



DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

15 September 1992

Tuesday, 15 September 1992

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MADAM SPEAKER (Ms McRae) took the chair at 2.30 pm and read the prayer.

PAPER

MR HUMPHRIES: Madam Speaker, I seek leave to present a petition from interstate petitioners.

Leave granted.

MR HUMPHRIES: I present a petition from 907 interstate residents, requesting that the Assembly prohibit the availability of all X-rated material and the possession of child pornography.

SUSPENSION OF STANDING AND TEMPORARY ORDERS

Motion (by **Mr Berry**) agreed to, with the concurrence of an absolute majority:

That so much of the standing and temporary orders be suspended as would prevent:

- (1) any business before the Assembly at 3 pm this day being interrupted to allow the Treasurer to be called on forthwith to present the Appropriation Bill 1992-93;
- (2) debate on any motion before the Assembly at that time of interruption being adjourned until the question "That debate on the Appropriation Bill 1992-93 be adjourned and the resumption of the debate be made an order of the day for the next sitting" is agreed;
- (3) at 3 pm on Thursday, 17 September 1991, the order of the day for resumption of debate on the question "That the Appropriation Bill 1992-93 be agreed to in principle" being called on notwithstanding any business before the Assembly and that the time limit on the speech of the Leader of the Opposition (Mr Kaine) be equivalent to the time taken by the Treasurer in moving the motion "That the Bill be agreed to in principle"; and
- (4) debate on any motion before the Assembly at that time being adjourned until a later hour that day.

QUESTIONS WITHOUT NOTICE

Budget Consultations

MR KAINE: I would like to direct a question to the Chief Minister. Chief Minister, in your consultations leading up to the presentation of the budget today, did you consult with the trade unions on the ramifications of any staff reductions that will flow from your budget?

MS FOLLETT: Madam Speaker, in the lead-up to today's budget I have consulted with a wide range of community groups including, of course, the trade union movement. I listened very carefully to the points of view put to me by the trade unions and, indeed, by all groups who were consulted. Madam Speaker, there is an acknowledged view from the trade unions that jobs should be protected, and I am sure that most members here could well understand that view. I do not want to pre-empt what is in the budget, Madam Speaker, except to say that that issue has been canvassed and the trade unions, I believe, have a very good understanding of the financial realities that face the ACT. They realise that we have to deliver services in the most efficient way possible, and I think that they acknowledge that framing this budget has not been, and, indeed, framing the coming budgets for the ACT will not be, an easy task. I consider that the agreements that have been reached with trade unions in the past on job savings will stand us in good stead if there is occasion for job losses in the future. But, as I say, I am not about to pre-empt what is in the budget. I think that Mr Kaine can be assured that negotiations and full consultation will continue with the unions on this and on other matters.

MR KAINE: I have a supplementary question, Madam Speaker. Without attempting to pre-empt what is in the budget, what level of staff reductions did the trade unions agree to?

MS FOLLETT: Without wishing to pre-empt what is in the budget, Madam Speaker, I could say that they were not asked to agree to any level, and nor did they.

Legislative Process

MR STEVENSON: My question is also to the Chief Minister, Rosemary Follett. Public opinion clearly indicates that the people of Canberra want all legislation tabled for evaluation, comment and input - that is, consultation - for a minimum of 60 days. Will the Labor Party commit itself to a firm policy that people can rely on in this regard by changing the standing orders to allow for a minimum of 60 days, except for emergency legislation?

MS FOLLETT: Madam Speaker, I believe that on a strict interpretation of standing orders Mr Stevenson's question might be ruled out of order. Nevertheless, I will try to deal with it. I say that it might be out of order because, obviously, I do not have responsibility for the standing orders. Mr Stevenson has put forward a proposition that the majority of Canberra people would like to see legislation lie on the table for 60 days for consultation purposes. I have to say, Madam Speaker, that I have not heard that view put forward by a single Canberra citizen other than Mr Stevenson. If Mr Stevenson has irrefutable evidence of this he might do best to share it with us, because it is not an issue that has ever been put to me.

On the second part of Mr Stevenson's question, Madam Speaker, I do not have the power to change the standing orders, and the Labor Party does not either. If you left it to the Labor Party to change the standing orders we might see some rather different changes from the one that Mr Stevenson is seeking. Madam Speaker, it is for this Assembly to deal with its standing orders. I am sure that Mr Stevenson knows that if he wishes to have a matter like this dealt with he can raise it on the floor of this chamber, as he has in a matter of public importance, and hear the view around the chamber. He can further raise it with the Administration and Procedures Committee, and, indeed, I believe that it has been raised with that committee.

Finally, Madam Speaker, the short answer to Mr Stevenson is that I am not able to assist him on this matter. There are other mechanisms available to him if he wishes to continue proposing the view that this is the wish of the majority of the people of Canberra. I have no evidence that Mr Stevenson's view in the matter is supported.

Mr Berry: How many people were polled in the Dennis poll?

MR STEVENSON: I ask a supplementary question. Without getting into the details of polls, perhaps the Chief Minister would say whether or not she would be prepared to consult with people on the many matters that come up in legislation and allow them sufficient time for input, for consultation, for public meetings and other things?

MS FOLLETT: Indeed, Madam Speaker, and that is the way that we go about the business of government. I think that we have a record of consultation on issues. If that is the point which Mr Stevenson is making, then it is a point with which I have some sympathy; but we do have to get on with the job. We did get elected on stated and known policies. That possibly is where the Labor Party in government differs from other parties here, most notably Mr Stevenson. What Mr Stevenson stood for was not particularly well known. In fact, what Mr Stevenson has stood for in this chamber from time to time has come as something of a surprise to many others. My party was elected on a known platform. We will get on with the job and we will consult appropriately in the course of getting on with that job.

Government Service - Provision of Information to Assembly Members

MR HUMPHRIES: My question is to the Chief Minister. Last Thursday the Chief Minister told the Assembly that the internal memorandum appearing over Mr Allan O'Neil's signature in the Government Solicitor's Office was "an officer's interpretation of the guidelines" and had not originated from any Minister or Mr Bill Harris. Will the Chief Minister confirm that the substance of the O'Neil memorandum is not a flight of fancy by an ACT Government officer, but is in fact based on a Cabinet decision taken just three weeks ago, that is, Cabinet decision No. 3208 of 24 August this year? Can the Chief Minister assure the Assembly that she has not misled it?

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MS FOLLETT: Madam Speaker, I most certainly can assure the Assembly that I have not misled the Assembly. I am sure that Mr Humphries knows, as well as other members here, that I will not comment on what may or may not have been discussed in Cabinet. I think that members opposite operated under a Cabinet system while they were in government. We have adopted a Cabinet system as well. Just as the Cabinet papers from the Kaine Alliance Government are still confidential to that Government, the matters dealt with in my Cabinet are confidential to our Cabinet. I will repeat, Madam Speaker, that I have not misled the Assembly.

It is a fact that the Government has reaffirmed the substance of the guidelines which had previously been adopted by, amongst others, the Alliance Government, and under successive administrations. Those guidelines are aimed at assisting officers in the handling of requests for information. The guidelines are based on the principle that requests from members for information, other than of a readily available or factual nature, should be pursued with Ministers. I find that a perfectly normal course of action. They naturally contemplate the need to inform Ministers of matters of substance which members might be inquiring into. I believe, Madam Speaker, that I tabled those guidelines for the information of members, but anyway they are contained in an appendix to a handbook which is called "ACT Government Participation in Parliamentary and Other Inquiries". That handbook was, as I say, adopted by the Alliance Government as well as having been reaffirmed by my own Government. This is an entirely normal practice.

MR HUMPHRIES: I have a supplementary question, Madam Speaker. I ask the Chief Minister whether, without telling us the details of Cabinet decision No. 3208, she will advise the Assembly, on notice if necessary, what the general subject matter of Cabinet decision No. 3208 was about.

MS FOLLETT: I will not, Madam Speaker.

Child Sexual Assault

MRS GRASSBY: My question is to the Attorney-General. Was the Government aware of community concern that in a recent Supreme Court trial a person was convicted of a sexual offence against a child and was not given a custodial sentence?

MR CONNOLLY: Yes, I and the Government have been aware of considerable community concern arising from a recent decision of the ACT Supreme Court in which a person was convicted of a sexual assault involving a child and was not given a gaol sentence. I have discussed this matter with the ACT Director of Public Prosecutions, Mr Crispin. The Government has no power to direct Mr Crispin in relation to appeal matters, as was made clear in his recent annual report; but it is appropriate for me as Attorney to raise matters of concern with Mr Crispin. Mr Crispin indicated this afternoon that that particular matter will be appealed to the Federal Court. The grounds of appeal will be that the sentence was manifestly inappropriate. It will be argued that community expectations and community concern about the crime of sexual assault involving children is at such a level that the community expects custodial sentences when persons are convicted of sexual assaults involving young persons.

Open Learning Program

MR CORNWELL: My question is to Mr Wood, the Minister for Education. It is not about this budget, Mr Wood; it is about the Federal budget. I refer to the \$53m over the next three years for an open learning program for studying from home which was announced. The initiative will allow "every Australian with access to a television or a letterbox to now have access to a university education". Could you advise the Assembly of how much of that \$53m is to be allocated to the ACT? Could you also briefly explain how this remarkable educational initiative is going to work?

MR WOOD: Madam Speaker, I do not think Mr Cornwell wants me to go right through the "how", because we would be here until well after 3 o'clock. As to funding for the ACT, it is my understanding at this stage that it is substantially a one package affair. Numbers of capital cities in the States are keenly contesting the right to be the centre where this open learning centre is to be, saying that it should be located in one of the capital cities. That is not likely to be Canberra.

I might indicate that I have not made, on behalf of the ACT Government, a claim for that centre, because I recognise the prior claims of some of the States. The University of Queensland, for example, the New England University, and universities in Melbourne have a long and honourable record in open learning, in distance learning. Much as we would like to, I was not about to go ahead and make a claim when I knew that we lacked the substance to back up that claim. It is a different case with the location of the Australian National Training Authority, where we do have, I think, the strongest claim. We have made that bid and are contesting that quite strongly. I do not know yet where the open learning centre will be based. It is a matter that will be coming up for discussion at the next AEC and MOVEET meeting in a week's time. Whether it will be decided there is another matter, as with ANTA. It is going to be discussed. It may not finally be decided, but certainly this will be a key meeting in addressing those issues.

I think I have answered your question about the money. As for how it will work, it will work quite well. You perhaps have seen some component of that if you have been following ABC television's open learning programs. You may have participated in your earlier years, as I did, in distance education. I did my first university degree by way of correspondence, to use a pretty outdated term. I am quite familiar with all the benefits of distance education, at a university level. It can work. It will work. We have the technology today to do it. I think it is a fine approach, a very sensible approach, by the Federal Government. It will be very successful. I think that this advanced approach from the Federal Government is in marked contrast with the mean approach that John Hewson displays towards TAFE education, towards training and towards education generally.

Regional Community Councils

MS SZUTY: Madam Speaker, my question without notice is to the Chief Minister, Ms Follett. This ACT Government has stated that it prides itself on consultation with the community, but formal consultation networks with local communities are yet to be established. As members are probably aware, currently the ACT's network of regional community councils is being increased to five. Could the Chief Minister indicate how regional community councils can have input into decision making, and whether the ACT Government will accept them as having a formal role in the consultative process?

MS FOLLETT: Madam Speaker, I thank Ms Szuty for the question. As members will know, the Government has a commitment to greater consultation with the community and I have put forward a concept of community councils, community committees, which would provide a ready mechanism for such consultations to take place across a wide range of issues. The negotiations or consultations on the actual form of those councils or committees are at an early stage. I make no bones about that. Early discussions have been held. At the moment the exact nature of the bodies is quite some way from resolution.

I am aware, as Ms Szuty has pointed out, that the community councils that do exist have been making some moves towards adopting a role which they see as a more appropriate one, a role which would facilitate greater consultation. I have been encouraged by those moves because I believe that they indicate, as I have always felt, that there are a large number of people in the ACT community who are willing and able to take part in the decisions which affect their community.

Whilst I have carefully watched the activities of those community councils, at the moment I have not formed a view on how they might fit into the consultation framework that we put forward at election time. I have that matter still under review. I am more than pleased to hear from those organisations their views on the appropriate mechanisms to be adopted; but at the moment I am not in a position to be final or to be absolute about the processes that might be involved, because they are simply not resolved and they are quite some way from being resolved at the moment.

***Canberra Times* - Police Investigation**

MR DE DOMENICO: Madam Speaker, my question without notice is to the Attorney-General and police Minister, Mr Connolly, and it refers to the witch-hunts last week at the *Canberra Times* and the police moving into the Assembly. I ask the Attorney-General: At what cost were last week's paranoid witch-hunts to the ACT Australian Federal Police budget? If no costings have been made, will the Minister give an undertaking to let the Assembly know the cost to the AFP budget of last week's paranoid witch-hunts?

MR CONNOLLY: Madam Speaker, as there were no paranoid witch-hunts, the question is pointless. If Mr De Domenico, trying desperately to drag one last little headline out of this exercise, wants me to find out what it cost the ACT police budget for the ordinary employment of, as I understand it, two police officers for a couple of hours, I will do that. I will also find out what it cost to make the inquiries to find out the cost of a couple of police officers going about their ordinary duties for a couple of hours.

Bruce Stadium - Lease by Canberra Raiders

MR LAMONT: Madam Speaker, my question is directed to the Deputy Chief Minister in his capacity as the Minister for Sport. I refer to a number of comments that have been made in the last 24 hours in relation to the signing of a long-term hiring agreement for Bruce Stadium. What delayed the signing of that long-term agreement and what does that agreement entail?

MR BERRY: Thank you for the question. I was very disturbed, I have to say, to hear on ABC radio this morning Mr De Domenico's words in relation to the arrangements that were negotiated between the Government and the Raiders.

Mr De Domenico: I said that we did not know what the arrangements were. Perhaps you will tell us that.

MR BERRY: The language that Mr De Domenico used suggested that there was something wrong with the way that the negotiations were conducted. He was trying to create the impression that there was some deal going on that was not in the interests of either the Raiders or the ACT people. Mr De Domenico, of course, has slighted the Raiders. There is no doubt about that.

Mr De Domenico: I take a point of order, Madam Speaker. Can the Minister tell me what he means by the word "slighted"?

MADAM SPEAKER: I do not think the standing orders allow you to ask that sort of a question right now, Mr De Domenico. We may follow it up later.

MR BERRY: The Raiders have always pushed a hard deal in their negotiations with the Government, and that is fair enough. The Government, on the other hand, of course, takes a firm line in relation to its negotiations about the use of facilities which are owned or leased for the people of the ACT. But I will not sit by, Madam Speaker, and have legitimate, commercial-in-confidence negotiations treated in the way that Mr De Domenico treated them this morning. He tried to create the impression that something was wrong with those negotiations.

Mr De Domenico: Are you going to give us the details of those negotiations?

MR BERRY: If you want details of the agreement, I would be happy to provide you with a briefing - there is no question about it; all you have to do is ask - just as I provided Mrs Carnell with one. Just ring the office. Strategic comments aimed at milking every political drop out of everything that happens in this town do not do you or the Liberal Party any good. The Raiders agreement was reached in a set of commercial-in-confidence negotiations. It was properly negotiated.

Mr De Domenico: Are you going to provide us with details of it? The people of the ACT, not just me.

MR BERRY: Are you deaf or something?

MADAM SPEAKER: Order!

MR BERRY: Are you deaf or something? I just asked whether you wanted a briefing about it. I am sure that you will be satisfied that everything is fine. You will probably shut up and not go on with all of this claptrap about some sort of secret deal. Everybody, apart from the Liberals, understands - the Liberals obviously do not - that the negotiations for a long-term hiring agreement of the Bruce Stadium have been punctuated by the financial difficulties of the Raiders. It was not in the interests of the ACT Government to do damage to the Raiders; neither was it in the interests of the Raiders to walk away from the Bruce Stadium. It was in both of our interests to pursue the matter in what I think would fairly be described as delicate economic circumstances for the Raiders.

We have concluded the long-term hiring agreement for Bruce Stadium. It will expire in the year 2009. The agreement is predicated on the basis that, as partners, both parties will maximise their return from the agreement. That is the nature of commercial agreements, as I am sure any member of the Liberal Party would understand. Under the agreement, both the Raiders and the Territory will receive a share of income received from ticket sales, including sponsorship boxes, advertising and signage, and catering for Raiders matches played at Bruce Stadium. These revenues are in addition to the match day costs which are paid by the Raiders. The agreement concluded is substantially the same as that contemplated last year immediately prior to the Raiders' temporary financial difficulties which I spoke about. The Government will be continuing to encourage as much other use of the stadium as possible, consistent with the agreement with the Raiders. Members will have noted from media reports that a temporary cricket pitch is being installed at the ground with a view to attracting high-class cricket to the ground as well.

I warn people like Mr De Domenico about the rank, political opportunism that we heard on ABC radio about strictly commercial-in-confidence negotiations conducted in relation to providing high-quality sport for the people of the ACT. If you want to take those sorts of approaches in the media, it will damage our chances of providing high-quality sport in the ACT. I thought that, as the opposition spokesperson on sport, you would have more sense.

Needle Exchange Program

MRS CARNELL: My question is to Mr Berry, the Minister for Health. You indicated in answer to my question on notice No. 123 that an estimated 100,000 disposable syringes are distributed each year under the ACT needle exchange program. On conservative estimates this would mean that heroin users are using, at most, one or two disposable syringes per week. This indicates that needles are being shared or, at the very least, reused. The Minister undoubtedly would be aware of the danger of this in terms of spreading HIV. What is the Minister doing about this problem? Does he accept that this is really causing a danger to health?

MR BERRY: Given the resolution suspending standing orders carried by the Assembly, I think it would be more appropriate if I gave that question the response that it deserves, in order that we can get on, within 60 seconds' time or just before that, with the budget.

Mr Moore: Try saying, "I will take it on notice".

MR BERRY: No, I will do it tomorrow.

MADAM SPEAKER: With all that extra advice from the Assembly, I believe that you will take the question on notice.

Members, it being 3.00 pm, pursuant to the motion suspending standing and temporary orders agreed to by the Assembly earlier this day, I now call the Treasurer.

APPROPRIATION BILL 1992-93

MS FOLLETT (Chief Minister and Treasurer) (3.00): Madam Speaker, I present the Appropriation Bill 1992-93.

Title read by Acting Clerk.

MS FOLLETT: I move:

That this Bill be agreed to in principle.

I am pleased to present to the Assembly and to the Canberra community the Government's budget for 1992-93. This is a budget about protecting Canberra's future. It is unashamedly a Labor budget. It is a budget which recognises the needs of our community. All sectors, including government, business and the unions, must work together to provide leadership if these needs are to be met. As a government we have balanced our priorities and we have produced a balanced recurrent budget. We will undertake a modest borrowing program to fund new capital works and to generate jobs.

Madam Speaker, at a time when the national economy has been in recession, and when unemployment in the ACT has been rising, the Government has been devoting its energy and resources to lessening the impact of these national trends. This budget builds on our previous initiatives and takes further significant steps to create a positive future for Canberra. In particular, the 1992-93 budget allocates additional funds to employment and training programs in both the public and private sectors. It increases expenditure on capital works. We are providing support for important business sector initiatives. We are creating an economic and marketing environment that encourages the growth of local businesses. We are ensuring that the ACT can further participate in, and benefit from, the national education and vocational training initiatives.

We will protect those in need in our community. This budget increases funding to community groups, increases expenditure on concessions, and funds new initiatives for the unemployed, for women, for Aboriginal people, for mental health, and for others who are disadvantaged. The growth in demand for the Government's own community services is recognised. More funding is also directed to child-care. This budget reflects our commitment to improving the effectiveness of the public sector and the efficiency of its service delivery.

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Priority is given to the training of our staff. They are our most important resource. This budget is an important statement about the Government's policies and priorities. So too, Madam Speaker, is our legislative program. The two go hand in hand. Our law reform program is wide-ranging and this budget gives financial expression to its outcomes.

I turn to community consultation. To the extent that our short history of self-government permits, some important traditions have emerged. One of these, very clearly, is the tradition of community consultation by this Government. We have again released the budget strategy prior to the budget. The strategy has been well received and there has been strong endorsement for its central principles of balanced recurrent budgets and prudent borrowings to invest in the continuing development of our territorial, social and physical assets. We have a strong and continuing focus on efficiency gains. The strategy sets out the benefits of careful urban renewal measures and it proposes a balance of revenue measures across business and the community.

Submissions were received from many organisations and individuals. Their contributions to the Government's deliberations have been informative and valuable. There was a debate in some quarters about the relative contributions of the public and private sectors. This Government recognises the worth of both, and this budget provides support to both. Each is essential to our future well-being. There was support from all quarters for the Government's focus on employment. There was common concern for the impact that the national recession is having on the disadvantaged. This budget delivers on these fronts to all members of the community.

I turn to the social and economic environment. The national recession, and a slowing of economic growth in the ACT, have demanded a response. The flat levels of employment in the ACT over the past year have been replaced by growth for the first two months of this financial year. The unemployment rate is also starting to fall, but while it is well below the Australian average it is still clearly unacceptable.

