DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

17 February 1993

Wednesday, 17 February 1993

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MADAM SPEAKER (Ms McRae) took the chair at 10.30 am and read the prayer.

CRIMES (AMENDMENT) BILL 1993

MR MOORE (10.31): Madam Speaker, I present the Crimes (Amendment) Bill 1993.

Title read by Clerk.

MR MOORE: I move:

> That this Bill be agreed to in principle.

Madam Speaker, the Crimes (Amendment) Bill 1993 is a quite simple and short Bill that could have major ramifications for some of the problems we have seen the police dealing with over the last three or four months in particular. I remind members that it was in December that we passed very quickly an amendment to the Crimes Act moved by Mr Connolly which became section 545A and which created the new offence of fighting. I think that was the first step in giving the police more flexibility to deal with problems of public misbehaviour.

This Bill is an attempt to increase the flexibility police have in dealing with public misbehaviour and also to give them the choice of charging people or giving them an on-the-spot fine, which is the effect of the Bill. The most important thing is the flexibility of the police. One of the things I observed when the police were kind enough to take me on their rounds on a Saturday night was that the police lacked a certain amount of flexibility. More importantly, when a situation arose where they needed to charge a member of the public, particularly for public misbehaviour, it would require two police officers to go back to the station to charge that person. That is the normal method of dealing with the situation.

It occurred to me that it would be a much more effective method of dealing with public misbehaviour if we could apply the systems we use for motor vehicle offences and give the police the flexibility to give an on-the-spot fine - I have identified that on-the-spot fine as being $100 - for such offences as street fighting, misbehaviour at public meetings, possession of offensive weapons, fighting, offensive behaviour, indecent exposure, noise abatement directions and public mischief. I will go through those one at a time to illustrate why I have chosen each one.

The Crimes Act at section 482 provides a $1,000 fine or imprisonment for six months. It reads:

> A person shall not, in any premises in which a public meeting is being held, behave in a manner that disrupts, or is likely to disrupt, the meeting.

It goes on to explain how the presiding person at a meeting can ask the police to assist. The difficulty with it is that the police attending a meeting where there is disruption would need to take the people away and charge them. That takes the police officers away from what might be a rowdy situation. If they had the ability to impose an on-the-spot fine, they could say, "This is not all that serious a matter. The person is misbehaving and ought to have a fine". The police officer could then write a $100 fine. The police would have the choice of doing that.

If there was a particularly serious matter - say somebody at a public meeting was going through, turning over chairs and tables and being a menace to other people - the police might decide that this was not a matter for an on-the-spot fine, that it was a matter a magistrate should deal with, and would then charge the person. What could happen, though, in some cases is that the police could write an on-the-spot fine and the person may feel that he has been wronged, that all he was doing was presenting his opinion, which happened to differ from the rest of the meeting, and that his behaviour was perfectly normal. In that case the person would say, "No, I am not prepared to pay the on-the-spot fine. Instead, I will go to court and explain to the magistrate that I have been unfairly dealt with". So the civil liberties of that person are in no way interfered with; it is just that there is a flexibility of choice. Some people would say, "Okay, I was disrupting the meeting. I should not have been doing it. It is a fair cop. Blow it, but I do not want a police record. I do not want this to go any further. I will pay the $100 on-the-spot fine". That seems to me to be a perfectly logical way to go.

The next amendment I have suggested is to subsection 493(1), which relates to the possession of offensive weapons, and includes not only offensive weapons but a disabling substance. The fine could be $1,000 or imprisonment for six months. Such a weapon has to be carried without reasonable excuse in a public place in circumstances likely to cause alarm. We are not talking about somebody who happens to have buried on his person somewhere a carving knife he has bought in a shop and is on the way home to carve the roast. We are talking about somebody who is in some way causing a public nuisance. We could see a situation where the police may well decide that this is a more serious offence because of the way somebody is using an offensive weapon or they may choose to impose a $100 on-the-spot fine.

Similar provisions would apply to the offence of fighting, which we passed through this Assembly in December. Section 546A of the Act, offensive behaviour, reads:

> A person shall not in, near, or within the view or hearing of a person in, a public place behave in a riotous, indecent, offensive or insulting manner.

It is one of the sections that police use for public misbehaviour - probably on many occasions with some trepidation, because a magistrate may well view the situation differently from the police. In this case, I think a person who has behaved in a riotous or indecent fashion, having received an on-the-spot fine from the police, may simply say, "Far better that I do not have a police record. Far better that I just accept that this is a fair cop". I think many of us in our society do accept that a punishment meted out in this way is a fair and reasonable thing and does not need to be challenged. The prerogative to challenge, I reiterate, is still there, and somebody could still go to court to plead innocence. That is not at any stage lost. Therefore any argument that this interferes with civil liberties, I think, is not tenable.

Similarly, this provision would apply to the offence of indecent exposure, and to section 546C, noise abatement directions. This does not mean that a police officer could come along and say, "You are too noisy; I will give you a $100 on-the-spot fine". Failure to respond to a police direction to lower the noise level could be dealt with in the same two ways. Finally, under section 546E of the Crimes Act, public mischief can bring a fine of $2,000 or imprisonment for 12 months. Basically, it has to do with interfering with the responsible workings of any member of the emergency forces such as an ambulance officer, fire officer, bushfire council officer or any officer in an emergency service. Once again, on many occasions a police officer may see the need to write an on-the-spot fine or he may think that the matter is more serious - perhaps he is dealing with a recidivist - and would prefer to charge that person.

The Bill I have presented is really in two main parts, apart from the introductory section. Clause 4 provides for the offence notices, which make it very clear that there will be no record. Proposed new paragraph 575(4)(c) reads:

> If the prescribed penalty is paid in accordance with the offence notice -
>
> ... ...
>
> (c) the person shall not be regarded as having been convicted of the alleged prescribed offence.

That is in the same mould as the expiation notice this Assembly passed with regard to marijuana. It is important that we have that ability to make sure that somebody is still presumed innocent, instead of paying a fine and then being presumed to have been guilty. There is another side advantage to this method, and that is that the Magistrates Court may well be freed up from the Monday morning rush of charges. The result may well be that the Magistrates Court can deal with more serious matters, rather than having to deal with a range of general public misbehaviours.

The revenue implications I have been asked about by a number of people. I think they probably are not very significant. The figure I have chosen is $100 when the offences are either $1,000 or $2,000 offences. The magistrate could well impose a penalty greater than that provided for in the expiation notice, but I think that is appropriate. We are really talking about a situation where the police, when they consider a matter to be serious, can refer it back to the magistrate. The person who has been given the fine can also refer it back to the magistrate if he feels that he has been unjustly dealt with.

I must say that I have been encouraged by the in-principle support from both Labor and Liberal for this concept. Members may wish to make some minor modifications or to discuss other offences that should be included, or perhaps one or two of the ones I have identified that are considered inappropriate. I am quite happy to discuss that with members and, hopefully, get tripartisan support for this Bill to give our police force more flexibility in the way they deal with public misbehaviour. I commend the Bill to the house.

Debate (on motion by **Ms Follett**) adjourned.

POISONS AND DRUGS (AMENDMENT) BILL 1993

MRS CARNELL (10.43): I present the Poisons and Drugs (Amendment) Bill 1993.

Title read by Clerk.

MRS CARNELL: I move:

> That this Bill be agreed to in principle.

It is with pleasure that I present the Poisons and Drugs (Amendment) Bill 1993. The purpose of this Bill is to make it an offence for unauthorised persons to possess anabolic steroids. Anabolic steroids are synthetically produced chemical substances derived from the male sex hormone testosterone and are used for medical, performance enhancing and body image changing purposes. They increase muscle bulk, strength and power. They promote muscle development - that is the anabolic action - but cause associated androgenic changes, that is, the development of secondary sex characteristics.

Although researchers have attempted to separate the virilising, that is the androgenic, effects from the anabolic effects of increasing muscle mass, to date they have been unsuccessful. In layman's terms, this means that all the anabolic steroids have adverse effects in addition to the desired increase in muscle mass. Some of these side effects are minor, others are serious and irreversible, and in rare cases the effects can be fatal. In teenagers and young adults who have not completed growth, anabolic steroid use can close the growth plates in long bones and permanently stunt growth.

Other documented side effects include the shrinking of the testes, known in gyms as sultana nuts; the development of breasts, known in gyms as bitch tits, in men who have stopped taking the drug; high blood pressure; and abnormalities in liver function. In fact, up to 47 per cent of sportspeople using steroids have been found to have abnormal liver function. Liver tumours have been found, both benign and malignant. At least 36 cases have been reported, according to the Senate drugs in sport report released in 1990. Impotence and decreased sex drive have been found, as have baldness, changes in hair growth distribution, nose bleeding, severe kidney disorders, acne - the list goes on. If used in women during pregnancy, steroids can impair foetal growth and possibly cause foetal death. Steroids can also lead to psychological changes, causing severe mood swings or raid rages, as they are called in the gyms and nightclubs.

While this litany of potential consequences of anabolic steroid use has been well documented for some years, and popularised in books such as *Death in the Locker Room* in 1984, it appears that many steroid users do not acknowledge these adverse effects. The Senate Standing Committee on Environment, Recreation and the Arts in its 1990 drugs in sport report said:

> The Committee also found the steroid users' attitude disturbing. It is disturbing because individuals who use steroids appear to value their present appearance and immediate prospects of success above their short and long term health and, indeed, their longevity. This results in a denial of the threat to health from steroids.

The committee went on:

> While it is clear that steroid abuse has significant adverse effects, both physical and psychological, the Committee's concern projects far beyond the harm that can be suffered by the individual users.
>
> The damage extends to personal relationships, family breakdown, financial loss, criminal assault and violence at social venues such as nightclubs.
>
> The deleterious effects of steroid use are affecting Australian society to a noticeable extent and could escalate in the future unless effective controls are put in place at both Commonwealth and State levels. The potential deleterious effects of steroids are compounded by the significant number of people consuming them. Usage rates vary but are very high amongst the high-risk activities of weightlifting, powerlifting and body building. Among nationally competitive body builders usage would be about 100 per cent.

You cannot do better than that. These findings were borne out locally by statements made by Mr Jamie Costin, the proprietor of Canberra's Jets Fitness and Health Club, in the June 1992 issue of the *Bulletin*. He said that there is "a flourishing black market" amongst high school students from private and state schools near his Kingston gym. He estimated that between 15 and 20 per cent of teenagers at his gym take anabolic steroids. Mr Costin went on to say:

> Steroid use is a definite problem and will probably get worse. What is surprising is how much younger the people who want them are. If you go back six years it was the guys in their 20s who were considering taking steroids; now they're getting younger.

The alarming growth in the use of steroids was highlighted in the Australian Customs Service research paper entitled "The Threat to the Customs Barrier from Anabolic Steroids". This report indicated that the steroid scene was much larger than originally thought. It seems that the perception that only elite athletes and body builders use steroids is invalid. Steroid use appears widespread amongst recreational sportspersons, including recreational body builders. This means that steroids are being used for cosmetic rather than competitive purposes. Queensland's statistics show that 30 to 40 per cent of recreational body builders and up to 80 per cent of nightclub bouncers are taking anabolic steroids. It is easy to see the appeal to teenagers. The "best" bodies at the gym are regularly those moulded around anabolic steroids, and it is tempting to take the quick route to the perfect pectorals. Teenagers see biceps, not side effects, it appears.

Currently it is illegal to import anabolic steroids into Australia without approval, but the Australian Customs Service has no authority to seize steroids that have been manufactured locally or imported legally and then introduced into the sporting community at that level. Customs officers and police continue to be presented with the dilemma of often having to leave quantities of such steroids with offenders after seizing any illegally imported steroids. Distinguishing between local, counterfeit and imported steroids is a very real problem for these people.

Anabolic steroids are listed in Schedule 4 of the Poisons and Drugs Act. This means that they can be supplied only on prescription of a doctor, dentist or veterinary surgeon. To sell steroids without a prescription is therefore an offence but to possess anabolic steroids is not. Under ACT law, anabolic steroids are treated in the same way as any other prescription drug. It is not hard to see the untenable position in which this places enforcement agencies. To get any conviction at all, an offender must be caught actually selling the drug. Mere possession of any amount - and I stress that - is not an offence.

This legislation should not be seen as the answer to the problem on its own; punitive laws of this nature will never substitute for education. I hope that what it will do is to discourage those who are considering steroid use, reinforce the extremely dangerous nature of the drugs, and give police, Customs officers, gym owners and others the chance of stemming the growing tide of anabolic steroid abuse. Legislation of this type has been recommended by a wide variety of bodies, including Health Ministers conferences, the Board of Health, police, Customs - just about everybody who has been involved in the growing anabolic steroid abuse problem.

The penalties prescribed in this Bill are a fine of up to $5,000 and/or a gaol sentence of six months for the individual offender. The maximum penalty may seem quite severe, but it is consistent with other sections of the Act, and I believe that it is appropriate for people found with larger amounts of the drug, probably designed for sale. Obviously, if the quantities found are small, so will the penalty be. The $25,000 fine for a body corporate offender is designed to cover the gym, body building club, manufacturer, or others that might be providing steroids to their patrons. These penalties are identical to those in section 47W, possession of poison, in the Poisons and Drugs (Amendment) Bill 1992. That Bill is part of a package of government health Bills which will be debated in this house tomorrow. This is a simple piece of legislation but it is essential if we are to have any real impact on the growing problem of anabolic steroid abuse. I commend the Bill to the house.

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

ACTON PENINSULA

Debate resumed from 25 November 1992, on motion by **Mr Moore**:

That this Assembly directs the Government to:

(1) retain the use of the Acton Peninsula site, namely sections 55 and 33, block 5, for a public health facility with rehabilitation, aged care services, convalescent facilities, Queen Elizabeth II home for mothers and babies, a hospice, clinical medical school, community health and related facilities; and

(2) establish a Chair of Community Medicine and a Chair of Rehabilitation and Aged Care as part of a Centre of Excellence in Aged Care on the Acton Peninsula -

and on the following amendment moved thereto by Mr Stevenson:

That all words after "block 5" be omitted, substitute "for community health services".

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (10.55): Madam Speaker, a couple of amendments have been circulated in my name. The amendments clarify the issue in relation to Acton Peninsula, with the removal of the words ", namely sections 55 and 33, block 5, for" and the substitution of the word "as", which means that the Acton Peninsula is named. I understand that a copy of the block and section map with that part of the peninsula clarified will be circulated in due course. The first amendment seeks to omit the words "directs the Government" and substitute the words "notes the Labor Party's priority for the next three years".

That clarifies the motion as far as the Government is concerned, but there are other issues that need to be raised in relation to the matter. There are some flaws in the motion which I need to draw to the attention of members. One matter refers to the establishment of the clinical medical school, which seems to suggest in its entirety, on the Acton site. Quite frankly, Madam Speaker, that will not happen. Part of the clinical medical school may be on the Acton site, but it will be centred on the Woden Valley Hospital. We were careful when we announced our policy before the last election to make allowances for that proposition. The motion is flawed in that respect.

The Government notes the sentiment of the motion moved by Mr Moore. It mirrors in some respects the announced policy of the Labor Party, and that is a policy we will stick to. If carried, the motion will recognise our priorities as announced in that policy, and that should somewhat clarify the motion. I make those points of reservation about the motion. As I announced, the Government will support the amendments I have circulated, and will not oppose the motion in its entirety. It is essentially a political statement, and we accept that. We also have made a political statement in relation to the site.

I foreshadow those amendments, Madam Speaker. I had prepared another amendment which talked about the facilities that were to be established on the site. I think I have support for the amendments circulated, which note our own priorities. That sorts out the concerns about the establishment of a clinical medical school on that site in its entirety. I make it clear to the members of the Assembly that, practically, that will not happen. We do note the sentiments of the motion as put by Mr Moore.

MR MOORE (11.00): Mr Stevenson, in presenting his amendment, moved that all words after "block 5" be omitted and the words "for community health services" substituted. I do not wish to do that, but Mr Stevenson and later Mr Berry have identified a problem with the motion in terms of block and section numbers. To clarify this issue, I will take this opportunity to distribute to members, with your leave, Madam Speaker, part of a block and section map which identifies the part of the peninsula I am referring to. I have in front of me three block and section maps. A 1989 block and section map shows the whole area as section 33, block 5 of Acton. A 1992 block and section map shows the area around Acton Peninsula as section 33, block 5. Somewhere along the line, without any indication on the map, block 5 changes to block 17, and there is some

difficulty there. Then I have the 1993 block and section map, which is different again. It shows block 17 going all the way round the Acton Peninsula, and it is the 1993 block and section map that I have provided for members to indicate exactly what it is that I am interested in ensuring is protected.

A senior public servant from the leases area was kind enough to ring my office in the last few minutes and explain the difficulty that had arisen with the block and section map, and I might just share that with members. Apparently, up until 1990 it was all block 5, as is indicated in the block and section map. In November 1990 there were some changes to the block around the ferry terminal which translated into the renumbering of block 5 to block 17. Unfortunately, in producing the 1991 and 1992 maps, block 17 was numbered only around West Basin and the bit around the peninsula stayed as block 5. For the 1993 map, someone realised the typographical error and rectified it to make the total area block 17.

That explains some confusion in the house about the import of my motion. In preparing this motion, I had been using the 1992 block and section map, which was the logical thing to do in 1992, and other members either had referred to previous block and section maps or perhaps were privy to the changes that had already been made. There was some more information that is not particularly relevant to us. To clarify the situation, I have included in that map a line across the Acton Peninsula showing the area I am referring to in the motion. As far as I am concerned, the amendment Mr Stevenson has put up is not adequate and I will vote against it. I will consider the amendment to be put by Mr Berry.

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

Amendments (by **Mr Berry**), by leave, proposed:

Omit "directs the Government", substitute "notes the Labor Party's priority for the next 3 years".

Paragraph (1), omit ", namely sections 55 and 33, block 5, for", substitute "as".

MR HUMPHRIES (11.05): I indicate that I do not think we on this side of the chamber can support this amendment. The motion, with Mr Stevenson's amendment having failed, is also an unfair representation of what either is going to happen under this Government or ought to happen under a government which was making the best use of this valuable resource. First of all, I am extremely cynical about the phrase "notes the Labor Party's priority for the next three years". It does not say that the Labor Government is going to be pursuing this particular agenda, as put forward by Mr Moore. Indeed, the phrase used, very deliberately apparently, is "Labor Party" not "Labor Government".

Mr Berry in his remarks did not commit the Government to each of the items on this agenda. What Mr Berry is seeking to do with this amendment - I hope that Mr Moore, the mover of this motion, can see this - is indicate broad support for the general concept put forward by Mr Moore without actually committing the Labor Government to any of the specifics in that list, or to all of the specifics in that list.

Mr Kaine: And nothing beyond three years.

MR HUMPHRIES: And nothing beyond three years, as my leader points out. Putting that to one side, the question also has to be asked whether these particular facilities are appropriate for the Acton Peninsula. I think it is perfectly plain to anybody who has examined these issues over a period, as I have done, that some of these uses simply are not appropriate. As Mr Berry indicated, it is not appropriate to wholly base an academic facility such as a chair of community medicine or a chair of rehabilitation and aged care on a site which is not a functioning hospital, or for that matter a functioning part of a university. That has great sentimental value - I think Mr Moore pines for the days when the hospital was open - but to base such a facility on a site like that, while it would be edifying and very pleasant for the academics who could sit there and look out the windows, would not perform any other practical role in advancing either community medicine studies or rehabilitation and aged care. What connection does that site have with those things?

