee takes on that responsibility. Where we accept what the Auditor-General has written, a brief statement is made to the house. Even that is not required by this amendment. It simply makes sure that the information is available. Should members decide to take an interest in it, they can do so. For that reason, it is a very sensible amendment.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.24): The Government opposes this amendment, for the reasons that we have argued a number of times thus far. I think we are going to break down that committee system, somehow.

MR MOORE (4.24): Mr Speaker, I am glad to have this opportunity to speak again. I hear Mr Wood arguing that we are going to somehow or other break down the committee system by providing committees with information. That is absolute nonsense, and also an abrogation of the concept of open government, to say the least. What we had a short while ago, prior to the guillotine being moved on this debate, was a cooperative effort, following up on four or five years of work, to try to get what members considered the best possible planning legislation for this place.

What we have now is a push to rush things through at the last moment in an appalling way. In this situation, members' natural reaction, instead of debating propositions and coming through with sensible compromises and understanding each other's views, is just to try to steamroll the rest of this Bill through. It is an appalling situation, Mr Speaker. Of course, in making this comment, I reflect on the vote of the Assembly, and I will try not to do that too much in the future.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.25): Mr Speaker, there is some misapprehension here. These things are not going just for information, because, if we look at the proposed amendment to clause 202 - again, a path we have been down - we see that it locks it down.

Mr Jensen: I am being consistent.

MR WOOD: You are going to stop this sitting, Mr Jensen, the way you are going. It is very clearly your intention to do so, and that is the path that you are quite persistent about.

Proposed new clause agreed to.

Clause 202

MR JENSEN (4.27): I move:

> Page 93, line 19, after "shall", insert "consider any recommendations relating to the draft by a committee of the Legislative Assembly that considers the draft under section 201A and -".

This amendment provides for a requirement for the responsible Minister to consider recommendations relating to a draft made by the committee of the Legislative Assembly that considers it. It is consistent with previous comments in relation to this matter. The Minister does not have to accept the recommendations, but he must consider the recommendations.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 203 agreed to.

Clause 204

MR JENSEN (4.28): I move:

Page 94, line 14, after *"Gazette",* insert "and in a daily newspaper".

For the life of me, I hope that this amendment is supported.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 205 and 206, by leave, taken together, and agreed to.

Clause 207

MR JENSEN (4.29): I move:

Page 95, line 13, subclause 207(3), omit the subclause, substitute the following subclause:

"(3) Where the Minister grants a lease under this section, he or she shall cause -

(a) a copy of the lease;

(b) a statement of the amount (if any) paid for the grant of the lease; and

(c) a copy of any agreement collateral to the lease;

to be laid before the Legislative Assembly within 5 sitting days after the day on which the lease is granted.".

I understand that the Government supports this amendment. We have already been through this argument. I commend the amendment to the Assembly.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 208 to 211, by leave, taken together, and agreed to.

Clause 212

MR JENSEN (4.29): Mr Speaker, I move:

Page 75, line 29, at the end of the clause, add the following subclauses:

"(4) The Executive shall not accept the surrender of lease, or any part of the land comprised in a lease, otherwise than in accordance with criteria for the acceptance of the surrender of leases or leased land specified pursuant to subsection (5).

"(5) The Executive may, for the purposes of this section, by instrument -

(a) specify criteria for the acceptance of the surrender of leases or leased land; or

(b) amend or revoke criteria so specified.

"(6) An instrument under subsection (5) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989.*

"(7) An instrument under subsection (4) is a disallowable instrument for the purpose of section 10 of the *Subordinate Laws Act 1989.".*

Basically, what we are requiring here is:

> The Executive shall not accept the surrender of lease, or any part of the land comprised in a lease, otherwise than in accordance with the criteria for the acceptance of the surrender of leases or leased land specified pursuant to subsection (5).

In fact, this amendment would allow the Executive, in this case, to specify the criteria, and it would also make this instrument a disallowable instrument. We think that is appropriate because it is very important for this sort of information to be identified and clearly established so that there is no argument about it, and so that everyone knows, in these circumstances, that the Government is operating to the criteria. It is quite appropriate for these criteria to be dealt with in this way.

MR KAINE (Leader of the Opposition) (4.30): The Liberals do not support this amendment. When we dealt with clause 164 we said that we did not agree with the notion of the Assembly being able to disallow a lease which the Government has entered into. For the same reasons, we do

not agree that it should be allowed to disallow the surrender of a lease that the Government has determined. It seems to me to be quite unnecessary.

Consideration interrupted.

ADJOURNMENT

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

That the Assembly do now adjourn.

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

Question resolved in the negative.

LAND (ENVIRONMENT AND PLANNING) BILL 1991
Detail Stage

Consideration resumed.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.31): The Government opposes this amendment. It simply is not practical. You would have either a schedule a mile long, or the broadest possible provisions written into it. It just will not work.

MR JENSEN (4.32): I just cannot understand this. I am not proposing a schedule, Mr Wood; I am proposing a provision for the specification of criteria and for an instrument made under the proposed subclause to be a disallowable instrument. One minute you are happy for there to be disallowable instruments; the next you are not. I am not proposing that the lease be disallowed. I think that is what Mr Kaine said. All we are saying is that the criteria for the surrender of a lease, in these circumstances, should be a disallowable instrument. What is wrong with that? It provides clear guidance to both the Government and the community as to the criteria under which the Executive is required to accept the surrender of a lease. The mind boggles. I just cannot understand why the Government would not want to do it.

Amendment negatived.

Clause agreed to.

Clauses 213 to 218, by leave, taken together, and agreed to.

Clause 219

MR JENSEN (4.32): I move:

Page 100, line 16, omit "$200", substitute "$2,000".

What we are seeking to do here is increase the penalty from $200 to $2,000. A penalty of $200 for a false statement to the Executive, the Minister, a public servant or an agent is, we believe, far too low. The minimum penalty, we are suggesting, should be $2,000, and that is why we have moved this amendment.

MR KAINE (Leader of the Opposition) (4.33): This is the first time that the question of penalties has come up. I would seek some advice from the Attorney-General on the matter of whether the penalties proposed here are consistent with those imposed in other cases. We come to additional penalties later on, when we get down to the schedules - and I notice that Mr Jensen has raised the question of whether they are appropriate in a number of cases. In respect of them, I have the same questions in my mind, in terms of consistency. Perhaps the Attorney will give us some guidance as to whether the penalties for the offence of making a false or misleading statement under other Acts are consistent with what is proposed here.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.34): I am advised that, in the drafting of this legislation, both in the period of the Alliance Government and in the period of the Labor Government, these issues of penalties have been cleared with the justice area of the Attorney-General's Department. This section tries to advise all departments, when legislation is being drafted, on penalty provisions to try to have some consistency across the whole range of ACT legislation. So, this penalty, like all the penalties - and I notice that there are a number of amendments by Mr Jensen in relation to numbers going up or down - has been picked on the basis of consistency with other Acts. So, to have a tenfold increase in this particular clause would seem to the Government to be pointless.

MR COLLAERY (4.34): I agree with the Attorney that it is consistent. But, as Mr Kaine well knows, it is consistent with outdated other laws in the law package that we have inherited. The fact is that the statutory declarations legislation and all those other provisions and laws have yet to be re-penalised in that process that we know is going to take place some time down the track. So, I just wanted to add that. The question whether $200 is appropriate in this day and age for the range of offences of this type has not been addressed, but it probably is consistent with what else is on the statute book.

MR MOORE (4.35): I hear what the Attorney-General and the previous Attorney-General say about this. But, looking at it at face value, it still seems to me that there is the potential to make a great deal of extra money out of making a false statement with reference to the variation of a lease. Therefore, there is a great temptation to do so. A maximum penalty of $200 would hardly discourage that. Where somebody accidentally makes a false statement, obviously the court would have the discretion to determine that this was not a deliberate and malicious method of trying to make more money and would, I presume, act accordingly. Therefore, it seems to me that a $200 penalty really is inadequate in these circumstances.

MR KAINE (Leader of the Opposition) (4.36): Mr Speaker, it is obvious from the debate that followed my question that there is not unanimity on the question of what the fine ought to be. I accept Mr Collaery's comment that the penalty may be consistent but it may be too low. There are two possible courses of action now: We can use this as the beginning of a revision of the penalties right across all Bills and increase this one, in which case I would not agree to it going to $2,000, because I think a tenfold increase is probably too much; or we can agree upon the notion that the Government will undertake a review of penalties across all Acts, including this one, as a matter of urgency, and bring them into line with 1991 practice rather than 1951 practice. I do not care which way we go, and I will leave it to somebody else if - - -

Mr Moore: We should do both - make this $1,000 and let the Government do the review.

MR KAINE: I think that a tenfold increase, without looking at the ramifications of it, is a very significant change and I do not know that I want to accept that order of magnitude of change without some justification.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.37): Mr Speaker, I understand what Mr Kaine says. Let me point out that, if such a false statement were part of a more serious crime, appropriate penalties would follow any action on that crime.

Mr Connolly: Fraud.

MR WOOD: Fraud, for example. So, it does not confine things to that, and certainly I think that the present and future Attorneys would undertake a wide-ranging review of penalties.

Amendment negatived.

Clause agreed to.

Clauses 220 to 223, by leave, taken together, and agreed to.

Clause 224

MR JENSEN (4.38): I move:

Page 102, line 9, paragraph 224(1)(a), omit "made available", substitute "prescribed".

This is an amendment to paragraph 224(1)(a). It proposes the omission of "made available" and the insertion of the word "prescribed". I am not sure whether the Minister is going to agree with that. Up until recently the indication was that he would not. I think it is not inappropriate for the Minister or his or her delegate to actually prescribe a form. It is a process that is used quite regularly in this sort of legislation, and I think it is not an inappropriate way to go.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.39): We oppose this, Mr Speaker. Traditionally, the Government does not get into the routine prescription of every form, which is, it seems, what Mr Jensen wants to do - in keeping with a lot of things that have happened. Let us stay out of that area. I think this provision as it stands is fine.

Amendment negatived.

Clause agreed to.

Clause 225 agreed to.

Clause 226

MR JENSEN (4.40): I move:

Page 103, line 34, after subclause (4), add the following subclause:

"(5) Information related to design and siting shall not be excluded from being made available to the public or for public inspection or both.".

This issue of the availability of information related to design and siting has been a very vexed one in the ACT. There have been occasions when officers of the department, particularly in the building section, have used the excuse that they are not able to provide information on design and siting situations, on height, size, shape, et cetera, because of some sort of restriction.

We believe that half the problems associated with community concern about a number of issues in development are due to the fact that this sort of information is not available, or only partially made available. That is why we believe that it is important for this information to be available to the

public for inspection. In the majority of cases, probably 99 per cent of cases, we believe that this would reduce some of the conflict that we now see. In a way it is like the start of a mediation process, a bit like the start of a consultation process.

There may be some indication that things that are in a design and siting proposal or a request may be affected by copyright or may be commercial-in-confidence. Let me get this right on the record straightaway. A design and siting guideline, or a drawing, is the property of the architect concerned and it is copyright. It is a very simple matter of the architect maintaining copyright under the copyright laws. So, we do not believe that there is any need for this to be held back.

Because of history, because of past access and availability of information, we believe that it is appropriate to require this information to be made available on request or for public inspection, or both. We are not saying that it must be there or that it must be made available; we are saying that if someone asks for it they should be given access to it. That, I think, is the important distinction and that is why we have moved the way we have.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.43): Mr Speaker, again I think this is a problem due to rush and the lateness of things. I understand what Mr Jensen is saying; but this is a matter, I believe, that needs more time and treatment in a better way. In fact, my advice is that this provision does not belong in this legislation at all but belongs in the Acts related to design and siting. I further understand that you could be exempting some applications of this nature that you would want from being revealed under the draft Territory Plan. That is not a complete plan yet, but I think this amendment would benefit from a wider consideration. Therefore, we will oppose it.