There are areas of strong growth in the local economy. Overall, the ACT's gross state product was estimated to have increased by 1.7 per cent in real terms, compared to only 0.4 per cent nationally over the past year. The forecast is for a higher level of activity, at 2 per cent for 1992-93. In the year to March 1992 our population increased by 2.6 per cent. The estimate for 1992-93 is 2.2 per cent, which will continue to generate growth in the labour force and a further demand for services and infrastructure. Employment is forecast to increase by one per cent this year, representing a growth of 1,500 jobs.

The two strongest sectors of our economy have been housing and retailing. For 1991-92, the number of dwelling approvals increased by 76 per cent and the value of housing finance commitments increased by 40 per cent in real terms. These growth levels reflect strong underlying demand and the recent decline in interest rates. Growth may not continue at those high levels. In the non-residential construction sector, performance has been slower, and there was an actual decline in the value of works of 1.5 per cent last year. Fortunately this is well short of the 25 per cent decline nationally, and will be turned around in the coming years through the initiatives in this budget and those announced recently by the Commonwealth.

Retail turnover increased in 1991-92 by 8.2 per cent in real terms, compared to the national figure of 3.2 per cent. This reflects the ACT's higher average disposable income, the relative stability of a large sector of our work force, the high level of population growth and the growing attractiveness of Canberra as the region's centre of commerce. Canberra's CPI of 2.6 per cent was above the 1.9 per cent national figure.

The Government is concerned that the sense of activity and relative prosperity implied by these figures does not mask the problems facing those in our community who are less well-off. Canberra can be a very difficult place in which to live for the poor, the unemployed and those bringing up a family by themselves. The community support and employment initiatives in this budget recognise these needs. The ACT also continues to experience a change in its demographic structure. The number of frail aged increased by 5.3 per cent in 1991-92 and those aged 65 and over increased in total by 4.1 per cent. This trend is long-term and underlines the importance of the Government's policies in residential and health care and community support.

There is an imperative for greater choice in housing to meet the needs of the aged and the trend towards a greater proportion of households headed by a single adult and for smaller households overall. The priority the Government is placing on urban renewal, and on its proposed better cities projects, is in large part a response to this need for more diversified housing and better use of existing infrastructure. This is a long-term process of urban change.

I turn to the budget outcome for 1991-92. Madam Speaker, 1991-92 was a difficult year in which to manage a budget anywhere in Australia. In the ACT we responded in a caring but careful manner and applied additional resources where they were most needed. Total receipts for 1991-92 were \$21.1m more than estimated at budget time. The overall outcome was a small recurrent surplus of \$6.7m, equal to 0.6 per cent of the recurrent budget. There was also an improvement of \$5.6m on the capital budget. The Government paid back \$25m of debt to the Commonwealth. We also refinanced \$42.2m of Commonwealth debt by replacing it with commercial borrowings. This will save the ACT community an estimated \$3.8m in interest payments over the next 10 years.

The Government's sound financial management policies, our low debt policy and our prudent use of borrowings and provisions for accruing liabilities such as superannuation have been well received in the financial marketplace. The ACT Government has been awarded a long-term credit rating of AA+ with a positive outlook. This ranks the ACT second only to the AAA rated States of Queensland and New South Wales.

I refer now to Commonwealth financial relations. The Commonwealth budget, delivered last month, placed a greater emphasis on training and industry across Australia and gave more funding to the TAFE sector. This will be good for our youth and good for industry. The ACT is actively participating in these initiatives. The ACT will also benefit from the Commonwealth's increased funding in such areas as road improvements, better cities projects and secondary schools refurbishing. We are currently negotiating a greater level of support for our public health system. The ACT will receive a very welcome injection of funds into our local construction industry. The scale and nature of the projects will

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ensure a continuous stream of local employment over the medium term. There remains, however, a continuing and unavoidable reduction in Commonwealth funding to the ACT. It is an inevitable consequence of the largess of earlier Commonwealth spending, over which the Canberra community had no control.

For the first time, the Government has decided to publish the forward estimates at the same time as the budget. These estimates, based on existing government policy, show in clear terms that there remains a challenge to live within our diminishing means. They also show that the Government is managing this task in a responsible manner. The Commonwealth Grants Commission's recommendation on funding to the ACT for 1992-93 provides the Territory with \$78.9m more than would be due on a State-like basis. This funding will be phased out completely by 1996-97. There is no comfort from the fact that the Commonwealth's general revenue assistance to the ACT in 1992-93 has been cut by more than 6 per cent, compared to a real increase for the States. Further cuts can be expected in future years. Our task is to manage the adjustment in a way that protects the fundamental quality of our community and our city.

I turn, Madam Speaker, to the budget in overview. The 1992-93 budget for the ACT responds to these challenges. It protects Canberra's future. We have produced a balanced recurrent budget. Recurrent expenditure is estimated at \$1.1 billion - an increase of 3 per cent in nominal terms, or a reduction of 2 per cent in real per capita terms on 1991-92. We will not leave a legacy of borrowings for ongoing activities which would burden future Canberrans. Central to our strategy is a balanced set of revenue measures, together with efficiency savings. This budget is the first of a three-year program to honour our election commitments. The policy initiatives announced today amount to \$9.6m this year.

In our continuing drive for increased efficiency in the public sector, enhanced training, restructuring and improved management policies will be central to our efforts. The 1992-93 budget provides \$6.9m for restructuring projects, with annual savings by 1995-96 expected to be \$5m. We have also balanced immediate priorities with our accruing liabilities and have set aside an additional \$17.7m for the general government sector in our superannuation provision trust account. The Government has budgeted for a capital deficit in 1992-93. This will be funded by \$20.8m from Consolidated Fund reserves and \$23.3m in new borrowings. It is a very clearly calculated decision designed to generate jobs in our local economy.

Madam Speaker, turning to revenue measures, the ACT's own source recurrent revenues for 1992-93 are estimated at \$521m, an increase of 5.5 per cent on 1991-92. This increase is in large part due to the range of measures I announced in June this year, to align with States such as New South Wales and Victoria. Today I am announcing only one new tax measure - an increase in the financial institutions duty rate from 0.08 per cent to 0.1 per cent. This will raise an additional \$3.6m in 1992-93 and \$6.3m in a full year. This new rate recognises that the ACT, unlike the States, has no bank account debits tax. The revenue gain, in total, is similar to most States, but the ACT will still benefit from a simpler and less costly administrative and compliance regime. The tax is broadly based, and is consistent with our efforts to avoid targeting the business sector, particularly at a time of recession.

Madam Speaker, I will now turn to the specific expenditure initiatives in the budget. Firstly, as to new employment measures, the availability of employment is fundamental to the future well-being of Canberra's community. It is a cornerstone of social justice. My Government's economic development strategy is similarly focused on employment. It is a comprehensive and carefully targeted strategy which comprises direct funding of job creation through training and work experience programs, through increased capital works and through support to the private sector to promote the growth of local industry.

Madam Speaker, my Government actively supports vocationally related training and direct work experience as two of the most effective measures to assist people to gain and retain employment. We are directly funding programs for our youth and for others in the community. This budget will provide over 220 new places this year in government employment and training schemes. We are establishing an ACT Youth Conservation Corps, at a cost of \$200,000 in 1992-93, which will provide 40 places this year and 80 places in a full year.

Under the umbrella of special youth employment initiatives, we will spend \$600,000 in 1992-93 to provide temporary employment for 30 young people for six months, to provide 10 additional traineeship places and an additional nine apprenticeships. An additional \$200,000 will be provided through the new enterprise incentive scheme and the employment and training grants program. The ACT Jobskills program will provide training and work for 100 long-term unemployed people at a cost of \$1.1m. An additional \$300,000 will be spent annually on the mature age women's traineeships scheme to provide 20 places on each occasion.

The ACT is a party to the new national vocational education and training arrangements. We are submitting pilot projects to the Commonwealth for funding under the Carmichael initiatives. Our partnership with the Commonwealth is already improving our ability to upgrade work force skills and opportunities for vocational education. In 1992-93 TAFE expenditure will be increased by some 9 per cent to \$56.4m. This additional \$4.4m will provide over 500 more places in the ACT institute to significantly improve access and reduce unmet demand. Student fees have been restructured to allow payment on a semester basis, thereby reducing the burden on students.

I turn, Madam Speaker, to jobs through capital works. This budget builds on our accelerated works program and on the Commonwealth's major projects which will itself provide a further 2,000 jobs. We have increased expenditure on our own capital works from \$130m in 1991-92 to \$147.2m this year. The projects include \$20.5m this year on new infrastructure in Gungahlin and \$48.5m this year on building better hospital and health facilities. The Tuggeranong swimming complex will be completed at a cost of \$8.7m to this budget. Stage 1 of the courts complex will commence. This is a \$17m project. The new police complex will commence, at a total project cost of \$7m. Conder Primary and Preschool will also be started, at a cost of \$7.2m. In addition to those works, the Housing Trust will spend \$40.5m on its own capital works program in 1992-93 and ACTEW will spend \$31m. Overall, this represents an increase in the ACT's public sector expenditure of \$32.8m on 1991-92 and will support 3,400 jobs. This is an increase in the order of 300 jobs in the industry and a flow-on employment of about 220 jobs in other sectors.

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Turning now to private sector support, Madam Speaker, as I have said on many occasions, Labor stands for a strong public sector and for a thriving private sector. One of the key sectors of our local economy that can look to a growing future is tourism. The Tourism Commission has responded magnificently to the restructuring effort demanded by last year's budget and has focused its resources on its prime task of marketing. The commission's operational funding has been maintained this year to enable it to spend over \$2m marketing the ACT to visitors. An additional \$400,000 is to be spent on the establishment of a Tourism Development Unit to attract and develop new events for Canberra. The unit will work closely with the Cultural Council, the Office of Sport and the Special Events Unit in developing and funding such ventures. The interim casino will be in operation by November this year, creating approximately 400 jobs. Construction will commence on the new casino, creating 280 jobs, and leading to 500 permanent jobs when it is open. It will be a significant boost to our tourist infrastructure.

The Government is negotiating a land development joint venture arrangement this year with the developers of Harcourt Hill - an international recreation, tourist and residential centre in the Gold Creek area. Madam Speaker, \$100,000 will be spent on studies for the development of Canberra as a centre for regional and national freight distribution and warehousing, and in this regard we are working closely with the Federal Airport Corporation. During 1992-93 the Government will be pursuing specific projects with both Telecom and Optus. This includes the development of a major facility at Mitchell and the possibility of a televillage, giving further support to Canberra as Australia's communications and computing capital.

The ACT Government is also active in a number of forums with other governments and with business, to promote local economic development. A second business incubator is being funded at Kingston and matching funding is provided for the National Industry Extension Service. A supply and tender agency will be established to provide a publicly accessible record of local suppliers and their products and details of the Government's purchasing plans. There is funding for the planning of an international hotel management school in Canberra which will give momentum to the development of our tourism infrastructure and to the development of ACT vocational education as an export industry. The Government is providing direct financial support to the Canberra Business Council, which has identified the opportunity for a greater degree of locally-based accredited training for public and private sector employees. The Government is also proud to be the co-sponsor of the Small Business Awards in 1992.

I turn to education. Madam Speaker, throughout Australia the education sector is undergoing reform. This reform must meet the challenge of improving the quality of educational outcomes. It must also enhance the vocational relevance of education and training programs. These are complex educational issues and in addressing them we are committed to wide-ranging consultations. At the same time we will also address the very high levels of expenditure in our education system. With reduced Commonwealth funding, current spending levels are simply not sustainable and this budget begins to achieve the necessary savings. We will work together with the staff, students, community and the unions to achieve the efficiencies and restructuring that must take place.

In recognition of two areas of need, the Government has allocated additional resources for improved pastoral care and career advisory programs in high schools, at a cost of \$300,000 in a full year. Funding is also provided for the integration of primary students with special needs into mainstream classes, at a cost of \$300,000 in a full year. The longer-term funding arrangements for non-government schools will follow from our consideration of the Berkeley report. For this year, recurrent funding of non-government schools will be maintained at the current level of 50 per cent of the Commonwealth rate, but discretionary funding of specific grants will be reduced.

I turn, Madam Speaker, to community support services. This budget protects Canberra's community. There are many who are disadvantaged, many who, for the first time, are experiencing the financial and personal hardship of being out of work. Social justice demands that those in need are assisted. This budget increases funding to the Housing and Community Services Bureau by \$7.1m, or 8 per cent, to \$91.1m, in recognition of those needs. The cost of concessions for electricity, transport and other essential services is expected to increase by \$800,000. Under the extended national child-care strategy, the ACT will provide an extra \$500,000 per annum by 1993-94. There will be 230 new long day-care places and 660 new outside school hours care places over the next four years. Our own work-related child-care centres at Acton and at Campbell will be opening this financial year.

Despite the ACT's difficult financial circumstances, community service organisations, home and community care and family support services will be provided with an additional \$500,000 each year, in recognition of the increasing demands being placed upon them, including their superannuation levy and their training obligations. We will establish a community-based support service with counselling for problem gamblers and their families. The long overdue reform of the law governing the availability of information to adoptees will result in a demand for counselling and information services. The Government has provided \$400,000 for this need, with \$200,000 in 1992-93.

Following the recommendations of the Royal Commission into Aboriginal Deaths in Custody, and recognising that 1993 is the International Year for the World's Indigenous Peoples, the Government is funding the establishment of an Aboriginal Advisory Council and adviser and is providing funds for specific projects. These are to be decided in association with the council. Expenditure in 1992-93 is estimated at \$200,000. Cross-cultural training in the Government Service will support improved access to and equity in service delivery.

The ACT has assumed responsibility for accommodation and support services for people with disabilities. We will be expanding and improving those services under a three-year plan. The remaining residents of Bruce Hostel will move to group houses during this year and consultation is taking place with all concerned on the future options for the John Knight Hostel. Madam Speaker, through our urban renewal strategy we will provide a greater choice of housing and greater accessibility to employment and services. Over 50 per cent of the Housing Trust's new housing commencements will be in renewal areas.

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Part of the Government's commitment to protect Canberrans is to ensure that law and order is properly maintained. As with other programs, the budget allocation for police running costs has been reduced, but community police services will not be affected. Start-up funding is being provided for the development of a crime prevention strategy for the ACT in consultation with a wide range of community and government bodies. The Government is also improving facilities through the construction of a new Magistrates Court and Belconnen Police Station, at a total cost of \$24m. The Women's Information and Referral Centre will receive extra funding for a domestic violence advocate and for sponsorship of a support group for victims of violence. In recognition of the important role that sport has in our community, there is a 7 per cent increase in operational funding this year. A Women's Sport Unit will be established, to promote greater gender equity in sport.

Madam Speaker, people with mental health problems and their carers in our society deserve recognition of their needs and the establishment of appropriate support structures. A tribunal will be established which will make assessments and treatment orders for mentally dysfunctional people. The role of the Community Advocate will be extended, with \$100,000 being provided in 1992-93 and \$200,000 in a full year. This year \$500,000 has been provided for three new services. First, an intensive care team will assist the seriously mentally ill to better use existing services or be provided with more intensive services; secondly, an outreach team will work with adolescents experiencing mental health problems; and, finally, a service will be established for patients with a mental illness who come into contact with the criminal justice system.

I turn now to health. The Government is committed to building a better health system to be part of the future of Canberra. The physical expression of this commitment is evidenced by the new facilities at Woden and Calvary hospitals. Inside the hospitals and health centres and elsewhere throughout Canberra, there is a program of change in our health system. The goals and strategies are directed at the twin aims of improving the quality of service and of increasing the efficiency of service delivery.

The efficiencies arising from hospital rationalisation are both evident and necessary. The challenge facing the health system over the medium term is to continue to deliver these efficiencies, consistent with our reducing revenue base. The allocation of resources to training, to day surgery and to extensive management, union and staff group consultation on work practices are all bearing fruit. Less interventionist and resource intensive health care practices are being introduced, for the greater well-being of patients. In 1991-92 the number of day-only admissions in public hospitals increased by 10.5 per cent and the average length of stay decreased by 6 per cent.

In this budget, Madam Speaker, we will establish an independent health complaints unit to protect ACT health consumers. We will fund the planning of, and appoint a surgeon to, a new cardio-thoracic unit. We will provide an additional \$200,000 to the Health Promotion Fund, to be specifically aimed at encouraging access by young people and lower income earners to programs which help them give up smoking. We will commence work on the hospice. We will provide \$1.4m to the Red Cross to assist in building a new blood bank and administration centre. We will introduce a second linear accelerator for use in the treatment of tumours. We will commence the mammography screening program; and we will provide additional pregnancy counselling.

I turn now to the environment. To protect the good things about Canberra and to ensure that the future Canberra retains its special bush capital characteristics, the Government is committed to strong environmental policies. The Government is establishing a Commissioner for the Environment who will undertake a reporting and investigative role. We are continuing our program to increase the energy efficiency of government buildings. Funding is being provided for improved environmental controls at the tips. New projects are being funded under the Landcare program, and additional funds are being provided to extend the Parkcare program. Urban renewal will, in itself, assist in protecting Canberra's environment. There will be greater energy efficiency and reduced air pollution through reduced transportation and a reduced rate of transformation of greenfields into urban areas. The Planning Authority has received additional funding to assist in the development of these initiatives.

Referring now to management of the city, Madam Speaker, the issue of how well governments provide basic urban services is dear to the hearts of most city dwellers, and Canberra is no exception. These and related matters form a very large proportion of calls made to me, both complaining and congratulatory, through the Wastewatch hot line. This budget will continue the Wastewatch service. We will also be conducting another ratepayers survey. We will open a new government shopfront this year, to provide Belconnen residents with ready access to a range of services and payment facilities. We will spend an additional \$100,000 in each of the next three years on new books for our libraries. One of the significant issues in facing the future is waste management. In this budget funding is provided for a trial of 140-litre wheeled bins for the collection of domestic garbage and recyclable materials, at a cost of \$900,000 in 1992-93. The Institute of TAFE will conduct a feasibility study into an ACT centre for training in waste management.

As part of the Government's commitment to a quality public transport service, ACTION will, for the first time, publish its service objectives for comment by the community. As many commentators have observed, the cost of ACTION services is expensive relative to other public transport systems, despite the dedication of the staff. A funding agreement is being negotiated which will require a reduction in the ACTION subsidy by \$10m over the next three years. The aim is that this will be achieved without a reduction in service standards. There will be extensive consultation with the staff and the unions. This budget provides for the replacement of 50 ageing buses at a cost of \$12.8m. For trial purposes, two buses will be powered by compressed natural gas. Under the restructuring program, the budget provides a net \$900,000 in 1992-93 and a net \$800,000 in the following year for an automated ticketing system for ACTION. This will provide greater flexibility and equity for passengers in the structuring of fares.

I turn to the management of the public service. Madam Speaker, we rely heavily on the skills and dedication of our public servants to deliver excellent services. Where we have not pursued specific efficiency strategies, most managers have been charged with saving 2 per cent per annum in their program running costs. Consultation with unions will be central to the restructuring that will be needed, and relevant awards will be adhered to. Where a reduction in positions is involved, the emphasis will be on redeployment. There will be no involuntary redundancies and funding for voluntary redundancies will be made available where needed.

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At the same time, we have required the ACT Government Service to increase its overall expenditure on training by 0.5 per cent of the salary budget this year and for each of the years in the forward estimates. Managers must have up-to-date information on the deployment of their staff and on the associated costs if they are to use their staff in the most efficient way. This budget provides \$3.8m this year, with a further \$1m next year, to implement a new human resource management system. The cost of office accommodation and energy use in government buildings has also been targeted, with a view to achieving savings in rental and operating costs.

To conclude, Madam Speaker, this is a budget about protecting Canberra's future. We have delivered on our social justice principles and accommodated the increasing pressure on our community support services. We have recognised the fundamental need for jobs and have provided additional funding for employment and training schemes. This budget is the first of a three-year program to honour our election commitments, and our new policies reflect those commitments. All of this has been despite a 6 per cent cut in the Commonwealth general revenue assistance.

Program managers have been required to pursue gains in efficiency, rather than reductions in the quality of services. We have recognised that there are long-term social, environmental and economic advantages to urban renewal, and have built its implementation into this budget. Our revenue measures announced last June, together with the single tax increase contained in this budget, have been broad-based and generally align the ACT with other States such as New South Wales and Victoria. Through these various strategies, and through a balancing of our priorities, we have produced a restrained recurrent budget. Within this budget we have even recognised liabilities, such as superannuation, that are accruing today.

This is a balanced recurrent budget. It does not have a legacy of borrowings for ongoing activities which would burden future Canberrans. We have also brought down a capital budget which, through a modest borrowing program, recognises that the provision of jobs is one of the single most important issues facing Canberra and the nation. Madam Speaker, I commend the budget to the Assembly.

I present an explanatory memorandum to the Bill, and the following papers:

- Budget Overview 1992-93 (Budget paper No. 2).
- Capital Works 1992-93 (Budget paper No. 4).
- Environmental Budget Statement 1992-93 (Supplementary Budget Information Paper No. 2).
- Program Information and Estimates 1992-93 (Budget paper No. 3).
- Women's Budget Statement 1992-93 (Supplementary Budget Information Paper No. 1).
- 1992-93 Budget - Media statements.
- 1992-93 Budget - Protecting Canberra's future - pamphlet.

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

SUBORDINATE LEGISLATION
Papers

MR BERRY (Deputy Chief Minister): Madam Speaker, pursuant to section 6 of the Subordinate Laws Act 1989, I present subordinate legislation in accordance with the schedule of gazettal notices for determinations.