I also disagree with the concept of putting a hospice on that site. I have said so on several occasions. When I was Minister, the advice that came to the Government was unequivocal. It was that a hospice ought not to be located away from a functioning hospital. That advice came from the then chair of palliative studies at, I think, the University of Sydney. I would not be held to that. It was certainly a person who held such a position, and the only such position in Australia at the time. I would say without any fear of being contradicted that that would be the same advice I would receive today. If the Government sought the advice, I am sure it would receive that advice as well.

I must say also - this is a personal point of view, not so much a party one - that I have reservations about the decision we announced about locating aged care facilities on that site.

Mr Berry: Different when you are in government?

MR HUMPHRIES: No, we took that decision on the basis that we felt that it was important to be able to use that site for health care facilities, and that remains the Liberal Party's position. When I announced that decision, I was immediately approached by members of the Council on the Ageing and other experts in the area of aged care. The view was put to me very forcefully that that was not the right decision, that there is some danger in putting aged care facilities on a site which is, firstly, at the present time at least, not accessible to public transport; and, secondly, not accessible to things such as shops and community facilities. Having buses going down there does not mean that they are necessarily accessible to regular facilities. Would there be buses going down there at night? Old people need to go out at night. They like to go to shows or the movies or to visit friends, and they are entitled to access to buses at normal hours of the day, not just during daylight hours. But, that to one side, there is the problem of access - - -

Mr Kaine: The Labor Party should come down there and look at access after 6 o'clock.

MR HUMPHRIES: Apparently you have to go to bed by 6 o'clock. There is the problem of access to transport, the problem of access to places such as shops and community facilities, which you are obviously not going to get on Acton Peninsula, and the problem, particularly for people suffering certain illnesses, of very close access to water. The fact of life is that some people in these facilities run the risk of wandering from the aged persons home, and water does present a risk in those circumstances.

Mr Berry: So do motor cars.

MR HUMPHRIES: Indeed, so do motor cars. I listened to the people who came to see me about this matter, and if Mr Berry did the same thing he might take a slightly different view. Does he deny that he has had some disquiet about the idea of putting aged care facilities on the foreshores of the lake? He does not, so I think we can assume from that that he has had that view expressed to him.

Mr Kaine: Nobody can get at him on the fifth floor to talk to him. They have a security guard up there to keep them out.

MR HUMPHRIES: Perhaps the Council on the Ageing might have held up a sign outside his office so that he could read it. They certainly made that view known to me, and we on this side of the chamber are very accessible to those sorts of comments and views. I think it is quite clear that Acton Peninsula is not the right place for aged care facilities - at least, not the general kinds of broad-ranging aged care facilities which, for example, are represented at the present time by Jindalee.

There is a real question mark over some of these concepts and there is a need for us to accept finally that the Royal Canberra Hospital at Acton has closed. Neither a Liberal government nor a Labor government is going to reverse that, opportunities though there might be to do so - and there were opportunities to do so in 1991. That being the case, we have to decide what is the appropriate use for that site.

I think at least some of the things listed in Mr Moore's motion are not appropriate. Let us get beyond the debate on what might have been and think about what should be. The citizens of Canberra might find that community health facilities are not best placed on a relatively inaccessible peninsula in the middle of a lake and should rather be put in places where they are accessible and close to the community that uses them. There is no residential accommodation to speak of for a couple of kilometres, at the very nearest, from that site. Nobody is going to be able to wander down to the local community health facility, if it is based on Acton Peninsula, except for a few academics close to the university.

Mr Kaine: There are not many of them there either.

MR HUMPHRIES: There are not too many of them these days, I am advised. The fact of life is that, if you were going to chose a site in Canberra for community health facilities, you would not really put them on a place like Acton Peninsula. Obviously, these comments fall on deaf ears. Labor has some hurts to mend. They offended a lot of people by continuing with the closure of the hospital when they promised not to do so, and obviously they are keen to expiate their guilt by sympathising strongly with a motion such as this from Mr Moore. The fact of life is that it does not make very sensible use of the community's valuable resources based on that site.

MR KAINE (Leader of the Opposition) (11.13): I would like to speak to Mr Berry's amendment. I have already spoken at length on Mr Moore's original proposal and I indicated that I would not support it. I also indicated that I would not support what the Government was talking about putting forward as its amendment. My reasons for opposing Mr Moore's motion have not changed, and essentially Mr Humphries has amplified them.

There are two sides to the coin. One is that it is not appropriate to say that the peninsula may be used only for these purposes when a public consultation process has been going on for two years. I know that this Government is pretty good at cutting off community consultation in the middle. It did it on the Territory Plan and it is trying to do it again on this issue. I suggest that they let the community consultation process run its course before they start making decisions about what this is going to be used for. It is not appropriate to truncate that process. It is not appropriate to constrain this site only for the purposes Mr Moore describes. The converse is that this is not an appropriate site, as Mr Humphries has explained, for some of the facilities Mr Moore is proposing, particularly the hospice.

That being said, what we have now is that the Government does not want to be committed to this motion either, so they have to get themselves off the hook. It is part of their policy but they do not want to support it. What do we get? We get Mr Berry coming up with a two-bob-each-way approach: "Although it is our policy, we are not going to support Mr Moore, but we are going to note the Labor Party's priority". What the hell does that mean? Either the Labor Party is committed to doing something or it is not. This is yet another case of a Labor Party policy they are trying to escape, to avoid. I am surprised that they are not pulling the old stunt of saying, "Well, it is in our policy, but it is not really a priority right now", and then in three weeks' time coming out with a Bill to put it into effect. We can note a couple of cases of that.

What do Mr Berry and the Government mean by this amendment that the Assembly notes the Labor Party's priority for the next three years? I do not know what the Labor Party's priority for the next three years is on this issue, except to avoid having to make a decision about it.

Mr Lamont: Read the resolution.

MR KAINE: I have read the resolution. You tell me what is the Labor Party's priority for the next three years in connection with putting the Queen Elizabeth II home for nursing mothers and babies on this site? Can you tell me what it is? I do not know what it is, and I do not believe that anybody out in the community does either. You do not have a policy on that matter and you do not have a priority for the next three years either, except to do nothing, which is what you do about most issues. You talk about it, but you do not do anything.

So this is Mr Berry and the Government trying to have two-bob each way, trying to avoid the issues Mr Moore has raised, but at the same time trying to give the community some perception that they actually have a plan in mind. They do not have a plan in mind. If they did, they would have put forward an amendment to Mr Moore's motion that was far more specific about what they intend to do.

On the basis of the motion, they do not intend to do anything. As I said when I spoke on this motion originally, it is so absolutely meaningless that I cannot support it. The Government ought to come clean and tell us what they really intend to do, if they have a plan.

MS SZUTY (11.17): I foreshadow an amendment to Mr Berry's amendment which I believe will be circulated presently. I agree with Mr Humphries. The first point in Mr Berry's amendment to omit "directs the Government" and substitute "notes the Labor Party's priority for the next three years" simply is not strong enough. What I am suggesting, which will be stronger and will send a clearer message to the community, is to substitute for those words the words "endorses the Government's commitment". By using the words "endorses the Government's commitment", the community can see that this Labor Government has a clear commitment to those facilities and uses that the community has said it wants for Acton Peninsula. I think it is a stronger amendment than Mr Berry's, and I would urge the Assembly to consider it.

MADAM SPEAKER: Ms Szuty, you can move that now. It is an amendment to an amendment which is before us, and other people may speak to your amendment to the amendment if they so choose.

MS SZUTY: I move:

> Omit "notes the Labor Party's priority for the next 3 years", substitute "endorses the Government's commitment".

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (11.19): Ms Szuty's amendment is six of one and half a dozen of the other. There is a lot of froth and bubble about a few words. We have made our position clear. We have a record of sticking to our promises.

Mr Kaine: What is your promise in the case of Acton Peninsula? To note the Labor Party's priorities? I do not care what the Labor Party's priorities are. Tell us what yours are.

MR BERRY: If you sit and listen I will tell you. We will retain the Acton Peninsula site as a public health facility with rehabilitation and aged care services, a convalescent facility, the Queen Elizabeth II home for mothers and babies, and a hospice. That is what we will do.

Mr Humphries: When?

MR BERRY: Somebody asked when. If a Hewson government wins the election it will take a lot longer because we are going to have a lot less money to spend in this Territory. So you people are going to be the guilty ones if you keep supporting those sorts of policies, because we are going to have a lot less money to spend in the Territory. We are going to have a lot less health money to spend in this Territory as a result of the actions of the Liberals federally. They are the ones who are going to cut the finances of the Territory. It will be a lot longer, when it comes to the provision of services in the Territory, if we have to tolerate the horrific experience of a Liberal-led government.

I think there is fear and terror out there in the community about the prospect of a Liberal-led government. It is the old story. Whenever you stick your hand in your pocket to get some money out, Dr Hewson's hand is going to be in there with yours, taking 15 per cent every time. That is what the community are in fear and loathing of. We heard also that troops are going to be called in. Mr De Domenico will call the troops in. He will have the troops in, if he cannot get his own way - - -

Mr De Domenico: Yes.

MR BERRY: He says it again - "Yes, we will call the troops in if we cannot get our own way. Call in the military". That is them on industrial relations.

Madam Speaker, getting back to the amendment, we are happy with it. It does not ruffle our feathers at all. As I have said, we accept the principles outlined in the motion. We do not see it as exclusive of every other use, and there is consideration going on about future uses of the Acton Peninsula. That is a matter for the Government and the community and others to look at when those sorts of recommendations are made. We do not have a result, so there is not much we can say about the issue without having first seen what they say. We have announced our position, and I think that is the most important one.

Again, there are some practical problems, as I pointed out in the course of debate, and we will just have to work our way around them. We cannot put the clinical medical school down on the Acton site. It is not going there. I make that position very clear. It will be based on the Woden Valley Hospital. So in that respect the motion cannot be adhered to.

Mr De Domenico: But you will put a hospice down there?

MR BERRY: We have announced that. It is inappropriate for the clinical medical school to go there. It will not go there. There are some problems with the motion in that respect; otherwise we accept the sentiment.

MR KAINE (Leader of the Opposition) (11.24): Madam Speaker, I and the Liberal Party will not support Ms Szuty's amendment because it would establish a fiction. The fiction is that the Labor Party has some commitment to doing what is entailed in this amendment. Indeed they do not, and nothing Mr Berry has said convinces me. If they have a commitment to this, where is the hospice? They have been talking for two years about putting a hospice down there. There is not even the first sign of turning the first sod. There is not even a sign up saying that this is where the hospice is going to be built. So where is the commitment? There is none. As far as I am concerned, QED: We will not support the amendment; we will not support the motion.

MR MOORE (11.25): Madam Speaker, I will support Ms Szuty's amendment and, following that, Mr Berry's amendment. As I said, it is the least bad situation that I can resolve. I put this motion for a specific purpose in protecting the Acton Peninsula, but in summarising I shall speak to that. At this point it is enough to say that Ms Szuty's amendment will have my support.

MS SZUTY, by leave: I am not sure of the point Mr Berry was making when he talked about froth and bubble. The words I have come up with are certainly not froth and bubble. I believe that the words "endorses the Government's commitment" are a very strong indication of what the Government intends to do at Acton Peninsula. I gathered from the later remarks Mr Berry made that he was indicating that the Labor Party would support the amendment.

Mr Berry: It does not make any difference.

MS SZUTY: Mr Berry is indicating that it does not make any difference, so perhaps the Labor Party will support it. Mr Kaine indicated that the Liberals would not be supporting the amendment because he did not believe that action would ever occur at Acton Peninsula and that those facilities and uses would ever be located there. I do not believe that that is a valid argument for the rejection of the amendment. I believe that the amendment to Mr Moore's motion will effectively create an expectation in the community that these health facilities and uses will be available at the Acton Peninsula site.

Question put:

That the amendment (**Ms Szuty's**) to **Mr Berry's** amendments be agreed to.

The Assembly voted -

AYES, 9	*NOES, 5*
Mr Berry	Mrs Carnell
Mr Connolly	Mr Cornwell
Ms Follett	Mr De Domenico
Mrs Grassby	Mr Kaine
Mr Lamont	Mr Westende
Ms McRae	
Mr Moore	
Ms Szuty	
Mr Wood	

Question so resolved in the affirmative.

Amendments (**Mr Berry's**), as amended, agreed to.

MR MOORE (11.29), in reply: Madam Speaker, in rising now I will close the debate. I should make sure that members understand that. The concern I had in raising this motion was about how the Acton Peninsula would be used. The fear in the community is that the Government has an intention to use the peninsula in some way other than as described in the motion. Many people would think that that has been resolved now, that the Government does not have an intention to use it other than in the way described.

However, I do not think the motion has managed to allay fears to that extent. First of all, we know that there is a joint consultation going on between the NCPA and the Territory Planning Authority on what should happen to Acton Peninsula. While that consultation goes on and people feel that there is an open system of consultation on what might happen on the peninsula, the reality is that the

Government has already decided that the Acton Peninsula will be used, amongst other things, for a series of residential towers, a medium density urban village, and so forth. I do not say this lightly. I shall quote from a letter from the Chief Minister, Rosemary Follett, of 11 June 1992, to the current Prime Minister, Mr Paul Keating, in which she said:

> It is the ACT Government's belief that the Peninsula area presents an unparalleled opportunity in the long term for the development of an urban village, based on a mix of medium and high density housing with ancillary commercial and tourist facilities. The urban village concept would have as a principal objective the retention of significant areas of the Peninsula for recreational use by the people of Canberra.

Madam Speaker, I think the fears that people have on how Acton Peninsula is going to be used are verified by this letter of Ms Follett's of June 1992 - prior to the announcement of the charrette, prior to the announcement of a competition and public consultation on how the peninsula should be used. I will read on a little further so that I am not misrepresenting the Chief Minister. She said:

> The ACT Government also believes that the opportunity should remain for the provision on the Peninsula of public health facilities ...

She specified them more or less as they are in the motion. The reality is that the people of Canberra generally would be very uneasy at the notion of high density. I think it is important to understand what we mean by "high density". When planners use the words "high density" they mean what we find in the Kingston towers.

Ms Follett: It is already there. Go and have a look at Sylvia Curley House.

MR MOORE: The Chief Minister interjects that high density housing is already there with Sylvia Curley House. Some could interpret that to be so. If you talked about high density accommodation, that would be a suitable way to describe Sylvia Curley House. However, I think high density housing would not be an appropriate way to describe Sylvia Curley House.

Members: Oh!

MR MOORE: I hear the Liberal and Labor members pooh-poohing this notion, but the reality is that Ms Follett's letter clearly pre-empted what was going to happen on that site and pre-empted the discussion on that site. They clearly have an agenda for the Acton Peninsula to turn it into an urban village, and that is a secondary concern for the people of Canberra. The first and primary concern is about health facilities, which we will resolve in the next little while.

The reality is that the people of Canberra are going to feel cheated again by the Labor Government when this happens. They felt cheated when Mr Berry announced that he was not going to reopen Royal Canberra Hospital. He had the funds to do it. He could have done it. He chose not to do it. He relied on a report that he claimed said that there was no other choice, but any reasonable reading of the report showed that he did have a choice to retain Royal Canberra Hospital and he decided to close it. The people of Canberra on this issue felt cheated by Mr Berry and the Labor Government reneging in the First Assembly, and I believe that they will feel cheated on this issue as well.

Question put:

> That the motion (**Mr Moore's**), as amended, be agreed to.

The Assembly voted -

AYES, 9	*NOES, 5*
Mr Berry	Mrs Carnell
Mr Connolly	Mr Cornwell
Ms Follett	Mr De Domenico
Mrs Grassby	Mr Kaine
Mr Lamont	Mr Westende
Ms McRae	
Mr Moore	
Ms Szuty	
Mr Wood	

Question so resolved in the affirmative.

UNIVERSITY COUNCILS - APPOINTMENTS

MR CORNWELL (11.36): Madam Speaker, I would like to make a small amendment to the motion on the notice paper relating to the appointment of Assembly nominees to the councils of the Australian National University and the University of Canberra. Do I need leave for that amendment?

MADAM SPEAKER: Yes, you do.

MR CORNWELL: I seek leave to delete the word "Assembly", second occurring.

Leave granted.

MR CORNWELL: I move:

> That the Assembly instruct the ACT Chief Minister to immediately appoint nominees to the Councils of the Australian National University and the University of Canberra, thus resolving a twenty-month delay.

The reason for deleting that second word "Assembly" is that it was ambiguous. It was also misleading because in fact it is the Government's prerogative, not the Assembly's, to appoint either Assembly members or community members as nominees to these councils. So it was misleading and ambiguous to speak of Assembly nominees.

I rise to move this motion conscious that the Assembly has been, in my opinion, seriously embarrassed by a delay of some 20 months in any action being taken upon these nominees to the councils of the Australian National University and the University of Canberra. I remind members that it was the previous Alliance Government who, after a 15-month argument with the Federal Labor Government, won the right to appoint two nominees to each of these councils.

The agreement was achieved in July 1991, the month the Alliance Government was replaced by the second Labor Government. In effect, we are dealing with something like 35 months all up, which is almost three years.

I have asked in the Assembly on three separate occasions - beginning with 7 April last year, repeating it on 13 May last year, and finally on 17 September last year - what was happening about these appointments. I have received no satisfactory response. The first two questions were directed to the Minister for Education, who finally conceded that it was the Chief Minister's responsibility to make these appointments. On 17 September the Chief Minister responded in part to my question that she had not made a decision on the matter. She said, "Indeed, I have not considered that matter".

I believe that this is quite embarrassing for this Assembly. I trust that it is not unduly inconvenient to the council of the ANU or the University of Canberra, though I have had representations in relation to the fact that we have been extremely tardy on these appointments. I do not understand why we have not made these appointments. As I said earlier, I understand that they could be members of this Assembly or they could be members of the community. It does not matter. The fact is that the Chief Minister, as a representative of the Assembly, has been given the right to nominate people to these councils and has simply not done so for 20 months.

Mr Kaine: She has a couple of names up her sleeve, though, but she will not tell us who they are.

MR CORNWELL: I would welcome an explanation, Mr Kaine, as to why this has not been done. I do not know whether, once again, we are back into the factional fighting that goes on in the ALP over the spoils that may be available to the left wing or the right wing of that party. In any event, I repeat that it is an embarrassing situation for this Assembly to be in. I strongly urge members to support this motion to instruct the Chief Minister to appoint immediately nominees to the councils of the Australian National University and the University of Canberra, thus resolving a 20-month delay.

Debate (on motion by **Ms Follett**) adjourned.

AUSTRALIAN FLAG - DISPLAY IN CHAMBER

MR DE DOMENICO (11.42): I move:

> That this Assembly requests the Speaker to arrange for an Australian flag to be properly and appropriately displayed within the confines of the Chamber of the Assembly.

Madam Speaker, this notice has been on the notice paper since 16 June. I think it is appropriate that we have come to it today. I am sure that we all believe, looking at television in recent times, that there should be unanimous support from every member of this house for the need to display the Australian flag.

Mr Kaine: Everybody should sit in front of an Australian flag.