MR JENSEN (4.44): Mr Speaker, I think we must remember that the Planning Authority does have some responsibility for design and siting. It is not just the building section that is involved in design and siting decisions; it is also the Planning Authority. I suggest to Mr Wood, the Minister, that it is quite appropriate for this sort of information to be included in legislation that deals with planning because the planners are required to provide design and siting approval. The building section provides building approval; but design and siting is the responsibility of the Planning Authority. That is why we believe that it is appropriate for it to go there.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.44): Mr Speaker, the Planning Authority does do that. So does the building section. So does that relevant Act. The two need to be consistent. Any provisions that are in these

have to merge comfortably and not be at conflict with each other. So, in a sense, Mr Jensen, you are right; but in trying to get that together you are wrong. It does not work.

MR COLLAERY (4.45): Mr Speaker, the Buildings (Design and Siting) Act 1964 is an anachronism and it should have been brought up to date in this process. To the extent to which we did not get around to it in the Alliance, I accept the blame. As all in this chamber know, some of the real disputes, as exemplified at Forrest recently, are about the scale and intensity, not about the fact of a variation, although there are the absolutists and others who want to stop everything.

The fact is that on our perusal of the Territory Plan and the written statement we can see that we are not resolving, through the mechanisms of the modern package we are bringing in, some of the major problems in the community. We enjoin the Minister to take a step back on this one and think about the wisdom of putting it in now. We will move an amendment. We have a design and siting Bill down for private members' business. It is not beyond us to have it brought up next Wednesday and to move the amendment there. We could just as easily do it here. It creates no complications, in my opinion, to put it in here. It is a laudable provision that will reduce the number of disputes. Let us face it; we are not going to get to the 1964 Act properly for six months or a year.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.46): In a sense you are right, but I do not think we can spend 15 minutes or longer sitting around talking about this. We are not disagreeing in principle, but you have not fixed it by working it this way.

Amendment negatived.

Clause agreed to.

Clause 227

MR MOORE (4.47): I have two amendments to this clause, Mr Speaker - my amendments Nos 8 and 9. Amendment No. 8 has to do with an advertisement in the public notices section of a daily newspaper on a Saturday, and we have discussed it before. Therefore, I will not be moving that amendment, Mr Speaker.

The second amendment I have to this clause is similar in effect to amendments presented by Mr Jensen. The amendment that I have has been drafted by the drafting officer. I wonder whether Mr Jensen would agree - - -

Mr Jensen: We agree.

MR MOORE: Mr Jensen has agreed that mine is a little more straightforward and has the other advantage that the Minister has already agreed to it. That gives it a great deal more benefit. I move:

> Page 104, line 31, omit "The Minister may, by instrument, require an applicant to", substitute "An applicant shall".

People nearby where a development is going to occur will know because the Minister will require that a sign be erected in a conspicuous place on the property. The Minister will set the conditions as to how that sign will appear. I think that is an eminently sensible way to go. People near where a development is going to occur will know what it is and will understand exactly what is going to occur.

MR JENSEN (4.48): Mr Speaker, for the record, the Government had agreed to my amendment; but I accept that subsequent to that there has been some redrafting. The Rally accepts this revised amendment by Mr Moore.

MR SPEAKER: Do you wish to move your amendments?

MR JENSEN: I withdraw my circulated amendments Nos 97 and 98.

MR SPEAKER: What about No. 99?

MR JENSEN: No, I have Nos 97 and 98 here.

MR SPEAKER: All right. We disagree on that, anyway.

MR JENSEN: I think Nos 99 and 100 are together. I think they are different issues, Mr Speaker. I am sorry; you are correct. I withdraw Nos 97, 98, 99 and 100.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 228 agreed to.

Clause 229

MR JENSEN (4.50): I move:

> Page 106, line 9, after subclause 229(1), insert the following subclause:

"(1A) The considerations by the Minister by section (1) shall involve information on joint discussions and meetings between the parties, including those who commented during the public consultation period, and the relevant authorities, sponsored by the Authority, for the purpose of explanation,

clarification rights and reply and where possible, resolving differences, settling objections, which shall be recorded by the Authority and occur within a prescribed period.

This requires the Minister to consider, during his deliberations, information on joint discussions and meetings between the parties, including those who have commented during the public consultation period, and relevant authorities, et cetera. These meetings are designed to seek to resolve issues of concern between groups. I think that is the way that we should be moving, to a form of mediation, when we are dealing with planning disputes. We are just formalising it and ensuring that the Minister, during his considerations that are required under this clause, will take into account those discussions.

Once again, the Minister does not have to accept the reports; he can come to a different view. However, we believe that these discussions are most important. We consider that they will become a much more popular way of resolving disputes in relation to these sorts of issues and planning issues in the ACT.

I was involved in a number of these sorts of discussions while I was in government and they very quickly ensured that issues were resolved. In most cases everyone went away much happier and with a clearer understanding of the issues. That is why it is important to have this subclause included in clause 229 - to ensure that the Minister does take these matters into account. I am not saying that Mr Wood would do so, but in the future there may be some who would wish to ignore this very important mediation and conference-type situation.

MR KAINE (Leader of the Opposition) (4.52): Mr Speaker, I shudder at the thought that one day I might be the Minister having to comply with this kind of thing in the Act which prescribes, as a matter of statute, that I must do these things. Mr Jensen would almost have done better if he had given a list of the things that the Minister should not take into account rather than list all the things that he should take into account under these circumstances. It is simply too prescriptive as to the kinds of things that a Minister must do. I personally find it quite offensive - being told by the Act, in great detail, as this does, the sorts of things that I must do.

Mr Jensen: Why don't you take out clause 229, then, and be consistent?

MR KAINE: I do not mind the Minister having discussions; but, when you get down to telling him what he must consider, in the most minute detail in an Act like this, as I have said many times in connection with these amendments, it is over the top.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.53): Mr Speaker, this amendment is outrageous. Mr Jensen interjected, "Why don't you take out clause 229?". He has answered the complaints I am about to make. Clause 229 says that the Minister shall consider any comments of a person or body, each objection, a preliminary assessment, any other assessment, and a whole range of things. Paragraph (b) goes further into that.

It is true that you simply want to foul up the system. I am starting to wonder what your real intentions are. I think you want to bring everything to a stop. This is such over the top stuff as to be impossible. I can tell you that any Minister will provide all the appropriate information that is needed. You have already given us about 100 extra public servants to cover most of this stuff. That is an off the top of the head guess, and it might be over the top, too; but you are continuing to impose conditions that reflect your absolute lack of confidence in processes. I know that this is the case. I think you have a rather warped idea of things. We reject this absolutely.

Amendment negatived.

Clause agreed to.

Clauses 230 to 234, by leave, taken together, and agreed to.

Clause 235

MR MOORE (4.55): Although it is written differently, the amendment that I propose here is exactly the same amendment that Mr Jensen has circulated. I move:

> Page 108, lines 3 to 5, subclause 235(1), omit all the words after "person", substitute "may, within the prescribed period, object to the grant of an approval.".

It is interesting, Mr Speaker, that the heading of this clause is "Objections - general". Then, there on page 108, it goes straight into making those objections very specific, because it says:

> Any person who may be affected by the approval of an application ...

So, it is not a general objection at all. Only the people who are actually affected and who can show within law that they are affected can appeal. I take the Assembly back to the situation of the casuarinas. It is quite logical and quite sensible that people would like to offer an objection. So, obviously, we need to broaden those objections. I think this is an amendment that Mr Wood has agreed to.

Mr Wood: No.

MR MOORE: Well, I may be mistaken. I will not hold you to that. It was worth a try.

Mr Wood: Are you trying to con me?

MR MOORE: I thought you had, but I did not know for sure. I had not put a tick next to it. Mr Speaker, I think that this comes down to the argument about certainty that has been run on many occasions. This legislation so far has given people who are interested in development a great deal of certainty. When you read the Territory Plan in conjunction with it, they have a tremendous amount of certainty. Unfortunately, the 95 per cent of other residents of the Territory are not given any certainty whatsoever by the legislation, and less certainty if that draft Territory Plan takes effect.

Therefore, Mr Speaker, it is appropriate, since they do not have any certainty, that we at least give them an opportunity to have the right to appeal, and to be able to appeal in cases other than when there is a direct impact on their lives, such as when it can be shown in legal terms that their house is going to fall down if the next-door neighbour excavates, or something to that effect. We have clear and obvious examples where it is appropriate for people to object even though they are not actually directly affected by an application. I think it is most important that people in Canberra have that right simply to appeal - not a right to do anything else, just a right to appeal.

DR KINLOCH (4.58): I would point out to the drafters that in any case the meaning of "who may be affected" is ambiguous. It could mean when there is some direct impact on them, or it could mean someone who feels strongly about it. The very term should be excluded on the grounds of ambiguity.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (4.59): This is a key part of the debate on this legislation because it begins the argument - it may end it, depending on how people vote - about appeal rights. The Bill is a vast improvement on existing provisions. I do not think any member of this Assembly will dispute that. Appeal rights, in practice, hardly exist at the moment.

I would remind members of why the existing provisions for public consultation and for objections by persons under this clause were included in the first place. I think it is important to put some matters on the record. Clause 235, as it now stands, has appeared in the same form in most of the successive drafts of the Bill. It was in the Land Use (Approvals and Orders) Bill released by the Alliance in December 1990. It was in the presentation copy of the Land (Planning and Environment) Bill drafted by that Government shortly before that partnership was dissolved.

It is not a new clause, but it is a clause that does not sit well with Mr Jensen's ideal world in which all things must be decided by all of the community in all circumstances and where all things may be appealed by any person. Mr Moore is also pushing this point of view.

That is the thrust of many of the amendments that we see in front of us from this point on. There is little or no regard amongst these amendments for the economic future of the Territory, for employment for our citizens or for the ordinary rights of members to conduct business in a sensible way.

Mr Jensen: Bill, you are reading from a prepared speech.

Mr Moore: Who wrote that for you, Bill?

MR WOOD: Mr Moore and Mr Jensen want any person in the ACT to be able to appeal anything. Mr Moore has a confidence that the system would not bog down. We have had some debates about this matter. He believes that it is so onerous, under present circumstances, to draft and to prepare an appeal that people simply would not do it. That certainly is the case at present because of the problems that people are presented with as they go to the Supreme Court, but we are simplifying appeal mechanisms. People will not have to go to the Supreme Court; they will have access to the Administrative Appeals Tribunal, and, quite properly, it will be more simple to prepare appeals. I think the argument that people will think twice about it, in the way that Mr Moore was proposing, simply does not hold.

We acknowledge that people will have a broad concern on matters of appeal. There is no question about that. Nevertheless, the principle established in this Bill is that where variations are in keeping with all the requirements - the very exhaustive requirements of the various parts of legislation - they should then proceed. That is a sensible measure. Along with that, of course, there are some areas, as indicated in the legislation and the draft plan, where people do have instant access to express their views in a variety of ways.

Mr Speaker, I will allow Mr Jensen or others to speak, and maybe I will come back and debate the matter further with them. We think that the provisions for appeal in this legislation are quite generous. They are clearly established. I believe that the people of Canberra will appreciate them, but would not wish to go any further.

Mr Moore: Mr Collaery, do you want to speak first?

MR SPEAKER: Order! Mr Collaery, do you wish to speak?

MR COLLAERY (5.03): Yes, if it would assist Mr Moore. This provision we are looking at has a long history in terms of government behind-the-scenes wrangling - and I see smiles on their faces. This provision sets up the widest possible appeal structure, the widest possible scope for appeal in Australia in any planning legislation. It allows anyone who may be affected - the widest possible words - to object. Other legislation restricts it to "directly" affected and uses a whole lot of qualifying words. There was a mammoth battle in drafting to get it through, and I trust that the Minister will stick to his guns now and vote for it. I am sorry that there is a bit of confusion on this side of the house.