The schedule read as follows:

Administration and Probate Act - Determination No. 127 of 1992 (S157, dated 9 September 1992).
Gaming Machine Act - Determination of fees - No. 147 of 1992 (S160, dated 14 September 1992).
Land (Planning and Environment) Act - Determination No. 145 of 1992 (S155, dated 8 September 1992).
Lotteries Act - Determination of fees - No. 146 of 1992 (S160, dated 14 September 1992).

LAND (PLANNING AND ENVIRONMENT) ACT LEASES
Papers

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning): Madam Speaker, for the information of members, I present leases granted pursuant to the Land (Planning and Environment) Act 1991, in accordance with the circulated list.

The list read as follows:

Land (Planning and Environment) Act - Leases, together with executive statements -

Ainslie, section 112, block 1.
Bruce, section 8, block 1 and section 29, block 3.
Campbell, section 65, block 1 and section 66, block 1.
District of Canberra Central, block 1320.
District of Coree, block 61.
Duffy, section 57, block 1.
District of Gungahlin, block 345.
Hackett, section 52, block 2.
Lyons, section 62, block 1.
Macarthur, section 384, block 14.
O'Connor, section 98, block 2.
O'Malley, section 34, block 2.
Pearce, section 27, block 10.
Spence, section 36, block 2.
Symonston, section 49, block 8.
District of Tuggeranong, blocks 1186, 1189 and 1190.
District of Woden Valley, block 1045.

GRAFFITI

Discussion of Matter of Public Importance

MADAM SPEAKER: I have received letters from Mr Stevenson and Ms Szuty proposing that matters of public importance be submitted to the Assembly for discussion. In accordance with standing order 79, I have determined that the matter proposed by Ms Szuty be submitted to the Assembly, namely:

The need for graffiti to be recognised as a legitimate form of artistic expression and communication which has an important place in the lives of members of the Canberra community.

MS SZUTY (3.40): Madam Speaker, I have brought this issue before the Assembly for debate as a means of clarifying the real issues about graffiti. At this point I foreshadow that at the conclusion of this debate I shall seek leave to move a motion calling on the Government to assist in identifying more space for graffiti art in Canberra, along major thoroughfares and in places where people congregate.

During the early sittings of this Second ACT Legislative Assembly, I have noted that several questions without notice have been asked concerning the removal of graffiti as an offending additional item on some of Canberra's public buildings and signs. What we have missed here is a chance to recognise the real nature of communications between young people and from young people to the conservative, employed and reactionary forces in the society in which we live.

What is graffiti? The dictionary says that it is a drawing or words written on walls. Graffiti fulfils a number of functions in a democratic society. For example, it is a means of direct communication, where a simple message is given without decoration but often with some embellishment. Indeed, the opposition spokesperson on police matters, Mr Humphries, especially as a law graduate, must have seen some of the more esoteric of these scribblings during his years at university, as indeed I and others have also.

Another function graffiti fulfils is the legitimate challenge to authority - the "Madonna Rules OK", "No Nukes" and "No Dams" types that have been around for some time. In romantic tales we hear of initials carved on trees inside a heart, a phenomenon that would now be regarded as environmental vandalism and punished accordingly. One of my favourite pieces of information from folklore is that when Pompeii was unearthed they found graffiti scribbled on the walls of the equivalent of the Colosseum. It may be just a tale, but it is one that I think is worth telling. One of Michelangelo's most celebrated pieces of art in Rome is a cartoon on the wall of his favourite restaurant, a story which all guides in Rome tell and one which shows that graffiti can eventually come to be regarded as a masterpiece.

This brings me to the discussion of another broad function category, that of graffiti art. For those of us who grew up in a State with a public rail system, graffiti art was a common enough sight. Some people regard it as vandalism, and under ACT law it is an offence under the Crimes Act. But what is the crime being committed, particularly when the work involved is often bright and colourful and conveys a meaning to its audience? Many commuters travelling on the Sydney branch lines keep an eye out for changes to particular walls, as others keep an eye on changes to cinema billboards. It is an indication of what is happening with the culture of our young people.

Whether we, as adults and legislators, like it or not, graffiti art is becoming part of the legitimate landscape. Only a few weeks ago, *Hey Hey It's Saturday* - a television program not known for its avant-garde tendencies at times - had two graffiti artists complete a work during the two-hour show. They were leading contestants in a graffiti contest that had been organised in Melbourne, a city that has fostered its graffiti artists for some years. Nightclubs commission works done by these young people, and sections of large walls are spray painted with graffiti art and left as art pieces. They are recognised by young people as great examples of their art.

In Canberra as well, at least one business has given two young artists a commission to provide the interior mood for its shop. While I feel that it would be healthy and beneficial to promote this idea in the private sector, much more needs to be done to encourage young people to express their talents in this complex medium. I am sure that, if members took the time to look carefully at some examples of Canberra's graffiti art, called "pieces" in the jargon, they would be amazed at the technical skill and talent of these young artists.

Of course, some members may be thinking that the majority of graffiti is done in a hurry, is not complex or artistic, and is basically a means of rebellion. I agree. Most of what is called "tagging" is done on what are known as illegal walls, and there will always be people who will want to demonstrate their disregard for authority in this way. This has always been the case. Germany has had a long history of graffiti, and in fact has a thriving and government-sponsored graffiti art culture. People, with or without a political message, will use any means to publish their statements of rebellion. Martin Luther used a church door. Modern-day young people use underpasses, buildings, phone booths - in fact, anywhere their message can be published. This is one of the issues at the very core of the existence of graffiti: It is a means of communication.

The graffiti artists I have had contact with have emphasised the prominence of the walls needed for their art work. They speak with envy of Sydney's public rail system, of the long stretches of embankment walls that form train corridors. Sydney has had a more pressing need to solve its graffiti problem because of the element of danger in young people hanging outside moving carriages to get a better view. Punishment, and even the death of other taggers, does not seem to have had an effect.

I am informed that in Melbourne transit police have taken what I see as an antagonistic approach, bringing along their own cans of paint and destroying any graffiti they can find. This has not solved the problems on the trains but only increased the stakes, and a real animosity has developed there between graffiti artists and transit police. South Australia has introduced some of the toughest laws in a bid to stamp out graffiti. These have yet to be fully tested by time, but the feeling among graffiti artists is that the laws act more as a bait for tagging and further destructive work.

Queensland, on the other hand, perhaps surprisingly, has taken a progressive approach. As detailed in an article in the *Sydney Morning Herald* on 14 July 1992, police are currently organising groups of graffiti artists, who under previous laws were common vandals and had been charged with offences, into

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gangs that are now decorating railway stations, schools and even some private buildings. The article says that the work has impressed members of the public, and, as a result, some young people have ended up with legitimate and fulfilling work. Some of the murals carry messages about safe sex and the need to combat racism.

How do we help young people in our society to express themselves in their chosen way? The problem is more than simply one of funding community arts projects. To quote a recent Arts Council paper, "Youth Cultures - Arts Policies":

The shared experiences derived from being from the same age cohort (or group) may be trivial compared to the contrasting social experiences and possibilities ...

The study uses the example of a black adolescent female in Redfern compared to a white male adolescent in Vaucluse. While we pride ourselves on being more egalitarian than other capital cities, there would be little difficulty in finding a similar yawning gulf between the experiences of young people from the Canberra, Queanbeyan and southern tablelands districts. What is good for one cohort does not necessarily address the needs of another.

That graffiti does exist in our city is not denied; but I feel that at present we are not encouraging its artistic elements, nor are we observing its social history function closely enough. I was given some disturbing information while preparing this matter of public importance debate for the Assembly: The graffiti on university campuses is becoming more racist in tone. This has not come from academic sources; it has come from the people responsible for removing the graffiti. What can we do with this information? What we need to do is acknowledge the message that the graffiti is giving us and react and respond appropriately.

The Australian National University has a great method of keeping up with trends in graffiti. It repaints walls every now and then and lets students and others have their say. In those areas where the Australian National University feels that graffiti is not wanted, anti-graffiti paint is used. At student election times, a committee of students and staff sit down and discuss the areas where posters, which are another form of mass culture art work, and graffiti will be acceptable. This model, I think, could be extrapolated to other situations.

We need to channel the skills and talents of young people - not necessarily into areas of already acceptable art, but into other areas in which they are interested. By challenging their right to find and use their own methods of expression we create problems for ourselves from the point of view of the large costs associated with cleaning up graffiti, the increased use of tagging to get the message across, and confrontations between police, who have to enforce current laws, and graffiti artists. In an age where we are attempting to find different approaches to solving the problems of youth, allowing an avenue of expression such as legitimate graffiti art on legal walls would give us more insight into their attitudes, concerns and frustrations. What we can give young people is the chance to use their art form in a way that fulfils their needs and allows us as adults a view into their world from a different perspective.

There are some people who rubbish the idea of studying pop culture, and there was a debate in the *Canberra Times* in recent weeks over a fairly interesting set of lectures called "Madonna studies". This was not an erudite treatise on the impact on various cultures of the image of the Madonna of the Christian religion; it was an examination of the phenomenon of Madonna the singer. I am not an expert; however, I am pleased that I live in a society where people find it important to study the past and the present to help us understand our options for the future. Madonna studies could well be enhanced by some scholarly concentration on graffiti; but, while we continue to ignore the need for this avenue of expression by young people and while we continue to group all graffiti under the heading of an offence under the Crimes Act, we are missing an opportunity to create a more understanding and accepting community. It has always puzzled me that, while people may have no exposure to one area of culture they do not participate in, they can be critical of others who choose to do so. However, as often happens, once they gain an understanding of the alternative view they become more tolerant and accepting.

What appears to be at the heart of the understanding of graffiti, in my view, is that as a society we have not come to grips with the notion of adolescence. The phenomena we are grappling with in so many areas - health, unemployment, drug abuse, alcohol abuse, access to education - did not exist in our parents' adolescence. There were children and there were adults. The rites of passage were observed, and to be a young person was to be an apprentice adult.

The article already quoted from the *Canberra Times* puts the emergence of a youth culture variously between the 1930s and the 1950s, but it was in the 1950s that we saw the emergence of the idea of rebellious youth. Ever since then there has been in train a long process of our society attempting to come to grips with the needs of young people. We have recognised the special needs of some of the adolescent population by changes to our education system and work practices. However, if we are to have adolescents who grow up being able to express themselves, not just in conventional ways but across a wide spectrum, we must recognise all attempts at expression and communication as legitimate and give young people access to the means to make their mark. Let us give people responsibility for spaces where their art form can be recognised for its talent and the skill it involves.

We might also try looking at the messages conveyed by other forms of graffiti, before we clean them off or paint over them, to see whether they show any trends or indicate any other fears, concerns or positive feelings among our youth. A regime of tolerance will achieve more in the longer term by channelling into positive ventures the energy currently put into defying the law. As I stated earlier, there will not be an end to communication graffiti or the defiant anti-establishment graffiti. I would not want to live in a society where children grow up feeling that the establishment has got it right all the time. We would then be living in a world of non-thinking people.

We can always improve as a society. By letting our young people express themselves in as wide a range of ways as possible, we are encouraging them to own their community, to participate, and we therefore are accepting of their contribution. Young people do not need to be patronised. However, they do need our assistance as legislators to get access to space to allow them legitimately to carry out their expressive, colourful and skilful work.

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MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.55): We need to be very careful, in responding to this MPI, that we do not send the wrong message, which is that graffiti is a good thing to do and we want people to be out doing more of it. I was a little concerned at some encouraging remarks Ms Szuty made about people admiring some of the work that is done in Sydney on the train lines. While some of it may be colourful, the fact is that a number of young people have been killed doing it. It is an extremely dangerous practice. As well as young people being killed, police are at risk as they try to stop the young people doing it.

Graffiti, in its place and properly directed, can provide all the positive benefits Ms Szuty referred to. But graffiti wrongly directed, in the wrong place, apart from being unsightly, untidy and irritating - Mr Humphries has made some remarks in the media about that from time to time and may well make some remarks this afternoon - can be simply dangerous. Graffiti on some of the road signs around Canberra has caused me concern. This is the national capital and tourism is an important issue. We are all familiar with interstate plated cars, with drivers going slowly, peering around for road signs. Graffiti painted over road signs in Canberra can present traffic hazards. Graffiti on "stop", "give way" or "hazard ahead" signs can lead directly to accidents.

While we can say that graffiti in its place - I would prefer to say public art in its place - is a good thing, graffiti as vandalism is unacceptable. There were some questions from Mr Stevenson, I think, earlier this year on this subject, asking what the cost was and what we were doing about graffiti. I had to say that, whilst it was costing the Government a considerable amount of money to deal with graffiti, with Urban Services cleaning up the city, at the end of the day it really was not something that government as a body could handle; it was a community problem.

We need to get some awareness in the community that graffiti can be a dangerous and destructive activity. We need parents to ask a few questions when their teenage children are running out with paint cans. We know that spray paint cans are widely sold in Canberra shopping centres to young people. Obviously, a lot of those cans are used for vandalism and graffiti-ing public facilities. From my experience of using spray paint cans to do the odd bit of handyperson work at home, I always get paint all over me when I try to do anything with them, and I suspect that young people are the same. Parents must be seeing their kids coming home with paint on their clothes and over themselves. We really need a community response to deal with this sort of public vandalism.

I should say at the outset that the Government will not be supporting the suspension of standing orders to move a motion on this issue. I think it is a matter that can properly be dealt with in discussion on the MPI and is not sufficient to warrant suspension of standing orders for a motion. I guess that it can always be dealt with in private members business later on, if necessary.

In respect of graffiti art, a lot of the things Ms Szuty was saying we should be doing we really are doing. The ACT in this area is probably in front of a lot of other parts of Australia. The ACTION bus system has for many years and over successive governments been promoting the use of public art - call it graffiti work, if you like - by young persons. At the Woden bus interchange there has been a major mural for about two years. That is currently being replaced by young people doing that public work.

ACTION and Montone Paints have for some years now run a competition for the painting of bus-shelters which is open to community groups. This allows young people to identify with their shelter and has clearly operated to discourage young people destructively graffiti-ing public facilities such as bus-shelters; rather, directing them to creatively painting those bus-shelters. The pattern has been, particularly near schools, where in the past we had problems with graffiti in bus-shelters, that once you let the school group have the bus-shelter and create its youth art work on it, other kids from that school will tend to leave it alone. No-one is more vigilant in protecting public property, it would seem, than the young students who have done the work. They seem to be far more effective in prohibiting graffiti than are members of the police force or our Urban Services inspectors.

That has been a significant saving to the community. It costs the community, when we have to send people out to repaint a bus-shelter, between \$130 and \$200. We tend often to do that work on weekends in order to avoid inconveniencing the community. I think Ms Szuty once asked me a question about why we were doing it on weekends, and that was the answer. In the five years that we have had this program running, over 200 of our total of 500 bus-shelters have been painted by community groups around Canberra. In August this year we launched for the first time seminars at the Australian National Gallery, where people who were interested in joining the competition - school groups, community groups, youth groups - were given a half-day workshop from some of those expert creators at the gallery on community art and public art. They were shown a very interesting slide display of public art works in Europe, particularly in the Netherlands and Germany, and then were given some workshopping on butcher's paper, putting those ideas into place.

This year some of the works our young people will come up with on the bus-shelters around the town will be that much more artistic, if you like, that much more studied, than we have seen in the past - again directing the focus of energy and expression into positive aspects of public art as opposed to the destructive vandalistic graffiti. A year or so ago, when ACTION was running one of these competitions, two unemployed young Canberra people approached ACTION to get involved in painting bus-shelters but were unable to take part in the competition because they were not a community group.

These two young Canberra artists, in association with the Chief Minister's local employment development initiative, have been able to incorporate themselves as a business, Vahomes Murals, and now have a contract with ACTION for the painting of 22 bus-shelters. So, in addition to the community competition, we have also been fostering work by two previously unemployed young Canberra artists. This is very high quality work. As well as getting the contract with ACTION, they have recently got a contract to do a mural in the basement of Parliament House. The business is now being expanded to employ and train another 36 unemployed young Canberra artists, in conjunction with ACTION and the Chief Minister's Department. There is a very impressive record of achievement in community art in the ACT.

There was an issue agitated earlier this year in relation to underpasses. When school safety issues are raised we will often say, "Look, we have constructed an underpass; it is the safest possible means for young people to get from one side of the road to the other". Sometimes there is resistance from parents and schools

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groups, who say, "The underpass has become a haven for unpleasant activities; it is dark and dank; and it is covered with offensive graffiti". Indeed, in some parts of Canberra that can be a problem with underpasses.

As a trial project, near the Fadden Primary School we have sent Public Works out to clean and strip and repaint as a bare white surface the local school underpass. Parents and students of the school have, as a community project - with some paint that I think was provided from a private sector source, which is very encouraging as a sense of community spirit - painted murals on the underpass. Although the underpass was a public engineering investment designed to make the school safer, it was seen almost as a threat to the school. We have seen that threatening environment turned into a very warm, friendly and welcoming environment through the constructive use of public art. Again, we hope that, because the school and the community were involved, nobody else will come along and put graffiti, in the sense of offensive vandalism, on what is now a very attractive community arts project.

While we encourage all that was said about community arts and community expression, and while as a community the ACT has one of the most innovative records in Australia in providing and encouraging community art and that productive form of graffiti, we are reluctant to say that graffiti is a good thing. In its bad and anti-social form it can be most destructive, it can be offensive, and it can quite simply be dangerous. In order to prevent graffiti from being put on public facilities, we sometimes have to resort to the use of chemicals to treat the walls. That is both expensive and something that one prefers not to do, because we always want to be cautious about what we spend. As one example, the cost of removing graffiti from an underpass in the Canberra region was something like \$10,000 to clean up a public facility. While we support and encourage community art and the creative use by young people of their talents on public facilities in a directed way - I will not say a controlled way - we obviously cannot support or encourage graffiti as vandalism.

What we have been doing in this community is taking the balanced approach. We are seen as leaders. Certainly, the success of the bus-shelter competition in Canberra is something other public transport systems are interested in. I think we have got it about right. We do need to be cautious about sending a message that we as an Assembly are generally in favour of graffiti. That is clearly not the case. It is not what Ms Szuty meant. I am sure that Ms Szuty was not saying that we should encourage people to go out and deface assets. What she was saying was that, properly channelled, that creative energy can be a good thing. We would agree with that and we would say that we are doing that, and that the motion suggesting that we need to put up boards or whatever is unnecessary.

MR HUMPHRIES (4.06): Mr Deputy Speaker, first of all, let me say that, if I suggested in an interjection earlier today that I might have been responsible for some graffiti when I was at university, I would not like that to stand on the record. I might have been the subject of some graffiti remarks at university, but I certainly was not responsible for any - at least, not directly.

I think the Attorney and I are in almost total agreement on the issue that has been raised today by Ms Szuty. I can see the distinction between the graffiti that is a form of expression, that has something vital and relevant to say about our community or our society or the condition of life, and on the other hand the graffiti that is merely an ugly and costly form of vandalism. The problem is

that it is impossible to send to the community, particularly that part of the community that engages in graffiti, a message that we support the former kind of graffiti and abhor and discourage the latter kind. That kind of message is impossible to get across. At the end of the day, our clear message from this Assembly has to be that graffiti is a form of vandalism and that we will not tolerate or accept it. We should be taking steps to discourage that form of expression in the community because, ultimately, it is the sort of expression that most people in the community do not profit or benefit from and in fact are offended by.

The word "graffiti", if I recall correctly, comes from the Italian "graffio", which means to scrape or scratch. The great artists and thinkers of yesteryear - Michelangelo and Luther were mentioned by Ms Szuty - might have engaged in graffiti as some appropriate form of expression; but I think it is quite misleading to suggest that we gain some authenticity, some historical value, from graffiti in the present context merely because it has its modern precursors. I can think of many other analogies that might show how futile that argument is, but I will not proceed with it.

We need to bear in mind that almost invariably graffiti involves the defacing, destruction or damaging of somebody else's property. Whether it is public property or private property, it entails a person using somebody else's property as if it were his own. It is frankly irresponsible of Ms Szuty to suggest that we should be in some way encouraging people to treat somebody else's piece of property as a canvas on which to express their ideas.

Ms Szuty would be most upset if she went out to her car one morning and found that someone had decided to use it as a canvas on which to express views about land tax, the banning of circus animals or some other important issue in the community. We might well say that the matters being expressed in that message are of vital importance to our society and our community. We would not say that Ms Szuty's car, her house or anything else that belonged to her was an appropriate vehicle for that kind of expression. The fact of life is that most vandalism, most graffiti, is not artistic; it is not thought provoking; it is not socially redeeming in any way. In the vast majority of cases, at least according to my observation, it is sexist, racist, defamatory or scatological. In each of those cases there is no valid reason for society to be promoting or encouraging that kind of expression.

I was not listening closely, but I think the other point made by the Attorney was that graffiti in its effect limits the accessibility of people to certain public places. By the overlaying of graffiti on public buildings, on underpasses, on certain areas or environments, you very distinctly change the character of that place. The result is that it affects people's attitudes towards that place. I have had many complaints from people, particularly in relation to the Civic area and Garema Place, about a number of features of the central part of the Canberra shopping area. The complaints relate to the way in which the character of that amenity has changed because of graffiti. They say that people do not look on it in the same way because of the way graffiti has, as they would say, lowered the tone, or changed the tone, of the neighbourhood. It does affect people's view of that place.