MR DE DOMENICO: That is right. We should be displaying the Australian flag somewhere in this Assembly building. I think it is also appropriate because we are getting to the stage where the Chief Minister is advertising, we hope widely, the competition for the Canberra flag. Until such time as that decision is made, I think it is appropriate for a body such as the Assembly to display the Australian flag. Seeing the current, but not for long, Prime Minister, Mr Keating, who is apparently very proud to be sitting in front of the Australian flag through the television campaign - - -

Mr Lamont: As we all are.

MR DE DOMENICO: I note Mr Lamont's comment, but I recall that not so long ago he did wear into this place a T-shirt which had on it something other than the Australian flag. I think I heard Mr Keating say the other day that, while he may not like the current design or colour of the current Australian flag, it was the flag and, as such, it ought to be supported accordingly. I am saying the same thing as Mr Keating is saying. I expect every member of this Assembly - - -

Mr Lamont: Can we quote this? "De Domenico supports Keating". It should be headlines in the *Canberra Times* tomorrow.

MR DE DOMENICO: Madam Speaker - - -

Mr Wood: You interject more than anybody else, Mr De Domenico, so do not complain.

MR DE DOMENICO: I am not complaining, Mr Wood. I am just waiting for you to finish and then I will continue talking.

Mr Wood: That fellow interjects more than anybody else. How often do I interject?

MR DE DOMENICO: Have you finished? Is there anything else?

MADAM SPEAKER: Mr De Domenico, you have the floor.

MR DE DOMENICO: Thank you, Madam Speaker. I will disregard the irrelevance to my right as well. To cut a long story short, I believe that all members of this Assembly should be proud to support this motion, which says, quite simply, that we ought to be displaying the Australian flag somewhere within the confines of this Assembly.

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

LAPSE OF NOTICE

The Clerk: Private members business, notice No. 5.

Mr Kaine: This notice is Mr Lamont's, Madam Speaker.

MADAM SPEAKER: He is not standing to move it.

GOVERNMENT SERVICE - OVER-AWARD PAYMENTS, BENEFITS AND CONCESSIONS

MR DE DOMENICO (11.46): I move:

> That the Government immediately initiate an inquiry into all over-award payments, benefits and concessions paid or made to employees in the ACT Government Service including the staff of agencies such as ACTEW, ACTION, ACTTAB, ACT Forests, Totalcare, Milk Authority and Natex.

Madam Speaker, although unprepared, I am delighted to be able to move this motion.

Mr Lamont: You are always unprepared, Tony.

MR DE DOMENICO: That comes well from you! Get up on your feet, Mr Lamont. Let us debate yours, which appeared at No. 5.

MADAM SPEAKER: Mr De Domenico, I think you should take your own advice and ignore some of those interjections.

Mr Kaine: That particular interjection shows what a wimp Mr Lamont is. He will not debate his subject, but he criticises Mr De Domenico.

MR DE DOMENICO: That is the usual style of the trade union movement, is it not?

Madam Speaker, I am delighted to move the motion standing in my name. I think the Government should immediately initiate an inquiry into all over-award payments, benefits and concessions paid or made to employees in the ACT Government Service, and the names of the various bodies are in the motion. We do not move this motion lightly. We have heard from time to time about the alleged rorts that happen in certain areas. ACTEW was one that made the headlines, and in ACTION we know of the infamous people playing golf when they were supposed to be sick and being caught out by their boss.

This motion virtually says: Let us make sure that everybody working for the ACT Government is getting a fair pay. We are not saying that they should not all be getting a fair pay, but let us make sure that they are not getting something more than they deserve to get. I think even the Minister, Mr Connolly, from time to time has made similar comments, only to be told by various members of the Transport Workers Union, I recall, that he should pull his head in or else various things would occur during the next Labor Party preselection.

We have heard various members of the Government talk about how important it is to improve employment opportunities in the ACT, how important it is to find jobs for our young people. That is very laudable and we applaud all those comments made by members of the Government over the months and years. What is wrong with us having a good look at all the salaries and structures and over-award payments and the like that occur in the ACT Government Service? Perhaps it is appropriate now to look at things of that nature, seeing that the Chief Minister, with a great fanfare just before we got up before Christmas, finally decided to do something about setting up our own ACT public service.

The Federal Minister for Industrial Relations, Senator Cook, has been talking about enterprise bargaining and workplace bargaining and how much more efficient things are going to be under enterprise bargaining arrangements. I think it is about time we found out exactly what sort of over-award payments and the like occur in the ACT Government Service. This is not accusing anybody of doing anything untoward, although Mr Connolly will concede that there have been front-page newspaper stories from time to time - not denied by anybody, including Mr Connolly, by the way. When he heard that things seemed to be going on that should not be going on, he quite rightly put his foot down and attempted to wipe these things out - sometimes not as successfully as he would have liked, through no fault of his own, but for obvious reasons that Mr Connolly knows a lot about.

Mr Connolly: Attack me, Tony; say something nasty.

MR DE DOMENICO: It is very difficult to say nasty things about the Minister. He does try very hard to do the right thing by his ideology and beliefs, except that he is not allowed to do that by certain of his colleagues who he would wish perhaps were not there from time to time, faceless people being what they are.

The motion is quite clear. I think it is time we entertained such an inquiry, in view of the current negotiations with the trade union movement about the creation of a separate ACT public service; the relationship that has to the enterprise bargaining that has been happening, according to the Federal Government; and also - let us be realistic - taking into account the fact that it is very likely that we are shortly going to have a change of Federal government. People who try to dismiss that as something that may not happen are not looking at reality.

For all those reasons, Madam Speaker, I think it would be very appropriate for us to say to this Government that it is about time we had a look at what people being paid from the ACT coffers are earning.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.51): The Government will be opposing this motion, but it is an appropriate motion to debate because it once again draws the Liberal Party out of their shell on industrial relations issues. Yesterday we heard Mr De Domenico interjecting with great enthusiasm that he wanted to use the troops in industrial disputes. He interjected and said, "So does Mrs Carnell". Mrs Carnell looked a bit uncomfortable but no doubt had to support the party line. They want to use the troops in industrial relations. They have a policy they are introducing in Victoria whereby, from 1 March, all State awards cease to have effect and we go into this process of individual contract negotiations. I can recall on the ABC *Lateline* program the representative of the Victorian Chamber of Commerce conceding that, in effect, if you did not like what you were being offered by your employer in difficult economic times, there were plenty of people outside the door who would like the job, and you could either take it or leave it.

That is the process they favour in industrial relations. You have to sign your individual contract with the boss. As was conceded by an employer representative in Victoria, if in difficult economic times, when there is unemployment and there are people waiting outside the door for that job, if you

do not like the salary you are offered you have no option. It is either out the door or take the reduction in wages. Of course, they deny reductions in wages. They say, "We are not out to attack people's wages". Yesterday Mr Westende said that we should be getting rid of all penalties and overtime in relation to ACT government employment.

Mr Westende: I did not say "penalties".

MR CONNOLLY: They want to get rid of all overtime. They deny that they want to reduce people's wages. Again we had Jeff Kennett before the Victorian election saying, "Trust me. No worker will be one dollar worse off". Was it two weeks after the election or was it a week after the election or was it on the Monday that he said, in effect, "In comes the silver service for Parliament House and, by the way, Victorian workers, forget that nonsense I told you about nobody losing a dollar on their wages. That was just me seeking your vote. What I am really going to do is knock off your holiday pay, knock off leave loadings". These principles were not in issue during the election campaign because he had given solemn assurances that he was not after people's terms and conditions.

This is Liberal Party industrial relations ideology: "Give people lots of platitudes before an election that we are not out to undermine their wages and conditions; give people assurances that they will not be one dollar worse off, everything will be fine. Try to get into government, and then knock off the award system, do away with awards and have individual contracts". That is your Liberal Party rhetoric. We saw in Victoria an even more sinister process. At 3 o'clock in the morning whack through legislation to do away with holiday pay, leave loadings, and these sorts of principles. No doubt this inquiry the Liberal Party would like us to have into terms and conditions in ACT industrial employment would be a prelude, if they ever found themselves in office here, to the process of offering all these workers their individual contracts, where again they can take it or leave it.

Our employment practices in the ACT are obviously open and accountable. We come to the Estimates Committee and we are accountable in this parliament. I cannot recall answering any questions, either in the chamber or on notice, seeking details of the extent to which we make overtime or penalty or over-award payments. Certainly, if asked, we will make that information available in relation to any agency. In most cases, of course, these payments are authorised by awards. The controversy, if you like, that Mr De Domenico was referring to in relation to the Electricity and Water Authority was a process where, because of a multitude of workers working under different awards and each award having a different and quite complex set of provisions on what is allowable to claim as an award allowance and what is not, you had some confusion. We had a situation where some workers were getting allowances which were not covered in their awards. We sorted that out, and those payments that were not authorised have been stopped.

We have now negotiated with the relevant unions - and there is a range of them - a process of broadbanding in those over-award allowances. Actually, they are not over-award allowances; they are allowances in the award. My terminology in this area is perhaps not as precise as Mr Lamont's will be. Those allowances that go beyond the basic award pay have now been broadbanded. We have a simpler and more straightforward system, achieving the sort of change that Labor has

achieved in the last decade across Australia - landmark change in industrial relations and what happens in the workplace - but doing it around the table with the trade union movement and with managers, not through this process of coercion, of intimidation, of "Sign on the dotted line, sign this individual contract or you are out the door".

Mr Berry: With a gun at your head.

MR CONNOLLY: "With a gun at your head", interjects Mr Berry.

Mr De Domenico: And where has that got you? A million unemployed. That is the bottom line.

MR CONNOLLY: Is your solution to slash wages? Is that your solution?

Mr De Domenico: No.

MR CONNOLLY: That appears to be your solution, because the Victorian Chamber of Commerce bloke said, "If you do not accept the contract you are offered, there are plenty of people outside the door wanting the job".

Mr De Domenico: That is Victoria. We are representing the ACT, Mr Connolly. We are not in Victoria. Talk about the ACT and the rorts that may be happening under your administration. That is what you have to talk about.

MR CONNOLLY: The term "rorts" is one that has been widely used by Mr De Domenico - - -

Mr De Domenico: And you.

MR CONNOLLY: No, not one that has been used by me, Mr De Domenico. I have never used the word "rorts". "Rorts" has appeared in headlines, and I have then been quoted as referring to payments that are not authorised by the award, but I have not used the word "rorts". Where I have become aware of payments that are not appropriate, we have moved on it.

The other one the Opposition was desperate to try to create a scandal about related to ACTION. A meal allowance that had been claimed for many years had not been authorised by an award.

Mr De Domenico: What about the six that were playing golf?

MR CONNOLLY: We became aware of this situation, and later we went to the commission and we consented to an order which retrospectively validated that payment. It had been a condition for many years and everyone had assumed that it had been authorised by the award. In fact the clause was not broad enough to cover it. It had been claimed; it had been paid. I can recall members opposite causing much agitation about that - this was a rort, this was terribly improper, how dare we have gone through that process - until they were confronted by the report of the Public Accounts Committee, which Mr Kaine had chaired. It said that the problem had been occurring, it was illegal and unauthorised, it then went to the commission, the commission validated it, and that was a proper process. They thought they were onto a scandal there but, sadly, they were not.

There were some interjections about people attending golf days. If any employee is not conducting himself properly - taking unauthorised leave, that sort of thing - the matter gets dealt with in the ordinary course of events. That is what occurred in ACTION in relation to some of those allegations that were widely reported. This Government deals with public service - I should not say "improprieties", perhaps that is putting it too high. People who do not follow the rules are dealt with in the ordinary course of events.

Where we have problems with award payments or over-award payments, we are going through the process of simplifying the awards, consolidating the awards, and achieving change. The pace of change at the workplace in the ACT Government over the last couple of years has been unprecedented. When you people were in power you ranted and you raved but nothing happened, and the cost of running the administration was escalating.

Mr De Domenico: I was never in power, Mr Connolly.

MR CONNOLLY: Your leader was. This was shown nowhere more dramatically than within the bus system, where the costs just kept going up. Since we have been in office we have been effecting change at the workplace. We have been sitting around the table with the relevant unions and we have been achieving real change.

This has happened in the Department of Urban Services, in the asset management area, with the people who go out repairing public housing in the ACT, Mr Cornwell, and doing it very efficiently. Some years ago a carpenter would have gone out and done the woodwork. If there was a tile missing in the bathroom, he would have called back to the depot and a tiler would have gone out and repaired the tile. Now, in cooperation with the relevant building unions, through the building trades group, we have got reform and change out at the workplace in the asset management section, where we are multiskilling our trades employees and our non-trades assistants. We are effectively getting one worker with one basic trade, but with some additional skills, able to do a broader range of that sort of general household maintenance.

It is significant change, and change that is being achieved through cooperation with the trade union movement. That is the way you achieve efficiency, that is the way you achieve change, and **t**hat is the way you guarantee job security. We have a record of change and reform. The Liberal Party talks about micro-economic reform. We have a record of achieving that within the ACT Administration, which you people were unable to deliver when you were in office. You rant and you rave, but you are not prepared to sit down with the workplace managers, the workplace delegates and their unions, and negotiate the hard nitty-gritty of workplace change.

We have done it. You can see that in the ACTION subsidy figures, where for the first time, according to that chart that was published in the Advance Bank magazine, we have got over the hump. We are starting to achieve those savings targets, and I am confident that we will achieve that $10m real change in the subsidy level over the life of this Government. We are doing it through consultation. We are doing it through cooperation - not with the gun-at-the-head approach; not with the approach that says, "If you do not sign the contract you are out on your ear"; not coming in and in the dead of the night passing a Bill

through parliament to knock off people's longstanding industrial entitlements such as recreation leave and leave loadings; not through a process of guaranteeing workers before an election that nobody will be one dollar worse off and then the day after the election announcing the abolishing of award systems and knocking off people's longstanding entitlements.

That is not the way to go about it. The way to go about change is the way this Government is doing it. If members have concerns about the way salary bills are put together, or the components of salary bills, or suggestions of improprieties, all they need to do is ask specific questions about specific areas and we will give them the information.

MR LAMONT (12.02): Madam Speaker, this motion is interesting, basically because of what it does not say. What it does not say is that this group of people over here supported the policies of Jeff Kennett and support the policies of John Hewson and John Howard, and they are predicated on fear. They are predicated on dealing with the work force in this country by confrontation as opposed to conciliation.

Mr De Domenico: From the mouths of babes - - -

MR LAMONT: Bubble and squeak over here would far rather see - - -

Mr De Domenico: On a point of order, Madam Speaker: I do not know who he thinks is bubble and who he thinks is squeak, but if the Chief Minister insists on being called by her appropriate title, which I agree with, I suggest that Mr Lamont do the same.

MR LAMONT: The honourable bubble and squeak over here.

Mr De Domenico: Once again, Madam Speaker - - -

MADAM SPEAKER: Mr De Domenico, Mr Lamont was addressing his remarks to me, as is appropriate. He was not addressing his remarks to anyone else, so he may once in a while stray into commentary on the Opposition. Mr Lamont, please continue.

MR LAMONT: Thank you. There is no imputation, and I would withdraw it, Madam Speaker, to allow the debate to continue. I thank you for your ruling, which was the appropriate one, of course.

Mr Cornwell: I thought it might have been a reflection on the Chair, but never mind.

MR LAMONT: Not at all. It is obvious that the criticisms strike home, and the Opposition has become just a little more sensitive in the lead-up to this election. This motion attempts quite clearly to line up the working conditions of workers in the Australian Capital Territory. Today they are proposing to look at those issues associated with government employees. Tomorrow under Dr John and his mate they are looking at the working conditions of every worker in the ACT, every wage and salary earner and every contractor in the ACT. That is the basic tenet of their industrial relations policy. The only way you can adjust wages, conditions or contract prices is downwards. There has not been an occasion under people like their mate in Victoria, their fellow traveller, where there has been an adjustment which in real terms has been upwards.

Mr Humphries: New Zealand.

MR LAMONT: What an interjection! Let us talk about New Zealand, because that is what they wish to emulate. Let us have a look at Telecom in New Zealand.

Mr Humphries: They have higher growth than us, and lower inflation.

MR LAMONT: High growth? You go and tell that to the 5,000 people that your policies in New Zealand have put on the dole queue in the last 24 hours. It is an absolutely terrible predicament for any country to be in, and that is acknowledged. It is a hard enough fight in these times to maintain the unemployment rate at what is acknowledged by everybody as an unacceptably high level. What is going to happen under your policies is that that trend will accelerate, and therein lies the difference. In every single policy initiative, you will have your hands in the workers' pockets - every time they put their hand in, out comes Dr John with 15 per cent. All you are attempting to do is to emulate those policies and instil that fear quotient back into industrial relations.

Let us have a look at what your motion says. You are not lining up just those over-award payments that you allege have been rorted, which I believe the Minister has quite adequately demonstrated is not the case. What has happened, Mr De Domenico, is that you have lined up in your gunsights exactly the same conditions of service that your mate in Victoria has and that have been lined up in New Zealand. Overnight, despite the promises of Telecom in New Zealand in relation to employment, they said, "We now suddenly want to get rid of 5,000 of you". It was 40 per cent of their work force in one hit.

Those are the policies you espouse. They are what you support and, despite the fact that you have not been forthright enough nationally to say that, the Australian people, including those living in Canberra, can see through it. Your actions speak louder than your rhetoric. The actions of your mates in Victoria and in New Zealand speak louder than your rhetoric. What you are trying to do by setting up a house of cards here is quite simple. Let us look at maternity leave and other conditions of service that are enjoyed. Let us look at what your motion sets up for the chop.

Mr De Domenico: Where in my motion do you see the words "maternity leave"?

MR LAMONT: Let us have a look. It says:

> That the Government immediately initiate an inquiry into all over-award payments, benefits and concessions paid or made to employees in the ACT Government Service including the staff of agencies such as ACTEW ...

What are the benefits?

Mrs Carnell: What does Fightback say about maternity leave?

MR LAMONT: I do not believe what you have in the "frightpack". This man said in November, "If I have to change Fightback, I will resign". He has said exactly the same thing now under mark 23, or whatever the number is now up to.

Mr De Domenico: Two.

MR LAMONT: He has made two more changes, other than the time that he was going to resign. What he has already done is misrepresent the position, and what you are doing by this motion, in my view, is misrepresenting your objectives as well. It is quite clear that under your policies you wish to have on the table and deny to working men and women in the Australian Capital Territory those basic conditions of service which they have negotiated and had independently arbitrated over the last number of decades.

I know that you want to return to better times, but 1893 is not the appropriate time, and that is what you wish us to return to - the antiquated, well-respected, in your view, master-and-servant relationship where the master, it does not matter at what level, has all of the say.

Mr Humphries: What about public floggings, David? Shall we have public floggings? Trial by ordeal? Burning witches at the stake?

MR LAMONT: I have no doubt that, in time, you will make public what you probably propose in private. The simple fact is that we have had in the last 24 hours - I think it was reported on early *AM* this morning - Dr Hewson mark 1 or 2, or whatever number he is now up to, talking about how he has had these independent consultants have a look at the programs he is putting. I think it was ACIL in Canberra he was referring to, which made an independent review of their policies and has supported them.

Mr Humphries: Foot in mouth.

MR LAMONT: Absolutely none. The people of Australia should come to understand the level of impartiality in relation to that question which that organisation may exhibit, given the fact that they are involved, and we have seen here in the last 12 months how that involvement has occurred.