I go back to the parallel I use all the time, the *Hail Mary* case, where His Honour Mr Justice Wilcox found that a couple of clerics could be affected by a perceived blasphemous film. Mr Connolly is nodding; he knows what I am talking about.

We are breaking new ground with this provision and I commend it to the house. I apologise for not communicating on this side of the house a bit earlier, but this was approved by us when we were in government and it is a major feature of the scheme. I think the fault lies with me in not communicating to my non-government colleagues the legal meaning of "who may be affected". It gives a very wide standing, the widest possible standing. You are required to be affected. There is no test of effect put into this.

Mr Kaine: Even if it only makes you sick to think about it.

MR COLLAERY: Indeed. If it is blasphemous, or something, on the parallel I use. I assure you that we had very anxious and detailed discussions on this provision in government at the time. It is, as I am sure Mr Justice Paul Stein, who currently rules the Land and Environment Court in New South Wales, would say - as Mr Moore heard him say recently when we talked to him about the Chaelundi Forest decision - the widest possible ground for review. I commend it and apologise to my colleagues for not discussing it with them earlier.

MR MOORE (5.05): I heard what Mr Collaery said. I heard his lawyers' argument. I know that lawyers like these sorts of arguments. He said that it is the widest possible allowance. I get the indication that I am going to lose this amendment, so we will be able to test that. But in English "any person" is much wider than "any person who may be affected". There is no doubt in plain English that one is wider than the other. I know that the thing can be tested in due time because I am going to lose, but it still seems to me that this narrows the ability to appeal. As far as I am concerned, any person should be able to appeal. It is as plain as that. That is why I moved the amendment.

MR COLLAERY (5.06): If it is left as "any person", that literally is it - any person. There is absolutely no threshold for involvement on the issue. There could be someone in some remote reaches out of the country or across Australia who wants to do something about self-government - one of Mr Stevenson's band, for instance. There must be a test of effect of some kind, in law.

Amendment negatived.

Clause agreed to.

Clauses 236 to 273, by leave, taken together

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.07), by leave: I move:

Clause 240, page 110, line 6, subclause 240(3), omit "1 or 2", substitute "2 or 3".
Clause 269, page 122, line 16, after "267", insert "(1)".
Clause 270, page 122, line 31, subclause 270(1), after "267", insert "(1)".
Clause 270, page 123, line 9, subclause 270(2), after "267", insert "(1)".
Clause 271, page 124, line 14, paragraph 271(4)(e), omit "1 month", substitute "28 days".

MR SPEAKER: Are we all aware of what is happening, members?

Mr Kaine: Yes.

MR WOOD: It is routine. There is nothing philosophic about it.

Amendments agreed to.

Clauses, as amended, agreed to.

Clause 274

MR MOORE (5.09): It seemed to me, when I circulated amendments to this clause, that there was inadequate time for people to appeal to the tribunal. However, in discussions with Mr Wood and his officers they explained that there is the time prior to the actual review. People would have prepared those things. I have accepted his point of view and I am prepared not to move those amendments.

MR SPEAKER: Is that your amendments Nos 12 and 13?

MR MOORE: Both my amendments, Nos 12 and 13. I withdraw those circulated amendments.

Clause agreed to.

Clauses 275 to 286, by leave, taken together, and agreed to.

Schedule 1 agreed to.

Proposed new Schedule 1A

MR JENSEN (5.10): I move:

That the following new schedule be inserted:

" Section 55

SCHEDULE 1A

CRITERIA FOR THE ASSESSMENT OF THE

HERITAGE SIGNIFICANCE OF PLACES

1. Under subsection 55(2) of the Land (Planning and Environment) Act 1991 the criteria for the assessment of the Heritage Significance of Places are:

(i) a place which demonstrates a high degree of technical and/or creative achievement, by showing qualities of innovation or departure or representing a new achievement of its time;

(ii) a place which exhibits outstanding design or aesthetic qualities valued by the community or a cultural group;

(iii) a place which demonstrates a distinctive way of life, taste, tradition, religion, land use, custom, process, design or function which is no longer practised, is in danger of being lost, or is of exceptional interest;

(iv) a place which is highly valued by the community or a cultural group for reasons of strong or special religious, spiritual, cultural, educational or social associations;

(v) a place which is the only known or only comparatively intact example of its type;

(vi) a place which is a notable example of a class of natural or cultural places or landscapes and which demonstrates the principal characteristics of that class;

(vii) a place which has strong or special associations with person, group, event, development or cultural phase which played a significant part in local or national history;

(viii) a place which represents the evolution of a natural landscape, including significant geological features, landforms, biota or natural processes;

(ix) 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;

(x) a place which exhibits unusual richness, diversity or significant transitions of flora, fauna or natural landscapes and their elements; or

(xi) a place which demonstrates a likelihood of providing information which will contribute significantly to a wider understanding of natural or cultural history, by virtue of its use as a research site, teaching site, type locality or benchmark site.".

As an amendment about this has been included in the legislation, I expect that this will go through with flying colours.

Proposed new schedule agreed to.

MR JENSEN (5.11): Mr Speaker, I do not think there is any point in proceeding with my proposal to put in proposed new Schedule 1B.

MR SPEAKER: I will wait until the Minister catches up.

Mr Wood: We just want to check. We are not going to oppose anything. If it has been accepted, we are going to accept it.

MR JENSEN: Proposed new Schedule 1B was not accepted. I withdraw it.

Proposed new Schedule 1C

MR JENSEN (5.12): I formally move:

That the following new schedule be inserted:

" Section 114

SCHEDULE 1C

CONTENT OF PRELIMINARY ASSESSMENTS

1. The following format is to be used for a preliminary assessment required under section 114.

1. **GENERAL INFORMATION**

1.1 **Name and Address of Proponent.** This is to include the details of any ACT government Authority or Agency.

1.2 **Details of the Contact.** This is to include the contact officer within any ACT government Authority or Agency.

1.3 **Status of the Project.** Advise the current position on the planning of the project, studies commenced or planned and the proposed targets for planning, development or construction.

1.4 **Location of the Project.**

(a) Project site description sufficient for precise location on a map or a map included to show the exact site location.

(b) Information on possible future extensions.

1.5 **Description of the Project.**

(a) the type and form of the project including supporting developments including those not the responsibility of the proponent;

(b) the purpose and need for the project, intended utilisation and operation of the facilities;

(c) the relationship of the project with surrounding development, to connected facilities and services or to other proposed projects.

2. **EXISTING ENVIRONMENTAL CONDITIONS**

2.1 **Description of Project Site.** A brief description of the overall appearance and current land use with mention made of any special features including the built and natural heritage factors, if any of the site.

2.2 **Description of Region Surrounding the Project Site.** Significant differences between the site and surrounding areas should be noted - eg. variation in population density, watershed, proximity to watercourses and water bodies.

2.3 **Current Land Use Policy and Lease Conditions of the Site.**

3. **POTENTIAL IMPACT OF THE PROJECT ON THE ENVIRONMENT.**

3.1 **On the Physical Environment.**

3.2 **On the Human Environment.**

3.3 **On the Non-human Biological Environment.**

3.4 **Potentially Beneficial Impacts.**

4. **SUMMARY AND CONCLUSIONS**

4.1 A summary of the potential benefits and disadvantages of the project. Can the benefits to the community be said to offset any unavoidable permanent or temporary adverse effects?".

This proposal was agreed to, I understand, by the majority of this place during the previous debates. I commend it to the Assembly.

Proposed new schedule agreed to.

MR JENSEN (5.13): Mr Speaker, I do not think there is any point in wasting time. The proposals for proposed new schedules 1D, 1E, 1F and 1G were not carried during the main debate. I seek leave to withdraw all four schedules - with regret, I might add.

Schedule 2

MR JENSEN (5.13): Mr Speaker, I withdraw my circulated amendment No. 103, but I think it important that I put a couple of comments on the record to make sure that everyone knows what I am doing. I have been advised, after discussions with Mr Wood's staff, that the definition of "variation of a lease" does include surrender and regrant. On that basis, I withdraw my circulated amendment No. 103, on the clear understanding, on the advice that I have been given, that a variation of a lease does include surrender and regrant.

Mr Wood: Yes, that is clear.

MR JENSEN: Thank you.

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

> Page 133, Schedule 2, item 4, omit "Territory".

Schedule, as amended, agreed to.

Schedule 3

MR MOORE (5.14): I withdraw the amendment I circulated. Mr Wood's staff pointed out that where it applies to a body corporate there is a fivefold increase, which I accept. I shall withdraw my proposed amendment No. 10. Is it better for me to deal with my proposed amendment No. 11 now, Mr Speaker?

MR SPEAKER: No, we will do Mr Jensen's first.

MR JENSEN (5.15): I understand what Mr Moore is talking about. I move:

> Item 7, page 134, column 3, omit "$5,000", substitute "$20,000".

What we are talking about here is mining otherwise than in accordance with an approval. For goodness sake, a fine of $5,000 for a body corporate, or even $100,000, quite frankly, for illegal mining of, say, the Murrumbidgee River, is insufficient. If one looks at more modern legislation in relation to environmental damage, in some cases we are talking that sort of money per day while they continue their mining operations.

It seems to me that $5,000, or even $25,000, for a body corporate for illegal mining of, say, the Murrumbidgee River to take sand out is, quite frankly, not sufficient. I am quite happy for a body corporate to pay a fine of $100,000 for illegal mining within the ACT. I think it is quite appropriate. I note Mr Kaine nodding and I am pleased to see support for that.

Mr Moore: Up to $100,000.

MR JENSEN: Yes, for illegal mining in the ACT.

MR KAINE (Leader of the Opposition) (5.16): I would like to support Mr Jensen on this. I looked at this and I thought $5,000 was very little deterrent. I discussed it with my colleagues and we came to the conclusion that there ought to be something of the order of $20,000 for a natural person and $100,000 for a corporation rather than just $5,000. I have not drafted an amendment to that effect, but I believe that $5,000 for a mining offence is much too low.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.17): Mr Speaker, I draw members' attention to clause 283 on page 130.

Mr Collaery: We know that.

MR WOOD: You know that. For the benefit of members who are not reading it, it says that a fine not exceeding five times the amount may be imposed for a body corporate.

Mr Jensen: That is chickenfeed.

Mr Collaery: That only makes it $20,000 for a corporate body.

MR WOOD: We indicated in an earlier debate that we will be reviewing penalties. I think we should keep that consistency.

MR JENSEN (5.17): Mr Speaker, I have to reiterate that this sort of fine is chickenfeed. Even $100,000 is chickenfeed for this sort of activity.

Mr Connolly: A million dollars and a flaying.

MR JENSEN: I tell you what, Mr Connolly: New South Wales and even Queensland are moving towards these sorts of quite heavy penalties for this sort of thing and for environmental breaches. I think it is quite appropriate for these sorts of fines to be increased. I commend this amendment to the Assembly most strongly .

Amendment agreed to.

MR MOORE (5.18): I move:

> Page 134, item 9, column 3, omit "$5,000", substitute "$500".

It is a very strange situation where on the one hand we had what was a quite low fine for mining but on the other hand we have a high fine for permitting a tree, a sapling, a plant or a shrub to overhang a public place so as to obstruct or inconvenience a person in that place. How many of us are not guilty? Who has a tree hanging over their nature strip?

Mr Kaine: Not me.

MR MOORE: Exactly. Mr Kaine does not have any trees on his property, so he is right; he does not have that problem. We are talking about a fine of $5,000 for not cutting your hedge. It clearly is over the top. The judge has discretion in these matters, but I think that the Assembly should be giving the judiciary an indication of how serious we consider the matter. Therefore, I have moved my amendment, Mr Speaker. We rely on the discretion of the judiciary as to whether or not it is serious. I am sure that, if somebody who has been instructed to cut back their hedge from overhanging the footpath appears before a judge, the judge will say, "Well, go and cut your hedge". That most likely would be the result.

Mr Connolly: If it is contempt he might double or triple it.