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The best example is the sort of change that goes on when someone puts graffiti on an underpass. Underpasses are not very successful concepts, in my view; they are not viewed by many people as a good place to be. If they go through an underpass, they move through quickly and leave it as quickly as they can. Graffiti accentuates the unattractiveness of an underpass; it even accentuates the sense of fear we feel when we are passing through an underpass. We associate it with people who are breaking the law, people who are foul-mouthed, people who have destructive forces at work in their lives. That kind of thing intimidates people, and it results in people avoiding those kinds of places. That is an unfortunate tendency. Mr Connolly made reference to the effect on signs. I would argue that, when somebody drives into the ACT and sees on the Federal Highway sign the words, "Welcome to Canberra, the National Capital", or whatever it is, and then four-letter words sprayed over the top, they form a bad impression of Canberra. It is their initial impression, the impression they get when they first come to the city, and it is a bad impression. Graffiti of that kind has no merit whatsoever. It is extremely destructive.

To be quite frank, I do not think Ms Szuty speaks to the same sort of people that I do. I do not know many people who espouse seriously courses in Madonna studies at university. Perhaps I am on a different plane from Ms Szuty. The vast majority of people who have spoken to me in my capacity as a member of this Assembly have complained about graffiti, asking me to do something about graffiti in their suburbs. People have complained about rocks being painted in nature walks in the north of Canberra, in Belconnen. People have complained about signs, and about a change room that is completely covered in graffiti, with the result that people do not want to go near it. People who might want to use it for some kind of legitimate function are discouraged from doing so because of the nature of the graffiti all over it. The sooner we discourage that kind of thing, the better off we will be.

I understand that some other communities are even more concerned about that than we are. The Attorney will be very pleased about this because it comes from South Australia. He will no doubt be very keen to support it. I understand that the South Australian Government has actually made it an offence to carry a spray paint can in a public place. That is how concerned the people of South Australia are about the problem of graffiti. That is what the Labor Government in South Australia has done in response to the concern. From a legal point of view, I would not necessarily want to go quite that far in the ACT. It is very tempting, but I would not want to go quite that far.

Mr Wood: What did you use in your day?

MR HUMPHRIES: I refuse to answer that question, on the grounds that it might incriminate me. Madam Speaker, I do not believe that our community can afford to ignore this problem. We need to act on it. The only thing I would agree with Ms Szuty about is the need to divert some of this energy into media that are acceptable to the broader community and that do not entail the damaging of public property. For example, we probably should encourage the provision of some designated public graffiti space. When I was at the University of New England there was a wall at the end of a building which was designated as the graffiti wall. They actually provided the paint at the university so that you could paint things on it. Some quite successful, quite entertaining graffiti was painted on that wall. That is an area of expression that is legitimate and directed, and it is tolerant of other people's beliefs and views about graffiti. The kind of broad brush Ms Szuty talks about, I think, goes far too far.

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning) (4.16): Mr Humphries has read the MPI and responded to it. However, I think the spirit of the debate is otherwise. The spirit of the debate is reflected in what Ms Szuty and my colleague Mr Connolly said. I understand that we cannot amend what has been expressed in an MPI, although I thought about doing that as soon as I saw it this morning. It needs one extra word, namely, "art" - the need for graffiti art to be recognised. That is certainly the way in which Ms Szuty meant it, and it is the way I want to take it.

Graffiti art is something that should be recognised and acknowledged as worthwhile. I join with other members in this Assembly in condemning graffiti generally. Graffiti is a problem in our community. It seems to have become rather more current in the last 10 years or so than it was when I was younger, no doubt accompanying the popularity of the spray-can. My first memory of graffiti of the non-spray-can variety was something like "Pig Iron Bob". That goes back some time. Graffiti itself is still a reasonable, democratic expression, and the Labor Party supports that. We support protest; we support demonstrations or marches outside embassies and other forms of democratic protest. Graffiti can do that.

Graffiti is now changed in form, and today we have a situation where graffiti is signature based. Young people, predominantly, stylise a signature, their own name, and leave their mark around the city. It is rather like an animal leaving its mark around its territory in its unique way, to signify to other animals its ownership, or indeed that it exists. I speculate, as I see these signatures around the city, that they signify some lack of fulfilment on the part of these young people, that the way for them to give some expression to the fact that they exist is to stylise their signature and leave it around the city. I believe that some of the train graffiti was almost an extension of that; it was a mark of valour to leave your signature on a train. I think there were spotters sitting along the train tracks and seeing whose signature was where. So my theory is probably valid in that respect.

Let me get to the real issue here, and I do not think it is graffiti. I am not even sure that it is graffiti art that is being discussed today. What we are really talking about is young people and their cultural expression. Graffiti art happens to be a current form of youth expression. In a few years' time it will be something else, no doubt just as challenging, perhaps more challenging. Graffiti is damaging, and I think we should try to get past that. Maybe if we provide more opportunities for graffiti art, for that expression that I theorised was lacking in our young people, we will have less graffiti. We may not have signatures all over the city. Instead, we may have graffiti art, or some further development of art growing out of the graffiti art, which reflects the expression of those young people.

We certainly support the right of young people to contribute to the cultural life of the city. Let me inform the Assembly, in case members do not know, that the Cultural Council is currently undertaking a major review of arts and cultural policies, and they are taking the views of young people most seriously. We have carefully placed young people at the centre of attention there. I have put an excellent young person onto the Cultural Council with this expressly in mind.

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The council have now issued a discussion paper, among a whole range of such papers, and they are out there in the young community seeking opinions. We are out there seeking to support young people in their self-expression. I will not go through in detail the various ways in which the Government supports young people in their cultural expression. I am sure that in moving around the city members are well aware of the musical and theatre groups that pay particular attention to young people, organised and run by young people, often with guidance. The Chief Minister's Department, through its program of impact grants to young people, is helping them. Last year about \$50,000 was expended on those grants. They are not all of a cultural nature; they cover a wide variety of issues. But culture is an important component.

I think the point is clearly made: Let us accept graffiti art. Let us give young people the opportunity to express themselves. Let us improve that quality of expression. Let us expand it from graffiti to graffiti art and through that to something else. Let us give them all the opportunities to do that. I am sure that doing that, and I have described the process of changing graffiti through those forms, will be the most effective way to rid the community of undesirable graffiti.

MR MOORE (4.24): Madam Speaker, I should like to begin by summarising in six words Gary Humphries's speech: Middle class, middle class, middle class.

Mr Cornwell: Hear, hear!

MR MOORE: Mr Cornwell gives me a "Hear, hear"; he is quite happy to recognise that that is all there was to the speech Mr Humphries made. Graffiti is not a problem. It is the symptom of a problem, and you will not resolve the symptom until you resolve the problem. That is really the kernel of what Ms Szuty has been trying to say.

Gary Humphries lauds the South Australian Labor Government for moving to ban spray-cans in public. That will give us an opportunity to see that they will make the situation worse. Once we have managed to ban spray-cans, what would be next? Those big texta colours will go next, for sure. As soon as we get rid of the big texta colours, people will get the smaller ones and we will have to ban those. We will have to ban them from schools, so you will not be able to use them there. To digress a little, there may be a very good reason for banning some of the spray-cans, but it has more to do with the ozone layer than it does with graffiti. Going back to the point, what do we ban next? There might be people carrying around cans of paint. We are going to have to ban those. Where will this stop?

What is the problem, if graffiti is the symptom of a problem? The problem is probably best summed up in terms of alienation. What Ms Szuty is really saying to this Assembly, to the people of Canberra, is that, if you are going to attempt to solve the problem of alienation, perhaps what you do is set aside more spots and say to people, "Okay, you are welcome to express your opinion in our society". If Garema Place is the spot and young people actually put some graffiti on a wall in Garema Place, it is quite likely that some very middle-class people will find that threatening. They do not like the look of the graffiti - a view they are entitled to - and they will express that opinion to their middle-class representatives, particularly Mr Humphries. They are welcome to do that. That is how our process should work.

We should also be recognising graffiti for what it is - an expression of alienation, often an expression of frustration, of feeling disempowered. People who are empowered do not feel the need - Mr Cornwell probably has never felt the need, as indeed I have never felt it - to engage in graffiti. I cannot, for the life of me, remember ever writing anything on a wall in that way - apart from on blackboards, which are specifically designed for it, and I have written on those on many occasions, and perhaps on whiteboards. I am fortunate not to have felt the type of disempowerment that would lead me to that kind of expression. I am fortunate to have been literate enough to find other forms of expression, as would be the case with most members here - apart from the short time at university that Mr Humphries admits to.

In dealing with the matter before us we should identify a series of differences. Already members who have spoken have identified the difference between graffiti art and graffiti, and we accept that. We also need to identify the difference between the symptom and the problem. The solutions to that problem are not simple. The solution to any problem of disempowerment is never simple. It means facing the fact that we will have to surrender some of the power we have to people who are younger than ourselves, and that might be difficult for members to face.

Schools that have surrendered some of their power to students, as an example, have achieved great success. In our college system students have become part and parcel of making policy. A number of our schools over recent years have actually had students as their board chairs. There is an understanding that the rules of the school are made in conjunction with the students, and the power is transferred in that way. That is when we begin to find solutions to our problems - problems that have been identified in terms of the symptom of graffiti. It is those sorts of structural changes that we should be looking at.

One of the great shames of today's budget is that those structural changes do not appear. There is some attempt to move towards dealing with some of the symptoms of the problems.

Mr Berry: That is churlish.

MR MOORE: Perhaps that is the case; "churlish" is a good word. Thank you for being so polite. The issue raised is indeed a matter of public importance, but it is a matter of importance in terms of the problem rather than the symptom we recognise and deal with.

MRS CARNELL (4.30): Madam Speaker, I support the spirit of Ms Szuty's MPI. I believe in adopting a generous interpretation of the MPI, and I think we need to distinguish carefully some of the questions it raises. I certainly do not support a liberal interpretation of the MPI wording, because that would support the wanton destruction and defacing of property, whatever the socioeconomic cause might be. A better term for us to use is approved street art, rather than graffiti, because I think that is what we have all been talking about today.

Mr Moore: Except Mr Moore.

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MRS CARNELL: Except Mr Moore, quite right; as usual, he is different. The question becomes the need to recognise approved street art as a legitimate form of artistic expression. I do not support the idea that graffiti necessarily has an important place in the lives of the members of the Canberra community. It probably does have an important place in the lives of some members of the Canberra community, but I believe that the MPI was a little wide. It is going too far to suggest that all members of the Canberra community are concerned with street art. Quite frankly, many people just wish it would go away.

I am sure that Ms Szuty was not intending to speak out in support of any old form of graffiti, regardless of its destructive qualities. The MPI gives us an opportunity to distinguish between wanton destruction and the evolution of artistic expression amongst people who currently do not have that capacity to express themselves. There is obviously a need to distinguish between pure and simple vandalism and approved street art, and I support the MPI in so far as it refers to that form of artistic expression.

All graffiti, as far as I know it, starts out as an assault on somebody else's property, whether it be private property or taxpayers'. Much of it is simply destructive. A paper published by the Melbourne Metropolitan Train Network states:

The only rational reason for responding to malicious damage is when it impacts on organisational effectiveness.

That is an interesting statement. It continues:

The simplest example is when the damage prevents the operation of the asset at normal acceptable levels. Incidences such as smashed equipment, safety signs painted out, advertising disfigured, et cetera, are very clear examples.

Mr Lamont: But that is vandalism.

MRS CARNELL: Yes, that is vandalism. These statements quite clearly show that we should not be supporting any sort of vandalism, as perhaps a literal interpretation of the MPI would suggest. Quite often, graffiti is simply vandalism which destroys the usefulness of a public asset. I do not believe that anybody here would support that sort of thing.

There is much more to it than that. It is not just the impairment of functionality that raises concerns; it is also the question of aesthetics and private property. Quite clearly, people have a right to the protection from destruction of what is their own property, even if that destruction is the result of somebody else's artistic endeavours. This is quite fundamental. I have a right to keep my well-painted grey, pink or white shop or house the way I like it, and not have black letters or whatever painted all over it.

Mr Lamont: Hear, hear! Your house looks nice like that.

MRS CARNELL: It does, too. I do not think I could support the notion that graffiti should be allowed anywhere, regardless of whose property it might be on and regardless of how beautiful that graffiti might be. I am sure that that is not what Ms Szuty has said.

There is also the question of people's individual likes and dislikes. The problem with what Mr Moore says is that some people like some things; some people like others.

Mr Lamont: And some people just like everything.

MRS CARNELL: And some people just like everything. I realise that there are forms of graffiti that can actually be considered artistic. As I said, all graffiti starts out as an assault on somebody else's property, which is illegal; but over time a certain sophistication and artistic style has developed. I am sure that we can find a place for this, but it must be in its proper place.

Mr Lamont: The Southern African Liberation Centre.

MRS CARNELL: That is not very pretty. If we are talking about finding a place for this kind of art, it should be approved and it should be capable of being appreciated by the wider community. We must remember that people have different tastes. Even where we do approve community space for the purposes of street art or graffiti, we must also take into account that we must not offend the wider community. Despite the suggestion in the MPI that graffiti plays an important part in the lives of the members of the Canberra community, I think many people in the community do not share this sentiment.

The dislike, aesthetically speaking, that people express towards today's graffiti is also not necessarily baseless or reactionary. For instance, it has been said that attitudinal surveys of passengers on the London Underground indicated that extensive vandalism and graffiti were seen as indicative of a lack of control over environs in and around the stations, invoking passenger insecurity and fear, particularly amongst women. I think that argument can be raised about underpasses and other things. More generally, people often see graffiti as a sign of decay and as a sign of a lack of resources being spent on upkeep. I do not think we should discredit these sentiments or reject them out of hand. Nonetheless, I do think we can find places for street and community art, and we should take a positive approach to this. Let us not be sanctimonious about this issue. Hoardings around construction sites could be vastly improved with a little approved community art.

We can actually prevent graffiti in bus-shelters, as Mr Connolly appropriately said, by allowing them to be decorated by community artists or schoolchildren. Studies have shown that plain concrete will be defaced substantially quicker than appropriately decorated bus-shelters, or whatever else we have in mind. I know from personal experience that the quickest way to have your shopfront defaced is to have it plain white. If you have something on it, it lasts substantially longer, and I know that that is what ACTION have found. Telecom Australia has also recently announced a program whereby community artists can paint one face of a telephone booth. Again, I think this is legitimate and positive. In other words, we need a positive approach to this issue and we need to encourage and investigate ways to allow the legitimate expression of community and street art.

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MR DE DOMENICO (4.38): Madam Speaker, in the limited time I have available I would like to say yes, we support young people and self-expression. One piece of self-expression I can recall, for example, on a hoarding at the Hawthorn railway station was, "What will you do if God comes to Hawthorn?". Someone wrote on the bottom, "Play Peter Hudson at centre half-forward". Translated into rugby league, that would be, "What would you do if God came to Canberra? Play Mal Meninga in the second row". I can recall signs at Puckapunyal that said, "Gentlemen, please don't throw your cigarette butts into the toilet as they become soggy and hard to light". We can all appreciate that that sort of thing is sometimes funny - and sometimes crude, I know, Ms Ellis.

I take umbrage at what has happened to some of the walkways in Fadden and Gowrie. The students and teachers at the Holy Family Parish School and the Fadden Primary School have got together to deface some of the words they see written under those bridges. That is what we express concern about. It is all well and good for Mr Moore - the sensitive new age guy over there - to talk about middle class, middle class, middle class.

Mrs Grassby: What do you think he is, living in Reid?

MR DE DOMENICO: We would rather call him a SNAG, Mrs Grassby, than a middle-class guy. Let us give support to self-expression, but let us also have a look at the frustration expressed by the parents of those young children who see all these obscenities written on walls. The majority also has rights. We have to instil into our young people the responsibility that comes with the rights we may give them from time to time.

MADAM SPEAKER: The time for the discussion of the matter of public importance has expired.

Ms Szuty: Madam Speaker, I seek leave to move the motion circulated in my name.

Leave not granted.

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

MRS GRASSBY: I present report No. 13 of 1992 of the Standing Committee on the Scrutiny of Bills and Subordinate Legislation. I seek leave to make a brief statement on the report.

Leave granted.

MRS GRASSBY: Report No. 13 contains the committee's comments on three Bills and three pieces of subordinate legislation. I commend the report to the Assembly.

Sitting suspended from 4.40 to 8.00 pm

LAW OFFICER BILL 1992

Debate resumed from 10 September 1992, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR HUMPHRIES (8.01): Madam Speaker, this Bill will be supported by the Opposition. It contains a number of provisions which, in effect, confer on the Attorney-General powers which the Attorneys-General in other States and in the Commonwealth traditionally enjoy. Those powers which are traditionally enjoyed by Attorneys in other States are apparently in some doubt in the ACT, and it has been felt necessary by the Government, apparently, to put beyond doubt that the Attorney has those traditional powers, by enumerating them to some degree and saying that the powers exist, in a less specified degree, in this Bill. Madam Speaker, it obviously is important for the powers that are referred to here, which it is the intention of the Bill to cover, to be clearly exercisable by the Attorney-General. They include obvious roles, including exercising the legal representative role of Attorney for the Crown in right of the Territory and in respect of the Territory itself. They include the power to conduct litigation on behalf of the Territory, or a Territory government, or a Minister of the Territory; and paragraph 4(1)(e) refers to functions which are conferred on the Attorney by another Act of this Assembly.

Madam Speaker, I think we can see the reason for such powers to be enumerated. In effect, clause 4 of this Bill provides a duty statement for the role of Attorney-General. I must say that the question that came to my mind when I read that was, "Why should there not be a duty statement for other Ministers as well?". Perhaps in due course there will be, if the Government thinks that is appropriate. Certainly, this makes it clear that the Attorney has a specified role in law. It lays down what that role is and it puts beyond doubt the fact that those powers which are traditionally to be exercised by Attorneys in other places can be exercised by the Attorney here.

The question that I also asked myself when I first read the Bill was, "Is there a demonstrated need for there to be such a Bill?". In other words, has doubt been cast upon the question of what powers the Attorney exercises in the ACT? I was kindly directed by officers of the Attorney-General's Department to a transcript in a case which was in the Supreme Court of the ACT earlier this year - the case of Olaseat, in which His Honour Justice Higgins indicated that he had real doubts about whether there was an ACT Attorney, I think he said at one stage, but certainly doubts about what the powers - - -

Mr Cornwell: I share that view, actually.

MR HUMPHRIES: Perhaps it is a good question for a debate one day, Madam Speaker. The real question is: What powers does this Attorney exercise? By force of the creation of this role in the self-government Act, or by force of the Chief Minister's decision to create that role, does the role that traditionally attaches to an Attorney in other places flow on to this particular position and does it carry that right in the ACT? The issue was not resolved in this case because it was not argued at the end of the day by the parties; but there is a very clear implication that if it had been argued it might well be that there would have been a decision which would have prevented the Attorney interceding in some way in the case. I forget, at the moment, what that particular - - -

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Mr Connolly: The grant of a fiat.

MR HUMPHRIES: Granting a fiat, that is right. So, Madam Speaker, obviously, if a judge of our Supreme Court is sufficiently concerned to make those comments, there is a demonstrated need for us to pass a Bill of this kind. Therefore, we on this side of the house will support this Bill.

One of the things which I think we should bring to the attention of the Assembly is that subclause 4(2) of the Bill gives the Attorney "the power to do all things necessary or convenient to be done in connection with the performance of his or her functions". One would assume that that power included, for example, the capacity to appear in a court in the ACT and argue the case for the Territory's position, whatever it might be. The Attorney pointed out in his introductory speech that the role of Attorney-General evolved from a person who appeared in court on behalf of the king. Even in these days it is not unknown for Attorneys to actually appear in court. I understand that our own Attorney indicated his desire to appear in the High Court some time last year over a matter which affected the ACT's interest, and perhaps we will see that in due course. I am sure that he would do that very well if he had to appear in that capacity; but obviously this clause gives anybody, even a non-lawyer, the right to appear in a court in that capacity as Attorney for the Territory.

We have not had a non-lawyer as Attorney for the Territory - with one exception, and that, of course, was the very first Attorney that the ACT had, namely, Ms Follett. She did not seek to exercise the power of appearance in any ACT or other court that I know of; but, under this Act, she or somebody else who is not qualified - should Mr Connolly lose his seat under the Hare-Clark system, for example, and Ms Ellis become the Attorney-General in the next government; something of that kind, you never know - whoever it might be, would have the power to appear in the Supreme Court on behalf of the Territory. Although I am not personally in favour of unqualified people doing that type of onerous job on behalf of the Territory, I am sure that certain leniency would be shown by judges and magistrates towards that person if they were fighting the good fight on behalf of the Territory.

Madam Speaker, the Opposition, as I said, supports this Bill and we hope that it will clear up any ambiguities and doubts about the role of the Attorney in the ACT.

MS ELLIS (8.08): Madam Speaker, before I turn to the Bill that is before us, I think that this debate provides an opportunity to reflect on how well this Territory's law officers have served its interests, and on the fine tradition of impartiality they have inherited and furthered. Law officers have not always been so well thought of. I should explain that the term "law officer" is usually understood as including not only the Attorney-General but also the Solicitor-General.

Madam Speaker, members are aware that at this time the Territory does not have a Solicitor-General; but no doubt, at the appropriate time in the Territory's development, consideration will be given to establishing such an office. The Northern Territory, along with all of the States and the Commonwealth, fills both offices.