We can talk about independent assessments of what they want to do. What will happen with this witch-hunt is that the Opposition, and particularly the Opposition spokesperson on industrial relations, will continue to pursue that policy which they have not had the temerity to get up and announce openly to everybody in the ACT and, indeed, in this country. They want an industrial relations system predicated on fear, predicated on a return to the last century master-and-servant relationship. They want to turn the clock back all right, but they want to turn it back 100 years. It is about time that was exposed, and the sentiments expressed by the Opposition spokesman, quite clearly enunciated in comments made in the Assembly this week, demonstrate exactly what they are on about and exactly what they are after. Despite the interjections and the jocularity and the throwaway lines, they must be exposed for that. They must not be allowed to dismantle a regime in this country, the conciliation and arbitration process, which our forefathers quite properly put into place and which should be maintained.

MR DE DOMENICO (12.13), in reply: Let us get it straight, Madam Speaker. Mr Lamont was quite obviously not prepared to speak on his own motion.

Mr Lamont: Give me another 10 minutes.

MR DE DOMENICO: No, you have had your turn. Mr Lamont made some comments which were incorrect. The Liberal Party has been up front with its industrial relations policy, both nationally and at the local level in the ACT. I have yet to see Mr Lamont's Government's industrial relations policy, except that during the election campaign I read a document that said that they would give preference to union members, and things of that nature. That is what Mr Lamont believes to be modern industrial relations.

Let me reiterate, for the sake of Mr Lamont, that the ACT Liberal Party's industrial relations policy is a public document. I am sure Mr Lamont has a copy of it; I know that the Trades and Labour Council has a copy of it. They did not seem to disagree too vehemently with it, as I recall Mr McDonald's views on it on radio recently. The Liberal Party's up-front, publicly known industrial relations policy does not abolish the award system, as Mr Lamont was pretending it did. It does not, I repeat, abolish the award system. It sets up an alternative system that sits side by side with the existing Federal system. Whether you like it or whether you do not, or whether Mr Lamont likes it or not, Madam Speaker, that is what it does. It does not cut wages and conditions but encourages a system of remuneration tied to productivity. People from overseas who come to this country from time to time - two gentlemen were here the day before yesterday, in fact - talk about productivity, quality and innovation. That is what we have to talk about. That is what a clever country does. You are not going to do that, with the industrial relations views of Mr Lamont and the people on his side of the house.

The Liberal Party policy does not destroy unions. It acknowledges the unions' right to exist, but it also gives the individual the right not to join a union. Madam Speaker, I am sure that even Mr Lamont from time to time would agree that you and anybody else in this Territory have a right to join a union and a right not to join a union. We are giving individuals the right to choose. I am sure that that does not sit very nicely with you, Mr Lamont, and the people on your side of the house, but we like to think that individuals in this Territory are smart enough to choose to join or not to join a union. That is what the policy does.

I will tell you what else it does, Madam Speaker. It is about choice in negotiating the most suitable employment relationship between employer and employees. Mr Lamont waxed lyrical about Mr Kennett. Let me quote this comment made on 4 February:

> Alan Brown, the Transport Minister, has welcomed today's historic breakthrough agreement with the Australian Tramways and Motor Omnibus Employees Association.

That is not a right-wing group, as I am sure Mr Lamont will know, but a left-wing union in Victoria, sitting down with a Liberal government - the Kennett Government - and negotiating something to the satisfaction of both the employer and the employee. That is what industrial relations is all about, Mr Lamont, and that is what the Liberal Party policy is all about. For you to stand up here, after your years of involvement in the trade union movement, and disparage what people on this side of the house are trying to do is sheer humbug.

The Liberal Party policy is about employment growth through flexibility, as opposed to restrictive work practices. My motion says, purely and simply: Let us have a look at all these work practices that occur in the ACT Government Administration, especially at a time when we are looking into establishing our own public service. We might also have to establish our own awards, which we do not have right at this minute. Under a Hewson-Howard government there is not going to be a Federal award system, so under what awards will the ACT be operating? It has to be on a contractual basis with employees or you are going to have to have some sort of award.

Mr Connolly: So you are going to scrap awards?

MR DE DOMENICO: No, I did not say that. Madam Speaker, would Mr Connolly attempt not to misrepresent what I am saying?

Mr Connolly: You said that there would be no awards.

MR DE DOMENICO: No. You have a habit recently - I do not know; perhaps you are not getting enough sleep - of misrepresenting what people are saying. I ask you, please, not to misrepresent what I say.

Madam Speaker, it is about employment growth through flexibility as opposed to restrictive work practices. Once again, Mr Lamont can stand up and talk until he turns blue in the face. The fact of the matter is that after 10 years of Labor government we have over one million people unemployed. If Mr Lamont believes that over the past 10 years accords mark 1 to 14, or whatever it is, have been successful, he should have a look at the unemployment queue. Over one million people are unemployed. That was not done by us but by policies of your Federal Government, which has been in power for 10 years. That is the result of your policies and your viewpoint. So do not stand up here and talk about what we are doing. The ACT Liberal Party policy recognises the peculiar legislative and work force requirements of the ACT and encourages the creation of an industrial relations system that is both adaptable and flexible. I think it is adaptability and flexibility that we are talking about.

To get back to the motion, because we were taken away from it by the comments of the previous speaker, Mr Lamont, what does the Government have to hide? To all intents and purposes, there may be nothing occurring at the minute that should not occur, but perhaps there may be, Mr Connolly. The things I have seen occur time and time again make me believe that, especially as the Chief Minister has come into this place and said that we need to set up our own public service, we should have a look at exactly what people are receiving in terms of salaries and conditions, to make sure that everybody is being paid a fair share, that they are being paid what they are entitled to.

Let us be honest. That is the only way we are going to make sure that the community of Canberra are happy to say that this Government has done all it can to make sure that there are no rorts occurring - and I use the word that you suggest you do not use, Mr Connolly. I do not think the community is satisfied, notwithstanding what you or your Government, through you, Madam Speaker, might think from time to time. Let us bring it out into the open. What do you have to hide? If you have nothing to hide, I think you can see why logically you should support this motion.

Question put:

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

The Assembly voted -

AYES, 6	*NOES, 8*
Mrs Carnell	Mr Berry
Mr Cornwell	Mr Connolly
Mr De Domenico	Ms Follett
Mr Humphries	Mrs Grassby
Mr Moore	Mr Lamont
Mr Westende	Ms McRae
	Ms Szuty
	Mr Wood

Question so resolved in the negative.

Sitting suspended from 12.23 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Government Service - Staff Numbers

MR KAINE: Madam Speaker, I direct a question to the Chief Minister and Treasurer in her capacity as the Minister responsible for the public service. Does the Chief Minister believe that to wait for 10 months for the answer to a question on notice is reasonable? If not, when does the Chief Minister propose to answer a question of mine dated 8 April last year to do with staffing numbers in the ACT Government Service, which question remains on the notice paper?

MS FOLLETT: Madam Speaker, no, I do not believe that it is reasonable. I will check up on that matter and provide Mr Kaine with an answer at the first opportunity.

Lanyon High School

MS SZUTY: Madam Speaker, my question is addressed to the Minister for Education, Mr Wood. There have been calls for the opening of Lanyon High School to proceed as quickly as possible, given the number of students living in Gordon, Conder and Banks likely to attend the local high school. Can the Minister inform the Assembly whether Lanyon High School is likely to be included in the 1993-94 forward design program for capital works, ensuring the completion of its construction by the beginning of the 1996 school year?

MR WOOD: Madam Speaker, I understand that the planning for Lanyon High School is on the forward design program. As we assess the high school needs in that area, we have an expectation that it will progress. I will check the detail and, in absolute accuracy, advise what the situation is.

Belconnen Remand Centre

MR HUMPHRIES: My question is directed to the Attorney-General, Mr Connolly. I refer the Minister to reported allegations of misconduct at Belconnen Remand Centre on Christmas Day of last year, when custodial staff allegedly brought alcohol and cannabis into the remand centre and consumed it there. I ask the Minister: Has an inquiry been conducted into this incident? What was the result of the inquiry, if any? When was the Minister informed that the incident had occurred or that an inquiry was being conducted?

MR CONNOLLY: I thank Mr Humphries for the question. Yes, allegations were made on 26 December 1992. While a detainee was being investigated for other matters, that detainee made an allegation to the duty chief of the remand centre that remand centre staff had been consuming alcohol in the secure area and had offered some to detainees. He also alleged that cannabis was made available to detainees. The duty chief notified the superintendent of those allegations. The superintendent directed that every officer who had been present and on duty that day provide written reports.

The matter went up the line to the Director of Corrective Services on that day, 26 December, so immediately after the alleged incident every detainee in custody was subjected to urinalysis. The reports indicated that there may have been use of alcohol by officers; that officers may have had a drink on Christmas Day. Importantly, though, analysis reports from the hospital confirmed that no drugs or alcohol was detected among the remandees. So the allegations of passing cannabis to detainees - obviously very serious allegations - and of passing alcohol to detainees - also very serious - can be refuted.

The question of alcohol consumption by staff was further investigated. Mr Horsham, the general manager of the Housing and Community Services Bureau, directed that the formal public service discipline procedures be followed. An officer from outside the department conducted an investigation and a report which came to the general manager indicated that three officers had, on their admission, committed misconduct involving the use of alcohol and involving the use of a government vehicle. It would appear that a person took a government vehicle to pay a visit home on Christmas Day. One of the officers who admitted using alcohol has subsequently resigned from the service. The person who improperly used the government vehicle - I stress that it was to visit home - has left the service on leave without pay for two years. Further disciplinary administrative actions are currently in train and are likely to result in formal counselling action against those officers.

Mr Humphries made my office aware of this matter while I was on leave, and I gave an assurance that I would make sure that the matter was properly investigated and that I would give him a report. I gave him a report yesterday. It was essentially what I have read from here. When I spoke with the secretary of the department, Mr Hunt, in early January Mr Hunt mentioned to me that there was a public service disciplinary process in train in relation to allegations of cannabis and alcohol misuse at the remand centre, and I left the matter with him on the basis that a public service disciplinary procedure was in force. So I was aware that a process was in train. That process has come to a conclusion, and I provided a copy of the report to Mr Humphries.

MR HUMPHRIES: I ask a supplementary question. I thank the Minister for his answer, but I further ask: First of all, why was it that officers at the centre were not tested at the same time as detainees were? Were the tests effectively carried out or conducted through the agency of the officers? For example, were the officers responsible for taking urine samples from the detainees to the hospital for testing? In what circumstances does the Minister consider it appropriate that the public of the Territory be advised that incidents of this kind have occurred and that an inquiry is being conducted into such allegations, or does he consider it appropriate that matters of this seriousness remain entirely internal and not come to public light unless leaked or revealed to the public?

MR CONNOLLY: Madam Speaker, Mr Humphries refers to "matters of this seriousness". It must be borne in mind that the allegations were extraordinarily serious. An allegation that cannabis was supplied to a detainee by a remand centre officer would be a matter of the utmost seriousness. Urinalysis of remandees established that that did not occur. The outcome of the investigation is that officers appear to have had a few cans of beer at their place of work on Christmas Day. That is contrary to public service directions. It is against the regulations. Disciplinary action has been taken in relation to that, but one would have to say that, in the scheme of things, in Australia on Christmas Day for somebody to consume a can of beer at work is probably not the most serious breach of public order and safety that one could imagine. However, it should not happen. Had any grog or cannabis been passed to prisoners, that would obviously be a very different matter, because it would give rise to potential disciplinary problems. That matter has been dealt with.

When I was first made aware of it and told that the matter was being pursued through a public service disciplinary procedure I let it go at that. When there is a disciplinary inquiry it is appropriate that Ministers not intervene. When Mr Humphries raised the matter with me I assured him that I would promptly give him a full report, and I did so. Had he not raised the question, a report would have come to me in due course saying that an investigation had confirmed that a couple of officers had imbibed a can of beer and that an officer had taken a government vehicle to visit home. They are fairly low-level matters, and I probably would not have felt it necessary to make a major statement to the Assembly about them. Those sorts of low-level disciplinary matters arise on a daily or weekly basis and are dealt with by workplace managers under the Public Service Act without a need to make them a major public issue.

Medicare Agreement

MR LAMONT: My question is directed to the Deputy Chief Minister in his capacity as Minister for Health. The ACT Government recently signed the new Medicare agreement. What were the advantages to the ACT in signing the agreement early?

MR BERRY: I thank the member for the question, Madam Speaker. It is most important that all matters of concern to Canberra residents be fully aired in the course of this Federal election and that their effects on the ACT be made known. The Medicare agreement which was signed by me was a significant advance on what had occurred in the past. I have to report to the Assembly that Mrs Carnell, in her usual tirade of complaints, attempted to cause fear and concern amongst

Canberra residents about our health system. She said, "You have gone in too early. You have committed yourself too early. You should do this. You should do that". She just cannot keep her nose out of these affairs and let responsible government get on with the job. We have proven to the people of the ACT that we have been able to secure a good agreement for the Territory, a responsible agreement and an agreement which will - - -

Mrs Carnell: Make sure that you do not have any more blow-outs?

MR BERRY: It will ensure that we are able to continue with a better hospital system in the ACT than would have been the case otherwise. I went to see Mr Kaine this morning, and we were discussing order in the house. I have to say that one of the things that I pointed out to him was that they were the rowdiest lot in this chamber. They cannot keep their mouths shut. No wonder they get itchy and twitchy about Medicare arrangements in the ACT.

Mr Humphries: Look who is talking.

MR BERRY: Mr Humphries is one of the better examples of the noise in this place. If they sit and listen while I answer the question they will not then be able to complain about me taking too long to answer it.

Mr De Domenico: You will need psychological help, Gary, after that tirade.

Ms Follett: Madam Speaker, I raise a point of order. Mr De Domenico made an audible interjection which was quite unparliamentary and which must be withdrawn.

Mr De Domenico: Madam Speaker, on that point of order: I said to Mr Humphries, "Gary, you will need psychological help after that tirade from Mr Berry". I do not think that is unparliamentary and I will not withdraw it.

MADAM SPEAKER: Mr De Domenico, may I simply point out to you again, as I have pointed out in many cases, that the requirements of standing order 39 are that members keep quiet whilst another member is speaking. I will not ask you to withdraw that statement, because it was not aimed at Mr Berry; but I will ask you to remember the provisions of standing order 39.

MR BERRY: Madam Speaker, one of the initiatives that we were able to take advantage of early as a result of our commitment to the Medicare agreement is the hospital access program. We got access to it earlier because we gave our commitment early - there is no question about that - and we were able to get on with the job of getting that money into the system. My officers have been working closely with the Commonwealth with a view to securing that money and getting the waiting list down early. This is a great initiative by the Commonwealth - something that will not be repeated under a Hewson administration, because the Liberals have promised to cut back public hospital administration in the Territory by at least $17m. Seventeen million dollars will be cut out of public hospitals in the ACT at a time when we have just gained around $21m.

That would make the Liberals twitchy. If I were in their position, I would be embarrassed about that. I would not be able to hold my head up as I walked down the streets of Canberra if I supported the sorts of things Hewson is going to do to our public hospital system. You talk about long waiting lists. You just have a look at what might happen if a Hewson government is elected.

The Commonwealth provided $647,000 in 1992-93 and $226,000 in 1993-94 to fund specific time limited waiting list initiatives according to a strict set of criteria governing what the money might be spent on and how it is to be acquitted.

Madam Speaker, these are the issues that have been addressed thus far: Two surgical registrars will be employed to deal with waiting lists, and that will cost $85,000 in 1992-93 and $170,000 in 1993-94; some domiciliary surgical nurses will be employed; and we will be purchasing some equipment to undertake more intrusive procedures. The purchase of this equipment will result in the length of stay being reduced again. In the short time that we have been in government we have achieved great success in reducing the length of stay. Such reductions mean that there will be increased throughput in our hospitals.

Madam Speaker, committing ourselves to the Medicare agreement, though a quite natural thing for a Labor government to do, was something which I think advantaged us significantly in that we were shown to be friends of Medicare. Mrs Carnell ought to sing our praises on this one. If you look at what the ACT received compared to the two Liberal States that were grandstanding on the issue of Medicare, you will see that we did a lot better.

Hospital In-Patient Fees

MRS CARNELL: My question is addressed to the Minister for Health. The December quarter financial performance reports show that receipts from in-patient fees - and I am saying it really slowly - are $356,400 below budget. This is due to the fall in the numbers of patients with private health insurance which, as the Minister knows, has been continuing for a number of years. Can the Minister tell the Assembly why his projected budget figures for the second six months of this year show an increase in in-patient fees, an increase in excess of budget? You are budgeting for a real increase in the number of privately insured patients using our public hospitals in the next six months. That is an increase in excess of budget after the last six months showed a 4 per cent decrease. Is it true that the Minister is budgeting for a Federal coalition win on 13 March, or can he think of another reason why substantial numbers of Canberrans would all of a sudden take out private health insurance?

MR BERRY: I think the substantive question was whether I was budgeting for a Hewson win. The answer is no.

MRS CARNELL: I ask a supplementary question, Madam Speaker. Can the Minister explain what he is budgeting for? Can he explain why the figures for the second six months as outlined in the December quarter financial report show a real increase in in-patient fees? Is it true that the figures are fudged?

MR BERRY: Madam Speaker, sooner or later Mrs Carnell will come to the understanding that these figures are the board's figures, not my figures. The Board of Health, of course, is about to come to an end. The reason for the board's demise is not as Mrs Carnell has said. She has said that the reason for the board's demise is that I want more power over the hospital system. That is not the reason. The reason is - and everybody knows this - that the chairman has resigned, the deputy chairperson has resigned and one other person has resigned. It has been because of her political interference in the management processes in health that they have given it away. The chairman himself said that.

Mr Kaine: Why don't you appoint another chairman? You want to get rid of the board as you did in 1989.

MR BERRY: Mr Kaine says, "Why don't you appoint another chairman?". I will tell you why: I would not be able to get anybody of calibre to come forward to do that job. There is nobody that I would accept to do it, and there is nobody that I would ask to do it and to be harassed by you lot.

Mrs Carnell presented some figures. Those estimates were made in good faith, I expect. They have not been fudged. They have not been framed on the basis of a Hewson government, because the wise people on my board surely know that Canberra people and Australian people, given time, will not vote for these people. The figures have been presented to you in good faith. They outline the predictions which have been approved by the board, and they stand.

Asbestos Removal Program

MR MOORE: Madam Speaker, my question is directed to Mr Connolly and also has to do with investigations. In January, after some public disquiet, Minister, you announced an investigation to be carried out by the Auditor-General into the asbestos removal program. Can you please inform the Assembly what the terms of reference provided to the Auditor-General were? Will the Auditor-General report back to the Assembly, and what reporting date was the Auditor-General given?

MR CONNOLLY: Madam Speaker, members would understand that the Auditor-General is an independent office-holder and exercises significant discretion as to what he will or will not investigate. When the issue of asbestos contracts was being agitated and allegations were being made that the financial management of that program was greatly amiss and that the ACT was paying far more than it should for work being done - that is the nub of your allegations - I asked whether the Auditor-General would conduct an inquiry into that. The Auditor-General indicated that he would.