MR MOORE: I hear the Minister interjecting that it is actually contempt of the order. You have been told that you will cut it. You do have to cut your hedge and you have decided not to. Even so, $5,000 is entirely over the top for that sort of thing - permitting a tree, a sapling, a plant or a shrub to overhang a public place. It really is. When I read this, it was one of the jokes as far as the legislation went. I went home and I looked along my footpath and added up how many times $5,000 I would be up for and thought, "This can't go on".

MR JENSEN (5.20): As members no doubt know, we had a similar amendment; so we support this proposal.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.20): I guess this might be a hard one to win. It is not as has been read on the surface. Mr Moore acknowledges that it is contempt of an order, which is a more serious penalty. It is not just the overhanging branches in your front yard, Mr Moore; it is obstruction of any passage or of any other activity. Let us put it to the vote. I am not going to get excited about it at this stage.

MR COLLAERY (5.21): I have just thrown an eye over this. I remember a matter in the Magistrates Court some years ago. I question the drafting at this stage. I am not going to move an amendment. I am going to put it on the record. Qualifying this provision are the words "so as to obstruct or inconvenience a person in that place". That can result in a situation where such matters have been thrown out in the past. I believe that it should have been "so as to obstruct or inconvenience a person using that place". The fact is that most boundary lines have some type of intrusion on them, but it is not reasonable for a person to be necessarily on that boundary line. I just say that you probably will have great difficulty in proving this, out of vagueness; but it is too late to do it.

Amendment agreed to.

Schedule, as amended, agreed to.

Title agreed to.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.22): As indicated, under standing order 187, I move:

> That clause 2 as amended, clause 4, clause 5, paragraph 7(3)(e), clause 10, clause 14, clause 50 and clause 127 as amended be reconsidered.

MR MOORE (5.24): Mr Speaker, I will speak to this. I will move to bring us back to clause 15 as well. It would be appropriate to do them in order. Once this vote is completed, I will move that way. Perhaps it might be more convenient, Mr Speaker, if I moved an amendment to Mr Wood's motion. I move as an amendment:

> After "14", insert "clause 15".

Amendment negatived.

Motion agreed to.

Clause 2, as amended

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.25), by leave: I believe that the amendments have been circulated in my name. I move:

> Page 1, line 11, omit all words after *"Gazette";* and

Page 2, lines 2 to 4, omit all words after "before", substitute "2 April 1992, that provision, by force of this subsection, commences on that day.".

This fixes the inconsistency we wrote in between clauses 2 and 3 around our starting date of 2 April.

Amendments agreed to.

Clause, as further amended, agreed to.

Clause 4

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.26): I am looking for clause 4. This relates to something I said in debate, but we have not taken it on. I am not sure. It has my name against it, but I am not aware of what that was about. I think we just have to pass on.

MR SPEAKER: We will defer that.

MR JENSEN (5.26): I am sorry, Mr Speaker. This is mine.
I move:

> Page 2, line 34, add at the end of the definition of "inquiry", "or an inquiry established under the *Inquiries Act 1991*.".

This provides the sort of flexibility that we were talking about. I think we have already discussed it. I have made the point. I formally move that to provide flexibility for the Minister for the future.

MR SPEAKER: Members, are you happy to proceed with this amendment, not having seen it in writing?

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.27): If I can speak against that, it is a separate issue. I do not think it adds to it. That is still a provision that can be applied in the circumstances as appropriate. We do not need it.

MR JENSEN (5.28): Mr Speaker, I beg to differ with Mr Wood. The definition of "inquiry" in this legislation is very clear. It says "under Division 4 of Part IV". We need to make the point that this was an alternative to the Government in relation to the issue of powers of search and seizure.

Mr Berry: It is not necessary.

MR JENSEN: Mr Berry, your turn will come. It relates to the definition and removes some of what we consider to be inappropriate clauses in respect of powers of search and seizure under Division 4 of Part IV.

Amendment negatived.

Clause agreed to.

Clause 5

MR JENSEN (5.29), by leave: I move:

Page 4, lines 3 to 7, subparagraph (b)(iii) of the definition of "background papers", omit "recommendation", substitute "submission".

Page 4, lines 10 and 11, subparagraphs (b)(v) and (vi) of the definition of "background papers", omit the subparagraphs, substitute the following subparagraphs:

> "(v)any relevant environmental report;
>
> (vi)the report of any relevant Inquiry;

(vii)the report of any other inquiry relating to the variation;

(viii) any documents relating to design and siting approvals developed from the planning principals identified in the draft Plan variation or Plan variation, including a summary of any concept diagrams prepared for the purpose of that document;

(ix)an urban design impact statement; and

(x)an infrastructure augmentation statement.".

My understanding is that the Government is prepared to accept amendment No. 1 and part of amendment No. 2. I am not quite sure how we get around this and resolve this issue.

Mr Wood: I have not got those.

MR JENSEN: Yes, you have; they are on the first page, Mr Wood. The first one is an amendment to omit "recommendation" and make it "submission". I think this provides for a wider amount of information. It is not just the recommendation; it is the total detail in relation to the basis on which that recommendation is agreed to. On that basis, we put that forward. I understand that the Government has agreed with that.

The other point that I understand they have agreed to is the addition of a new subparagraph (b)(vii) to that subclause by including "the report of any other inquiry relating to the variation". You will notice there that in the phrase "other inquiry" inquiry has a lower case "i", which means an internal inquiry, whereas subparagraph (b)(vi) relates to an Inquiry, with a capital "I", which is an inquiry under the section of the Act.

We also bring back this issue of "design and siting approvals developed from the planning principles identified in the draft Plan variation or Plan variation, including a summary of any concept diagrams prepared for the purpose of that document". Once again, if I can comment briefly on this, we get back to this issue of the provision of this sort of information at the stage of the preparation of a draft variation to a plan.

I ask members to recall the Manuka variation that was tabled yesterday. All we got in relation to that was a couple of squares on a piece of paper which was a plan version, if you like, of what the development should look like. We believe, and have continued to maintain, that that is totally inappropriate. The community really does

not have any idea of what is being proposed by the draft variation. We are saying that we should add this new subparagraph (viii) to this list of information so that the community is given some indication, by way of diagram, of what we are really talking about.

I accept the fact that it may not be possible for the issue to be fully identified and that all we are talking about here is concepts; but it seems to us that it is not inappropriate for a drawing, other than a plan drawing, to be included to give an indication of what might be possible under the design and siting criteria for that site. That is why, Mr Speaker, we have moved this.

The next two items relating to the provision of information are urban design impact statements and infrastructure augmentation statements.

Mr Wood: I thought we knocked those out.

MR JENSEN: Yes, I said that you had not accepted the last three but you had accepted the first three. I hoped that you may have reconsidered the information in relation to documents for concept diagrams. I hope that you may reconsider that and decide to include it, but I will await your response.

What we are talking about, in the case of the last two items, is firstly urban design impact statements. My amendment to clause 5 quite clearly indicates what I am talking about there in relation to an urban design impact statement. It means a statement of the urban impact that the variation would have. It includes drawings which indicate permissible building forms; building plans that include elevations for existing and proposed site levels; a statement of the impact of the variation on the streetscape affected by the variation; a statement of the traffic generation that would flow from the variation; and a statement of the ability of existing infrastructure to cope with the proposed development. That is the sort of thing we are talking about, Mr Speaker, and which we believe is currently lacking in draft variations.

All we are getting in draft variations is a statement that says, "No problems with the infrastructure; no problems with the streets". Quite frankly, we do not accept that. We believe that it is appropriate to provide this sort of information because failure to do so has been one of the major problems associated with concerns related to the process we have at the moment. That is what the community expresses concern about. We believe that this is a very far-reaching and more modern approach to this sort of development.

It has been adopted and adapted quite well in the North Sydney area by the North Sydney Municipal Council. We saw the process of planning revolutionised by Mr Ted Mack, as the mayor of North Sydney. I think that, to all intents

and purposes, that has reduced the amount of community concern and has provided a much better environment for the people of North Sydney to live in. We believe that the sort of information that we have asked for here will do exactly the same for the ACT.

Briefly, in relation to an infrastructure augmentation statement, that really is a statement of the infrastructure, if any, that will be required to augment the existing infrastructure to allow for development in accordance with the variation. We believe that this information is important. It adds to the knowledge of the community in relation to a proposed variation and would reduce the amount of concern raised by the community in relation to developments.

I suggest to the Minister, having spoken at some length to the people involved in the two recent controversies - the Canberra Bowling Club and the Manuka proposal - that that sort of information may have alleviated a lot of the concern and ensured that the Government would not get as many negative responses to their draft variations. I commend these amendments to members.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.36): The Government will accept some of this but not the whole package. The Government will agree to No. 1 of Mr Jensen's amendments. We will agree to No. 2 to the extent of subparagraphs (v), (vi) and (vii). We are not prepared to go down the path of (viii), (ix) and (x). We will agree to No. 3 of his amendments, that definition. We come back to the persistent claim, the attempts of Mr Jensen to - - -

Mr Jensen: Enlightened planning, Mr Wood.

MR WOOD: It might be enlightened planning, but I think it has a temperature around it - if it is getting some light from somewhere - of some millions of degrees centigrade. I do not think it is going to work. I move as an amendment to Mr Jensen's second amendment:

> Omit subparagraphs (viii), (ix) and (x).

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

Amendments (**Mr Jensen's**), as amended, agreed to.

MR SPEAKER: Now, Mr Jensen, do you wish to move your amendment No. 3?

MR JENSEN (5.38): Yes, Mr Speaker. I understand that the Government supports it. I move:

> Page 4, line 14, subparagraph (c)(ii) of the definition of "background papers", omit "recommendation", substitute "submission".

Amendment agreed to.

MR JENSEN (5.39), by leave: My amendment No. 4 is an amendment to subparagraph (c)(iv). I move:

> Page 4, line 19, subparagraph (c)(iv) of the definition of "background papers", omit "(v) or (vi)", substitute "(v), (vi) and (vii)".

We believe that it is important to include (vii). If the Government has already accepted up to (vii), we believe that there is no reason why they should not accept this amendment. All it does is add (vii), which is the report of any other inquiry, to the list.

Amendment agreed to.

MR JENSEN (5.40), by leave: I move:

Page 5, line 16, add the following new definition:

> "'infrastructure augmentation statement' in relation to a draft Plan variation or a Plan variation, means a statement of the infrastructure, if any, that will be required to augment the existing infrastructure to allow for development in accordance with the variation.".

> Page 5, line 21, after the definition of "National Capital Plan", insert the following definition:

> "'urban design impact statement' in relation to a draft Plan variation or Plan variation means a statement of the urban impact that the variation would have, being a statement that includes -

(a) a set of drawings which indicate permissible building forms;

(b) building plans that include elevations for existing and proposed site levels;

(c) a statement of the impact of the variation on the streetscape affected by the variation;

(d) a statement of the traffic generation that would flow from the variation; and

(e) a statement of the ability of existing infrastructure to cope with the proposed development.".

Mr Speaker, I have already spoken to these at length. I do not think there is any point in continuing. I am very disappointed that the Government has chosen not to accept these. We consider them to be very important innovations

in relation to planning within the ACT. We also believe that they would have reduced a lot of the heat in the planning debate. I would be interested in some comments by Mr Kaine before we go to a vote on this one.

Mr Kaine: I disagree.

Mr Wood: We are opposing them.

MR COLLAERY (5.41): Before you close the door on it, Mr Wood, let me say that we are talking about protecting government revenue. We are talking about protecting capital expenditure. We believe that there should be some statement on the infrastructure augmentation effects of developments and that that should be a publicly accessible document, within the limits of commercial confidentiality. What is wrong with the community knowing what the infrastructure impact would be in terms of, for example, traffic engineering, traffic signals, augmentation of other reticulation services, in an informed and aware document like this? What harm would it do? Surely it would put down the issues.