Madam Speaker, as I said, at one time law officers were not as well thought of as ours, and with good reason. We all remember hearing of Sir Walter Raleigh at school. I guess that most of us remember him only as the gallant who spread his cloak across the puddle so that Queen Elizabeth would not get the hem of her dress muddy. He came to a sticky end. He was executed as a result of a charge of treason. Some reports have it that all he did was offend James I by not actively supporting that Scottish king's aspirations to the English throne. At his trial he faced the Attorney-General, Sir Edward Coke, and a reportedly unsympathetic and perhaps even biased bench. Coke's attitude to the duties of his office can be gleaned from the following extract from his opening address:

Thou art a monster; thou hast an English face, but a Spanish heart ... you are the absolutest traitor that ever was ... I protest before God, I never knew a clearer treason. Thou art the most vile execrable traitor that ever lived ... Well I will now make it appear to the world that there never lived a viler viper upon the face of the earth than thou.

Madam Speaker, incidents such as befell Sir Walter led to the offices of Attorney-General and Solicitor-General being described in the eighteenth century as:

... rocks upon which many aspiring lawyers have made shipwreck of their virtue and human nature. Some of these gentlemen have acted at the bar as if they thought themselves, by the duty of their places, absolved from all obligations of truth, honour and decency. But their names are upon record, and will be transmitted to after-ages with those characters of reproach and abhorrence that are due to the worst sort of murderers; those that murder under the sanction of justice.

Not even the reasonable man in the street who has become so popular in this place, even wearing a white coat, would think of describing our Attorneys-General in this way. To date, the following members of this Assembly have held that office: Rosemary Follett, from 18 May 1989 to 5 December 1989; Trevor Kaine, from 5 December 1989 to 14 December 1989; Bernard Collaery, from 14 December 1989 to 29 May 1991; Trevor Kaine again, from 29 May 1991 to 7 June 1991; Rosemary Follett, from 7 June 1991 to 18 June 1991; and Terry Connolly, from 18 June 1991 to the present.

Some idea of the importance of the office to the Territory can be got from the fact that only the title "Chief Minister" has a longer record. Madam Speaker, as all members know, that title was first held in this Territory by Rosemary Follett on self-government day, 11 May 1989. Madam Speaker, no doubt Gary Humphries and Terry Connolly will be able to confirm this, but I understand that the ACT has contributed two members to one of the most exclusive clubs around. Rosemary Follett and Trevor Kaine are non-lawyers who have held the office of Attorney-General.

Madam Speaker, the attitude of the Territory's Attorneys to the duties of their office and, for that matter, the attitude of this and, I am sure, all previous Territory governments to the office is apparent if one examines the details of the case that convinced the Government that this Bill should be brought forward.

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That case concerned the trash and treasure market that has been conducted at Jamison every Sunday for close on 20 years. The market is conducted by Rotary and the fees it receives from stallholders and visitors have been of very great assistance to charities and community activities in this Territory. However, local retailers believed that breaches of a number of Territory laws, in particular the hawkers and trading hours legislation, were occurring at the markets. I hasten to add that they were not attempting to close the markets down. However, in their view, some of the trading that was occurring at the markets was in breach of the laws I have mentioned.

Madam Speaker, after exhausting other avenues - because our time is short I do not think that those avenues need to be detailed today - the landlord of the Jamison shopping centre, Olaseat Pty Ltd, began proceedings against the relevant Minister, who was ultimately referred to in the litigation as the Minister for Land and Planning. Olaseat immediately had to confront an issue that often confronts those who complain of government action or inaction. Did it have what lawyers call "standing"? That is, was its interest in the matter sufficient to allow it to commence legal proceedings? There were very real doubts on this point. Olaseat applied to the Attorney for his fiat - that is, for his authority to take the proceedings using the Attorney-General's name.

When this Bill was presented by the Attorney he described the fiat - and his other traditional powers - as being something that contributes to the welfare of not only the Government but the general community. The fiat allows matters which otherwise would not be considered by the courts to be properly tested. In the case of the trash and treasure market, the Government's administration of the licence under which the markets are conducted and of a number of very important laws was under a cloud. I am sure that members will agree that it was in the public interest that those matters be examined by the court. I have been advised that both the applicant for the fiat and the Attorney who proposes to grant one must complete a rigorous process that is aimed at ensuring that the grant is, indeed, in the public interest. In the event, Olaseat was granted the fiat.

Madam Speaker, what I have said about Olaseat's request and the Attorney-General's handling of it illustrates that when exercising his or her traditional powers the Attorney-General does not have regard to party political matters and the interests of the government of the day. In fact, these matters have to be furthest from his or her mind. The powers are intended to be used to further the administration of justice and the community's interests in general. This is especially so of the powers the Attorney-General has in relation to the criminal process, as Sir Walter Raleigh and, apparently, a great many others in earlier times found to their cost.

Madam Speaker, as the ACT enjoys the services of a very competent Director of Public Prosecutions, Mr Ken Crispin, QC, and his officers, the Attorney-General has little need to exercise his powers in the criminal process. However, if the Attorney-General exercises his or her other powers for the wrong reasons, the consequences for the community will be as serious as the wrongful exercise of the powers in the criminal process are to those immediately affected.

Madam Speaker, in the trash and treasure case, I am told, the Supreme Court was advised of the grant of the fiat at the first opportunity. His Honour Mr Justice Higgins considered the question of whether the Attorney was in a position to grant the fiat. He expressed doubts on the matter.

Madam Speaker, the fiat is available to protect the public interest no matter who seeks it. It is true that in a case where the fiat is available the Attorney-General could take action in his or her own name, but there will often be advantages in the proceedings being conducted by a member of the community who is in a better position to argue the matter and to bring forward relevant evidence.

In the ACT the most famous example of it being granted is to be found in what is known as the Black Mountain tower case, a planning and environment case in the mid-1970s. What has to be appreciated is that the doubts expressed by His Honour Mr Justice Higgins would not only prevent the Attorney-General from granting a fiat but also prevent him or her from being an active party in such cases; that is, the ACT's laws would, in some cases, be unenforceable because nobody would be able to bring a breach of the law before the court. The Government was not prepared to take the chance that this view would be acted on by the court.

I hope that what I have said will convince members that this Bill is significant, despite its brevity. Madam Speaker, members may recall that when the Bill was presented the *Canberra Times* report on it was headlined, "A Special Bill to be Sure, to be Sure". The balance of the article was a factual summary of the Attorney-General's presentation speech and set out the matters that have led the Government to bring forward this measure. If the headline was intended to convey the message that in bringing forward this measure the Government was wasting the Assembly's time, I hope that members will join with me in rejecting the suggestion. In conclusion, Madam Speaker, I commend this Bill, and, for that matter, the efforts of the ACT's Attorneys-General to the Assembly.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (8.18), in reply: I thank members. Mr Humphries foreshadowed that at some future stage perhaps Ms Ellis may be an Attorney. I am sure that her erudite remarks this evening confirm that that could, indeed, be the case. The Bill, as members have indicated, clarifies the powers of Attorneys or Ministers who may be, from time to time, administering this Act. It may well be that in future administrative arrangements the position of Attorney-General may not be required; but from time to time whoever is administering this Act will have those powers and will exercise those functions.

They are important public interest powers. The ability to grant a fiat is an important safeguard of the public interest. Ms Ellis said that it has to be exercised without regard to partisan spirit. I think that is most highlighted by that Olaseat case. For the casual reader of the law reports - if there is a person who casually reads the law reports - that case would be reported as the Attorney-General of the Australian Capital Territory v. the Australian Capital Territory Minister for Land and Planning, and it would seem highly unlikely that Mr Wood and I would resort to litigation against one another.

The effect was that the fiat was granted to enable the citizen to run a matter. One could well imagine, particularly in the environmental and town planning areas, that there may well be cases where this Government, or any future government, may grant the fiat to enable the citizen to challenge an exercise of our powers. Mr Moore, I seem to recall, at some stage in the First Assembly, was seeking from the then Attorney, Mr Collaery, the grant of a fiat to enable a particular planning issue - I cannot quite recall, but I think it was the school issue - to be litigated. I think in the end that was not granted.

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Certainly, our perspective would be that a government ought to grant the fiat to enable the case to be tested, regardless of whether that was, in effect, a challenge to a government decision. It is highly likely that in most cases the fiat would be granted, in effect, for the citizen to challenge a decision of the Government. The proper course of action is for a government to not have regard to the partisan consequences but to give the citizen the opportunity to challenge the matter. Of course, it does not follow that the Government picks up the legal costs - they are always the responsibility of the citizen - but it does allow the citizen to challenge government action.

As was indicated, there was some doubt cast in a recent Supreme Court proceeding as to whether the ACT executive arrangements allowed that. I must say that it causes us some concern that there is a view about that somehow the administrative arrangements in this Territory are different from a standard traditional State body politic. The self-government Act clearly establishes the ACT as a body politic under the Crown. It vests the executive power in the Chief Minister and those Ministers appointed to be the Executive, and one would have thought that the consequence of that was that the ordinary executive arrangements followed. But, as doubt has been cast, and as the *Canberra Times* indicated in its article, it is better to be sure to be sure, and that is what this Bill will achieve.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Question proposed:

That this Bill be agreed to.

MR HUMPHRIES (8.22): Madam Speaker, there is something I forgot to say during the in-principle stage and which I would like to mention now. The problem here apparently arises by virtue of the fact that the ACT Attorney-General is not appointed by the Crown directly. The Attorney is appointed by the Chief Minister, who is elected by the Assembly and not appointed by a viceregal representative. Madam Speaker, obviously this Bill is designed to overcome that deficiency, the argument running that, by conferring that power directly on the Attorney-General, you then overcome the problem that it is assumed that those powers flow to other Attorneys-General by virtue of the fact that they are appointed by the Crown; and that therefore the prerogative rights of the Crown presumably flow on to the Attorney because he or she is appointed by the Crown directly.

This is a small argument, I would say, Madam Speaker, for the ACT to consider in due course whether it does not need a viceregal representative in the same manner as every other jurisdiction in Australia. This is only a small case where the lack of that representative has caused us a problem. Possibly, if Olaseat's case had gone on that issue, it might have occasioned us some problem because there was not, on His Honour's reading, a real Attorney-General in the ACT. If that had been the case, we might have suffered some loss; but we have not in this case. We have avoided that problem.

It still raises the question of whether the ACT, in the long term, should have that position - not merely because it clears up the role and the nature of each of the ministries in the ACT, of each person who holds a ministry, but also for political reasons; because it provides, I would argue, Madam Speaker, a pressure valve when certain political crises might from time to time beset the Territory. I think for that reason that we should not consider that this question of what the constitutional arrangements are for the ACT is closed. Indeed, I think that issue will come up again at some point and we should at that point, if not sooner, consider what the appropriate arrangements should be.

I am also reminded that there was an interesting exchange in that case to which Ms Ellis and Mr Connolly referred. I thought I might read it into the record because it was quite interesting, Madam Speaker. His Honour asked, in the course of the judgment:

Is there an Attorney-General for the ACT?

The transcript then reads:

MR TAMBERLIN: There is, I understand. Yes, Mr Du - Mr - - -

HIS HONOUR: It is not Mr Duby.

MR TAMBERLIN: Mr Connolly I think is the Attorney-General.

His Honour, who I thought should have known better, said:

Well, he calls himself that, but is he really an Attorney-General?

The transcript continues:

MR TAMBERLIN: Well - - -

HIS HONOUR: Attorney-General to whom?

MR TAMBERLIN: - - - one would assume prima facie on the principle of regularity that he is an Attorney-General - - -

HIS HONOUR: Well, I do not make that assumption in the Territory ...

So, as you can see, Madam Speaker, there is a real need for this Bill, to make sure that we really do have an Attorney-General for the ACT - once and for all, settled beyond doubt and beyond question.

MADAM SPEAKER: Really, Mr Humphries, I indulged you, because I think by default the Assembly gave you leave to speak. Just for members to get this absolutely clear, when we dispense with the detail stage, which enables the putting of the question, we then have to move right to the question. It is my error. By default the Assembly has given you leave.

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MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (8.26): I also seek leave to speak briefly.

MADAM SPEAKER: I am sure that, as the Attorney-General, the Assembly will indulge you similarly now.

MR CONNOLLY: My colleague Ms Ellis, after making those remarks, did suggest to me that now that we have clarified that there is an Attorney-General, which the Opposition seemed to think was necessary, perhaps government members might move at some stage in private members business a Bill to establish that there is an opposition, because sometimes we have some real doubts as to that.

Madam Speaker, more seriously, Mr Humphries made some remarks about the possible need for a viceregal position. That was raised once before during the Alliance. I recall having some fun in debate suggesting various members of the then Alliance Cabinet who might accept lordships or other viceregal titles to perform the office. One former Minister was quite enthusiastic. I would commend to members who are interested in this subject an article by Geoff Lindell, who teaches law at the Australian National University as well as, from time to time, being an adviser in the Commonwealth Attorney-General's Department. This article, in a recent edition of the *Public Law Review*, probably is the most comprehensive academic treatment of the ACT constitution. Interestingly, he says that the ACT constitution would be a model for any future republican constitution because it does show how you can run the traditional executive and legislative arms of government without a viceregal representative.

Mr Humphries said that there may be a need at some future time for a viceregal position, particularly in times of crisis. A point that Lindell makes is that the First Assembly, for all its faults, and we know that there were many, had three changes of government, and in terms of treatments of a Westminster system a change of government is often seen as the point at which there is a crisis and the viceregal representative must intervene. He makes the point that that First Assembly managed quite satisfactorily to deal with three changes of government without - - -

Mr Kaine: It had to. There was no option.

MR CONNOLLY: Indeed. Mr Kaine says that it had to because there was no option. It goes to show, as was the point in the article, that you do not need a viceregal representative; that democratic government can operate without it. The traditional ministerial arrangements, where Ministers are accountable to an Assembly, where the Executive exercises the traditional powers of the Crown, can, in fact, operate; you can have a system which creates a body politic under the Crown, which is the position from section 6 of the self-government Act, and it can operate without a viceregal representative. So I would say to Mr Humphries that it is unnecessary, but I commend to any members who are interested in this issue, because it is an interesting constitutional issue, Geoff Lindell's article in the recent *Public Law Review*.

Question resolved in the affirmative.

Bill agreed to.

SUSPENSION OF STANDING AND TEMPORARY ORDERS

Motion (by **Mr De Domenico**), by leave, agreed to, with the concurrence of an absolute majority:

That so much of the standing and temporary orders be suspended as would prevent order of the day No. 1, private members business, relating to the Rates and Land Tax (Amendment) Bill (No. 2) 1992, being called on immediately after the resolution of any question relating to the conclusion of consideration of order of the day No. 2, Executive business, relating to the Rates and Land Tax (Amendment) Bill (No. 3) 1992.

RATES AND LAND TAX (AMENDMENT) BILL (NO. 3) 1992

[COGNATE BILL:

RATES AND LAND TAX (AMENDMENT) BILL (NO. 2) 1992]

Debate resumed from 8 September 1992, on motion by **Ms Follett**:

That this Bill be agreed to in principle.

MADAM SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Rates and Land Tax (Amendment) Bill (No. 2) 1992? There being no objection, that course will be followed. I remind members that in debating order of the day No. 2 they may also address their remarks to the Rates and Land Tax (Amendment) Bill (No. 2) 1992.

MR KAINE (Leader of the Opposition) (8.30): We are in a rather unusual position tonight in having to debate two Bills on the same topic that are such different Bills. We are in that situation because the Government initially declined to take the necessary action to amend this Act, even though it was obvious that there were problems with it. The Opposition took the initiative and then, behind it, along came the Government's belated Bill to achieve some change. The things that they are proposing are in no way consistent with the things that are being proposed in the private members Bill. So members now have a choice of two Bills, the objectives of which are quite different and the detail of which is quite different.

I suggest, Madam Speaker, that the Government's Bill is an expression of ideas that are at large either in the Treasury or in the ranks of the Liberal Party but not in the ranks of the Government. I can only conclude that the Government, on this issue, as with many others, is entirely without direction. Certainly, the Government failed to amend the Act when the problems first became evident. That did not occur only in August, or even in late July of this year, as the Chief Minister asserted only as recently as August. The problems that we are discussing today in connection with the Rates and Land Tax Act were evident at this time last year when the Act was first applied. The same problems are being experienced now as were being experienced a year ago by some people who became subject to this Act.

There were a number of problems with the original Act, Madam Speaker, not just one or two. They include the fact that people are now afraid to leave their homes in the ACT, even if their families remain in those homes, to take up work outside the ACT, because if they do they are going to be taxed. Secondly, people are taxed because they organise their affairs through a trust or a corporate body, even when those arrangements are entered into for legitimate reasons that have nothing to do with tax avoidance. Thirdly, life tenants, that is, people who have occupation of a house under, perhaps, a will, are taxed because they are not owners under the current law. Fourthly, people in possession of more than one property on 1 July each year, that is, the date on which the assessment is made, are taxed regardless of the use to which the properties are put or the circumstances under which they are held.

Fifthly, people are penalised because they cannot meet the demand for a lump sum land tax payment that happens to coincide with their rates payment. Finally, bona fide residents who happen to be absent from Canberra and the ACT by virtue of employment for longer than three years are taxed as if they were commercial landlords, as though the circumstances of the rental had nothing to do with the case. If they just happen to be away for more than three years they are taxed. Those are very significant matters, and the total result of them is that a lot of people are being levied this tax when they should not be. I submit, Madam Speaker, that the Government did not even have it in mind to levy the tax on most of those people when they put their Act into place in the first place.

The Liberal Party Bill, the private members Bill, addresses all of these problems directly, with amendments that are simple, effective and applicable across a broad range of circumstances. It increases the ability of appellants to have their cases determined by the commissioner rather than requiring expensive recourse to the Administrative Appeals Tribunal. People say that it is not expensive, but for those who have to put up the money in the first place it is expensive when they are up against payment of the land tax and rates and other things all at once.

The Government's Bill, Madam Speaker, on the other hand, does not respond to the people's needs as outlined in all of those problems. Indeed, it makes the imposition of land tax even more punitive in some cases. It is clearly a reflex reaction to the Liberal Party Bill, but it misses the central point. That issue is missed because there is the ideological blindness to the reality that people often own property for reasons other than extracting rental from them. The Government is so convinced that property must mean extractive wealth that, even if an owner leaves a house empty, it is assumed to have a taxable rental potential. Those are the words of the Chief Minister. She made that statement in August - "Even if the house is not being rented, because it has a rental potential we will tax you".

The Government's concern with the greed of landlords - their words, not mine; and I use that word in the context of land ownership as a direct quote from Mrs Grassby - has made them blind to the reality of the circumstances. Nowhere in the Act is there a reference to the rental potential of, say, rateable land in the ACT, because people know that there is no potential. Either it has a rateable value or it does not. I am quite sure that the law officers of the Territory cringe at the thought of the Government taxing citizens on the basis of the inherent potentiality of either their property or their person. Why not a tax on the income potential of people, or increasing rates because property in, say, Isaacs or Forrest or Aranda is potentially worth more than the current unimproved value as determined by the Taxation Office?

To be fair, the Government has had the sense to adopt instalment payments and pro rata payments from the Opposition's Bill. I am sure that this was not to make the Opposition happy; but perhaps it was to appease the two Independents who have strong views on this matter. I am sure that the Government will argue that they have made the concessions on instalment payments and pro rata payments in response to community demand; but it is significant, Madam Speaker, that the wording of the Government's Bill is virtually a verbatim replication of my Bill, and my Bill was on the table three weeks before theirs. If this is in response to community need, how come the wording is so much the same? It was clearly not the Government's intention to recognise community demands even a month ago. The Chief Minister said on 11 August:

The system we have in place is efficient and is being handled well. The changes that have recently been made -

through their own administrative arrangements -

to the land tax arrangement address, in my view, the vast majority of the problems that have been raised with me by constituents ...

In other words, she was perfectly happy with the situation as it was then. The changes referred to, of course, were those put in place by the Government through administrative change, not through legislative change.

Although on the same day the Chief Minister recognised some deficiencies in the Act, the Government's statements appear contradictory in other areas as well. The Chief Minister declared, for example, that instalment payments would not be considered because they were inefficient and costly. She said about pro rata payments:

I do not have it in mind to make the payment of land tax pro rata ...

Yet one month later we are debating a government Bill that proposes both instalment payments and pro rata payments. Is that not incredible? The Government clearly has had a recent change of heart on this issue, and only since I tabled my private members Bill on this issue. They were behind the eight ball and had to catch up in some fashion.

The central issue, Madam Speaker, on which resolution of all the other issues depends, is this: What is really being taxed? It is not, as the Government states, the potential for extracting rent from property. That is not the basis of the tax. That is, as I have already said, ideological nonsense, just as such a proposition would be in relation to any other form of taxation. The central issue, in fact, is the "clear intent in the extension of land tax to make commercial properties pay land tax" on "commercial properties whether they are residential in nature or of some other nature". I am quoting the Chief Minister again.

I agree that the use to which the property is put should be the central proposition in determining tax liability. They are not my words; they are the Chief Minister's words. Unfortunately, the Chief Minister has not ensured that the stated intention of the tax is translated into law - neither in the original Bill, nor in her amendments to it. The Government's Act failed to do that; the Government's Bill fails to rectify it.