Unlike the practice when you set up an inquiry or a royal commission or send something off to an Assembly committee, you do not give the Auditor-General terms of reference which he is locked into. If the Auditor-General thinks it is appropriate to look at a matter, the Auditor-General will exercise his or her discretion and do that. That is what has occurred. I have no control over the conduct of that inquiry. I have no ability to say to the Auditor-General, nor would I want to say to the Auditor-General, "Look at this but do not look at that". The Auditor-General is, I understand, conducting a thorough review of that program. I know that he has been interviewing a very large number of officers of my department, ranging from the most senior to the most junior. I take it from that that the inquiry is well under way. When he reports he will report in the ordinary way - that is, to this Assembly.

Mr Kaine: Is this an audit or an inquiry?

MR CONNOLLY: It is an audit. The Auditor-General is exercising his power to - - -

Mr Kaine: You were using the word "inquiry", Minister.

MR CONNOLLY: Inquiry, audit - what is the difference? The point is that the independent officer who has the responsibility to ensure that the ratepayers' dollars are being spent wisely, and in whom we all seem to express a high degree of confidence, is looking into the question of whether ratepayers' dollars are being spent wisely in relation to the asbestos program. That report will come to this Assembly in the ordinary course of events. This Assembly refers such reports to the Public Accounts Committee, so the representatives of this community in this Assembly on that committee can look at what the Auditor-General has had to say.

Griffith-Narrabundah Primary School

MR CORNWELL: Madam Speaker, my question is addressed to Mr Wood, the Minister for Education. I refer Mr Wood to Monday's census of school enrolments and ask whether he can advise me and the Assembly of the number of pupils enrolled at the Griffith campus of the Griffith-Narrabundah Primary School.

MR WOOD: Madam Speaker, that was a simple question. The answer is equally simple: 49, I believe, is the number today. The number has varied a little from what it was on Monday.

Mr Kaine: What was it on Monday?

MR WOOD: It was about 49, Mr Kaine. That is the basis of the staffing configuration at this time. I think Mr Cornwell understands the process. That school, like all others, has been staffed on projections for 1993. The census is taken a week-and-a-half into the school year and the staffing is refined to match enrolments accurately. That is the next step I will be taking.

MR CORNWELL: I ask a supplementary question, Madam Speaker. Thank you, Mr Wood, for that concluding comment, because I understand that the school at the moment has three teachers and one non-teaching deputy principal. I presume that that staffing will now have to be revised by you in accordance with what you have just said.

MR WOOD: Madam Speaker, that is correct. The Government is maintaining its support for the campus. The new staffing will be in the order of - I do not know whether it is exactly defined yet - two classes, rather than the three that are there now, with additional support in the way of ancillary staff and supervisory staff from the Narrabundah campus, commensurate with the review we undertook last year, the outcome of which was that we gave some additional support to the Griffith campus.

Goods and Services Tax - ACTEW

MRS GRASSBY: My question is directed to the Minister for Urban Services. Can the Minister inform the Assembly of the effects of the GST on the cost of services provided by ACTEW?

MR CONNOLLY: As the Prime Minister indicated yesterday, the GST affects everybody. When you go home and have your shower, or when you press the flush button, or when you turn the light switch on, it is Dr Hewson's hand in your pocket. The GST will have the effect of putting 15 per cent on everybody's water and electricity charges. But, Madam Speaker, that is only the half of it. You have to think of what that means. ACTEW generates sales revenue of some $300m a year. It was a bit over that last financial year, but we will round it down to $300m a year.

Let us accept all the benefits that you claim for Fightback and the GST. Let us accept that the GST means a reduction in the fuel excise. At the moment fuel excise costs ACTEW about $300,000 a year. Let us accept that the GST means the abolition of payroll tax. Payroll tax costs ACTEW a bit under $3.5m a year, but let us be generous and say that there is $4m worth of benefit to ACTEW in your tax reductions that you talk about so much. ACTEW does not pay sales tax on its purchases, nor do all the other taxes you talk about affecting business apply to ACTEW. The imposition of a GST of 15 per cent on $300m worth of sales will cost $45m. Madam Speaker, $45m will transfer from ACT ratepayers to the Commonwealth Government.

Let us be generous and talk about a $4m taxation benefit, although of course payroll tax is neutral to the ACT if we believe you. If we believe you, Mr Kaine, at best payroll tax is neutral. But what is new and what has not been considered is that there will be an additional slug on ACT taxpayers. Forty-five million dollars that is now not paid in tax will go straight to the Commonwealth Government. Madam Speaker, there is nothing in the Fightback package mark 1 or mark 2 - or mark 10 or mark 12 or whatever we are up to now as Dr Hewson runs around the country inventing new give-aways - that provides a compensation mechanism.

The GST is a new form of taxation taking $45m away from the ACT and directing it to the Commonwealth. Madam Speaker, the ACTEW dividend is now about $20m. That $45m means a significant reduction in ACT expenditures. To give an idea of what $45m means to the ACT, I ask you to contemplate that the police budget is about $50m. That is the scale of what this new taxation, the GST, will take away from the ACT community and transfer to the Commonwealth. We have no compensation mechanism.

Election Campaign Sign

MR WESTENDE: My question is directed to the Minister for the Environment, Land and Planning. I refer the Minister to page 5 of the *Canberra Times* of today, which shows a photograph of the two Federal members for the ACT and a sign. Could the Minister indicate whether the sign shown in the photograph was officially approved by the Government and legally constructed in accordance with building regulations? Was it approved by the Minister or an authorised person? If not, will charges be laid in accordance with section 12 of the Roads and Public Places Act 1937?

MR WOOD: Would you tell me which sign and what the sign says?

Mr Kaine: No, do not tell him what the sign says. He knows which sign you are talking about.

MR WOOD: No, I do not.

Mr Kaine: Don't you read the *Canberra Times*?

MR WOOD: I have the gist of it now. Madam Speaker, I do read the *Canberra Times* sometimes. I did note a picture this morning but I did not particularly pay attention to the sign in the background. I think it says something about lots of jobs - 1,500 jobs - being at stake if Hewson gets in. That would seem to me to be a very sensible sign and one that I would support. Whether it is a legal construction, I do not know. It could well be that it was a rather temporary construction for a particular purpose.

Mr Kaine: No. It has been there for a week. Is it going to come down tomorrow or today?

MR WOOD: I have not driven past that area for a while. In due course I might make some inquiry. In the end, all the laws of this Territory will be observed. It is the case that people who leave signs in the middle of a main road from time to time lose them. People in Mr Connolly's department collect them. I will initiate some investigation into this matter. If an approach were made to approve the sign, I might be sympathetic.

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

Joint Venture Housing Development - Braddon

MS FOLLETT: Yesterday Mr De Domenico asked me a question, which I took on notice, concerning the guidelines for appointments to public office. My answer, Madam Speaker, is that since self-government general requirements for appointments have been included in various versions of the *Cabinet Handbook*. The current guidelines provide that assurances must be obtained from prospective appointees in relation to potential conflicts of interest and personal financial affairs. In seeking assurances from prospective appointees their attention is drawn to the fact that they may be required, by the nature of public office, to accept restrictions on certain areas of their private conduct beyond those imposed on ordinary citizens. A code of conduct is drawn to appointees' attention prior to appointment. This code addresses conflicts of interest, use of information obtained as an appointee and the need to notify changes in circumstances.

Mr De Domenico's question arose from a question involving the ACT Electricity and Water Authority. I draw his attention to the requirement of section 22 of the ACTEW Act, which requires members of the authority to disclose matters of personal and financial interest to meetings of the authority. For the information of members I table the relevant portion of the *Cabinet Handbook*, the code of conduct for appointees and a copy of section 22 of the ACTEW Act.

Belconnen Remand Centre

MR CONNOLLY: Madam Speaker, I wish to give some supplementary information in answer to a question that Mr Humphries asked in question time this morning in relation to the inquiry at the Belconnen Remand Centre. The detainee made allegations that drugs and alcohol were given to and consumed by detainees. He did not make allegations that officers had consumed cannabis. The tests were done on the detainees. The process was that samples were taken and put into sealed bottles and, as is normal, other remand centre staff, not staff who were on duty on the previous day, signed the bottles.

The samples were then transferred to the analytical laboratory at Woden Valley Hospital. Woden Valley Hospital, in accordance with the ordinary practices, will not accept any samples if the seals have been broken. The process was as follows: Samples were taken at the remand centre by remand centre staff and placed into bottles which were signed by both the person who took the sample and the detainee. There would not have been an opportunity for the bottles to have been tampered with, unless the detainees themselves signed two seals. Of course, that is fairly easy to prove or disprove.

Mr Humphries: This is the following day?

MR CONNOLLY: The following day, yes, on the 26th.

Medicare Agreement

MR BERRY: Madam Speaker, in the course of question time Mrs Carnell raised a question on health matters. I will forward the text of her question to the Board of Health for their consideration.

PUBLIC WORKS AND SERVICES PROGRAM - TRANSFER OF FUNDS
Paper

MS FOLLETT (Chief Minister and Treasurer) (3.05): Madam Speaker, for the information of members, I present the statement and schedule of the transfer of funds from the recurrent to the capital subdivision of the public works and services program, pursuant to section 49B of the Audit Act 1989, and move:

> That the Assembly takes note of the paper.

Madam Speaker, the Audit Act 1989 provides for the effective financial management of the ACT Government Service and includes a number of provisions which enable appropriations to be varied in the course of the financial year. The Executive has approved a transfer of funds within the public works and services program in accordance with subsection 49(1) of the Audit Act. This section, amongst other matters, enables appropriated funds to be transferred between capital and recurrent items within a program.

In accordance with this section, the Executive has agreed to a transfer of funds from the recurrent to the capital subdivision of the capital works and services program in order to purchase an item of major plant and equipment needed to upgrade that program's computer facilities.

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

PAPERS

MR BERRY (Deputy Chief Minister): Madam Speaker, for the information of members, I present the following papers:

National Crime Authority - annual report for 1991-92

Policing in the Australian Capital Territory - annual report 1991-92, together with financial statements and the Auditor-General's report.

MENTAL HEALTH REVIEW COMMITTEE REPORT - GOVERNMENT RESPONSE
Ministerial Statement and Paper

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (3.06): I seek leave to make a ministerial statement on the Government's response to the report of the ACT Mental Health Review Committee entitled *Balancing Rights*.

Leave granted.

MR BERRY: Since the beginning of self-government, the Labor Government has stated its strong commitment to improving the ACT mental health legislation and associated services. The former Alliance Government shared this commitment and, with our support, established the ACT Mental Health Review Committee early in 1990. The committee, chaired by Mr Nick Seddon, examined the Mental Health Act and deliberated on ways to improve and protect the rights of people with mental illness. It produced a report titled *Balancing Rights*, which examines the ACT legislation and its impact on service delivery to people with mental illness or dysfunction. The comprehensive report contains some 59 recommendations.

In response to an invitation for public comment on the *Balancing Rights* report, 11 submissions were received. The *Balancing Rights* report and the suggestions made by the public have been considered by this Government, and this document I will table details the Government's response. Quite clearly, this Government is dedicated to improving the services and opportunities available to disadvantaged people. People with mental illness are very often disadvantaged in that they often cannot communicate effectively or make appropriate choices.

It is the responsibility of the community and the Government to ensure that the rights of these people are protected, that they have easy access to appropriate services and that their voices and wishes are heard and heeded. In the past the mental health system has operated to make it inevitable that some people who are mentally dysfunctional do not receive treatment or exposure to an appropriate management regime until they are finally brought before the courts and charged with an offence. It is inappropriate that the method of intervention for these people should be decided by criminal justice processes. Unfortunately, because there has been no alternative treatment or care available in a more compassionate environment, people with mental dysfunction are often tainted with criminality or convictions, with serious consequences for their reputation and sometimes their liberty.

Whilst the focus of the report is on changes to the law relating to mental health, there are recommendations about changes to services. Madam Speaker, I wholeheartedly support the approach developed by the *Balancing Rights* report, which would enable us to provide the least restrictive environment for mentally dysfunctional people and preserve their human rights. The philosophy espoused in the report has been adopted by this Government and is in line with that of the national mental health plan. It reflects the commitment given in March 1992 at the Burdekin inquiry into the rights of people with mental illness.

Madam Speaker, I am delighted to announce that this Government is responding to the needs of people with mental illness. This Government will implement and is implementing innovative and exciting changes to the ACT Mental Health Act to enhance the rights of people with mental illness. This Government will not shy away from its responsibilities and its genuine commitment to implementing the principles espoused in its social justice policy. The Government will introduce new legislation which will adopt the definition of mental dysfunction as recommended by *Balancing Rights*.

Other key recommendations from the report relating to reform of mental health legislation in the ACT include the establishment of a mental health tribunal and the expansion of the functions of the Community Advocate to include mental health advocacy. These initiatives bring the ACT into line with other jurisdictions, including New South Wales and Victoria. Other proposed legislative changes include the repeal of the outdated Lunacy Act 1898 and the introduction of mandatory access to interpreter services. Consistent with the report, the Government recognises that, ideally, treatment should be voluntary and that patients should be accorded certain prescribed rights such as the right to be assessed by a medical practitioner.

Balancing Rights made recommendations on the law relating to involuntary detention and treatment and concluded that the rights of the person suffering from mental illness need to be balanced against the rights of others who are affected by the person's illness, particularly family and carers. The proposed mental health tribunal will deliberate on options available as each case is assessed. As more appropriate services become available the lot of carers and families must improve.

We will be introducing legislation to expand the Community Advocate's functions to include general mental health advocacy. The role of the Community Advocate will be significantly expanded in relation to the mental health tribunal and will have the vitally important function of protecting the rights of people

suffering from mental illness. The primary function of the Community Advocate will be to represent people suffering from mental dysfunction at the tribunal, which represents an expansion of the existing mental health advocacy role, and will be supported with extra resources.

The provisions for involuntary detention and orders of the mental health tribunal will reduce the need for court appearances and possible unnecessary trauma for the person. However, the person will retain the right to appeal against orders of the tribunal should they wish to do so. These provisions are incorporated in the legislation for the establishment of the mental health tribunal. The tribunal will consider matters and make decisions in relation to persons suffering from mental dysfunction, including those in contact with the criminal justice system.

The key functions of the tribunal will be to determine fitness to plead of persons charge; to review and decide when persons detained in a prison psychiatric hospital following a finding of not guilty by reason of mental illness should be released from custody; and to arrange assessments of, and make case management decisions and treatment orders in respect of, persons suffering from mental dysfunction.

The provisions for the tribunal allow for applications to the tribunal to be made by relatives, doctors, welfare agencies, concerned neighbours, the police, the DPP, the Community Advocate, Corrective Services and the courts on the basis that, in the view of the applicant, the person is mentally dysfunctional and requires care or treatment for his or her own health and safety and/or the protection of the community. The establishment of the tribunal will expand the dispositions available to the courts and is in line with the thrust of the recommendations of *Balancing Rights*. This Government has also set up a multi-agency working group to examine and report on the integration of services and facilities for people with mental illness. Madam Speaker, I have recently re-established the Mental Health Advisory Council, which will advise me on a regular and ongoing basis on mental health related issues so that the community voice is always heard. Such is the commitment of the Labor Party to community consultation.

Madam Speaker, the Government has established a day care centre so that young people with severe difficulties can receive positive intervention and assistance in coping with their day-to-day life. My department has strengthened formal links with the New South Wales Health Department to facilitate planning of health services and facilities for the ACT and the surrounding region of New South Wales by the re-establishment of the South-East Regional Liaison Committee. Cross-border mental health issues, particularly those relating to long-term health facilities such as those highlighted by the Burdekin inquiry into the rights of people with mental illness, will be examined by this committee.

Obviously, in this climate of restricted budgets we cannot achieve everything at once. My intention, Madam Speaker, is to move as quickly as possible within the confines of these restrictions. I remind members of the Assembly of my comments in relation to proposed health budget cuts by a Hewson administration. Madam Speaker, my aim is to continually provide the initiatives necessary to enhance the protection of people with mental illness. I am pleased to table this statement and the Government's response to *Balancing Rights.* I move:

> That the Assembly takes note of the papers.

Question resolved in the affirmative.

BUSINESS FRANCHISE ("X" VIDEOS) (AMENDMENT) BILL 1993

MS FOLLETT (Chief Minister and Treasurer) (3.15): Madam Speaker, I present the Business Franchise ("X" Videos) (Amendment) Bill 1993.

Title read by Clerk.

MS FOLLETT: I move:

> That this Bill be agreed to in principle.

This Bill amends the Business Franchise ("X" Videos) Act 1990. The Act provides for the licensing of wholesalers and retailers of X-rated videos located in the Territory. On 15 October last year, the High Court of Australia handed down a decision of considerable significance for the taxation laws of the Australian Capital Territory and the Northern Territory. By a majority decision, four justices to three, the court ruled that the Territories were precluded by section 90 of the Constitution from imposing duties of excise. By way of explanation, an excise has been held by the High Court to be a tax on a stage in the production and distribution of a product before it reaches the consumer.

The court decision to which I refer was given in a case involving an X video licensee in the ACT who had challenged the validity of the tax imposed under the Business Franchise ("X" Videos) Act 1990. The court considered that it was desirable, given the important issues involved, to hear the two main issues separately. The first part of the appeal was: Did section 90 of the Constitution preclude the ACT from imposing an excise? The second part of the appeal was: If the first was decided in the affirmative, did licence fees imposed by the ACT under the X videos Act constitute an excise?

The court's decision and, in particular, the comments of the individual judges have been very helpful in clarifying Territory powers in relation to raising tax revenue. Since self-government, successive ACT governments have considered that we are not constrained, as the States are, from levying excise-type taxes. This was also the view of the Commonwealth. However, somewhat fortuitously, to achieve comparability with tax regimes in the States, the ACT has generally enacted revenue laws which are consistent with equivalent taxes in the States. Such tax laws are therefore within the constraints of section 90 of the Constitution.

To avoid constitutional challenges, the States have developed franchise schemes in relation to liquor, tobacco and petroleum. The essential characteristic of these schemes is that the licence fee is not directly correlated to the value of trading in respect of the licence period. Rather, the fee is determined by reference to trading activity in some prior period. The High Court, most recently in the Philip Morris case in 1989, has ruled that liquor and tobacco fees imposed under business franchise schemes are not excises and are therefore not in breach of section 90 of the Constitution.

The amendments proposed in this Bill will ensure that the ACT's X video licensing scheme is brought closer to the business franchise model validated by the High Court - liquor and tobacco. The amendments propose changes to the current advance fee provisions which apply on the initial grant and first renewal of a licence. Currently, the advance fee is payable on the estimated value of X videos manufactured or otherwise supplied for retail sale during the first two months and an adjustment of the fee is made when the actual figures are known. The proposed amendments will allow the Commissioner for ACT Revenue to assess an initial fee having regard to criteria specified in the legislation. This fee will not be subject to further adjustment. The commissioner's assessment will be subject to appeal by a licensee to the Administrative Appeals Tribunal. Such provisions will strengthen the position that the franchise fees are payable for a licence to trade in the future and are not an excise duty payable directly on a licensee's sales.

The Bill also includes two other amendments to strengthen and improve the administration of the X video scheme. The Bill will amend the definition of wholesale value specifically to include Commonwealth taxes and duties. This was always intended and on a proper reading of the Act this should be the clear meaning, but because industry sources have suggested otherwise, it is proposed to expand the definition accordingly.