When I speak to some developers, they cannot get over the surprise at the fact that they do not mind it being known that they are making an infrastructure contribution. They do not mind at all. In fact, they prefer people to know. Yes, they have been asked to pay $100,000 towards footpath regeneration and other issues. I cannot see that this is in any ideological frame. We simply think this would be sensible. It would help governments expose and explain their variations and other approvals. It is a matter which is accessible under freedom of information provisions, subject to commercial-in-confidence requirements. It is accessible under the 45-day rule or whatever applies in that circumstance. Why not make it available if ultimately it is accessible to the community?

MR MOORE (5.43): Mr Speaker, just to give an example of how useful the amendment that has been suggested would be, let me draw attention to paragraph (d) in Mr Jensen's amendment No. 6 - "a statement of the traffic generation that would flow from the variation". There has been considerable angst, I believe, over a series of developments in Civic and some debate as to just what traffic generation would flow from variations and the role that that plays in allowing variations to go ahead.

By having that information out and public, so that it is a straightforward thing, any appeal that takes place could well be foreshortened. The time could be reduced significantly simply by the information being there and being available. Having an urban impact statement which includes that sort of detail - obviously, before somebody does it, the details have to be there; you have to know - and having that sort of detail readily available to the public would be a positive contribution to reducing the time taken to deal with any appeals that do occur.

Mr Collaery: I bet it appears in Labor's election policy, too.

MR MOORE: Surely.

Question put:

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

The bells having been rung -

MR SPEAKER: Lock the doors.

Mrs Nolan: What about Dennis?

MR SPEAKER: I have been informed that Mr Stevenson will not be coming.

The Assembly voted -

AYES, 6	*NOES, 10*
Mr Collaery	Mr Berry
Mr Duby	Mr Connolly
Mr Jensen	Ms Follett
Dr Kinloch	Mrs Grassby
Ms Maher	Mr Humphries
Mr Moore	Mr Kaine
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.
Clause, as further amended, agreed to.
Paragraph 7(3)(e)

MR JENSEN (5.49): I seek leave to withdraw my proposal, Mr Speaker. I do not think there is any point in prolonging this one.

Mr Wood: Thank you, Mr Jensen.

MR JENSEN: I am glad to accept your thanks, Mr Wood.

Paragraph agreed to.
Clause 10

MR JENSEN (5.49), by leave: I move:

Page 8, line 6, subclause 10(2), omit "subsection (1)", substitute "this section".
Page 8, line 10, after subclause (2), add the following subclause:

"(3) Where an interim Heritage Places Register that has been submitted to the Authority pursuant to section 62 is not submitted to the Executive in a draft Plan variation before the expiration of the applicable period, the Authority shall, within 28 days after the expiration of that period, submit a statement in writing to the Executive setting out the reasons why the Authority did not include the Register in a draft Plan variation.".

Mr Wood: We have agreed to these.

MR JENSEN: Yes, Mr Speaker, these have been agreed to by the Government. I thank the Government for that and wish them a speedy passage.

Amendments agreed to.

Clause, as amended, agreed to.

Clause 14

MR JENSEN (5.50): Mr Speaker, I wish to withdraw my amendment related to defined land. We have lost this one.

Clause agreed to.

MR MOORE (5.51): Mr Speaker, I move, under standing order 187:

That clause 15 be reconsidered.

MR SPEAKER: I think I have to disallow that, Mr Moore, as it has been negatived earlier this day.

MR MOORE: Mr Speaker, I point out that it was negatived as an amendment to a motion. I have spoken to members and I believe that I have the numbers now to put it as a motion.

MR SPEAKER: All right.

Question resolved in the affirmative.

Clause 15

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

Page 8, line 36, add the following subclause:

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

Mr Speaker, when I spoke to this in the initial consideration of the Bill, Mr Wood gave us a couple of replies. One of the replies was that it is not necessary to reconsider this because the National Capital Plan already covers it and I had not included that in my amendment. On reconsideration, I was correct. At the time I offered to include it in my amendment. The National Capital Plan is already included in the legislation. You will see it there under subclause 7(1). There is no doubt that things have to be done within the confines of the National Capital Plan.

Apart from that, the Metropolitan Policy Plan is still the only long-term strategy plan in existence for the ACT. I read from page 73 of the "Draft Territory Plan Planning Report". It states quite categorically that it is not and it does not have a long-term strategy. There is no long-term strategy for the ACT as far as planning goes. It states:

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

Recognising that there is no longer-term development strategy plan for the ACT other than the now getting outdated Metropolitan Policy Plan, it is important that we put the pressure on planners to provide an appropriate strategy plan. The 1984 Metropolitan Policy Plan was designed to go through to the year 2000 and beyond.

The other argument that Mr Wood raised at the time was that all the measures in the Metropolitan Policy Plan are in the draft Territory Plan. That simply is not true. If it were true, he would not be worried about this amendment; he would be quite happy to accept this amendment. The reality is that the long-term strategy sets out quite clearly what will happen if we allow our planning to take a short-term view and what the problems will be if a short-term view is taken.

I think almost everybody in this chamber, apart from those who were elected on an anti-self-government basis, came here with a policy of having some type of vision for Canberra. In fact, some even called their policies a vision for Canberra. It seems to me that, if we are going to have a vision of Canberra, our planners, of all people, must have a long-term vision for Canberra. We must insist that they do. That is a responsibility that this Assembly must take very seriously. So, until they review and come up with a new long-term strategy, let them at least be tied by a long-term strategy for Canberra that goes beyond the year 2000, and that is the 1984 Metropolitan Policy Plan.

MR JENSEN (5.54): We have supported this proposal by Mr Moore in the past and we will continue to support it. We believe that it is an important aspect. It may be that the Territory Planning Authority is going to have more than enough time now to reconsider, as they go into the second stage of the development of the plan, some of the strategic aspects of the Territory Plan. It may be that by the time we see a final plan in this Assembly this strategic information will be provided. Therefore, on that basis, Mr Moore's amendment is quite appropriate, we believe. It will probably be nine months, possibly even 12 months, before the final Territory Plan is available and passes through this Assembly. That is too long, I think, not to keep our eye on the ball in relation to the need for strategic planning in the ACT. That is why we again support this amendment proposed by Mr Moore.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (5.56): The amendment says that "all variations to the Plan prepared by the Authority shall be in accordance with the document known as the Metropolitan Policy Plan". It goes on a little more. The problem is that we do not know what the Metropolitan Policy Plan is saying. I did make some - - -

Mr Jensen: What do you mean?

MR WOOD: You may say that, but the fact is that it has been partly revoked in a number of very significant areas. On inquiry, we understand that we will not be able to identify what has been removed; what precise points will be essential each time a matter is to be considered. The Metropolitan Policy Plan now is a hacked-about document. It is not a document that can be readily interpreted. It has changed significantly. Its application, because of changes, is no longer as it was. Mr Moore is not happy to hear that, but if you impose this upon the legislation you will be building up difficulties that will be impossible to surmount.

MR COLLAERY (5.57): When this debate occurred at the beginning of our discussion of this Bill we read into the record the references to policies revoked in part from the Metropolitan Policy Plan. I clearly recall referring in debate to the appendices to the National Capital Plan. I referred to those delineations of variations set out at page 23 in appendix C of that document. Mr Moore recalls that, and so does Mr Jensen, and I would say, with respect, that the Minister and his advisers have had time to respond to our statement. The response is, "We do not know what it is". Well, there is a compendious document here that says what has resulted in - - -

Mr Wood: It does not.

MR COLLAERY: If I can be corrected, I will accept that correction, Mr Wood. The fact is, as I read it, that a very detailed study has been conducted, in the drafting of the National Capital Plan, that sets out the residual

effect, the vestigial elements, of all of the variety of plans that affected the Territory at the time the National Capital Plan came in. It is there. So, how can the Minister assert - we are getting into straight factual contradictions here - that we do not know what applies?

I will give you an example - quite detailed statements. It states this in its introduction at page 23 of appendix C:

> General Policies of the Plan define urban areas and other major land uses on a pattern very similar to the MPP. The MPP is therefore revoked in respect of its broad policies of land use. The MPP is also revoked to the extent that it makes policy statements about the Parliamentary Zone, Diplomatic Missions and the Airport, all of which are within Designated Areas. Finally, the MPP is superseded by the National Capital Plan with respect to policies relating to the National Capital Open Space System, and is further revoked to that extent.

Mr Speaker, there is explicit specificity in this statement and in this document. The situation can be discerned by the Minister's capable advisers, I would suggest. What Mr Moore seeks to do is to ensure that this Bill renders consistent the actions under it. What he is doing is reinforcing clause 8 of the Bill, which says:

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

I am sorry; I have read from the wrong clause. It is clause 7 of the Bill, and it says:

> The object of the Plan shall be to ensure, in a manner not inconsistent with the National Capital Plan ...

So, there you complete the circuit - in a manner not inconsistent with the National Capital Plan, the specificity in the National Capital Plan. What we are concerned about as residents is the residual value of the MPP, which in itself, when completed in 1984, was a substantial document governing our lives. To the extent to which it is not superseded, it should be the benchmark.

MR KAINE (Leader of the Opposition) (6.01): Mr Speaker, I propose an amendment to Mr Moore's amendment that might resolve the issue. I move:

> Lines 2 and 3, omit "be in accordance with", substitute "have regard for any relevant provisions of".

The difficulty seems to be that there are only bits of the Metropolitan Policy Plan still in place, and in many cases there will not be any relevant provisions still extant. If Mr Moore will accept that amendment, I think we might be able to get some agreement on it.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (6.02): Mr Speaker, the Government will still oppose this. My strong advice remains that we do not now know specifically what the Metropolitan Policy Plan covers. Your amendment is certainly better; but I would still have some anxiety about litigation, about what is or is not relevant. I think you are building up problems there. On that ground, we will still oppose this amendment, although it is not as overwhelming a difficulty as the one proposed by Mr Moore.

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

Amendment (**Mr Moore's**), as amended, agreed to.

Clause, as amended, agreed to.

Clause 50

MR COLLAERY (6.03): I move:

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

We have had the debate. I do not intend to address the issue further. I understand that the Minister agrees.

Mr Wood: Which one is this?

MR COLLAERY: Clause 50.

MR SPEAKER: Read your amendment, please, Mr Collaery.

MR COLLAERY: The amendment is to clause 50, page 22, line 27; to add, after the word "provision", the words "or of a variation of the provision".

Mr Wood: Yes, that is fine.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 127, as amended

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

> Page 59, lines 4 to 14, subclause (1), omit the subclause, substitute the following subclause:

"(1) The Environment Minister may, by giving reasonable notice to -

(a) the proponent of a proposal that has an environmental impact;

(b) any other person that the Environment Minister believes on reasonable grounds to have an interest directly affected by the proposal; and

(c) any other person that the Environment Minister considers appropriate;

convene a meeting of such persons for the purposes of -

(d) clarifying the proposal or concerns relating to the proposal;

(e) clarifying the report of a panel established to conduct an Inquiry into the proposal; or

(f) discussing any ways in which the proposal could be modified in order to reduce or eliminate any potential or adverse environmental impact.".

MR MOORE (6.04): Mr Speaker, this is one of the clauses that were adjusted earlier. The attempt then was to remove "directly affected". We took out the words "directly affected" and the Assembly agreed to put in the words "in the". Now, Mr Jensen, I believe, has foreshadowed an amendment to this amendment which will achieve the same goal, I believe. The reality is that this one has been debated. The substituted wording does provide, as I understand it, the ability to stave off a problem that we may have created. Therefore, I am quite happy to accept the amendment, provided it carries the amendment that I believe Mr Jensen is about to move.

MR JENSEN (6.05): I move the - - -

Mr Wood: We are just going backwards. I thought we had agreed on this.

MR JENSEN: Mr Wood, I told your people that I was not prepared - - -

MR SPEAKER: Order! Just proceed, please, Mr Jensen.

MR JENSEN: I move:

> Proposed subclause 127(1), line 4, omit "directly".