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The Bill avoids dealing with that issue and substitutes an extension of exemption from tax only to life tenants. As I have already explained, there are many other people who have been hit by this tax and who should not pay it either - not only life tenants. This is merely tinkering with the machinery and not coming to grips with the main problem. Until that issue is recognised and rectified, the Act will remain flawed and the Government's avowed intent will not be met. On the other hand, the wording of my Bill specifically addresses this issue, and I urge the Government to adopt it. It matches the simple, clear application of tax to all rateable land in the ACT in section 22A of the Act with an equally simple exemption that says that if a property is used as a residence and is not used to produce rental income it is exempt from tax. That is a very simple, straightforward proposition. The corollary meets the Government's intention; that is, if it is a residence used for commercial purpose, if it is income rental producing property, it is liable for tax, right and proper.

If that simple philosophical step is taken, the solution to requests for exemption and the need to make provision for company holdings, mortgagees in possession, life tenants and all the other possible combinations, all fall simply into place. The simple test is whether the property is used to produce an income. If yes, tax is applicable. If no, tax is not applicable. That is a very simple basic rule, a very simple basic premise. Adopting this change would eliminate the need for an amnesty on stamp duty payments for transfers from company to individual titles, which the Government recently approved. Subsection (3) of section 22B of the Act would not be necessary; nor would the amendments now proposed in the Government's Bill, because they would be done away with.

The absence provisions in subsection 22B(1A) of the Act can be clarified without recourse to the more limited and niggardly provisions of the Government's Bill. An additional discretion to enable the commissioner to deal with periods longer than the three years' absence already provided for would eliminate reasonable complaints about this particular section of the Act. Many people will be taxed even on their principal residence, under the Government's provision, I might add, and that would include, for example, Defence Force members who cannot comply necessarily with the two years' prior residence before they rent their property and then come back to it. What these people are saying is that a Defence Force employee who meets all the other criteria imposed by the Act is excluded from exemption on his premises because by virtue of his duty he is posted somewhere else. I think the Government really needs to look at these things.

Again, Madam Speaker, there is a simpler, more effective and more general provision than that which the Act contains or which the Government's Bill proposes. My proposal in respect of exemptions for absent residents provides for both a common fact of life in the ACT - that is, our mobile, career-oriented population of public officials, business people, Service people, academics and the like - and our current recessionary economy forcing people to seek work outside of the ACT. The provisions of the Government's Bill do nothing to assist people who fall into this category. For exemption on the basis of employment-related absence, Territory residents, according to the Government's Bill, must have been resident for two years and must be currently employed by an employer resident or carrying on business in the ACT. This will not assist business people, academics or public officials taking up posts for valid reasons relating to their employment with interstate or international institutions. As I have already said, it certainly will not take account of Defence Force personnel, who do not move voluntarily; they move when they are told.

The new provision that the Government intends to put in place will create more problems than it solves. This is not an answer; it is a bureaucratic reflex action that ignores analysis of our present state of affairs, our ongoing needs and the nature and justice of complaints from some of our citizens. The Government's amendment will propose a more rigid criterion than did the original Act. The Government is tightening its legislation, setting aside its own claims to social justice.

This niggardly tax collector mentality is unfortunately not confined to the consideration of exemptions for absences for employment reasons. The instalment payments, which I agree with, come at a real price under the Government's approach. A significant cost will be imposed on those taxpayers opting to use this method of payment because an unstated "additional rate of tax" will be levied on those people who choose to use the instalment system. I imagine that the rate will be set to recover as much as possible of the additional cost and forgone interest that the Government estimates is involved with instalment payments.

One could argue that that is a reasonable basis if you accept a graduated tax as being a reasonable thing in the first place. But it is a punitive provision to be imposed on those least able to pay. Why would anybody adopt an instalment payment plan if they had the money up front and could afford to pay it? Those who have the money will make the payment up front; they will not be subjected to this higher rate of land tax that the Government is providing for those who cannot afford to pay up front.

Hopefully, Madam Speaker, if the Government insists on going ahead with this, the Treasury cost estimate of \$600,000 will not be used as the basis for decisions, because that estimate is, frankly, wrong. Estimates from sources able to calculate the cost on the basis of residential land tax, rather than an aggregate of both residential and commercial tax, put the figure closer to \$200,000 a year. So, if the Government uses its figure of \$600,000 it is becoming even more punitive than before. If other people can do the sums, then perhaps the Government ought to do its sums again.

Furthermore, Madam Speaker, in making instalment payments available, which the Government said only a month ago that it would not do, it has failed to carry out its promise of "ensuring that the dates of payment of rates and of land tax do not coincide". That is what the Chief Minister said only a month ago. Again the Chief Minister appears to have been directed by her bureaucrats. I recommend that the assurance given by Ms Follett on 11 August on this point be put into the legislation. The provision of separate dates in section 4 of the principal Act can be effected by reference to the relevant amendments in our Bill - a very simple amendment.

Madam Speaker, I will move such an amendment and oppose the penalty on instalments when we come to the detail stage - not to benefit big business, as the Chief Minister has claimed, but to relieve the financial burden which will now fall on those average income householders who must now pay the tax on the properties they are using to generate income, if the Government has its way. It is not the big businessmen who are going to have this burden put to them; it is going to be the smaller owner. Big business will pay tax in a lump sum, more than likely, because their cash flows are larger and they are more capable of

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planning than are single householders or house owners whose second property is often their sole source of retirement income. These are people who have fixed incomes that are suffering from recession already. Additional penalties are neither appropriate nor beneficial. The emphasis here should be on enabling people to comply with the law, not on forcing them into a situation where they will have to pay a 20 per cent penalty or a higher rate of tax, or both, if they cannot comply with the law. That is punitive and it certainly is not social justice.

There need not be additional costs involved in sending out separate land tax and rates notices. It has been asserted that if the Government adopts my philosophy it will cost them more. It need not. The objection holds no water. Other government notices of charges are sent out a month or more in advance. I quote the motor vehicle registration notices that go out many weeks before they are due. The land tax assessments can be sent out along with the quarterly rates notices and it will not cost them a cent to do it. So there is no additional cost involved in sending out the notices ahead of time.

The Government's approach to the land tax and their Bill demonstrates no clear or lateral thinking. This Bill is a bureaucratic document that fails to rethink the problem. The Act itself was wrong. The Government is merely perpetuating the wrong by the Bill that they are now bringing forward to amend it. It pursues a course of action that sees the community not in terms of a community with needs that have to be met but in terms of miscreants and tax avoiders. That is what the Government is on about; everybody is out there avoiding tax. It fails to take the opportunity to solve all the problems that I have identified with this tax in a simple, fair and effective way.

The Government no doubt will pass this Bill today with the support of the so-called Independents, and in the process they will dismiss the Opposition's Bill. That outcome will represent no victory to the community that is awaiting some leadership and some relief from this iniquitous tax. It will not solve the problems that we already know about but will, I expect, add further to the community's disaffection with the Government's attitude and performance. As I said before, it is going to create more problems than it solves.

Madam Speaker, I reaffirm that when the Liberal Party takes government at the next election this iniquitous Follett land tax on small property owners will be repealed. In the meantime we will do everything we can to eliminate bias and unfairness in its application.

MS SZUTY (8.51): Madam Speaker, I support the concept of land taxes, as I feel that they provide a sustainable and equitable base for the raising of revenue, especially when compared with other forms of taxation which impact more adversely on low income earners, pensioners and social security benefits recipients. As a community, we need to share the burden of paying for the services that are provided by government for the benefit of all citizens. If the land taxes were abolished or made ineffectual, additional revenue would need to be raised in other areas.

What I do feel it is important to note about both the Opposition's and the Government's proposed amendments to the Rates and Land Tax Act is that they have included arrangements for quarterly payments of land tax. While I feel that land tax should be imposed on an asset that is income producing and also provides the owner with a large Commonwealth income tax deduction, there is

also need for consideration of the circumstances of collecting that land tax. If land tax is paid yearly in advance, it can become a heavy burden for small investors. With the provision of quarterly payments, the liability is spread across the whole year so that there is a chance to earn at least some of the income before the land tax bill must be met. As a community we expect that all people should be treated fairly, and I feel that this proposed amendment makes the collection of land tax a more equitable practice. While there is a small penalty attached to paying quarterly, this is small in comparison with interest rates that would be charged by lending institutions for loans to cover the payment of the tax.

In terms of the other areas addressed, I feel that the Government's amendment Bill is to be applauded. I feel that it is a positive step to introduce the payment of interest in circumstances of the overpayment of tax, so that those who pay in good faith, and then are either exempted or a decision is made that they have paid too much, will not have lost any income from that decision making process.

I note that the Government charges a 20 per cent penalty for late payment but will be paying only market interest rates. This anomaly may be appropriately addressed at another time; but I would like to point out to members that the Australian Tax Office, which until recently has charged a 20 per cent penalty on late payment of income tax, has now moved to a sliding scale of interest on late payments. After the passing of the Taxation Laws Amendment (Self Assessment) Bill 1992 the interest rates for late payment of income tax will be made up of an 8 per cent penalty component, which is not tax deductible, and a component made up of the Treasury weighted average, plus 4 per cent, which will become tax deductible in the following tax year. While sounding complex, this is in reality no more complicated than tying the refund interest rate to a market rate.

The Government has also moved to tighten definitions of work related exemptions and exemptions on compassionate grounds, to change the redetermination guidelines to allow yearly rather than three-yearly reviews, to extend exemptions for people living in a house under the terms of a will, and to extend the tax to all parts of a complex of residential flats not used as the owner's principal residence. This amendment Bill is extensive, and it seems that it will be administered in a fair and equitable manner.

I understand that the Leader of the Opposition was attempting, with the introduction of his amendment Bill, also to make it a fairer tax which would not impose a burden on people who were not earning an income from their property; but, on my reading, what the Bill did was to effectively make the imposition of land tax unworkable. It attempted to be overgenerous in its exemption categories, leaving only a few landlords to pay the tax. The introduction of the amendment Bill is admirable, however, in its attempt to draw attention to existing anomalies in the Rates and Land Tax Act.

Madam Speaker, many of the complaints that I have received regarding the first round of land tax assessments related to the time that it took to be informed of the final decision. While this is of concern, and I would hope that mechanisms would now be in place to avoid further delays on applications for exemptions, there are other ways to manage this, rather than undermining the imposition of the land tax and making it in the interests of people to complicate their financial and property dealings.

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We, as an Assembly, need to keep in mind that what we impose by way of land tax is revenue we do not have to find elsewhere, and by imposing a tax on income producing assets we make this sustainable and equitable. If, as I have said, we were to move away from land tax there would be a burden on other taxation areas. Taxes in these areas would need to be extensive, often affecting people who do not necessarily have an asset base to sustain them. If social justice principles are seen to be worthy of upholding, we must continue to work towards a strong and equitable land tax base.

Madam Speaker, I support the Government's Rates and Land Tax (Amendment) Bill (No. 3) while acknowledging the work of the Leader of the Opposition which has drawn the Assembly's attention to current inequities in the imposition of land tax, inequities which will no longer exist following the passage of this Bill.

MR CORNWELL (8.56): Madam Speaker, as this is, I understand, a cognate debate, I rise to support the Rates and Land Tax (Amendment) Bill (No. 2) 1992 put forward by my colleague Mr Kaine. I remind members that Mr Kaine has put forward essentially three significant amendments to bring social justice back into the levying of residential rates and land taxes. These are, firstly, an exemption for those who should not be liable for this tax; secondly, improved circumstances for those who are liable; and, thirdly, the introduction of broader discretionary powers for the Commissioner for Revenue to determine appeals.

Since the original Bill was introduced by the Chief Minister all sorts of anomalies have occurred and the real intent of this tax became apparent. It is very simple; it is revenue raising. Interestingly, the Government has recognised some of these anomalies and, by the introduction of its own amendments, now purports to correct them, or at least some of them. I do not believe that they do so. In fact I think they simply create an even more confused set of bureaucratic rules governing the exemptions and place more power in the hands of the Commissioner for Revenue in exercising these discretionary powers.

As Mr Kaine has said, the Liberals oppose this tax. We will abolish it in government. In the meantime, however, in the interests of those who suffer its expensive consequences, we will attempt to improve it. It is an unnecessarily complicated land tax. Let me repeat: The tax should apply only to those properties that are, in fact and in action, income generating. It should not apply to empty houses. It should not apply to houses that are occupied by the absent owners' relatives or children on a rent-free basis. It should not apply to involuntary landlords. It should not apply to widows who have been left with free occupancy for the rest of their lives. It should not apply to any of those.

Further, we seek to ease the burden on those landlords who are liable for this tax, who are owners of income generating properties, and we do this by seeking to allow payment by instalments. We are doing this because not everyone who owns a rented property, as has been explained ad nauseam, is a capitalist. Indeed, most landlords of the ACT, I understand, would own no more than two rented houses. They rely on these investments for their day-to-day income. Many have placed their superannuation payments into these properties. In words of one syllable, they are people on fixed incomes. They do not have the ready cash to pay this tax in a single total amount, particularly as they have the further and simultaneous responsibility of paying rates as well as water rates, and perhaps, on occasions, excess water rates.

I admit that even the payment by instalment of these rates and now the land tax will place a burden on people with fixed incomes, but at least it will enable them to plan. However, any instalment plan that imposes a penalty charge is to be rejected, as Mr Kaine said, as punitive and, I add, because it is also totally inconsistent. Why charge an interest penalty payment of land tax by quarterly instalments when no interest penalty is charged on payment of rates by quarterly instalments? Perhaps you would like to answer that, Chief Minister, in due course. As you know, you obtain a discount for early payment of total rates, yet it is not proposed to offer this discount for early payment of total land tax. In fact they are going to reverse it; there will be a penalty applied for quarterly payment of your land tax. Why? I repeat: It is simply another revenue raising tax and it has been directed against a section of the community that this Government, the ALP, fears - that is the word - because they are people who seek to look after themselves by becoming financially independent.

I would suggest that in political terms this land tax really is the politics of hate, the politics of envy. There is an interesting comparison we can draw. Our friends over there, our good old Canberra China-Cuba, will perhaps appreciate this reference. It is almost as if they are taking a page out of Stalin's book in his treatment of the kulaks. These were reasonably prosperous, certainly upwardly mobile farmers in the Soviet Union. In about the 1930s Stalin got rather fed up with this lot because they were independent - they had their own little plots of ground - and he destroyed them on the basis that this did not fit his socialist concept. I suggest to you that this is the sort of thing that the Labor Party is trying to do to these people who at least are trying to look after themselves in their old age by investing in some rented properties.

I believe that I have fair justification in making this claim. I will give you two examples. Firstly, the Government's own interpretation of the eligibility for land tax, I believe, should apply to any property that is tenanted and that, of course, includes the letting of rooms in a family home, or perhaps granny flats or something of this nature.

Ms Follett: It does not apply.

MR CORNWELL: Exactly, Chief Minister; that is the point I am making. Secondly, in your quest for revenue, you are biased by your neglect of Housing Trust properties. We have discussed this before. I have discussed this aspect of land tax, but I would like to draw members' attention to the revenue potential that at the moment is being forgone.

Mr Connolly: So the Government should pay tax to itself?

Mr Kaine: No, your tenants should, like they do everywhere else.

MR CORNWELL: That is right. I would like, firstly, to draw members' attention to the revenue potential that is forgone by the Housing Trust, that Mr Connolly quite kindly provided to me in answer to question No. 115. He advised me that in 1991-92 there was \$4.4m outstanding in arrears from Housing Trust properties, including - - -

Mr Berry: What would you do?

Mr Connolly: Throw them all out into the streets.

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MR CORNWELL: Just a moment; one rooster at a time, please, in this farmyard. This included \$2.4m in vacated accounts. They are people who have done a flit. In 1991-92 there was \$2.4m outstanding from people who have done a bunk and, of course, another \$2m that is still outstanding in current accounts - \$4.4m in all. If you are looking for revenue, why do you not try to chase some of that?

Mr Connolly: Beat up the poor; throw them out of their public housing. The Liberal solution.

MR CORNWELL: I am glad that you said that. I am glad that you interjected. I will acknowledge it. If you need the revenue, if you are not pursuing that \$4.4m, why are you also continuing to exempt Housing Trust properties from this tax on the ground that the Government would be taxing itself and the spurious assertion that the Housing Trust's non-subsidised rents are set at market levels? We have discussed this before, Chief Minister; but it is worth repeating because you do not seem to understand what you said on 12 September 1991. As recorded at page 3248 of *Hansard*, the Chief Minister said:

I say again that Housing Trust rents -

those that are non-subsidised -

are set at market levels. I presume that that means they reflect the general market for rent in our community.

She went on to say that if the people who are occupying those places "are not in a needy category or in some way disadvantaged, they are paying full market rent".

Mr Kaine: Now they are not.

MR CORNWELL: That is a fact. Well, it is not a fact.

Mr Kaine: If they are, the Government has a windfall profit.

MR CORNWELL: Of course they have. But it is not a fact that they are paying the full market rent anyway, because, as we know, in answer to question No. 26 of 25 May, we discovered that there were great differences between the market value in the private rental market and the Housing Trust rents. In fact the estimate is \$4m in the last 12 months. So there we are; almost \$8.5m in revenue forgone, and this Government is making no attempt to chase it up, no attempt to go after it. They would prefer to attack a small group of people out - - -

Mr Lamont: The rich.

MR CORNWELL: I acknowledge the interjection from Mr Lamont - "The rich". These are pensioners, superannuants, who have put their money into some rented properties in order to get a return, and you state that they are rich.

Mr Lamont: It is like your slash and burn approaches. It does not matter what it is. Social justice; slash and burn. That is all you are interested in - slash and burn.

Mr Kaine: I said that it was an ideological hang-up and I - - -

MADAM SPEAKER: Order!

MR CORNWELL: It is an ideological hang-up, Mr Kaine. I agree with you. The problem is that this Government is against those people who help themselves. I told you that it was the politics of fear, and it is. They fear people like this. When you have people in your debt, when they are on pensions or when you have them in rebated housing, you have them in your power and they have to do as you say. The problem is that when they become financially independent they are independent themselves. They do not have to listen to you. They do not have to obey you people. That is what you do not like.

I repeat that there is a great deal of political influence in this. Mr Lamont's interjection about the rich simply confirms this. You have an ideological hang-up about these people. You are determined to tax them out of existence because you think that that way you will create power over them, the way you like to control everybody else. We will continue to oppose this. I repeat that in government we will abolish this iniquitous, unfair and socially unjust tax.

MR HUMPHRIES (9.09): Madam Speaker - - -

Mr Kaine: The Government does not want to defend its Bill.

MR HUMPHRIES: Yes, I am surprised about the Government's reluctance to speak on these Bills. They are quite significant pieces of legislation, but obviously none are interested. Madam Speaker, I might, first of all, declare my own interest in this debate. I am probably one of those that Mr Lamont calls "the rich" because under my house I have a granny flat which I rent out. I might say that I suspect that my net worth in this world is a lot less than Mr Lamont's, but we might compare - - -

Mrs Grassby: But do you have a granny in it?

MR HUMPHRIES: I might one day.

Mr Kaine: They will be amending the Act, next, to get you.

MR HUMPHRIES: They probably will. Madam Speaker, I think that the Independents, who obviously intend to support this government Bill, have been conned by what the Government has done here today. The Bill from the Government that we are debating is a reactive Bill. It is a Bill the sole purpose of which is to prevent the Opposition from responding to genuine community concern and at the same time allow the Government to appear as if it is meeting those same community concerns; but the Government knows, and we know, and apparently the community knows, but apparently the Independents do not know, that in fact the government Bill does not do that. The government Bill fails to do that. The government Bill has been pre-empted by Mr Kaine's Bill, which we are debating cognately with this Bill tonight.

In choosing between the two Bills that are before us tonight, Mr Kaine's Bill and the Government's Bill, we need to be aware of the fact that these two Bills go in completely different directions. Mr Kaine's Bill is designed to alleviate the burden of land tax in this community. It is designed to respond to the very problems in the administration of the land tax which we have identified for some time and which the Government at first denied existed. It has now come belatedly to the conclusion that they do exist and ought in some way, haphazardly as it turns out, be responded to.

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You only need, Madam Speaker, to look at the explanatory memorandum to the Government's Bill to realise that this is not a Bill designed to alleviate the burden of land tax or to make land tax fairer, because in the section indicating the financial implications it says:

Additional revenue from expansion of the land tax base to include investment flats is expected to be \$0.2 million in 1993-94 and each year thereafter.

Your so-called reforms to the land tax will actually increase the burden of land tax in this community, but you have painted it as some kind of response to community concern about the unfair way that land tax applies. You have created the impression that this land tax Bill of yours will ease land tax in the ACT.

Mr De Domenico: They have tried to create the impression.

MR HUMPHRIES: They have tried, indeed. Mr De Domenico makes the right point; they have tried to make that impression and they will not succeed. There is genuine and deep-felt community concern about the way this land tax is being imposed. Your Bill will not fool anybody. All those people out there who have written to us and to you, and to the *Canberra Times* and elsewhere, about the problems of land tax will not be mollified one iota by the tokenistic steps you are taking here tonight. I think that this issue will come back in more and more forms to haunt this Government as the people of the ACT realise that they have been taken for a ride yet again.

Mr Kaine: So have the Independents.

MR HUMPHRIES: And, of course, the Independents in this place who, unfortunately, seem to think that the Government's Bill in some way does something about the problem of land tax. It does not. It actually makes the burden of land tax on the community heavier. I do not think, to be quite frank, that the Government has really understood from day one how land tax has really impacted on this Territory.