The other area of administration which requires legislative attention is in relation to the fitness of a corporate licensee to gain or retain a licence. At present the Act requires the commissioner to be satisfied that a licensee meets certain standards of fitness and propriety in order to obtain a licence. The Act further provides that the commissioner may cancel a licence if he or she is satisfied on reasonable grounds that the licensee has committed certain offences. Where the licensee is a corporate body, the Act provides for these requirements to be met by the directors, secretaries and officers of the company. A clear weakness is the omission of persons able to influence decisions of the corporate body - for example, major shareholders. This weakness is overcome by the inclusion in the Act of a comprehensive definition of influential persons and by applying the requirements of, for example, fitness and propriety to them. It is proposed that these changes will take effect from 1 April 1993. I now present the explanatory memorandum for the Bill.

Debate (on motion by **Mr De Domenico**) adjourned.

STAMP DUTIES AND TAXES (AMENDMENT) BILL 1993

MS FOLLETT (Chief Minister and Treasurer) (3.21): Madam Speaker, I present the Stamp Duties and Taxes (Amendment) Bill 1993.

Title read by Clerk.

MS FOLLETT: I move:

> That this Bill be agreed to in principle.

This Bill amends the Stamp Duties and Taxes Act 1987. The Act provides for stamp duties on a range of documents and transactions, including duty on the initial registration or transfer of a motor vehicle. In the case of private sales

between individuals, stamp duty is payable by the new owner on the registration of the vehicle in his or her name for the first time. Subsequent registrations in an owner's name are exempt.

Prior to 1 July 1990, the responsibility for paying duty in respect of new and used vehicles sold by licensed motor vehicle dealers rested with the purchaser of the vehicle. This changed from 1 July 1990, when motor vehicle dealers were made liable to pay the stamp duty and required to lodge with the Commissioner for ACT Revenue monthly returns providing details of sales of both new and used vehicles. Following the recent High Court decision I referred to in relation to the Business Franchise ("X" Videos) (Amendment) Bill 1993, the Government proposes to amend the liability provisions so that liability of dealers for duty applies only to trading in used vehicles.

Purchasers of new vehicles will become primarily responsible for the stamp duty on first registration. Dealers may, of course, continue to register new vehicles and pay the duty as a service to their customers, but they will no longer be liable under the Act to collect the duty. The amendment is a precautionary measure to respond to comments made by the High Court. The imposition of stamp duty on the transfer of used vehicles has already been challenged in the High Court, which has ruled that such duty is not an excise and therefore is not subject to section 90 of the Constitution. No such decision has been made in relation to new vehicles, and therefore it is considered prudent to exclude the trading of such vehicles from the scheme.

The Bill also provides a definition of the term "trading stock" and thereby clarifies the exemption provisions of the Stamp Duties and Taxes Act which have caused some confusion in the industry. The definition will have the effect of limiting a dealer's exemption from the payment of stamp duty to vehicles that are offered or exposed for sale. Vehicles used personally by the dealer or a member of the dealer's staff or for the general purpose of the dealer's business will not be exempt from stamp duty. These amendments will take effect from 1 April 1993. I now present the explanatory memorandum for the Bill.

Debate (on motion by **Mr De Domenico**) adjourned.

BUSINESS FRANCHISE (LIQUOR) BILL 1993

MS FOLLETT (Chief Minister and Treasurer) (3.26): Madam Speaker, I present the Business Franchise (Liquor) Bill 1993.

Title read by Clerk.

MS FOLLETT: I move:

> That this Bill be agreed to in principle.

The Liquor Tax Act 1991 together with the Liquor Act 1975 provide the legislative framework for licensing persons selling liquor in the ACT. Prior to 1 January 1992, liquor fees were assessed annually on purchases by licensees during the previous financial year. This, together with deferred payment arrangements, in effect allowed liquor licensees to trade for up to 23 months before the fees passed on to consumers became payable to the Territory. The Territory was therefore exposed to losses through bankruptcies and bad debts in the liquor industry.

This problem was partially overcome through the introduction of the Liquor Tax Act which came into effect on 1 January 1992 and which involves the operation of two licensing schemes - one for old licensees, that is, persons already licensed at 1 January 1992; and one for new licensees, that is, persons licensed on or after 1 January 1992. Persons licensed on or after 1 January 1992 are required to pay tax in advance of each quarter's trading based on estimated or past sales. This advance payment is then adjusted when actual details are known, with the adjustment added to the next tax payment.

Old licensees, however, are required to pay tax calculated on purchases made during the quarterly period commencing 15 months prior to the licence period. It was impossible to bring those old licensees into an advance scheme without imposing a heavy financial burden on them. However, the Act provides that, in the case of a licensee ceasing to trade or a licence being transferred, fees payable in respect of those 15 months of trading be crystallised into a debt payable by the former licensee in the case where a licence ceases to be in force and by the transferee where a licence is transferred.

The existence of these two categories of licensees poses a problem for the introduction of different rates for taxing low and high alcoholic beverages, which I have announced earlier. The current rate of tax is 10 per cent of the value of liquor purchased. This will be replaced by two rates from 1 April 1993 - 13 per cent on high and 7 per cent on low alcohol beverages. Under the operation of the current arrangements for new licensees, if they wish to recoup the increase in licence fees payable in advance, they will be required to increase their prices immediately from 1 April 1993. Because their March payment is based on sales 15 months earlier, old licensees would not become liable to pay the increased fees for 15 months and therefore would receive a significant commercial advantage over the new licensees. It therefore became clear to the Government that consideration must now be given to the adoption of a single integrated scheme which will apply equally to all licensees. The Business Franchise (Liquor) Bill 1993 introduces such a uniform scheme.

The opportunity has also been taken to review the licensing regime in the light of the High Court decision in the X video case and to develop legislation which meets the requirements of the Territory in relation to the operation of section 90 of the Constitution. The Bill has basically adopted the scheme currently in place for new licensees, requiring all licensees to pay fees in advance for the right to trade during the coming quarter. There is, however, one significant difference. As previously indicated, under the current Liquor Tax Act, new licensees are required continually to adjust estimated purchases with actuals and to adjust the new quarterly fee accordingly. Under the franchise scheme adopted in the proposed Bill there will in fact be no adjustments. The licence fee for a continuing licensee will be based only on purchases by that licensee in the last completed quarter.

New licensees will be required to pay an initial fee for up to the first two quarters as assessed by the Commissioner for ACT Revenue, having regard to criteria specified in the legislation. Licensees will be able to appeal to the Administrative Appeals Tribunal if they have objections to the fee assessed by the commissioner. As with the amendments to the X videos legislation which I introduced earlier, these changes will strengthen the position that the franchise fees are payable for a licence to trade in the future and are not an excise payable directly on

a licensee's sales. Old licensees will be required to join the new licensees in the advance scheme. This will mean that licence fees paid on 17 March for the right to trade during the April to June 1993 quarter will be based on purchases during the October to December 1992 quarter.

Under the new legislation, the termination fees will no longer be payable when licensees cease to trade or transfer their licences. The decision to exclude the termination fee from the current scheme has been prompted by several factors: First, a termination fee is incompatible with a scheme requiring a fee to be paid for the right to trade in a coming quarter. Secondly, a termination fee by definition is payable only when a licensee ceases to trade. In most cases, licences are held by clubs or corporate licensees which pay over 90 per cent of the liquor tax each year. In other words, these licences are held by licensees which can hold those licences in perpetuity. The impact, therefore, is highly selective and discriminates against the small licensees who are natural persons. Thirdly, following the High Court decision, the continued reliance on such a provision is dubious.

However, to avoid the possibility of old licensees seeking to take advantage of the simultaneous repeal of the termination provisions and establishment of an advance payment scheme so as to avoid payments of tax due for the January to March 1993 quarter, the repeal of the termination provisions in the Liquor Tax Act will be delayed until 1 July 1993. This will provide a strong financial incentive for all old licensees to change over to the new arrangements.

It is the Government's intention to debate next week the Bills dealing with the liquor and X video franchise schemes and stamp duty on motor vehicles. The passage of this Bill is critical to the introduction of the differential tax arrangements for high and low alcohol products from 1 April 1993. As previously outlined, the introduction of new rates can occur only when all liquor traders are licensed under a single licensing scheme. That scheme will come into effect only with the passage of and assent to this Bill. Timing is critical, and I would remind members that the next sittings are scheduled for 23 March to 1 April 1993, which would not allow sufficient time to implement the necessary changes. It would also create uncertainty and possible additional administrative burden on licensees who are required on 17 March to make their next payment under the Liquor Tax Act to enable them to trade during the April to June quarter.

There is also an impact on the revenue in any delay in the implementation of the differential tax schemes. A delay in the introduction of the new higher rate for alcoholic beverages beyond 1 April 1993 will result in a revenue loss of approximately $300,000 this financial year. I believe that the Government has taken the prudent course of action in delaying the introduction of the differential rates until consideration has been given to the findings of the High Court. The current sittings are the first opportunity the Government has had to bring forward amendments and I would ask members to recognise this fact and debate this Bill next week. Because the X video Bill and the Stamp Duties and Taxes (Amendment) Bill also deal with amendments as a consequence of the High Court decision, I ask that members agree that there is considerable benefit in considering these Bills cognately. I now present the explanatory memorandum for the Bill.

Debate (on motion by **Mr De Domenico**) adjourned.

BUSINESS FRANCHISE (LIQUOR) (CONSEQUENTIAL AMENDMENTS) BILL 1993

MS FOLLETT (Chief Minister and Treasurer) (3.33): Madam Speaker, I present the Business Franchise (Liquor) (Consequential Amendments) Bill 1993.

Title read by Clerk.

MS FOLLETT: I move:

That this Bill be agreed to in principle.

This Bill amends the Taxation (Administration) Act 1987 and the Liquor Act 1975. The Taxation (Administration) Act provides a consolidated system for the administration of laws dealing with the collection of licence fees and taxes, while the Liquor Act provides for the licensing and regulation of liquor traders. Amendment of the Taxation (Administration) Act is required to make the Business Franchise (Liquor) Bill a tax law, to facilitate the administration of the liquor franchise scheme as contained in the Business Franchise (Liquor) Bill 1993. The Liquor Act requires amendment in order to make the licensing and regulation function of that Act complementary to the Business Franchise (Liquor) Act. I now present the explanatory memorandum for the Bill.

Debate (on motion by **Mr De Domenico**) adjourned.

MAGISTRATES COURT (AMENDMENT) BILL 1992

[COGNATE BILL:

MAINTENANCE (AMENDMENT) BILL 1992]

Debate resumed from 16 December 1992, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR DEPUTY SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Maintenance (Amendment) Bill 1992? There being no objection, that course will be followed. I remind members that in debating order of the day No. 1 they may also address their remarks to order of the day No. 2.

MR HUMPHRIES (3.35): The Liberal Party will support these two Bills. The difficulty that we have had in dealing with these Bills in the last few weeks is that it is rather difficult to tell, particularly from a lay point of view, exactly what the changes are that are being made, particularly in the case of the Magistrates Court (Amendment) Bill.

I must say that in this regard the explanatory memorandum which was presented at the time the Bill was tabled in December is a good document as far as an overview is concerned. It provides a fairly good summary of what the Bill is about. But it is hopeless on detail. It is very difficult to work out just what individual clauses it is supposed to amend and what the consequences of those

amendments are. I might say that, for a Bill of this kind which is highly technical in many ways and which depends on there being some knowledge of the operation of the Magistrates Court to make sense of it, it is not particularly easy to follow. The presentation speech itself is very brief, very scanty, and shows some signs of being rushed. It would have been more helpful to have mentioned what other fairly significant parts of this Bill were all about when the Bill was being tabled in the Assembly.

Nonetheless, having gone through it, I must say that this Bill appears to enact a series of procedural improvements in the operation of the criminal jurisdiction of the court. For example, it very importantly supports and extends the operation of the VATAC scheme - the voluntary agreement to attend court scheme - which is, as members would be aware, an arrangement to replace the requirements to issue summonses and serve summonses in such a way that much court time is freed up and police time is freed up. It also, of course, similarly supports the pleas by post scheme which has been in operation for some time and which is an important way of dealing with much minor prosecution or laying of information in an efficacious and least costly way.

These two schemes, the VATAC scheme and the pleas by post scheme, are designed to minimise the resources that we are pouring daily into the criminal justice system and the way in which the courts operate in administering that system. I think any of us here need only to visit one of our local courthouses to realise that there are enormous resources tied up in the way they operate. Large numbers of police, in particular, are tied up every day in dealing with matters in those courts and it really is quite wasteful. I think there are much better uses of that time than sitting in a court. Most of the time they spend in that court is in fact idle time. It is not time that they spend actually dealing with court matters or with people as members of the public; it is time spent sitting around and waiting. These schemes have built up procedures for a better use of court time, not only for the police but also for magistrates and for officials of the court, and I think for that reason they could be described as very positive. I know that this is very boring for Mr Berry but he will have to put up with it. These are important reforms, after all.

There are some long overdue improvements in the operation of our criminal justice system in this Bill - on conviction and the levying of a fine or the imposing of a fine on a defendant in court proceedings. It has been the case, and it still is the case, that a defendant or an offender is ordered to pay a certain number of dollars - X dollars - or, in default, a certain number of days' imprisonment. At present that rate of imprisonment for a default in the payment of a fine is fixed at a certain rate - one day for each $25 of the fine. So if you were fined $200 and you did not pay that amount you would be spending eight days in gaol to make up your debt to society, so to speak. Unfortunately, the rate that we are presently charging in the ACT, one day for every $25, is not the rate which is imposed in New South Wales, where, after all, as the Minister pointed out, prisoners who are sentenced in ACT courts actually serve their time. It is appropriate, therefore, to adjust that amount to the New South Wales rate, and that is one day for every $100 of a fine imposed.

I might just point out that there is one small downside in that. A number of offenders who appear before our courts and who are convicted make a deliberate decision to spend time in gaol rather than to pay a fine. Even though it might not appear to be a very large sum of money, they make a quite deliberate decision that they will save their money and spend a few days at Her Majesty's pleasure and at Her Majesty's expense. With the new rate of one day for every $100, that option will be rather more attractive.

Mr Berry: If we could get her to pay for it, it would make it a little bit easier.

MR HUMPHRIES: She is paying taxes now. With that adjustment in the rate, it is now possible for a person to pay off that debt much more quickly. So, rather than being confronted with spending eight days in gaol to pay off a $200 fine, it is now the case that you will pay off that fine in two days. I suspect that it will be the case that many more people will take advantage of that opportunity rather than pay the fine. It may not appear to be much to members here, perhaps; I certainly would rather pay $200 than spend two days in gaol. But, if you are unemployed, for example, as a million of our countrymen are, then perhaps spending two days in gaol would be better than blowing a week's dole payment on that payment of a fine. I think that is a matter which perhaps the Minister should factor into his calculations for expenditure on New South Wales prisons.

Another well overdue reform which is put into place by this Bill is a reform to the contempt laws. The old law states that a person committing a contempt, for example, can be fined up to $50 or imprisoned for 14 days. That is a rather unrealistic penalty and that has now been adjusted to $5,000 or six months. I do not think that that is a provision which is very often dealt with. These days people are very rarely fined or dealt with for contempt of court, but it does happen. We have heard recently of a certain incident where a water jug was sent in the direction of a magistrate. So we do need these sorts of provisions; they are important. Perhaps we could conceive of circumstances where 14 days' imprisonment might not be a satisfactory response to a contempt of court. These provisions in this Bill are much clearer, much more precise than they were before, and I think they will be a useful tool for the courts.

I might just comment that I noticed something rather interesting when I looked at the Magistrates Court Act when I went through this Bill. This Act has already been thoroughly dealt with by those intent on removing sexist language, but it is interesting that what they have done in removing sexist language is to insert the word "she" or "her" as appropriate, but not after "he" or "him" but before them. So, to quote from that provision dealing with contempt, we have expressions which state:

> No summons need be issued against any such offender, nor need any evidence be taken on oath, but she or he may be taken into custody then and there by a police officer by order of the Court, and called upon to show cause why she or he should not be convicted.

I found that rather curious. In other pieces of legislation, even those we have dealt with in the last 24 hours, we insert the words "or she" after the word "he" and - - -

MR DEPUTY SPEAKER: Ladies before gentlemen perhaps, Mr Humphries.

MR HUMPHRIES: It could be, Mr Deputy Speaker. Thank you for that interjection. I think that may be the case, although it is a bit unfortunate that when dealing with the commission of offences and people appearing before our courts on criminal charges the "she" should come before the "he". Perhaps they have some sort of reverse discrimination going on there. I do not know, but, as I have said, sexist language has been removed in one fashion or another from that Act already.

This, of course, goes hand in hand with the Maintenance (Amendment) Bill before the Assembly. This is a very simple piece of legislation. It complements the capacity of the Magistrates Court to appoint deputy registrars with a similar provision providing that the Collector of Maintenance may appoint deputy collectors of maintenance. It is a simple provision and therefore has the support of the Liberal Party, as does the Magistrates Court (Amendment) Bill.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.45), in reply: I thank the Liberal Party for their support for this legislation. This is a Bill which at first glance does appear to be rather dry, but, as Mr Humphries was kind enough to note, it does effect some quite significant reforms to the law. The point about making it more attractive for a person to serve out their fine - to cut out a fine in gaol - is a point that is well made. There was a clear injustice in the ACT in that a person from Canberra serving out their time in the New South Wales system would have to spend four times as long as the person sharing the cell. That is almost calculated to cause discontent. So I think it was appropriate for us to bring the penalties into line.

Mr Humphries's point would be far more serious, I think, had we not made changes to the law in the ACT over the past few years, under both Labor and non-Labor administrations, to ensure that the sanction for eventual default on parking and a wide range of traffic matters was suspension of licence or cancellation of registration of a motor vehicle rather than a fine and potential cutting out in default. If it were still an option to cut out parking fines and penalties for a wide range of traffic offences by time in gaol I would share your concern, Mr Humphries, in saying, "Yes, here is a problem. We are really encouraging people to spend time in prison". That is obviously a foolish thing for people to do.

There is the notorious case of Mr Partlic in the New South Wales prison system who was set upon while in the remand yard and rendered a quadriplegic. He was in fact serving out only a few days to cut out quite minor traffic offence penalties. So it would be very unsound public policy to be encouraging people to serve out penalties for minor traffic offences or minor parking offences in the prison system. That used to be an option in the ACT; now we have essentially moved a lot of those away from the criminal process. We deal with parking totally as a civil matter. A lot of minor traffic offences are dealt with almost as civil matters. So cutting out penalties for parking or traffic offences is no longer an option, and that probably solves the problem.

On the issue of "he" or "she" or non-sexist language, the preferred option, where we can, is to use totally gender neutral terms - "a person", "the person". Generally, when sexist language is corrected, the practice has been that, where it said "he" or "his", draughtspersons have put "she" or "her" after "he" or "his".

My favourite practice is to juggle it about a bit and sometimes say "he or she" and sometimes say "she or he". If members pay attention to the presentation speeches which I read, particularly in mammoth sessions where we have five or six Bills being introduced, I tend to juggle the "he" or "she", whether or not it appears within the text. So it does require a bit of attention to get this gender neutral attitude right, Mr Humphries; but I am sure that, if you keep trying and you are instructed properly, you will get there in the end.

Mr Deputy Speaker, there is an amendment that I foreshadow; I will be moving it when we get to the detail stage. It is purely a matter of picking up a point that was picked up by the Scrutiny of Bills Committee in relation to the way the pleas by post scheme operates. It makes sure that it covers that system under a range of Acts. I will get into that in detail later on.