Mr Speaker, let us get this quite clear. I had discussions with officers of Mr Wood's department and I indicated quite clearly that we did not believe that it was appropriate to have "directly" in this clause. We believe, as my colleague Mr Collaery has already argued, that "affected by the proposal" is sufficient to cover this. By including "directly" you get back to this whole matter of discretion in relation to environmental impact assessments and, quite frankly, that has been discredited.

The Minister and his officers were saying that there would seem to be some concern about having a room full of people who may have an interest in a proposal. I put it to you, Mr Speaker, that that may be the initial case; but following on from there, in the second round of negotiations, it could well be that a group of six organisations would seek to be represented by one.

I have some concern, and I have always had some concern, that the bureaucracy, for some reason or other, still maintains this fear of community consultation. How many times do I have to say that community consultation, we believe, if properly conducted and properly run, will reduce the amount of angst amongst the community? It does not seem to be getting through to people. It is unfortunate that I have to keep saying it. I will continue to say it until people seem to understand and realise that by proper, well-run community consultation we take the heat out of the issue and we end up with better planning and better processes for the development and planning of our city.

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

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

Clause, as further amended, agreed to.

Bill, as amended, agreed to.

HERITAGE OBJECTS BILL 1991

Consideration resumed from 19 September 1991, on motion by **Mr Wood**:

> That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

PROPOSED ENVIRONMENTAL ADVISORY COUNCIL

Consideration resumed from 22 November 1989, on motion by **Mr Moore**:

That -

(1) the Government take immediate steps to investigate the most appropriate mechanisms for establishing an Environmental Advisory Council;

(2) the Environmental Advisory Council be established, whether under an enactment or according to administrative arrangements, as soon as possible and that the Council -

(a) be responsible for investigating individual industrial, commercial or other development proposals, whether those proposals involve investment by the private sector, governments or both; and for reporting on all aspects of the environmental impact of development proposals (including the effects on flora, fauna, landscape, people and the quality and comfort of their lives);

(b) be appointed by and be responsible to the Minister responsible for the environment but, in all its investigations, report also on its findings to the Minister responsible for development;

(c) comprise a core membership of five, two of whom will be nominees of relevant environmental and development groups while the remaining three will be appointed for their expertise and experience. The members will be suitably remunerated and the Minister will appoint, as necessary, additional expert members, with equal rights and responsibilities, for the duration of a specific investigation or assessment; and

(d) be empowered to report in such a manner and make such recommendations as it sees fit in terms of necessary modifications, relocations, prohibitions, or requirements for further study (such as inquiries, environmental impact

statements, public environmental reports) and, where further study is required, the Minister responsible for development shall not permit the project to proceed until that study is complete; and

(3) pending the establishment of a permanent council, the Minister responsible for the environment appoint an Interim Environmental Council.

Question resolved in the negative.

PLANNING, DEVELOPMENT AND INFRASTRUCTURE AND CONSERVATION, HERITAGE AND ENVIRONMENT - STANDING COMMITTEES
Joint Report - Planning Legislation

Consideration resumed from 28 May 1991, on motion by **Mr Jensen**:

That the report be noted.

Question resolved in the affirmative.

ADJOURNMENT

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

That the Assembly do now adjourn.

Letter from Mr G. Gold : Planning and Environment Legislation

MR MOORE (6.10): Mr Speaker, I have chosen to use the adjournment debate to read into the *Hansard* a letter from Mr Gerald Gold to members. The letter reads:

Dear Member,

Between my first letter dated 21st May till this, I have posted 18 letters to all Members of your Assembly. Except for Parliamentary debate, the only noticeable action they have received is from Michael Moore MLA.

The reaction of others to my persistence is far from complimentary to your Parliament. It seems that no one cares what drivel is put out by your Members, "just don't fight it and nobody will know" attitude prevails.

> Leaving out our pseudologist Member Dennis Stevenson, it leaves 15 elected Members who have read my letters and except for a few acknowledgments in the early days, who it seems have agreed "together" to ignore my pleas. How can this be so??
>
> Have I not plucked one Member's conscience? Is there not one Member that has been hounded and maligned by unscrupulous, corrupt mercenaries?

Mr Gold then went on with another paragraph that I have chosen not to read. The letter continues:

> This is a democracy that we live in, thank God for that, I can still fight for the right to be heard and I will!

Mr Speaker, it is my intention just simply to give him that right to be heard. The letter goes on:

> Members of this Assembly, I will continue my fight against these accusations and my accusers. I will fight against your right to allow scabby, low-down, contemptible fraudulent conspirators to utter lies, to deliberately forge papers and to deceive the Parliament, as you have done in the past few months.
>
> "Silence is Golden", but I assure each and everyone of you, that "Gold cannot be silenced".
>
> During your recess, whilst you prepare to go to the electorate with your promises and your offer of good deeds, remember how shabbily you have treated me, to allow SILENTLY all the filth uttered by Stevenson and Gill to pervade your House of Assembly.
>
> I wish you all well and hope that you will find peace of mind in the future, I can assure you there will be none for me.

Mr Speaker, in speaking to Mr Gold this morning, I assured him that there was no conspiracy of silence and that, in fact, when I moved to allow the Operation Manna report to be made available to Mr Gold, members in this chamber supported me. I believe that he has accepted that. However, I also believe that he has been maligned, without much of a chance for defence. I felt that it was appropriate to allow him what I perceive as his final chance to have a say on this, because I intend not to raise this matter in the Assembly again.

On another matter, Mr Speaker: Now that we have the Land (Planning and Environment) Bill - - -

MR SPEAKER: Just before you proceed, Mr Moore: I am not sure whom the statements in that letter were referring to, but I remind members that reading from a document that accuses a member of something does not put the blame on anyone other than the member who was reading the document. I will have to review the *Hansard,* unless you can clarify the issue, Mr Moore.

MR MOORE: I will be happy to clarify it for you, Mr Speaker. The comments were directed by Mr Gold directly at Mr Stevenson. From the evidence that I have read, it appears to be reasonable.

MR SPEAKER: Under the circumstances, it is unparliamentary, and I would ask you to withdraw.

MR MOORE: Mr Speaker, I should be delighted to withdraw anything that I have said that is unparliamentary.

MR SPEAKER: Thank you, Mr Moore. Now proceed.

MR MOORE: Thank you, Mr Speaker. The use of the guillotine on the Land (Planning and Environment) Bill this afternoon was entirely inappropriate or, rather, unnecessary - I do not want to reflect on the vote of the house. I believe that the debate continued in exactly the same way as it had previously, apart from the first five or six minutes. The debate would have concluded quite easily on time tonight, as indeed was the case. Mr Speaker, I think it was unnecessary for us to move a declaration of urgency, and entirely inappropriate, considering the amount of preparation and the negotiations that had gone on through the debate.

East Timor : Mr Speaker

MR COLLAERY (6.14): I rise to remind members that on the 7th, Saturday of this week, we commemorate the invasion of East Timor by the Indonesians. There will be a commemorative mass at 9.30 am at St Peter's. I believe that we should, as a community and as constituent politicians, be seen to take a stand on that issue, whatever our stand may be. I believe that those who fundamentally believe that Australians should now be standing up to be counted on the issue should all be commemorating in our own way, if necessary outside the Indonesian Embassy.

Finally, Mr Speaker, may I commend you for the manner in which you have handled the last two arduous weeks, particularly the manner in which you have handled the numerous divisions and skirmishes on the last two big Bills - the human rights legislation and the planning legislation. I commend you, Mr Speaker.

MR SPEAKER: Thank you, Mr Collaery.

Planning and Environment Legislation

MR BERRY (Deputy Chief Minister) (6.15), in reply: In wrapping up the adjournment debate, let me say, having placed the first guillotine motion on the record in this place, that it has been a great delight to me to be able to whip up a fervour of action on a very important Bill. I notice that some members in the house sought to threaten me as a result of the pressure that I was putting on them. It was a hollow threat, another meaningless threat, and a bit of fancy dancing.

Mr Speaker, there is one apology that I have to make. I was 10 minutes out in the first place; but I suspect that, with a little bit of pressure, members could have dealt with the legislation within the hours originally prescribed. I think it was a sterling effort by the staff to deal with this issue. They have had to deal with a lot of complex motions, some meaningful and some meaningless, and they have done so with a great deal of tolerance. They are to be congratulated.

Mr Jensen: Mr Speaker, I seek leave just to make some brief comments.

Leave not granted.

Question resolved in the affirmative.

Assembly adjourned at 6.17 pm until Tuesday, 10 December 1991, at 2.30 pm

ANSWERS TO QUESTIONS

ATTORNEY-GENERAL FOR THE AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY QUESTION

QUESTION NO. 590

Drugs of Dependence

MR COLLAERY - asked the Attorney-General - When may I have an answer to my question No. 569, placed on notice on 10 September 1991, asking for details, inter alia, of drugs of dependence use and charges in the ACT.

MR CONNOLLY - the answer to the Members question is as follows:

The answer to Question No. 569 was approved for tabling and lodged with the Legislative Assembly Secretariat on 18 October 1991.

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MINISTER FOR URBAN SERVICES

LEGISLATIVE ASSEMBLY QUESTION

QUESTION NO. 596

Motor Vehicle Inspections

Mr Jensen - asked the Minister for Urban Services:

(1) The number of accidents in the A.C.T by vehicle type.

(2) The number of accidents caused by the following defects or mechanical problems by vehicle type (a) faulty tyres; (b) faulty steering; and (c) faulty brakes.

(3) The number of vehicles checked at the Phillip and Dickson inspection stations for the 1990-91 financial year.

(4) The number of vehicles rejected by those inspection stations and reasons for the rejection.

(5) The number of vehicles which fail registration and are not presented for further inspection.

(6) The number of vehicles which fail the first time and are required to be re-presented at a vehicle testing station.

(7) The number of vehicles which fail again.

(8) Have any studies or cost benefit analysis been undertaken in the A.C.T. or other States on the effectiveness of annual or regular inspections in reducing the accident rate and the number of road deaths and serious accidents.

(9) If such studies have been completed are they available to the public; if not, why not.

(10) What was the total cost of the operation of the Dickson and Phillip testing stations for the 1990-91 financial year.

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Mr Connolly - the answer to the Members question is as follows:

(1) THE NUMBER OF ACCIDENTS IN THE A.C.T. BY VEHICLE TYPE IS SHOWN IN THE FOLLOWING TABLE FOR EACH MONTH OF 1991 UP TO AND INCLUDING OCTOBER

VEHICLE TYPE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	TOTAL
Undefined	84	86	110	110	105	127	106	90	92	54	964
Car or Station Wagon	914	1123	1357	1220	1449	1307	1322	1356	1118	747	11913
Taxi or Hired Car	0	1	0	0	2	0	0	0	0	0	3
Utility	44	76	61	65	78	62	83	60	52	36	617
Panel Van	70	91	79	81	117	80	93	94	66	42	813
Articulated Vehicle (Semi)	2	0	0	2	0	0	2	5	0	0	11
Truck (excluding Semi)	33	44	65	48	63	42	42	38	46	31	452
Bus	11	14	9	13	12	12	11	9	18	13	122
Bicycle	13	27	38	15	23	17	14	6	14	7	174
Emergency Vehicle	0	0	0	0	0	0	0	0	1	0	1
Motor Cycle/Scooter	29	18	25	22	27	28	18	15	14	13	209
Tractor/Plant Equipment	1	0	0	1	1	0	2	1	1	0	7
TOTALS	1201	1480	1744	1577	1917	1675	1693	1674	1422	943	15286

(2) Information relating to traffic accidents in the A.C.T. is supplied to my Department from the Police, and the number of accidents caused by defects or mechanical problems is not recorded by them.

(3) The total number of vehicle inspections undertaken at the Phillip and Dickson Test Stations for the 1990-91 financial year was 136,000. (This includes initial and subsequent inspections).