You can see from the comments that have been made here tonight, particularly on the other side of the chamber in interjections, what kind of mentality underpins the Government's approach towards this land tax question. The comment by Mr Lamont - "The rich; it is all about the rich; we are targeting the rich in this matter" - is a contemptible statement. It is untrue. Mr Lamont, if he had any decency, would acknowledge that he is conserving a grave injustice on those people in this Territory who worked hard to secure some investment for their own future. Of course, we had the comment by Mrs Grassby. Again it was a contemptible comment about people in the ACT who put money aside to make that saving and to secure that investment in their own future. I quote, "Talk about the greed; it is unbelievable, the greed that people want. They are never satisfied. It is complete greed; that is what it is". Those comments, Madam Speaker, deserve to go much further than this chamber, and I assure you that they will.

The confusion in the Government's ranks came home to me by a question that I asked the Chief Minister on 11 August this year. I asked her about the decision that she had made in her haphazard response to the problem of land tax and her chopping and changing about what should be done about it. I asked her a question about family companies which own a family home and whether she

would make permanent the temporary exemption from stamp duty that she announced at that time. I asked: If it was the case that she considered that a family company ought not be subject to land tax - that, presumably, was why she was granting the exemption in any case - would she therefore make the amnesty or the exemption on land tax permanent? If a family company comes along in a year's time and buys an ACT property to hold for, say, people who are moving to the ACT to live here, should they not also be able to obtain the benefit of that exemption even though the amnesty that she announced had expired?

Her response was very interesting. She said:

... there are a number of reasons why we are providing a one-off amnesty. There is a clear intent in the extension of the land tax to make commercial properties -

note the words "commercial properties" -

whether they are residential in nature or of some other commercial nature, pay land tax.

Ms Follett: Exactly right. Well said.

MR HUMPHRIES: That is a good point. That point is fine as far as it goes; but, of course, we were not talking about an exemption for commercial properties. Correct me if I am wrong, but the exemption applied only to residential properties. Commercial properties were not eligible for an exemption from land tax under the amnesty that she had announced. What was she doing talking about commercial properties at all? It did not apply to commercial properties.

I went on to ask a supplementary question. I said, "Okay, where a family company can come to the Government and prove that they are not talking about a commercial property but are talking about a purely residential property which they hold for a family who live in that property, will you make that exemption from land tax permanent in the case of that particular property?". She said, "No, I cannot do that". She said:

... people who make residential and domestic arrangements -

at least it is not commercial any more -

under a family company are very often seeking to minimise their tax obligations.

If they are seeking to minimise their tax obligations, why grant them an exemption at all? If they deserved the exemption once, do they not deserve it all the time? If it is not a tax minimisation arrangement, if it is not a commercial arrangement, why should they not get the benefit of the exemption? That is a question that the Chief Minister could not answer then and I suspect that she cannot answer it now.

Madam Speaker, this tax arrangement is iniquitous. It clearly does not have the support of many people in the ACT. If the Government were serious about consultation it would acknowledge that the comments it has had about the present arrangements have been extremely negative and they should be amended. There is only one honourable course to pursue in that circumstance,

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and that is to pass Mr Kaine's Bill to provide real relief, real fairness, or at least an approach to real fairness, in the operation of the ACT's land tax. The government Bill will not do that. I therefore ask the Independents, in particular, to consider once more whether they are really achieving the objectives that the community is looking to us tonight to fulfil, and that is to make this land tax more equitable, more fair, than it currently is.

MS FOLLETT (Chief Minister and Treasurer) (9.18), in reply: Madam Speaker, I thank members for their comments in this cognate debate. Could I just reiterate the announcement that I made on 7 August of this year concerning changes that were being proposed to land tax. I think there has been a fair amount of misunderstanding, most notably perhaps by Mr Humphries, as to what those changes involved. The first change that I was putting forward was an amnesty period to allow property to be transferred from a private company into the shareholders' own names without attracting stamp duty, providing that certain conditions were met. Madam Speaker, I would have considered that that is a one-off transaction. I cannot understand Mr Humphries's apparent misunderstanding of the nature of that transaction. It is a transfer from a private company into individuals' names. That amnesty would get people out of paying a quite large amount of stamp duty on the transfer of that property. The intention to protect them from having to pay that stamp duty is quite clear to me and I do not understand Mr Humphries's apparent mystification over it.

Madam Speaker, I also announced that there would be an exemption from land tax for a property which is occupied as a principal place of residence by someone who has a life tenancy under a will. Mr Kaine has spoken, I believe, as though that were not the case. In fact it is and that change is being made. I have also announced the extension of the current exemption available to people who were transferred because of their employment to include the spouse of that person. I think that is a quite significant broadening of that exemption as well. I also announced that the date for payment of land tax had been changed to 15 September, rather than 15 August, in order to allow people to have a little more time in case they were experiencing cash flow problems, and also to allow them to consider their position in relation to that payment.

Madam Speaker, I made that announcement on 7 August. Since that time the Government has considered the matter further. We have had consultations with a number of people and a number of groups, and we have added, in the Bill before us tonight, a couple of further items. The most notable, I think, is the extension of the ground for exemption on compassionate grounds, because it includes unemployment as a ground for exemption on compassionate grounds. I think members opposite have not fully appreciated that point; that a person who, because of unemployment, must leave town to find work, and is able to demonstrate that fact to the Commissioner for Revenue, will be exempt on compassionate grounds. I think that members should at least give us credit for that.

I have also, as members have noted, included an instalment regime. I did that, Madam Speaker, because it is clearly the wish of a significant number of constituents and a significant number of members of this house. I will be blunt about it. It is not my preferred option, and I have said that on many occasions. I think it is cumbersome and expensive, but I am a realist. Madam Speaker, I believe that it is more appropriate that the Bill which the Government puts forward encompass all of those changes, rather than relying on some rather ill-thought-out proposals from members opposite.

Madam Speaker, I would also like to say to members, once and for all, that people who invest in residential properties do so for a variety of reasons. Those reasons might include obtaining income from rent; they might include maximising taxation benefits, for example through negative gearing; they might include achieving a capital appreciation. In other words, Madam Speaker, people who invest in residential property do so with the same sorts of motives as do people who invest in commercial land of other sorts. By maintaining land tax on all types of investment properties, I do believe that the Government is acting responsibly to protect the interests of the community and of other taxpayers. This can be contrasted with the approach of the Opposition.

I also believe, Madam Speaker, that Mr Moore has made comments about land tax being charged on the principal place of residence in some cases. I am not proposing that. Mr Humphries's granny flat is safe. Mr Kaine, I think it was, is renting out a room in his house. Providing that is his principal place of residence, he is safe as well.

Mr Kaine: I beg your pardon? I am not renting out anything. I live in my house.

MS FOLLETT: Perhaps it was Mr Cornwell. It was one of you. It might have been Mr Cornwell, Madam Speaker. As I say, the Government's approach on this Bill is very much at variance with that of the Opposition. A review of Mr Kaine's Bill and his presentation speech plainly shows, and Mr Kaine has been up-front about it, that he would have taken the easy way out by either removing this tax or expanding the exemption provisions beyond reasonable bounds and actually allowing avoidance schemes to thrive under some very vague and ill-considered criteria.

Madam Speaker, I believe that it is necessary for the Government to act responsibly. It is also necessary for us to maintain an adequate revenue base. At the same time the Government is aware of and sympathetic to, as I have already indicated, cases where the current land tax legislation has resulted in some unintended applications of land tax. These were referred to in the presentation speech that I made in relation to the amendment Bill. I referred to a number of difficulties that the commissioner was experiencing in administering the current provisions, and the Government's Bill addresses those difficulties. Mr Kaine's Bill, on the other hand, Madam Speaker, exacerbates the problems of the current legislation by introducing even vaguer provisions and by transferring all of the hard issues to the commissioner by increasing the use of discretion in determining the tax liability.

I would like to refer to a couple of areas of Mr Kaine's Bill which I think make it completely unworkable. The first is the matter of whether or not a residence is actually used to produce income. Paragraphs 4(a) and (b) of Mr Kaine's Bill replace the exemption for principal place of residence of the owner with a much broader class of exemption for residential land. Madam Speaker, where this becomes completely unworkable is that the word "income" is not defined and you would therefore fall back on the normal dictionary meaning of the word, I believe. So the property is land taxable if the residence is occupied by a person and it is also used to produce income; for example, a home business like that of a doctor or a hairdresser, or even part-time or casual income such as a second job like dressmaking or car repairs.

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The exemption of non-income-earning property completely ignores the other very important reasons for investing in property - I have mentioned them before - such as capital gains, negative gearing, tax advantage and so on. Madam Speaker, the period during which the property is earning income is simply not specified. The options are therefore that tax is payable if the income was earned on the prescribed day, 1 July, or the income was earned on any particular day, or only on those days on which income was earned. The Bill is unclear. Mr Kaine has not made us privy to his intentions in that regard.

Because the exemptions provisions have been broadened to allow eligibility to be established in respect of any person occupying a residence, I think tax avoidance would be widespread. For example, Madam Speaker, income may not be the same as discharge of liabilities. Through you, Madam Speaker, I ask Mr Kaine, "Does this permit an arrangement whereby the tenant actually pays the mortgage? Does that involve income under Mr Kaine's Bill?". We do not know. He has left it to the commissioner to work out all of that.

Another area where Mr Kaine's Bill, I think, is particularly vague and particularly dangerous is paragraph 4(d), which removes the provision which precludes corporate bodies and trusts from exemption provisions. Again, Madam Speaker, this matter has a lot to do with the stamp duty amnesty, which I have already announced. The removal of the provision, which Mr Kaine provides, would have overcome problems for a small number of residents; but because of the broad application that is involved in his Bill it, again, would provide opportunities for schemes to be developed to avoid the payment of the tax. For example, Madam Speaker, Mr Kaine's provision would allow corporate bodies providing employees with housing as part of a salary package to obtain an exemption from land tax. Clearly, that is not the intention of the Bill.

Madam Speaker, as I say, there are a number of difficulties with Mr Kaine's Bill and he is right in saying that our two pieces of legislation are very different. In saying that, of course, he is saying something very different from what Mr Humphries is saying, which is that they are almost the same. The Liberals really are going to have to get their act together at some stage. Madam Speaker, I put it to you that Mr Kaine's Bill is absolutely no way to make tax laws. I believe that such laws should be as clear as possible and be objective to the maximum extent possible so that taxpayers are aware of their responsibilities and rights. We should reduce, not increase, the need for use of discretion by the tax administrators.

The Scrutiny of Bills Committee has raised the issue of retrospectivity in respect of the amendment of section 10 of the principal Act, which allows the commissioner to go back three valuation periods and determine or redetermine unimproved land values in case of clerical error or a change in valuation circumstances. The Scrutiny of Bills Committee is concerned that the retrospective reassessment of rates and land tax, using these new values, may affect proprietors prejudicially in some cases.

Debate interrupted.

ADJOURNMENT

MADAM SPEAKER: Order! It being 9.30 pm, I propose the question:

That the Assembly do now adjourn.

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

Question resolved in the negative.

RATES AND LAND TAX (AMENDMENT) BILL (NO. 3) 1992

[COGNATE BILL:

RATES AND LAND TAX (AMENDMENT) BILL (NO. 2) 1992]

Debate resumed.

MS FOLLETT: Madam Speaker, the owner of the land which has been subject to a redetermined value has the right to object against the new value under section 29 of the Act and the right of appeal to the AAT if the objection is disallowed. Effectively, what this means is that the rates or land tax will be assessed or reassessed based on a value which the owner has had every opportunity to ensure is reasonable. In regard to an innocent purchaser becoming involved with rates and land taxes relating to a period before the purchaser owned the property, this would not eventuate provided that the purchaser had taken adequate precautions to protect his or her interests.

Mr Cornwell: How do you do that, Chief Minister? How can you make those adequate - - -

MS FOLLETT: Madam Speaker, would you protect me from the interjections coming from the opposite side?

MADAM SPEAKER: Order, please!

MS FOLLETT: Thank you. Subsection 21A(2) of the Act provides that, if the purchaser has obtained a certificate from the commissioner which has no notice of such liability on it when they get it, then the purchaser will not be responsible for any previous charges relating to the land.

Madam Speaker, another issue raised by the Scrutiny of Bills Committee relates to clause 12 of the Bill. This provides for the Minister to determine, by disallowable instrument, the interest rate that will be used to provide a refund of overpaid rates and land tax. The committee is concerned that the drafting of the section could be interpreted to mean that an individual owner's refund assessment is a disallowable instrument. Parliamentary Counsel has advised, Madam Speaker, that the provision is a standard drafting procedure frequently used in Territory legislation and properly refers to the relevant notice mentioned in the section. (*Extension of time granted*)

Madam Speaker, I will not take too much longer; but there was a further matter which I did want to address, and that was Mr Kaine's comment in regard to the exemption from land tax for people being posted away from Canberra by virtue of their employment. I think again that there has been some misunderstanding of

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the clauses in my Bill. The provision that is in the Bill allows the commissioner to prospectively grant an owner a three-year exemption providing that the commissioner is satisfied that the person's absence is by reason of his or her or his or her spouse's current employment and that the owner will be returning to the ACT at the end of that transfer. I think that is reasonable, Madam Speaker.

Mr De Domenico: What if they are transferred for more than three years?

MS FOLLETT: Madam Speaker, persons transferred for longer than three years may still be granted a three-year exemption, but they will be required to pay land tax in respect of the additional years. This is an extension of the current scheme. I think it should be welcomed by many employees. Madam Speaker, while the concept of two years' continuous residence after a posting has been retained, it is now only a precondition in relation to the granting of any subsequent exemption in relation to a second or subsequent posting. I wanted to make sure that members had that extended exemption clear.

To conclude, I think the biggest difference between my Bill and Mr Kaine's is that Mr Kaine's will not work. I have been through some of the extraordinarily difficult provisions of his Bill and I really do consider that it provides much less certainty, not just for the taxpayer but also for the Commissioner for Revenue, and provides the commissioner with a degree of discretion which I know he does not welcome. It is important that tax regimes are readily understood, and important also that they - - -

Mr Cornwell: And are fair.

MS FOLLETT: As Mr Cornwell says, it is important that they are fair and are equitable in their application. The Bill that is before the Assembly in the Government's name does represent those criteria. Whilst I am appreciative, like Ms Szuty, of Mr Kaine's work on this issue, I regret to say that the Bill which he has put forward is simply not workable. For that reason I commend the Government's Bill to the Assembly.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 10

Mr Berry
Mr Connolly
Ms Ellis
Ms Follett
Mrs Grassby
Mr Lamont
Ms McRae
Mr Moore
Ms Szuty
Mr Wood

NOES, 7

Mrs Carnell
Mr Cornwell
Mr De Domenico
Mr Humphries
Mr Kaine
Mr Stevenson
Mr Westende

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

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

Clause 3

MR KAINE (Leader of the Opposition) (9.39): I move:

Page 1, line 9, omit the clause, substitute the following clause:

Interpretation

3. Section 4 of the Principal Act is amended -
- (a) by omitting from subsection (1) the definition of "instalment day" and substituting the following definition:
- "'instalment day' means -
- (a) in relation to rates - 15 August, 15 November, 15 February or 15 May;
- (b) in relation to land tax - 15 September, 15 December, 15 March or 15 June;" and
- (b) by omitting from subsection (1) the definition of "owner" and substituting the following definition:
- "'owner', in relation to a parcel of land, means the registered proprietor of an estate or interest in that parcel, and includes a mortgagee in possession;"

My amendment to section 4 of the principal Act will have the effect of providing for instalment payments. Contrary to the Chief Minister's assertion, this amendment is workable. In fact, it complies with the Chief Minister's comments earlier in the debate, back in August, when she undertook that the payment of land tax would not coincide with the payment of rates. This amendment sets out to stagger the instalment payments of land tax and rates, so that land tax would be payable in September, December, March and June and rates would be payable in August, November, February and May. The second part of my amendment incorporates the amendment proposed by the Government. It does not affect other amendments I propose and is an acceptable amendment.

MS FOLLETT (Chief Minister and Treasurer) (9.41): Madam Speaker, needless to say, we oppose Mr Kaine's amendment. It seems to me to be quite contrary to the statements made by some members opposite about how inexpensive and administratively simple it would be to send out the land tax notices with the rates notices. In contrast, they are proposing here an entirely different set of dates. Again, I think the Liberals have confused themselves utterly. They have got the wrong dates, and for that reason we oppose the amendment.

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MR HUMPHRIES (9.42): Madam Speaker, perhaps the Chief Minister was not listening when Mr Kaine explained that this arrangement, as put forward in his Bill and now in his amendment, will not cost the ACT any more money than is presently the case.

Mr Berry: We would not trust your judgment on this.

MR HUMPHRIES: It does not rely on anybody's judgment; it relies on simple commonsense, which you might not enjoy in great quantities. If I put it to you in words of one syllable you might understand. We send out rates notices, Mr Berry - little pieces of paper that tell you how much you have to pay in rates each year. It seems to me very easy to slip into the envelope at the same time another piece of paper that tells you how much land tax you are liable for. With each notice you get for each instalment of your rates, you also get a notice for your land tax. There is no requirement in that scenario for the land tax and rates to be payable on the same day. They can be staggered. You can have your rates payable on one day and the land tax payable a month later, but you can have both notices appearing at the same time in the one envelope. Why should that entail any extra cost? Answer that if you can.

Can I also answer an argument Ms Follett raised in the in-principle stage. She talked about the exemption of stamp duty for family companies transferring ownership of properties into the names of the shareholders of that company. Ms Follett said that she could not understand why there would be a need for any later exemptions to be granted in those circumstances. I put to the Chief Minister the case where a family company rents the family property - not necessarily lives in it - because the family either is overseas or lives in another family home in the ACT. In due course that family either moves back to the ACT from interstate or overseas, or for reasons of hardship, for instance, sells up the other property and then moves into the home owned by the family company.

There is a perfectly legitimate situation which is not necessarily foreseen by the family company or family concerned where, under the principles enunciated by the Chief Minister, there ought to be an exemption. Why, in those circumstances, should there not be an exemption? Is that not a good case for another one-off exemption? If there is a need for another one-off exemption, why not make the grant permanent? I am not suggesting that we should make commercial properties eligible for the exemption, or even companies that are designed primarily to achieve taxation advantages for the family members; but even that could be excluded by the operation of the Bill or by the operation of the Government's administration. There seems to be no reason, in the circumstances I have just postulated, why there should not be a further exemption granted. I hope that the Chief Minister has paid attention to that and will be able to answer that question.

MR STEVENSON (9.45): It would appear clear that Mr Kaine's amendment to section 4 would solve the problem that people have in paying bills at the same time. As Mr Humphries clearly points out, the notices could be sent out at the same time; they do not have to be sent out at different times. If the Chief Minister could mention why this is deemed to be a problem, that would enlighten us on this side.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (9.46): One of the great difficulties when people play political games with these sorts of things is the Bernard Collaery back-of-the-envelope amendments that are proposed off the cuff and quickly.

Mr De Domenico: Our Bill was in first, Mr Berry.

MR BERRY: You can always tell the billygoats by the way they butt in. Essentially, what we have in front of us is some complex amendments - - -

Mr Humphries: You cannot understand it. That is why it is complex. It is too much for you. That is why it is complex.

MR BERRY: It is complex in the way that it will operate within the Act. This Government will act responsibly when it is dealing with amendments that come before the house. There will be no snap agreements to matters the Opposition has not chosen to take up with the Government by way of consultation. The Opposition complains about the Government and its consultation process, but is it a two-way street? Of course not. This amendment is intended to drag out the debate on this issue, and the Government will be opposing it.

Mr De Domenico: Why, when you just said that you have not had a chance to have a good look at it?

MR BERRY: If you want legislation to be agreed to by the Government, you ought to come and see the Government before you put forward a range of amendments that require considerable discussion and consideration before they can be implemented. Madam Speaker, this amendment will be opposed. The Opposition Leader could have taken the course of allowing the Government's Bill to be passed in the Assembly this evening.

Mr Kaine: Adjourn the debate until Thursday and you can have look at the amendments. I do not mind.

MR BERRY: You could withdraw it and then try it in private members business later on.

Mr Kaine: I have no intention of withdrawing it. I want you to be confronted with the issue which you will not confront.

MR BERRY: We do not have to worry about that. We confront issues, as you have noticed in the past, and do it fairly successfully. That is why we have no opposition. In any event, this amendment will be opposed in its current form. It cannot be considered in this form this evening because of the absence of any opportunity to closely consider it.

Mr Kaine: Do you not understand? It is a very simple amendment.

MR BERRY: I suppose it would be simple, coming from you. As I have said, the matter will be opposed.

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MR STEVENSON (9.49): Mr Berry could make a valid point, if he feels that there has not been time to consult with the Liberal Party on the amendments, that amendments should not be made on the run. However, it is far too important an issue to negative simply because there has not been time. It is clear that the matter should be adjourned. Certainly, there would be time enough by Thursday to look at the matters. Should we not ensure that the legislation is correct, rather than adopt the view that we have not had time to look at it? That would make a lot more sense to me, and I would expect someone in the very near future to move an adjournment, to which I will agree.

MR KAINE (Leader of the Opposition) (9.50): I must say that I am at a loss to understand Mr Berry's position. This proposal has been on the table since the day I lodged my Bill, over a month ago. This provision is contained in my Bill. Mr Berry, if he had bothered to read my Bill, would have known that. He has had a whole month to discuss it with me, if he thought there was something wrong with it.