The other point I will just briefly address is this: Mr Humphries commented that the VATAC scheme, which is locked in under this amendment, is a very useful scheme. It certainly is, and the New South Wales Government is looking very closely at the way we operate VATAC with a view to using it under their police arrangements. The point Mr Humphries made about police hanging around court to give evidence is one that is very much before the Government. We are currently working with the Chief Magistrate to effect a range of changes to court rules and procedures to reduce significantly the number of occasions on which a police officer is required to attend court in a wide range of non-contested matters - that is, matters where a defendant is pleading guilty, even to minor indictable offences.

At the moment the police officer is required to attend and give uncontested evidence, and we will be looking at ways to reduce that requirement for the police officer to attend. Mr Humphries says that it is wasteful at the moment because the police officer could be out doing other duties. It is also very expensive, because in most cases the police officer is on penalties and overtime. With the police officer working an ordinary shift arrangement which tends to break a 24-hour period up into three eight-hour shifts, more or less, the chances are that they are on day shift when they apprehend the person. When that person comes up for court they may be working a night shift, which will mean that they will have to work their shift and then come back into court to give evidence. This clocks up a quite substantial cost to the community by way of additional penalties and overtime for coming into court. So those measures are very much being addressed by the Government and I am very confident that we will, within a matter of a week or so, be able to announce quite significant changes, reducing that need for unnecessary police attendance. I thank the Opposition for their support for the Bill.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.51): I move the following amendment circulated in my name:

Page 11, clause 31, line 31, omit the clause, substitute the following clause:

Validation

"31. (1) In this section -

'Motor Traffic Act proceedings' means proceedings relating to an offence against the *Motor Traffic Act 1936* being proceedings that were heard and determined under Part VIIA of the Principal Act during the period commencing on 20 December 1991 and ending immediately before the commencement of section 10;

'Traffic Act proceedings' means proceedings relating to an offence against section 7 of the *Traffic Act 1937* being proceedings that were heard and determined under Part VIIA of the Principal Act during the period commencing on 8 February 1984 and ending immediately before the commencement of section 10.

"(2) In respect of Motor Traffic Act proceedings or Traffic Act proceedings -

(a) no act, matter or thing done or suffered in those proceedings;

(b) no conviction entered or order made in those proceedings;

(c) no penalty imposed in those proceedings; or

(d) no warrant or execution or anything done in execution of a warrant or other order of the Magistrates Court in those proceedings;

is invalid or shall be called into question by reason only that -

(e) in the case of Motor Traffic Act proceedings - the relevant offence was an offence for which the penalty was a fine of an amount exceeding $500 but not exceeding $2,000; or

(f) in the case of Traffic Act proceedings - the relevant offence was an offence for which the penalty was a fine of an amount exceeding $200.".

The Bill, which will amend the Magistrates Court Act 1930 in several aspects, was introduced into the Assembly in December 1992. One of the aspects in which the Bill will amend the Act is to widen the pleas by post scheme which allows people charged with minor offences under the Motor Traffic Act 1936 or the Traffic Act 1937 the option of pleading guilty by post and being dealt with without having to attend court.

The Bill extends the scheme to most minor offences created by law in force in the Territory, the penalty for which is a fine not exceeding $1,000, and to offences under the Motor Traffic Act 1936 for which a fine at or below the general offence penalty level of that Act may be imposed. Clause 31 of the Bill as introduced addressed the situation created by the raising of the general penalty level under the Motor Traffic Act 1936 from $500 to $2,000, effective from 20 December 1991, without a corresponding rise in the limit of $500 on the application of the pleas by post scheme.

The Standing Committee on Scrutiny of Bills and Subordinate Legislation pointed out the need to include a provision for the validation of proceedings under the Traffic Act 1937 in the Bill. One offence under that Act has had a penalty of $1,000 since 1984 and it is necessary to provide for the validation from that date of any matters dealt with under the pleas by post scheme in respect of that offence. I am grateful for the assistance of the committee, which once again shows its remarkable level of command of detail. We really are well served by the adviser to that committee, Professor Whalan. I am sure members of the committee would have found this themselves in the absence of Professor Whalan's expert advice. The revised clause 31 addresses both validation situations in consolidated form.

Mr Humphries: I think Ellnor found that one, actually.

MR CONNOLLY: I am sure the members of the committee take it in turns to pick these things out. I present the supplementary explanatory memorandum for the amendment to the Bill.

Amendment agreed to.

Bill, as a whole, as amended, agreed to.
Bill, as amended, agreed to.

MAINTENANCE (AMENDMENT) BILL 1992

Debate resumed from 16 December 1992, on motion by **Mr Connolly**:

> That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.
Leave granted to dispense with the detail stage.
Bill agreed to.

PAYROLL TAX (AMENDMENT) BILL (NO. 2) 1992

Debate resumed from 16 December 1992, on motion by **Ms Follett**:

That this Bill be agreed to in principle.

MR DE DOMENICO (3.54): Mr Deputy Speaker, during her budget speech of 1991-92 the Chief Minister suggested that she accepted the recommendations of the joint ACT Treasury and Australian Information Industry Association reports on the adverse impact of payroll tax on the computer industry. She went on to say that she gave a commitment to that industry and employment agents generally that they would be given the same tax exemptions available to other employers in relation to services provided by independent contractors. The Payroll Tax (Amendment) Bill (No. 2) purportedly gives effect to that commitment given by the Chief Minister. It is a commitment similar to those available under section 3B of the Payroll Tax Act to other employers in respect of payments which they make to independent contractors engaged through agency agreements. We note that the Bill also is deemed to be retrospective to the date of the announcement, which is 17 September 1991.

Let me say from the outset that the Liberal Party will not be opposing the Bill. The Bill also introduces new provisions in relation to binding the Crown and we believe that that is a good thing as well because, as the Chief Minister knows, currently the Act applies to wages paid by public authorities of the Territory other than wages paid out of Consolidated Revenue. The ACT tax laws are being amended progressively to allow the taxation of the Crown in right of the ACT and of the State and Northern Territory governments in appropriate circumstances.

It is in fact ironic that we are talking about a payroll tax Bill today, after what has been said from time to time about payroll tax. So I thought that the Assembly should be enlightened by the opinions of some people that perhaps are deemed to be more intelligent and more prominent than we are in the area of payroll tax. One quote I found was by a gentleman called Mr Paul Keating; I think it was in the *Australian* on 6 December 1977. In 1977 a younger Mr Keating - he was the shadow Minister for Minerals and Energy - said:

> ... Labor would solve the immediate problem of unemployment "by taking at least 150,000 to 200,000 people off the dole queue" with its reduction in payroll tax ...

He said it in the *Age* newspaper on the same day. The *Age* stated:

> Meanwhile Labor front bencher Mr Keating -

who was in opposition then, as Labor will be very shortly -

> yesterday defended the ALP's proposed payroll tax abolition from charges ... "Our policy (Payroll tax abolition) is not a gift. It's removing a disincentive to unemployment" ... Mr Keating said.

He was not alone, though, because as recently as 13 May 1991 his colleague and prominent senator John Button - I have a special liking for Senator Button for obvious reasons, but still he is a quite intelligent man from time to time - said:

> I agree that the unemployment situation is severe. I agree that payroll tax is a burden on employers and employment and is an undesirable tax. It is an issue which should be pursued over time with the Premiers to see whether some solution can be arrived at.

That was Senator John Button. It is interesting, Mr Deputy Speaker, when you look into histories and read newspapers. Perhaps we should not be concentrating on what people in the Federal house say from time to time, because there are also certain other politicians on a State level that have opinions of their own on payroll tax as well. Another recent one that I found was one in a speech to the Australian mining industry on 2 May 1991. The then Premier of Western Australia, Carmen Lawrence - for those people that have forgotten - said:

> The present process condemns State governments to the narrow, inefficient, regressive and unstable tax regimes which they operate today. I am sure you would join me in regarding as bizarre the imposition of payroll tax, particularly in the present economic climate. How could anyone justify the States depending on what is effectively a tax on employment as a major instrument for raising revenue?

We all remember what the Chief Minister said in the Assembly yesterday; she said that, after all, payroll tax is a very important part of raising revenue in the ACT. Ms Lawrence seems to disagree.

We go a step further and we go to a northern State, Queensland. I am sure that people in the house would be aware of Mr Tom Burns, who is currently the Deputy Premier of Queensland. At that stage I think he was Deputy Leader of the Opposition or whatever - he has had various roles from time to time over his very illustrious career in Queensland politics. In *Hansard* in 1986 Mr Burns said:

> It is absolutely incredible that any Government would allow payroll tax to become its major source of revenue.

Once again it seems to be different from what Ms Follett said yesterday and from what Ms Follett believes. So as not to bore people any further on what other people say, I think - - -

Mr Kaine: You are not boring us.

MR DE DOMENICO: I know; you are enjoying this. Mr Kaine, thank you. The final quote that I will make is from the ALP policy speech of 17 November 1977. This is magnificent. I quote from the ALP policy speech of 1977 - how times change. It states:

> And for its full success, it requires an act of national co-operation. Freed of the burden of the payroll tax, with its added labour costs, employers would have the incentive not only to employ more labour, but to hold prices down. Given good faith on the part of

> business, the abolition of the payroll tax can mean the end of the slide towards massive unemployment and a reduction in the Consumer Price Index of up to 2 per cent a year. At one blow, we can cut the upwards prices spiral and the downwards jobless spiral.

Mr Kaine: They were enlightened people in the Labor Party in those days.

Mr Humphries: Where did they all go?

MR DE DOMENICO: Exactly, Mr Humphries. Ironically, in 1977 they were concerned - and they should have been concerned, too - about the horrendous unemployment rate. Let me remind people sitting here and people outside who might be listening in the phone boxes that currently the unemployment level in Australia is over one million people. So we have all these eminent Labor politicians saying, "Payroll tax is the scourge of the private sector". But what do we do? We sit here and we debate a payroll tax Act. Let me say that I am delighted to be standing here debating payroll tax because I know with every bone within me that it will not be long before all this complicated legislation will be wiped away in one fell stroke of the pen when Dr Hewson wins the election on 13 March.

But I will go back to this particular Bill, Mr Deputy Speaker. It is interesting to note that the ACT Revenue Office conducts payroll tax audits of Canberra and the region to examine service contracts to ensure that they comply with payroll tax provisions. The Commissioner for ACT Revenue, Mr Gordon Faichney, has said from time to time that, as provisions requiring payment of payroll tax on service contracts have been in place for over two years now, taxpayers who failed to comply would be considered tax evaders. Mr Faichney is on record as saying that seven penalties, which would be calculated as a percentage of tax avoided, would apply. The commissioner, as we know, in the ACT has the power to impose a penalty tax of up to 200 per cent of the tax avoided. Under changes to the payroll tax legislation which date back to 1 November 1989, certain payments made to contractors or subcontractors and agents may be deemed to be wages and must be taken into account in determining the employer's payroll tax liability.

It is interesting, because, if anybody can stand up and tell me in, say, one or two words or one or two sentences what exactly is a service contract, they are better people than I thought they would be. It has been the scourge of all lawyers and drafters and everybody else for a very long time, and still is. The definition is wide, obviously; it is complex and confusing. It is also subject to certain exemptions, and this is what is interesting about this legislation. Traditionally, payroll tax is levied where an employer-employee relationship exists; however, the service contract provisions extend to payments to various subcontractor arrangements or agency arrangements. While the person performing the work may be regarded at law as a contractor, payments to such a person may be subject to payroll tax if the contract is primarily for the supply of labour.

A typical situation arises where, for example, two parties are in business - one is supplying a service, let us say a carpenter, and another party is receiving a service, a builder, let us say in this instance. In this situation the service is principally for the provision of labour. Obviously, one of the main industries affected by the service contract provisions is indeed the building industry, and we hear from time to time how important that industry is to the overall well-being of the ACT economy.

The other question that people might tend to ask from time to time is: Exactly when will these exemptions apply? That is an interesting question and I will try to have a look at the maze and see what comes out of it. Exemptions, of course, apply in respect of certain contract payments. One is where the main object of the contract is the provision of goods or equipment by the contractor, for example, let us say, the supply of a bobcat. Another example is where the service provided is not in the mainstream activity of the business. A third example is where the contract relates to owner-drivers. Additionally, the commissioner has advised through a revenue ruling - and that is also a salient point - that, where the nature of the contract did not require the contractor to provide services for a period of, say, in excess of 90 days in any financial year, no payroll tax liability would arise. By the way, the 90-day period is considered by the commissioner to be 90 working days or 120 calendar days.

The revenue ruling provides an exemption where the contractor is an employer in his or her own right. Ironically, it is worth noting that comparable provisions in the New South Wales Payroll Tax Act provide for the above exemptions and others by way of legislation and not by way of revenue ruling, the contents of which are unenforceable at law. This means that the Commissioner for ACT Revenue must exercise his discretionary power to exempt a particular payment from payroll tax, whereas taxpayers in New South Wales have the benefit of such exemptions through the relevant provisions of the legislation. Obviously, greater certainty exists for taxpayers in New South Wales. But it is not only taxpayers in New South Wales that have this greater certainty. It is definite that every other jurisdiction - State and Territory - in this country provides that buffer of legislation, except the ACT. So later on, in the detail stage, I will be proposing an amendment to put the ACT in line in that respect with other States and Territories in the country.

It is understood that payments to contractors who operate as partners are not subject to payroll tax in New South Wales, provided a genuine partnership exists. However, in the ACT such payments are subject to payroll tax unless the partnership employs labour on that particular job. The commissioner has said that, if an employer, upon review of their payroll tax obligations under the service contract provisions, voluntarily disclosed an understatement of payroll tax before an audit, the culpability penalties or penalty tax might be reduced or waived and a 20 per cent interest penalty would be imposed. The service contract provisions are confusing, to say the least.

Mr Berry: Are you speaking to the amendment you have not moved?

MR DE DOMENICO: No, I am not. It is likely that non-compliance may in many cases be caused by the lack of definition of when a service contract arrangement exists. However, as usual, the onus of complying with the legislation rests on the taxpayer.

In short, what the Liberal Party is saying is that we will not be voting against the legislation before us but there are anomalies in that legislation. If the Government is really concerned about making sure that ACT small businesses in particular are not placed at a disadvantage compared to those businesses operating in New South Wales and elsewhere, they might see fit to consider carefully the amendment before them which will be debated later on.

MS FOLLETT (Chief Minister and Treasurer) (4.07), in reply: I thank Mr De Domenico for his indication that the Opposition will be supporting this Bill. It is an important Bill in looking at fair and equitable taxing in the ACT, and I would like to revisit for a moment the intention of the legislation before us. The Bill gives effect to a government commitment that employment agents in all industries will be given exemption from the payment of payroll tax similar to that which is available under section 3B of the Payroll Tax Act 1987 to other employers in respect of payments they make to independent contractors engaged through agency arrangements. So it is a specific arrangement. This Bill would have no significant revenue implications. As I said, the purpose of it is to ensure a fair and equitable taxing regime in the Territory.

It also introduces some new provisions in relation to binding the Crown, as Mr De Domenico has pointed out. Currently the Act applies to wages paid by public authorities of the Territory other than wages paid out of Consolidated Revenue. The proposals in this Bill will allow the taxation of the Crown in right of the ACT and the States and the Northern Territory which conduct activities of a commercial nature and earn income from business-type operations in our Territory. I think that is only fair. The Bill continues to exempt departmental wages and salaries but it does introduce a mechanism to allow for the payment of payroll tax by nominated government business enterprises operating from within the Territory public account. The taxing of activities undertaken by sections of the Government which are conducted along business lines is seen as a natural progression of the policy of imposing taxes on ACT public authorities. This proposal is expected to realise a small increase in payroll tax of the order of $550,000 in its first year. That is the purpose of the Bill that is before us.

Mr De Domenico made a number of general debating points about payroll tax as a tax, and I would like to comment on a couple of the issues. First of all, he quoted some recent Premiers, notably Dr Lawrence, who was speaking about payroll tax and regretting the fact that the States had to rely upon what she saw as a narrow and regressive tax. I believe that that view put forward by Dr Lawrence would be quite widely shared. It is not a view that I have any problem with at all. The view was put forward in the particular context, though, that all of the States were attempting to get from the Federal Government a greater share of the Federal Government's income tax raising capacity.

The irony now is that the Liberal States, by agreeing to Dr Hewson's proposal on the abolition of payroll tax, have agreed to hand over to the Commonwealth a much more significant share of their revenue raising capacity. In the case of the ACT, the abolition of payroll tax and the subsequent compensation by the Federal Government through the general revenue grants process would move us from about a 50:50 situation of own revenue and Commonwealth grants to a 40:60 situation, where we were raising only about 40 per cent of our own revenue and were reliant on the Commonwealth to the extent of 60 per cent. If members cast their minds back, they will recall that that was at the time a very controversial issue put forward by Mr Greiner, Dr Lawrence, Mrs Kirner - any number of Premiers - and it seems ironic that, without a backward glance, the Liberal States have done a complete backflip on what is a relatively recent argument.

I would also like to comment upon the effect of payroll tax on small business in the ACT. I am sure all members are aware that small business is by far the greater proportion of business in the ACT. Small business does not, in the main, pay payroll tax. Payroll tax, as I have said many times, is paid by some 11 per cent of employers in the ACT. The effect of this is that our small businesses enjoy a relative advantage in competing with bigger businesses because they do not have to pay payroll tax. With the abolition of payroll tax and the introduction of a goods and services tax, our small businesses will lose the slight advantage they currently have. They will have to compete on an equal footing with bigger businesses for things such as contracts and services. So it is again, I think, probably an unintended consequence of Dr Hewson's action but one which is quite marked in the ACT. Nevertheless, I do appreciate the Opposition's support for the Bill before us. I recognise that Mr De Domenico will be moving an amendment and I will respond to his amendment in the debate at that time.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clauses 1 to 5, by leave, taken together, and agreed to.

Clause 6

MR DE DOMENICO (4.13): I move:

> Page 2, paragraph 6(1)(b), proposed new subsection 9(3), line 33, omit proposed new subsection 9(3), substitute the following subsection:
>
> "(3) Section 6 does not apply to wages paid or payable by an employment agent to a person under a contract between the agent and that person in relation to the performance of work by that person for a client of the employment agent, where the employment agent -
>
> (a) procures the services of that person in relation to the performance of work, being services that are ancillary to the supply of goods under the contract by that person to the client;
>
> (b) procures the services of that person in relation to the performance of work, where -
>
> (i)those services are of a kind not ordinarily required by the employment agent and are rendered by a person who ordinarily renders services of that kind to the public generally;

(ii)those services are of a kind ordinarily required by the employment agent for less than 180 days in a financial year;

(iii)those services are provided for a period that does not exceed 90 days or for periods that, in the aggregate, do not exceed 90 days in a financial year and are not services -

(A) provided by a person by whom similar services are provided to the employment agent; or

(B) for or in relation to the performance of work where any of the persons who perform the work also perform similar work for the employment agent, for a period that exceeds 90 days or for periods that, in the aggregate, exceed 90 days in a financial year;

(iv)the payment of the consideration under the contract is made at a rate that is not less than $500,000 per annum; or

(v)those services are procured under a contract in respect of which subparagraphs (i) to (iv) (inclusive) do not apply and the Commissioner is satisfied that those services are rendered by a person who ordinarily renders services of that kind to the public generally; or

(c) procures the services of that person (in this paragraph called the "contractor") in relation to the performance of work under a contract to which paragraphs (a) and (b) do not apply, where the work to which the services relate is performed -

(i)by 2 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor;

(ii) where the contractor is a partnership of 2 or more natural persons -

(A) by 1 or more of the members of the partnership and 1 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or

(B) by 2 or more of the members of the partnership; or

(iii)where the contractor is a natural person - by the contractor and 1 or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor;

unless the Commissioner determines that the contract was entered into with an intention of either directly or indirectly avoiding or evading the payment of tax by any person.".