(4) The total number of vehicles rejected by those inspection stations during this period was 74,800. (This includes initial and subsequent inspections). Although current statistics do not exist, previous historical information identifies the items listed in order of descending priority and incidence as reasons for rejection:

- Tyres
- Lights
- Exhausts
- Brakes
- Steering.

(5) Approximately 1000 vehicles per year which fail registration are not presented for further inspection or any further action.

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(6) 10,000 vehicles per year fail the test to such an unacceptable extent the first time that they are required to be presented again at one of the Test Stations (rather than an Authorised Inspector premises).

(7) Of those 10,000 vehicles which failed extensively the first time, approximately 5,000 vehicles fail subsequent inspections.

(8) No A.C.T. specific studies have been undertaken on the effectiveness of annual or regular vehicle inspections in reducing the accident rate and the number of road deaths and serious accidents. Numerous studies have been carried out in the States and overseas, and it is generally considered that vehicle defects contribute to some five to ten percent of accidents. These studies are not conclusive in that, in each case, the regulatory environment differs from that of the A.C.T.

(9) Yes

(10) Total running costs for both Phillip and Dickson Test Stations for 1990/91 were $987,743. This includes all wages, overtime and other recurrent costs, but excludes on-costs.

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APPENDIX 1: (Incorporated in Hansard on 3 December 1991 at page 5345)

SPEECH

BY BERNARD COLLAERY

TO THE REPORT OF
THE STANDING COMMITTEE ON LEGAL AFFAIRS
OF THE ACT LEGISLATIVE ASSEMBLY

INQUIRY INTO MAJORITY VERDICTS BY JUKES
IN THE AUSTRALIAN CAPITAL TERRITORY

DECEMBER 1991

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1

INTRODUCTION

1. I cannot agree with the proposition that we should do away with the good twelve, nor does the interstate and New Zealand experience support an assumption that retrials caused by jury disagreements would be less frequent with ten jurors. Although I think this reference to the Committee was mistimed, it has been productive and the Committees report represents an excellent compilation of the literature and the competing viewpoints.

2. I joined the Legal Affairs Committee after this reference was moved by Mr Stefaniak MLA (Lib). Had I then been a member of the Committee, I would have moved to expand the reference because the question of reviewing jury verdicts is but part of a much needed jury overhaul. In my questioning of witnesses, I sought to elucidate support for my view that reforms in other areas are inextricably connected. The Committees report alludes to the need for wider reform before a decision is taken to build a safety valve into the jury room. When reforms are implemented I would be prepared to reconsider the question whether the single "nutter" in a jury room could be neutralised by an 11:1 verdict in such circumstances.

3. Jurists are properly alarmed when righteous-minded elements in our community seek to pursue the verdict they want into the jury room. Recent comments by the Queensland Premier, Mr Wayne Goss, and the Queensland, Attorney-General, Mr Dean Wells, suggesting that there needed to be an inquiry into the activities of the jury and/or a juror in the Peterson perjury trial are a matter

1 "Hung Juries or majority verdicts: The jury on trial" Brookbanim NAZI June 91 pp i88-190 5738

of deep concern. Public confidence in the jury has been seriously eroded as a result of speculation, given credence by a Premier and an Attorney-General. Although, the jury has so far survived the vicissitudes of Australian politics, a growing conservatism of outlook in Australia coinciding with unprecedented public disquiet over inadequacies in the delivery of justice threatens this ancient institution.

4. In simple terms, the value of a jury is the surd total of the value of

the jurors minds. The more jurors the more chance of better knowledge, broader minds, better skills. An obvious example is the fact that in commercial matters, the wider the jury spectrum the more chance of finding commercially related skills with the jury. Fundamental to the, jury system is the method of selection - the scale of exemptions given; particularly to professionals and community service people who are often technically and socially aware is of concern.

5. Oil a smaller stage, we need to be careful in this Territory not to mimic untaught impulses. Practising lawyers know that most ACT juries are sensitive and aware. Whilst the chances of getting this with ten in an ordered society ire good, they are better with twelve aryl this is the essential :issue. .

THE JURY

6. As originally conceived, the jury, was designed to stay, the hand of those who would.punish arbitrarily and/or capriciously. The jury

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gave the people a chance to judge themselves and to provide a community sanction for miscreant activity.

7. I am troubled by how far we have gone from the original notion. In recent days in the ACT, a Supreme Court judge has again denied a jury the chance to positively contribute, not only to a decision on a case in point but to provide a community-based rather than a judicial view of a matter very much in the public interest, namely, the use of police tactical response groups. In that case, the judge did not even address the jury and direct it to acquit the defendant. With great respect to the learned judge this event brings to a head concerns I hold about the almost powerless role of the modern jury compared with its medieval precursors.3

8. I imagine that a jury sometime after the Barons were tamed might have revolted at the prospect of being usurped. A courageous jury, in those days, may well have challenged a judges authority to direct them but not so in Australia - a temporised society which, from Timor to the Tasmanian South-West, is content to hand the community conscience over to politicians, judges and bureaucrats.

9. Rampant individualism now dominates that great lever for reform the free press. Those who would advocate law reforms are increasingly bought off with appointments as they slip away from the quivering blame mange of Australian editorialise, our trades halls and universities. Reform now lies outside the political deeply -it will come from the community and, in that context, the jury itself.

2 "The unmarked bicentennial o jury usage in Australia and some consequences of its decline" Alex Castles ALJ Aug 90 pp 505-510. 3 "Unsafe and unsatisfactory, the law as to directed verdicts 63 ALL pp 283-284..

PATRONISING THE JURY

10. The court system should cease patronising jurors. The, whole process
of ng the-jury in, the deck must cease. -me jury squid be .

W3 -with- a transcript of the evidence. Expert witnesses should be allayed to present their written briefs. Their evidence slid not be selected for them by a lay person and the jury should be encouraged to peruse case summaries which are commonly handed up to the trial judge prior to the hearing., I do not, however, favour Victim Impact Statements going to the jury.

11. One of the justifiable bases for keeping a jury in the .dark is the rule that similar .fact evidence, that is; evidence which tends .to- show a

- disposition on the part of an accused to commit an offence similar to
that with which he or she is charged, is generally-inadmissible on the
grounds that it may prejudice the trials For this reason, persons
charged with the same offence involving different. victims are
sometimes-tried sequentially aril tie jury is lteptiii dark. , Caftful ,r ::.
thought should be -given to revising this rules In vile tunes, All -
would probably be known. Canberra is not far different from the
village erg ark-few jurors in-this Territory would Mnaint*nurunt.of
serial charges, so careful thought needs to be and economy of the rude.-.

12. Indeed, the rule contrasts with the usual admission of good character to a jury which tends to displace the reality that there can be, in many lives, an uncharacteristic fall from grace. In other words, from a serial victims viewpoint, good character evidence may equally be said to prejudice the trial. Fictional judicial directions to ignore or to make limited use of target and/or so-called character evidence should cease. The legal profession must develop a code of conduct to prevent blatant manipulation of jurors through the improper use of target and character evidence.

SELECTION OF THE

13. The right to idiosyncratic pre=emptory challenges should be abolished.s and, failing that, reasons should be given to exclude the chance that the challenge is based on race or other discriminatory prejudice, such as being an ex-serviceman or -woman, having a beard, being a woman, being grey-haired or blue-rinse, being young and trendy. The original idea of a jury was that it would be representative of the community, not of the defendants social. class. Whilst the right of challenge for good cause should remain purposeful discrimination by Counsel such as eliminating all persons of non-english speaking background should attract the sanctions of the Discrimination Act 1991 (ACT).

14. The system of exemption from jury service should be reviewed. Ironically, the Juries Ordinance 196? is still the responsibility of the Commonwealth because the ACT (Self Goverment) Act 1988

7 *Simflar fact evidence and Limited on buouctifts" Criminal LAw Jowl lace 90 pp 157-179. 8 Challenging and discharging jurors* Richard Burton UX Criminal Law Review April 1990

ensures that it will not become an ACT law until the- ACT Supreme Court becomes a Territorial responsibility on or before 1 July 1992. Delaying the court transfer has delayed reform, and the chances of a proper financial settlement for,-the Court from the Commonwealth have evaporated . As farmer Attorney, I supported a fury review including assessing-the current exemptions frond jury service pursuant to Section 11 of the Ordinance and the Jury Exemption Regulations of the Commonwealth which apply to,the ACT. No doubt it is now on the Labor backburner.

Current exemptions farm jury service include Ministers of Religion; employees of the government of an overseas country or of an international organisation; practising barristers and solicitors and their employees; practising medico(practitioners, pharmacists, dentists and veterinary surgeons; professors, lecturers and school teachers engaged in full tine teaching at universities, colleges and schools; editors of newspapers; members of the Australian Federal Police; Bremen; persons over the age of sixty years. In consequence,

the peer jury has been leavily.eby these exemptions.

. It For example, should medical practitioners sit on jurks?Are they -not better -nundet to take in the scientific evit*w:e and, -toy issues; such as grievous. bodily harm? S

houldAhe ACTs 7-,5W teasers participate.ou the Socratic notion that they are *ese aid can leave the jury room and spread, the word of simply because they probably .i,omt 596 of the otherwise eligible jury! population? why should the aver sixty years mgt stand ire judgment? Isnt this blatant, age discriminations Should not all newspaper editors spend a salutary period inJury lock-up, especially lawyer-dominated Canberra

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Times editorial desk? These issues are not being faced and they should be. They exemplify the desultory criminal law reform process in this Territory..

EXPERT EVIDENCE

17. How does the juror take an oath to faithfully try a defendant and give a true verdict when the jury is faced with opposing expert scientific evidence?9 Why is the jury the butt end of our failure to create an independent forensic service which would ensure that forensic expert witnesses are paid by the court, perhaps with cost recovery on the event. I have brought tentative moves in that direction to the attention of the Committee. However, the need to ensure that the injustices of the Lindy Chamberlain trial, the, Tim Anderson matter, the Birmingham Six and my unease with the recent Derry-Anne Browning trial in the ACT, surely call for urgent uniform reform in this country. How many juries, for instance, are even aware of the use by forensic scientists of the Inference Chart? It has been described as a jargon-free guide to assist the jury to weigh scientific signals and patterns. to This, can provide a way out of the bamboozling maze I have seen juries presented with. In the appropriate cases, the jury needs to be acquainted with the basks of scientific inference.

18. Claims of miscarriage of justice often stem from forensic .evidence which has allegedly tended towards being in the prosecution "stable". Whilst it has not been established that "stable" experts may

9 *How to confuse &e Jury Simon Cooper UK Journal of Criminal Law Feb 90 pp i25-137 10 "Guilt by Ieforewe" Day Matitim NZIJ Feb 91 pp 43-49

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subconsciously lean towards the party employing them, of greater concern is the fact that forensic experts themselves rarely get the chance to speak to the evidence - their evidence is selected by counsel conducting the examination and cross-examination is usually conducted by a non-expert who is often no competitor. Resolution of this issue may prevent confusing battles between experts which has lengthened trials, produces jury fatigue,, and has resulted in demonstrable miscarriages of justice in the United Kingdom and Australia.

THE JURY AS AN INSTRUMENT OF REFORM

19. The traditional restriction of expert evidence to that given by scientists belongs to the late nineteenth century when science was seen as an unquestionable arbiter of issues like biological determinism.12 Recently, expert evidence supporting the notion that battered women.may have behavioural changes such as to affect their cognitive conduct was denied to a jury by a judge at first instance. A reformist South Australian Court of Criminal Appeal has finally put an Australian stamp of approval on the admissibility of expert evidence in what is known as the Battered Wife Syndrome by overturning the judges direction. The patronising magi in which juries are artificially constrained on judicial direction from absorbing good theory to match their own. good sense was well illustrated in this cases Similarly, the conservative and misogyny reluctance to plead the premenstrual syndrome where apparent and dominant in

11 Homo= v me Queen L%repened Court of criminal Appeal (WA) 21 Mar 90 see Neil Morgan 15 Criminal
Lie 70urnmipp 217 219 r
12 "Expert Ewdenoe and de Qom Mdcolm Gray Law Sdcwy-Bulledn 2 Mar 90
13 Queen v Rumjaajx: Queen v Koutinuen (U=V) SA Court of C,runinul Appeal 28 luxe 1991

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conduct. Unlike developments in North America and Europe, Australia Courts rarely entertain arguments about the correlation between serious PMS problems and uncharacteristic conduct.