I do not believe that Mr Berry is so simple-minded that he does not understand the intent of this amendment. It is quite straightforward; it is quite clear. Mr Berry has had ample time to discuss it with the Liberal Party, had he not been so intent on getting his own grubby Bill on the table to circumvent the Opposition's Bill. That is what this is all about. Do not pretend that you do not understand it. Let us be honest as to what this debate is about. It is clearly your intention to do everything in your power to prevent my Bill from getting up. That is what this debate is about. Do not talk about adjournment or anything else. You have no intention of adjourning it. You have no intention of entertaining one single thought, no matter how good it is for the community. No matter how it relieves people of a tax burden, you do not want to know about it. That is what the debate is really about.

Mr Berry: Why don't you move to adjourn it?

MR KAINE: The initiative is entirely up to you.

MR CORNWELL (9.51): Madam Speaker, could I try to get some commonsense back into this. I have learnt one thing in this debate tonight, and that is that I will never send the Minister for Health a two-page letter. It is obvious that he cannot handle two pages. What we are suggesting, as Mr Humphries explained and I will repeat, is that we send out the rates requirement and the land tax requirement - two pieces of paper - in the same envelope, but they have to be paid by different dates. There is nothing complex about this. For Mr Berry to say that he wants an adjournment to consider the matter I find extraordinary.

Mr Berry: No, I do not care. It is up to you.

MR CORNWELL: I am sorry, sir; you were just opposing this. It is a matter of sheer commonsense. I am amazed that Mr Berry cannot understand what we are on about.

Mr Connolly: We know what you are on about.

MR CORNWELL: Mr Attorney is now inferring some sinister plan and plot in putting a rates notice and a land tax notice in the same envelope and sending them out. I do not see anything sinister in this. I find it very difficult to imagine anything sinister in it.

Mr De Domenico: It is a good idea, but it is sinister because it was not theirs.

MR CORNWELL: Probably Mr De Domenico's interjection is correct. They did not think of it themselves, and for this reason they will therefore oppose it. You are making yourselves laughing-stocks over this matter. It is absolutely absurd. I do urge you to reconsider. This is a commonsense, sensible approach.

Mr Berry: Are you going to say next, "Trust me"?

MR CORNWELL: No, I would not ask you to trust me, Mr Berry. I do suggest that you seriously consider using a bit of commonsense. There is no trick in this. It is just a sensible, cost-saving measure. I strongly urge the Independents, if not the Labor Party, to support this amendment.

MS FOLLETT (Chief Minister and Treasurer) (9.54): Madam Speaker, can I say very briefly that the amendment proposed by Mr Kaine and, indeed, all of the amendments proposed by Mr Kaine are a sham. All he is seeking to do is insert into the Government's Bill every aspect of his Bill. We have already had the debate on his Bill. I think it is verging on mischievous to move in this cumbersome way to amend the Government's Bill so that it reflects Mr Kaine's Bill. That is a waste of the time of this Assembly. We will be opposing Mr Kaine's amendments because we have already dismissed his Bill.

Mr Kaine: We have not dismissed it yet. We have not voted on it.

MS FOLLETT: We have discussed that. I have explained the faults with it. I have explained how it is unworkable. To try now to insinuate into the Government's Bill aspects of Mr Kaine's Bill, I think, verges on being mischievous.

Question put:

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

The Assembly voted -

AYES, 7

Mrs Carnell
Mr Cornwell
Mr De Domenico
Mr Humphries
Mr Kaine
Mr Stevenson
Mr Westende

NOES, 10

Mr Berry
Mr Connolly
Ms Ellis
Ms Follett
Mrs Grassby
Mr Lamont
Ms McRae
Mr Moore
Ms Szuty
Mr Wood

Question so resolved in the negative.

Clause agreed to.

Clauses 4 to 6 agreed to.

Clause 7

MR KAINE (Leader of the Opposition) (9.58): I move:

Page 3, line 12, omit paragraphs 7(a), (b) and (c), substitute the following paragraphs:

"(a) by omitting paragraph (1)(a) and substituting the following paragraph:

'(a) a parcel of land leased for residential purposes that -

(i) on the prescribed date, was a place of residence of a person;
and

(ii) is not used to produce income;';

"(b) by omitting sub-subparagraph (1)(b)(ii)(A) and substituting the following sub-subparagraph:

'(A) and was intended to be used as the place
of residence of a person; or';

"(c) by omitting subsection (1A) and substituting the following subsection:

'(1A) For the purposes of paragraph (1)(a),
a parcel of land shall not be taken to be used to produce income by reason only
that it is used for that purpose during a period when the parcel is not occupied
by the person referred to in subparagraph (1)(a)(i) if that period does not
exceed -

(a) if the reason for the person's absence is related to his or her
employment or occupation -

(i) 3 years if he or she occupies the parcel for a
continuous period of 2 years in any period of
5 years that commenced on the relevant prescribed
date; or

(ii) a period exceeding 3 years that is agreed with
the Commissioner if the Commissioner is satisfied
that the person intends to retain the parcel as his or
her residence on resuming occupation at the end
of that agreed period;

- (b) if the Commissioner is satisfied that by reason of the death or illness of any person or on some other compassionate ground the firstmentioned person has a compelling reason for not occupying the parcel for a longer period than 12 months - that longer period; or
- (c) in any other case - 12 months.'; and
- "(d) by omitting subsection (3).".

We come here to what really is the crux of the Government's Bill and its major deficiency. Clause 7 in its present form at least extends the exemption for an owner of a principal place of residence to include life tenants. I acknowledge that the Government has gone that far. Our amendment seeks to change the basic premise of exemption from owners to property use, and that is the point I made in my speech earlier this evening. It is not a question of who owns the property; surely, it is a question of the use to which it is put. If it is a residential property and if it is not used to produce income, I submit that it ought to be automatically exempt from land tax.

As I explained earlier at great length - although the Government obviously was not listening - if they were to agree to this amendment, most, if not all, of the problems they have had referred to their attention over recent weeks and at the same period last year about the unfair and unjust imposition of this tax would virtually disappear. They would then be levying tax only on those properties that are income earning, and that must be the test. If a property is not income earning, how can the Government say that they should be levying tax on it? I have not heard a satisfactory explanation from them yet; but I think the argument I put, if the Government is listening to it, is an irrefutable one. This amendment seeks to correct the anomaly in the original Act, which their present Bill does not seek to amend. The amendment I am proposing will redress that anomaly, that unfairness, and introduce some of the Government's social justice into this Bill.

MR STEVENSON (10.00): The key to the tax is whether or not the property is income generating. Mr Kaine, quite rightly, says that his amendment would make sure that if the property were one which was not generating income it would not be taxed. The clear intention initially was to tax those people who were making extra money. If they are not making extra money, why should we tax them?

A little while ago there were some comments from some of the Labor members regarding whether or not the Bill has been in for 60 days. I think it is a relevant point. By all means, bring it up at any time. It should, of course, be noted that these amendments to the Bill are to correct earlier bad legislation. If you approve bad legislation, if you enact bad legislation, I will be happy to amend it the following day - do not worry about a week or two or whatever - to correct the problem.

MS FOLLETT (Chief Minister and Treasurer) (10.02): To respond very briefly, the Government will be opposing Mr Kaine's amendment. As I have said before, he is merely seeking to insinuate his own draft into our Bill. Mr Kaine yet again has omitted to define in any way the term "income". I have said that properties may be subject to investment for a range of reasons, and those include income

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from rent, tax advantages such as negative gearing, and capital gains. Mr Kaine has not in any way defined income, so I presume that he takes a narrow view of it and would not include as income all those classes of advantage. But he has not told us. Madam Speaker, we cannot support his amendment, simply because it cannot be implemented. It is just not capable of implementation, and for that reason it must be rejected out of hand.

Question put:

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

The Assembly voted -

AYES, 7

Mrs Carnell
Mr Cornwell
Mr De Domenico
Mr Humphries
Mr Kaine
Mr Stevenson
Mr Westende

NOES, 10

Mr Berry
Mr Connolly
Ms Ellis
Ms Follett
Mrs Grassby
Mr Lamont
Ms McRae
Mr Moore
Ms Szuty
Mr Wood

Question so resolved in the negative.

Clause agreed to.

Clause 8

MR KAINE (Leader of the Opposition) (10.05): I move:

Page 4, line 29, omit paragraphs 8(a) and (b), substitute the following paragraphs:

"(a) by inserting in paragraph (1)(d) 'or (aa)' after 'paragraph (2)(a)';

"(b) by omitting from paragraph (2)(a) 'or' (last occurring); and

"(c) by inserting after paragraph (2)(a) the following paragraph:

'(aa) where the facts disclosed in, or the circumstances of, an application are so complex or uncertain, or for any other reason, it is difficult or impracticable for the Commissioner to determine whether the parcel is exempt from land tax without undue delay or expense - defer consideration of the application and, by instrument, declare that the parcel is exempt from land tax for the period specified in the instrument; or'."

The object of this amendment is to extend the commissioner's power to determine exemptions. The commissioner over the last year has frequently said to appellants, "I am sorry; I have no power to consider an exemption under the Act. The Act does not give me that power". He has said this on many occasions. In fact, the Chief Minister argued earlier that he should have very limited powers of exemption.

I suggest that much of the dissatisfaction and much of the unfair and unjust imposition of tax over the last year has been because the commissioner has had no power, no discretion, to exempt and has merely had to reject the applications. I happen to believe that that is wrong and needs to be rectified. I am suggesting here that, whether or not you accept that there should be few cases in which the commissioner ought to exercise his power of exemption, when one of those cases arises he should have the widest of powers rather than the narrowest of powers to consider such a request. At the moment he does not have that.

I am seeking to make it easier for an appellant to have a case heard and considered by the commissioner, rather than his having simply to say, "I am sorry; I have no discretion. I cannot entertain your appeal and I cannot rule on it". I do not believe that in anybody's terms that is an unreasonable imposition. It does not necessarily affect the net outcome of the workings of the Act, but it would at least be seen by some people to be a fairer Act than it is now.

MS FOLLETT (Chief Minister and Treasurer) (10.08): The Government will again be opposing Mr Kaine's amendment, for the simple reason that it is both unnecessary and undesirable for the commissioner to have the kind of discretion that is involved in the proposal. I understand that on the initial application of land tax to residential properties there were some 90,000 forms to be processed and many applications for exemption from land tax were made. Dealing with that number was both difficult and complex. I do not believe that those circumstances will be repeated. The amended exemption provisions that my Bill provides will make the commissioner's decision much more straightforward and more certain. The power to exempt totally, which is contained in Mr Kaine's proposal, is not necessary, and I think is bad law.

MR MOORE (10.09): It seems to me that in dealing with this tax the Liberals have spent a great deal of time ensuring that whatever they can do to make this tax less effective they will do. I can understand where they are coming from and I think they are entitled to do that. My position was that I would support this. I have always supported a land tax, and I have spoken on that matter a number of times. It would be pointless to repeat what is already well recorded in *Hansard* as my view on land tax.

With reference to this amendment, it seems to me that the only people who could benefit from it are the lawyers. What would happen is that the people who seek to have a decision made by the Commissioner for ACT Revenue will decide that they do not like the decision and they will take it to the courts through the Administrative Decisions (Judicial Review) Act. The Territory and the people who have applied will wind up spending a great deal of money on lawyers and courts. I think that is terribly undesirable, and therefore I will oppose this amendment.

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Mr De Domenico: What? To uphold their rights is undesirable?

MR MOORE: We are just clarifying what their rights are and are not in the other Bill.

Question put:

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

The Assembly voted -

AYES, 7

NOES, 10

Mrs Carnell
Mr Cornwell
Mr De Domenico
Mr Humphries
Mr Kaine
Mr Stevenson
Mr Westende

Mr Berry
Mr Connolly
Ms Ellis
Ms Follett
Mrs Grassby
Mr Lamont
Ms McRae
Mr Moore
Ms Szuty
Mr Wood

Question so resolved in the negative.

Clause agreed to.

Proposed new clause 8A

MR KAINE (Leader of the Opposition) (10.12): I move:

Page 4, line 31, add the following proposed new clause:

"Assessment

"8A. Section 22C of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) A notice of assessment shall -

- (a) set out the classes of land that are exempt from land tax under this Act;
- (b) describe the procedure for making an application to the Commissioner under section 22BA; and
- (c) be accompanied by a form approved by the Commissioner as suitable for such an application.'".

There is a major deficiency at the moment in that the Commissioner for ACT Revenue is not required to tell people that they are obligated to pay this tax or the circumstances under which they are obligated to pay it.

Mr Cornwell: Is that so?

MR Kaine: That is true. A year ago, when the tax was first introduced, the commissioner did send out notices with the rates notices that informed people of their obligations.

Mr Cornwell: In the same envelope.

MR Kaine: Yes, in the same envelope. But since then it has not been done. I believe that the Government has an obligation, if they impose a tax, first of all, to inform people that they are liable to pay this tax; secondly, to describe for them the circumstances under which they are obligated to pay it; and, thirdly, if they believe that they have grounds for an exemption, to explain to them the circumstances and the methodology for submitting an application for exemption. It is not good enough simply to publish the Act. In the good old days it was the fashion to say, "Ignorance is no argument; ignorance is no excuse under the law. If you do not know the law, we will cop you". It is an obligation of government, and this Government, of all governments, which so loudly proclaims itself as a consultative, open government, has an obligation to tell people about the law.

At the moment, the commissioner has no such obligation. He does not do it. This is a double-edged weapon. Sadly, I think it could easily be demonstrated that the Government is losing revenue by not doing this. There are many people who do not know that they are liable to this tax, and unless the Government tells them they are not going to know, and they are not going to come forward voluntarily and pay the tax. It can easily be argued that this is an amendment to the Act which would be to the Government's benefit. Since their whole objective is to tighten up the Act and increase their revenues, and in no circumstances to give anybody the benefit of the doubt, this is a case where they can really get in a few more taxpayers. I would have thought that Mr Connolly and his colleagues would have been only too happy to accept this amendment because it is to their advantage to do so.

The question of who pays the tax and who is liable for it in the circumstances is a matter of grave concern. I know that it is a matter of grave concern to Mr Moore because Mr Moore has said publicly that we should levy this tax on the rich. I was interested in his definition of the rich. It clearly is anybody who has a UCV greater than his or, alternatively, anybody who has a block of land bigger than his. Those are his two criteria for whether you are rich or not. If you have a block of land the size of his, you are not rich; and, if you have a UCV the same as his, you are not rich. But, if your UCV is bigger or your block of land is bigger, you are rich and you should be levied this tax. Mr Moore said that. I think he misunderstands the definition. Perhaps the commissioner could send him a notice with his next rates notice saying, "These are the conditions under which the tax is payable". That might help Mr Moore to get his thinking straight, apart from anything else, and it will be doing a great service to the community.

MR MOORE (10.16): I rise to clarify a point or two that Mr Kaine raised. The point where he is mistaken, where he is wrong, is that I did not refer to this Bill at all but suggested an extension of land tax.

15 September 1992

MS FOLLETT (Chief Minister and Treasurer) (10.17): The Government will again be opposing Mr Kaine's amendment. It is both costly and wasteful to provide these kinds of details.

Mr Humphries: They are all costly and wasteful, according to you.

Mr Kaine: Some little old lady is going to escape paying this tax.

MS FOLLETT: Madam Speaker, can you keep them quiet.

MADAM SPEAKER: Order! Members, I remind you of standing order 39.

MS FOLLETT: It is both costly and wasteful, I believe, to provide this magnitude of information when there is not the need to do so. Once a property has been declared liable or non-labile for land tax, and that follows the initial declaration application and so on, there is no change in the applicant's status until some fairly significant matters occur. They include the sale of the house or the applicant advising of a change in circumstances or where it is found that an exemption was fraudulently obtained. In those cases the declaration application forms are provided. An inquiry officer is available to assist with people's inquiries and, I am sure, does an excellent job. The brochure that is sent out with every rates notice will contain information about land tax liability. This will reinforce the Revenue Office's circulars and the media advertising that the Revenue Office carries out. We oppose the amendment. Again, it is put forward, I think, in a rather mischievous spirit.

Question put:

That the proposed new clause be inserted in the Bill (**Mr Kaine's** amendment).

The Assembly voted -

AYES, 7

Mrs Carnell
Mr Cornwell
Mr De Domenico
Mr Humphries
Mr Kaine
Mr Stevenson
Mr Westende

NOES, 10

Mr Berry
Mr Connolly
Ms Ellis
Ms Follett
Mrs Grassby
Mr Lamont
Ms McRae
Mr Moore
Ms Szuty
Mr Wood

Question so resolved in the negative.

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

Question put:

That this Bill be agreed to.

The Assembly voted -

AYES, 11

Mr Berry
Mr Connolly
Ms Ellis
Ms Follett
Mrs Grassby
Mr Lamont
Ms McRae
Mr Moore
Ms Szuty
Mr Stevenson
Mr Wood

NOES, 6

Mrs Carnell
Mr Cornwell
Mr De Domenico
Mr Humphries
Mr Kaine
Mr Westende

Question so resolved in the affirmative.

Bill agreed to.

RATES AND LAND TAX (AMENDMENT) BILL (NO. 2) 1992

Debate resumed from 19 August 1992, on motion by **Mr Kaine**:

That this Bill be agreed to in principle.

Motion (by **Mr De Domenico**) put:

That the debate be now adjourned.

The Assembly voted -

AYES, 7

Mrs Carnell
Mr Cornwell
Mr De Domenico
Mr Humphries
Mr Kaine
Mr Stevenson
Mr Westende

NOES, 10

Mr Berry
Mr Connolly
Ms Ellis
Ms Follett
Mrs Grassby
Mr Lamont
Ms McRae
Mr Moore
Ms Szuty
Mr Wood

Question so resolved in the negative.

15 September 1992

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 7

Mrs Carnell
Mr Cornwell
Mr De Domenico
Mr Humphries
Mr Kaine
Mr Stevenson
Mr Westende

NOES, 10

Mr Berry
Mr Connolly
Ms Ellis
Ms Follett
Mrs Grassby
Mr Lamont
Ms McRae
Mr Moore
Ms Szuty
Mr Wood

Question so resolved in the negative.

ADJOURNMENT

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

That the Assembly do now adjourn.

Canberra Stereo Public Radio

MR HUMPHRIES (10.27): Madam Speaker, I should like to refer to the bid by Canberra Stereo Public Radio for a public stereo licence, an FM licence. As members may be aware, the matter comes up next year for decision by the Federal Department of Transport and Communications. Members who served on the Select Committee on Cultural Activities in the last Assembly will recall that CSPR was referred to as a prime candidate and a supported candidate for an FM licence bid.

Members may also be aware that in the last three weeks or so there has been a further trial broadcast by CSPR in the Canberra region from its studios in Curtin which those of us who tuned in will know was a great success. I took the opportunity many times as I travelled around Canberra of tuning in to 103.1. I greatly enjoyed the quality and the diversity of music and other things that were available on that radio station. It was disappointing that CSPR missed out a couple of years ago on an FM licence, and I think all of us in this chamber would support its bid for a licence in 1993.

CSPR is a not-for-profit organisation incorporated nearly 10 years ago with the aim of setting up a high-quality FM music and arts radio station for the ACT and surrounding region. A good question to ask is: Just what level of interest would there be in the ACT in an activity such as this? We already have a fairly large

smattering of radio and television broadcasters, aggregation has provided some benefits to us, and one might well ask: Do we need a further station? The Australian Bureau of Statistics and the Federal Department of the Arts, Sport, the Environment and Territories have found that Canberrans spend up to twice as much on arts activities and products as does the average Australian. It is very clear that we are great consumers of arts and arts activities in this Territory. In those circumstances, there is certainly a market for an organisation such as Canberra Stereo Public Radio. It deserves some support.

If that bid is successful it will be great not just for the listeners of the ACT but also for Canberra's artists. Canberra Stereo Public Radio has been a major forum for Canberra artists, be they musicians, poets, playwrights, or producers of material, to have their works heard in public, and that is a very desirable feature of Canberra Stereo Public Radio's activities. You cannot tune in at the moment, of course - - -

Mr Berry: Trust the Liberals to try to mislead us again.

MR HUMPHRIES: If you had tuned in you would have heard jazz, folk, early music, plays, poetry - this is something you do not know much about, Mr Berry, but just listen on - writing, previews and reviews, arts programming for children, arts news and current affairs programs.

Mr Wood: It has had good write-ups in the cultural columns of our newspapers.

MR HUMPHRIES: It has had excellent write-ups, as the Minister points out, and I am sure that he and his colleagues and everybody else in the Assembly will support this bid. Let us hope that the moral suasion to be exerted by members of this Assembly will persuade our friends at the Federal Department of Transport and Communications that Canberra does need another licence and that CSPR should be the winner of that licence.

International Peace Day

MRS GRASSBY (10.30): I do not know whether everybody in the house realises that today is International Peace Day. When we think about this, we must think about the war that is still going on in Yugoslavia. On the news we hear about the horrifying things based on racism that are happening in Germany at the moment and about the many other wars around the world. We must also think about what is happening in South Africa. We thought that they were moving forward and that people were getting their rights, but we are not so sure now.

We should all think about people being able to live in peace in their own country, knowing that they are not going to be bombed or put in gaol or shot because they are participating in a peaceful march. We are very lucky that we live in a country where we know peace. It is a long time since we have had war on our soil. I just remind the house that we should be thinking about how lucky we are and of the people in other parts of the world who are not able to live in the sort of peaceful country that we have.

Question resolved in the affirmative.

Assembly adjourned at 10.31 pm