20. If properly instructed on their role, juries would be more inclined to provide a lead on these issues. Juries must be encouraged to become assertive and proactive. The role of an ethical media is vital in this context. Defamation law reform will unleash this force.

CONCLUSIONS

21. Mr Stefaniaks search for an answer in having two less voices and two fewer minds is misplaced - we need wider reforms. If we re-democratise, re-empower and unshackle the jury it might forge the reforms for which much of the judiciary and the profession underpinning it has lost its zest.

Bernard Collaery Member Standing Committee on Legal Affairs of the ACT Legislative Assembly December 1991

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APPENDIX 2: (Incorporated in Hansard on 3 December-1991 at page 5387)

**CHIEF MINISTER FOR THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY QUESTION**

Question Without Notice

MRS NOLAN - Asked the Treasurer without notice on 28 November 1991:

In relation to dividend payments, the ACT is looking like a 272% real increase which by far is the highest of other States. What percentage of those dividends is derived from lower costs, asset sales or higher charges.

MS FOLLETT - The answer to the Members question is as follows:

The increase in recurrent dividend_payments forecast in the 1991-92 estimates reflects the Governments desire to bring the level of dividends payable by ACT Authorities to levels equivalent to those payable by the State Government Authorities and is in line with the ACTs general move to financial arrangements consistent with those applying in the States.

The most significant increase is in the recurrent dividend payable by ACTEW which increased from $$.On in 1990-91 to $19m in 1991=92. It.should-be noted that a $4.OM one-off capital dividend was also paid by ACTEW in 1990•91. The level of ACTEW*s 1991-92 dividend was .calculated to recover a level of dividend and the tax equivalent payments which wouJ4 have been received from ACTEW if it had been corporatised. The additional dividend will be funded-from efficiencies him within Actins administration.

The ACTTAB Corporation, the ACT Milk Authority and Totalcare will gay dividends for the first time in 1991-92. The ACT Borrowing and Investment Trust Account will also.p4y a dividend for the fir:t time in 1991-92 reflecting returns achieved on the management of the Govertents borrowing anti investment activities.

In no instance will dividends be achieved through the sale of assets.

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APPENDIX 3: (Incorporated in Hansard on 3 December 1991 at page 5387)

MINISTER FOR HEALTH

QUESTION TAKEN ON NOTICE ON
21 NOVEMBER 1991

DR KINLOCH ASKED THE MINISTER FOR HEALTH:

WHAT IS THE NATURE OF THE RELATIONSHIP, IF ANY, WITH N.S.W. DEPARTMENT OF HEALTH, ESPECIALLY WITH MAINLY HEALTH-CARE AREAS IN RURAL N.S.W.?

IS THERE, FOR EXAMPLE, CONSULTATION BETWEEN THE MINISTER OF HEALTH N.S.W. AND YOURSELF?

IN PARTICULAR WHAT IS THE SITUATION RELATING TO THAT OF THE A.C.T. WHICH IS JERKS BAY?

THE ANSWER TO DR CHINCHS QUESTION IS AS FOLLOWS:

THE PUBLIC HOSPITAL SYSTEM IN THE A.C.T. HAS BEEN USED AS A BASE REFERRAL HOSPITAL FOR THE SURROUNDING AREA OF N.S.W. FOR MANY YEARS. AT A CLINICAL MANAGEMENT LEVEL THEREFORE THE SYSTEMS OF REFERRAL TO THE A.C.T. ARE WELL INTEGRATED.

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THERE IS ALSO SOUND CO-OPERATION WITH THE REGIONAL DIRECTOR OF THE SOUTHEAST REGION OF N.S.W. REGULAR MEETINGS TAKE PLACE BETWEEN THE A.C.T. AND SOUTH EAST REGION TO ENHANCE INFORMATION ABOUT DEVELOPMENTS AND DIRECTIONS WHICH ARE OF MUTUAL INTEREST. THE SOUTH EAST REGION HAS RECENTLY BEEN UNDERTAKING A STRATEGIC PLAN FOR THE REGION WHICH IT IS DISCUSSING WITH THE A.C.T. TO ENSURE AN INTEGRATED APPROACH.

IN ADDITION, I-WOULD LIKE TO DRAW DR CHINCHS ATTENTION TO BUDGET PAPER NO 5 FOR EXAMPLE P249 WHICH CLEARLY INDICATES THE A.C.Ts COMMITMENT TO THE DEVELOPMENT OF A REGIONAL PERSPECTIVE IN HEALTH CARE AND SERVICE DELIVERY.

MAJOR FINANCIAL ISSUES ARE DISCUSSED WITH v THE CENTRAL DEPARTMENT OF HEALTH AND SINCE SELF-GOVERNMENT T14E MINISTERS SINCE :HEALTH FROM N.S.W. AND THE A.C.T.-, HAVE MET TO DISCUSS MATTERS OF MUTUAL INTEREST -WHEN NECESSARY.

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JERVIS BAY IS NO LONGER ADMINISTRATIVELY PART OF THE A.C.T. BUT IS ADMINISTERED BY THE COMMONWEALTH GOVERNMENT. HEALTH SERVICES ARE PROVIDED TO JERVIS BAY BY THE A.C.T. BOARD OF HEALTH UNDER CONTRACT TO THE COMMONWEALTH.

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APPENDIX 4: (Incorporated in Hansard on 4 December 1991 at page 5476)

BUSINESS CONSUMER
AFFAIRS

File No. F89/0073

Mr N Jensen MLA Your Reference
Deputy Leader

Residents Rally for Canberra Coma Allan Lowe

GPO Box 1020
CANBERRA ACT 2691 Telephone 02 895 0045
lee 02 689 1484
Dear Mr Jensen, OCT 1991

Please find enclosed the Regulatory Impact Statement and Exposure Draft of the Retail Tenancy Leases Code of Practice. This free publication was requested by yourself in your letter of 17 September, 1991.

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 proposed-Code.

As a result the Minister has directed the Department to prepare a Paper on Future Options for Fair Retail Shop Leasing Regulation that can provide the basis for meaningful discussion and decision.

The Paper must take account of the substantive submissions received and- the recently announced decision of the Commonwealth Government to extend the unconscionable conduct provisions of the Trade Practices Act to-commercial transactions.

My Officers will be pleased to assist with any further enquires that you may have.

Yours faithfully

JOHN HOLLOWAY
COMMISSIONER FOR CONSUMER AFFAIRS

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APPENDIX 5: (Incorporated in Hansard on 4 December 1991 at page 5528)

MINISTER FOR THE ENVIRONMENT, LAND AND PLANNING

LEGISLATIVE ASSEMBLY QUESTION

QUESTION WITHOUT NOTICE

3 DECEMBER 1991

MR JENSEN: DOES THE MINISTER KNOW WHETHER THE TERRITORY PLANNING AUTHORITY ACTUALLY CHECKS, BY VISITS TO THE FIELD, THOSE AREAS PROPOSED FOR POLICY PLAN CHANGES FOR OPEN SPACE TO RESIDENTIAL OR INVESTIGATION FOR SIMILAR PURPOSE.

SUPPLEMENTARY: WILL THE MINISTER CHECK WITH THE AUTHORITY WHETHER THEY CONDUCTED ON GROUND INSPECTION OF THE FOLLOWING BLOCKS:
WANNIASSA SECTION 287 BLOCK 2
WANNIASSA SECTION 20 BLOCKS 36 & 37
KAMBAH SECTION 202 PART BLOCK 10
KAMBAH SECTION 272 BLOCK 8
KAMBAH SECTION 530 BLOCK 1
KAMBAH SECTION 532 BLOCK 1

OR ARE THEY IDENTIFIED AS PART OF AN AMBIT CLAIM AS OPPOSED TO A PROPER POLICY PLAN CHANGE.

MY ANSWER IS:

- THE PLANNING REPORT ACCOMPANYING THE TERRITORY PLAN CONTAINS SCHEDULES AND MAPS IDENTIFYING POLICY CHANGES (ANNEXURE I) AND INVESTIGATION AREAS (ANNEXURE G).

- ALTHOUGH INVESTIGATION AREAS HAVE BEEN CONSIDERED FROM SOME VIEWPOINTS, THEIR OVERALL SUITABILITY FOR DEVELOPMENT HAS NOT BEEN DETERMINED AND THIS IS PRECISELY THE REASON THAT THEY HAVE BEEN IDENTIFIED FOR INVESTIGATION. THE DRAFT TERRITORY PLAN REQUIRES THAT THESE SITES WOULD BE SUBJECT TO A FURTHER DRAFT VARIATION AND PUBLIC COMMENT. THE PLANNING AUTHORITY WOULD HAVE TO CONSIDER ALL COMMENTS BEFORE SUBMITTING ITS PROPOSALS TO THE EXECUTIVE FOR APPROVAL. IF APPROVED BY THE EXECUTIVE, THE VARIATION WOULD THEN NEED TO BE TABLED IN THE ASSEMBLY AND THERE WOULD BE AN OPPORTUNITY FOR DISALLOWANCE.

- SITE INSPECTIONS HAVE BEEN MADE TO ALL SITES.

- THE CHANGES FROM OPEN SPACE TO RESIDENTIAL IN SOME CASES DO NOT INDICATE LIKELY RESIDENTIAL DEVELOPMENT. SOME CHANGES ARE LISTED BECAUSE THE LAND IS CONSIDERED TO BE ANCILLARY OPEN SPACE (EMBANKMENTS,FLOODWAYS,NOISE AFFECTED) WHICH IS A CATEGORY PERMITTED WITHIN THE RESIDENTIAL PLUZ.

- SPECIFIC SITES

  WANNIASSA SECTION 287 BLOCK 2 AND SECTION 205 BLOCKS 36 & 37

THESE POLICY CHANGES RESULTED FROM THE PUBLIC LAND STUDY. THEY HAVE BEEN CLASSIFIED AS ANCILLARY OPEN SPACE AND AS SUCH ARE NOT SUITABLE FOR USE AS URBAN OPEN SPACE. THEREFORE THEY DO NOT NEED TO BE DECLAIRED AND MAINTAINED AS PUBLIC LAND. ANCILLARY OPEN SPACE IS PERMITTED UNDER THE RESIDENTIAL PLUZ AND IT IS NOT INTENDED THAT THESE SITES BE DEVELOPED FOR RESIDENTIAL USE. THEY HAVE BEEN LISTED AS POLICY CHANGES BECAUSE THEY REPRESENT A POTENTIAL LANDUSE CHANGE.IF FOR EXAMPLE, THE AREA WERE TO BE REDEVELOPED, THESE SITES MAY CHANGE TO RESIDENTIAL USE.

KAMBAH SECTION 202 BLOCK 10 PART AND SECTION 272 BLOCK 8

THESE SITES ARE SHOWN ON THE DRAFT TERRITORY PLAN AS INVESTIGATION AREAS AND AS SUCH WOULD BE SUBJECT TO FURTHER STUDY AND THE PROCEDURES OUTLINED ABOVE BEFORE ANY DEVELOPMENT TAKES PLACE.

KAMBAH SECTION 530 BLOCK 1 AND SECTION 532 BLOCK 1

ALTHOUGH THE CURRENT LAND USE POLICY FOR THESE SITES IS OPEN SPACE, THERE IS AN OVER PROVISION OF OPEN SPACE IN THE AREA. FURTHER STUDIES SHOWED THAT THE SITES WOULD BE SUITABLE IN LOCATIONAL AND PHYSICAL TERMS FOR RESIDENTIAL USE.

4.12.91