The amending Bill perpetuates, as Ms Follett said, the discretionary power of the Commissioner for ACT Revenue to determine when the exemption from payment of payroll tax will be applied. As I have said before, all other Australian jurisdictions have enshrined these exemptions in their legislation rather than in regulations, as exists in the ACT. The proposed amendments to the amending Bill seek to ensure that the exemptions available to New South Wales businesses, for example, under the equivalent provisions to section 3B of the Act, are also applied in the ACT with respect to agency arrangements. The details of the proposed amendment are there before you.

The proposed amendment also adds to subsection 9(3), as proposed in the amending Bill. It will have the effect of specifying with greater particularity the circumstances where the services provided will not be subject to payroll tax; that is, where the services performed are, firstly, not of a kind usually required by the agent in running the business; secondly, not of a kind ordinarily required by the agent for more than 180 days in a financial year; and, thirdly, not of a kind where the contract period, or combination of periods, exceeds 90 days in a financial year. A seasonal worker for a primary producer may be hired for more than 90 days, but as a primary producer does not normally hire seasonal workers for more than 180 days in a financial year the contract is excluded. Subparagraph (iv) of the amendment refers to a contract whose value exceeds $500,000 a year.

The amendment is highly technical, but what it attempts to do is make sure that agents and subcontractors in the ACT are not placed at a disadvantage in comparison with their fellows in New South Wales. The other part of the amendment also means that the decisions made already by the ACT Revenue Commissioner, Mr Faichney, are enshrined in legislation. That will give clarity and surety to those hundreds of people who literally do not know from week to week or month to month whether they are liable to pay payroll tax or not. If members care to flip through revenue circulars, they are very complicated documents that people in agency situations and partnerships find very difficult to understand. They obviously seek legal advice, but I am advised by the lawyers also that they are very complicated documents. There have been cases where the commissioner makes a certain decision one way one month, only to tell a tax adviser or a lawyer, down the track, that that decision has been reversed for various reasons.

We are saying that the ACT is the only jurisdiction in Australia that does not have that legislative surety, and we think it should have it. Secondly, I applaud Ms Follett for saying that she is attempting to cover all people in the agency-type situation, not just the computer industry. I am sure she will agree that the Liberal Party's amendment does that very thing she purports to have done in her legislation. I commend the amendment to the Assembly.

MS FOLLETT (Chief Minister and Treasurer) (4.17): The Government will be opposing Mr De Domenico's amendment, and I would like to go into some detail on that. The amendment will provide a different set of exemption criteria for employment agents compared with other employers under the service contract provisions. This would clearly, in my view, defeat the purpose of the Government's amendments, which is to provide the same benefits to agencies as are available to other businesses in relation to contract labour.

The amendment Mr De Domenico wishes to introduce in relation to employment agents is identical to that in his private members Bill, and for that reason it is worthwhile having a very close look at what this amendment would mean. I believe that the provisions Mr De Domenico seeks to introduce are both unnecessary and dangerous. They are unnecessary because the ACT Payroll Tax Act already contains sufficient relevant tests to exempt independent contractors.

The additional tests proposed by Mr De Domenico add nothing, other than to confuse the otherwise quite straightforward task of the commissioner of exempting truly independent contractors and imposing liability on contractual arrangements where subcontracts are an integral part of that organisation's work force. They are dangerous because the exemption of all partnerships, without exception, which is what Mr De Domenico is proposing, ignores any ongoing relationship between the partners and the contractor, which is the crux of the service contract provisions. Exempting partnerships and other loose arrangements will provide a gaping hole in the legislation which will enable businesses engaging so-called subcontractors who are in reality employees to escape their payroll tax obligations.

I would like to address some of the detail of Mr De Domenico's amendment, which is an attempt to reduce payroll tax revenue by increasing the opportunities for tax avoidance and evasion by those few people, and it is a very few, who seek to avoid such obligations. First of all, the operation of the 180-day rule, which Mr De Domenico has addressed, was examined when the service contract legislation was being drafted. It was excluded because it was considered that it added nothing to those provisions.

The aim of the 180-day rule is to attempt to take into account the fact that businesses require various ad hoc services which are allied to the mainstream of their work but so infrequently that permanent employees are not engaged to perform such services. This concept is already quite adequately covered in the existing test for subcontractors and is also to be applied under the Act to employment agents to exempt those services not ordinarily required by an employer if they are provided by a subcontractor who renders those services to the public generally. That is a very important test. Both New South Wales and Victoria have advised that this provision, although it is contained in their legislation in relation to service contracts, is never used because other provisions are more appropriate if there is an entitlement to exemption. I realise that it is in other legislation but it is not in use.

Mr De Domenico has also referred to the 90-day rule. This criterion is currently used by the Revenue Office as an acceptable prima facie test for determining whether a contractor is independent or not. Were the 90-day rule to be enshrined in legislation, as Mr De Domenico proposes, the commissioner would be unable to rely on the primary test of independence; that is, looking at the substance of the arrangements, he may instead be forced to exempt some sham arrangements, and I think that is not a fair regime.

Mr De Domenico is also proposing a $500,000 limit. I am advised that this criterion was also examined when the service contract legislation was being drafted. It was rejected as an arbitrary provision. Other grounds for exemption - for example, where the supply of goods is the primary purpose of the contract - are far more appropriate. Further, if such a provision were included in the legislation, it would open an opportunity for tax avoidance by using, for example, family trusts or companies to accept $500,000 payments for essentially highly paid consultancy and other personal services, just to avoid payroll tax. So it would enshrine a possible loophole in the tax system.

Exemption of work done by employees of subcontractors is another issue raised by Mr De Domenico. As a prima facie test of independence this is acceptable but, again, if it is enshrined in the legislation it can create loopholes for tax avoidance and tax evasion. For example, a private company the only members of which are the two directors - not an unusual example - could be providing labour services to another person. If those services are of the nature of services provided by employees - for example, if they are continuous - why should they be exempt from payroll tax? The arrangement is clearly a sham, and I believe that Mr De Domenico's amendment would require the commissioner to accept such a sham. I do not believe that that is a fair taxing regime.

Madam Speaker, as I said earlier, Mr De Domenico seeks to exempt all partnerships, without exception. Mr De Domenico seeks to exempt certain categories of labour contracts simply because the subcontractor is a partnership or because a sole trader arranges with another person to work with them on the job. The Opposition should recognise that the emphasis should not be on the structure of the arrangement but on the substance of the relationship between a principal and the persons performing the labour.

To summarise, Madam Speaker, the Government does not support Mr De Domenico's proposal, because we consider it to be both unnecessary and dangerous, and I consider that its prime purpose is to undermine the whole fabric of the service contract and employment agent provisions. I foreshadow that if Mr De Domenico wishes to debate his private members Bill, which is substantially the same as this amendment, we will take exactly the same position on it. I urge members to reject not just these amendments but also that private members Bill.

Madam Speaker, if the Opposition were in fact to succeed with this amendment, they would be creating avoidance loopholes with the potential to undermine completely those provisions which were designed to bring subcontractors and employment agents within the payroll tax net where their arrangements were merely a sham substitute for normal employment arrangements. Such a result, Madam Speaker, could reduce the Territory's payroll tax base by more than $2m. I ask members to bear in mind also that, if, as Mr De Domenico would have us believe, the coalition should win the coming Federal election, this will be $2m less that Dr Hewson would have to reimburse by way of compensation to the Territory if he proceeds, as he promises to do, with the abolition of payroll tax. I ask members to bear in mind that such a proposition would not do the Territory any favours at all and may limit our capacity for compensation in the future.

MR KAINE (Leader of the Opposition) (4.27): This is clearly a case where the Government does not want to hear the facts. It has made up its mind and is saying, "Do not bother talking to us. We know best". The Chief Minister has just admitted that these clauses, by and large, exist in State legislation in New South Wales.

Ms Follett: And they are not used.

MR KAINE: But you also just said that by incorporating them it would allow tax evasion and undermine the fabric of the Act. Is that a fact?

Ms Follett: Yes.

MR KAINE: Is payroll tax collection in New South Wales and Victoria undermined because these provisions are in their Acts?

Ms Follett: Yes.

MR KAINE: Rubbish! You have presented no evidence at all to suggest that. I submit that there is no evidence available to support your contention. But you have made up your mind and you have your Bill in place. You have given the Commissioner for ACT Revenue very wide powers of discretion, unlike anything equivalent in any State, and you have determined that that is the only way to go. You do not want to know about any other course of action. You believe that you have the numbers to defeat this, so you are saying, "Let us not even talk about it".

Madam Speaker, I submit that the Chief Minister has not made her point. The Chief Minister and the Labor Government have taken a particular stand on payroll tax since 1989. The original Payroll Tax Bill put in place by the Labor Party in 1989 was flawed. They have even resisted introducing the service provisions that the Chief Minister has just been talking about. They did it only because they were forced to do it. Now, even though the Act is still flawed, they still do not want to hear anything that would suggest that the Act has flaws in it.

I suggest that it is about time they opened their minds and listened to the people on whom this Act impacts and heard what they have to say. Mr De Domenico did not sit in his office and make things up. He has spoken to a very large number of people in the business world on whom this Act impacts, and they have difficulty with it. It is only a few months ago that we had to confront the difficulty of people in the computer industry, but the Labor Party did not want to know about that either. In December 1989 the Government shut their minds to the arguments being put forward by those people and took two years to amend the Act to take their problems into account. Presumably, if this Government stays in place, in two years' time we will still be discussing these points and trying to take the flaws out of the Act - - -

Mr Lamont: That is right, because Paul Keating will still be Prime Minister.

MR KAINE: No, he will not. He will not be the Prime Minister beyond 13 March. On that matter the Chief Minister continues to draw red herrings across the trail. She simply does not understand financial management at all. Some of the things that she was saying about the consequences of Fightback and - - -

Debate interrupted.

ADJOURNMENT

MADAM SPEAKER: Mr Kaine, I am sorry to interrupt, but it is 4.30, so I propose the question:

That the Assembly do now adjourn.

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

Question resolved in the negative.

PAYROLL TAX (AMENDMENT) BILL (NO. 2) 1992
Detail Stage

Debate resumed.

MR KAINE: I simply suggest that the members of the Government for once just listen to the arguments that are being put to them. They should not come into this chamber with a closed mind. They should not come into the chamber having in mind an objective that they were told in the caucus room to achieve. They should listen to the debate. They should listen to the argument and try to understand the debate that has been going on since they introduced the legislation in the first place over three years ago - the flawed Bill that they rammed through the Assembly in those days because they had the numbers. Now they are about to ram their flawed amendment Bill through the Assembly, again because they have the numbers, without any thought for or consideration of what they are doing.

I am sometimes astounded by the things that I hear coming from that side of the house in debate in this chamber. They do not listen to the people. They talk about community consultation. This is another case of not consulting the people. Did you talk to the people affected by this Bill? Of course you did not. You do not want to know. You take advice from only one place, and that is the Commissioner for ACT Revenue. The Commissioner for ACT Revenue can be wrong, and I suggest that you go and get some advice from other people before you make up your minds about a decision such as this.

Mr Berry: These other people must have advised you to put it up.

Mr Lamont: Madam Speaker - I am sorry; I thought he had finished.

MR KAINE: No, I am just letting Mr Berry continue the debate. He obviously has not yet had a chance to say his piece. I ask the members of the Government to stop and think about what they are doing for once instead of just acting in such a blind fashion.

MR LAMONT (4.32): In the first instance I refer the Assembly not only to the amendment circulated by Mr De Domenico today but also to Mr Collaery's presentation speech. I am sorry; I withdraw that. I mean Mr De Domenico's presentation speech on the Payroll Tax (Amendment) Bill 1992 on Wednesday, 21 October, as recorded on page 2795 of *Hansard*.

Mr Kaine: How did Mr Collaery get into this?

MR LAMONT: It is exactly the same proposal as he put up and as was defeated by you in the last Assembly.

Mr Kaine: As far as I know, this is Mr De Domenico's Bill.

MR LAMONT: But it is exactly the same. You suggested that Mr De Domenico had gone out and spoken to people in the industry. I suggest that he has probably spent some of the time, when he has not been plotting to overthrow you, in looking through old *Hansards* to try to come up with new matters. The amendment proposed by Mr De Domenico has to be taken into account and placed in the context of Mr Collaery's Bill, which Bill Mr De Domenico has now resubmitted. Madam Speaker, the amendment proposed should not be supported because - - -

Mr De Domenico: I raise a point of order, Madam Speaker. Mr Lamont has alleged that I reintroduced a Bill put in by Mr Collaery. I do not even know what Mr Collaery is doing at the minute, nor do I care. I suggest that Mr Lamont get his facts straight. He is wrong again, and I think he should withdraw that insinuation.

MADAM SPEAKER: Thank you for that clarification, Mr De Domenico.

MR LAMONT: I suppose I should withdraw it. At least Mr Collaery would have understood what it was that he was actually submitting. Madam Speaker, we should not support this proposal, because it is a somewhat obvious attempt to introduce into the Payroll Tax Act a set of criteria for employment agents separate to that which is in place for employers under the service contract provisions. The inconsistencies, having been introduced, will be used to argue for the adoption of the same provisions as are contained in Mr De Domenico's private members Payroll Tax (Amendment) Bill, copied from Mr Collaery.

This amendment should not be supported, for the same reason as Mr De Domenico's Bill will not be supported and for the same reasons as the Government opposed Mr Collaery's Payroll Tax (Amendment) Bill in 1991. He is in fact laying the groundwork for the debate on his private members Bill, the main purpose of which is to capitulate to the noisy demands of members and employers within the building industry who seek to avoid their payroll tax obligations. It is therefore important to look beyond Mr De Domenico's amendment to the Government's Bill and examine it in this wider context.

Madam Speaker, let me first address some quite unnecessary provisions which serve only to deflect attention from the real purpose behind the amendment. Mr De Domenico's only justification for seeking to have these provisions inserted in the ACT legislation is that they are in the New South Wales legislation. One might have expected him to at least try to justify the provisions he proposes on some policy grounds. He has not. As far as Mr De Domenico is concerned, it is justification enough that the New South Wales legislation contains such provisions or that the Chief Commissioner of New South Wales State Revenue has so ruled. One wonders what Mr De Domenico imagines the role of this Assembly to be if he in fact gives so much cognisance to what happens in New South Wales.

By the amendment, the Opposition is attempting to insert into the Act totally unnecessary and inflexible tests to artificially define what an independent contractor is and, by so doing, make it easier to avoid payroll tax. Madam Speaker, the Act excludes from payroll tax services provided by a person who ordinarily renders services of that kind to the public generally - that is, a genuine independent contractor. That has to continue to be the primary test if the legislation is to be effective, and the commissioner has to be given adequate discretion to set aside sham arrangements which do not satisfy this primary test.

The Government's Bill, as it currently stands, will adopt the same test for employment agents as those existing for subcontractors. The amendment proposed by the Opposition sets out to limit the commissioner's ability to attack sham arrangements. Some of the tests included in the Opposition amendment are useful as guidelines or broad indications of what might generally be regarded as an independent contractor, but they cannot supplant the primary test. Other State jurisdictions which have included the definitions proposed in the amendment have advised that they either are not used or present considerable difficulties for revenue authorities. So much so, Madam Speaker, that a working party of State and Territory revenue officials is currently examining the problems that this causes, with a view to putting a uniform proposal to their prospective governments to overcome these problems. Madam Speaker, the ACT does not have problems from not including these restrictive tests. Why would we want to introduce them when other jurisdictions are seeking to overcome the problems arising from including in their respective payroll tax Acts the tests now blindly proposed by the Opposition?

Madam Speaker, to make my point, let me now briefly refer to three specific tests contained in the amendment. I refer first to proposed new subparagraph 3(b)(ii). This test tries to take into account the fact that businesses require various ad hoc services allied to the mainstream of the work of the business, but so infrequently that permanent employees are not engaged to perform such services. Arbitrarily, this is set at less than 180 days in a financial year. If Mr De Domenico were really serious about these proposals he would have discovered, as did the Revenue Office in its research, before the introduction of these provisions that both New South Wales and Victorian revenue authorities do not use this test as other provisions are more appropriate if there is an entitlement to an exemption. There is piffle to his first proposal.

Subparagraph 3(b)(iii) is a relatively simple test and in genuine cases is easy for taxpayers and the Revenue Office to implement. It has, in fact, been described by the commissioner in a revenue circular as an acceptable prima facie test for determining whether a contractor is independent or not. Avoidance schemes are, of course, possible where this test is enshrined in legislation, but not so in the ACT, where the commissioner can rely on the primary test of independence. In other words, he can look at the substance of the arrangements. Genuine contractor arrangements will get no greater benefit from including this test in the legislation. On the other hand, the revenue will suffer if it is included.

Subparagraph 3(b)(iv) also proposes a test found useless in those jurisdictions where it exists in legislation. Whether a payment or payments under a contract exceed $500,000 in a year is absolutely meaningless if one is trying to decide whether the payee is an independent contractor or not. I will repeat that, Madam Speaker.

Mr Humphries: Must you?

MR LAMONT: I need to repeat things to get them through to you. Whether a payment or payments under a contract exceed $500,000 in a year is absolutely meaningless if one is trying to decide whether the payee is an independent contractor or not. Other grounds for exemption - for example, the supply of goods is the primary purpose of the contract, or the contractor is an owner-driver - are more appropriate and less open to abuse. Madam Speaker, in this day and age it is not difficult to visualise payments for consultancy or other personal services exceeding $500,000 and being made to private companies or trusts in order to minimise payroll tax. Yet again the ACT's approach is superior and should not be jettisoned for inferior models interstate.

Madam Speaker, we come now to paragraph 3(c) - the real purpose, one imagines, behind the amendments and behind Mr De Domenico's Bill. It is proposed because the Opposition has succumbed to the persistent pressure of a few who cannot accept that their cosy arrangements for acquiring labour ought to attract payroll tax in the same way as they would if the alternative of employing labour had been used. Madam Speaker, service contract provisions were introduced in the ACT, New South Wales, Victoria, Tasmania and South Australia because there was growing tax avoidance through the simple expedient of using so-called contractors in lieu of employees. As with all tax avoidance, the honest paid for the dishonest, and the service contract provisions address this simple fact of life. Similarly, the employment agent provisions were introduced because more businesses were substituting full-time employees with agency personnel. In essence, the service contract and employment agency provisions bring within the payroll tax net payments for labour when provided by contractors who are considered to be a mere substitute for direct employment of labour.

I repeat that the Act does not seek to catch genuine independent contractors and specifically exempts payments to contractors who provide services to the public generally. What Mr De Domenico's amendment seeks to do in relation to employment agents is to exempt certain categories of labour contracts simply because the subcontractor is a partnership or, in the case of a sole trader, if he or she arranges with another person to work on the job. The Opposition's Payroll Tax (Amendment) Bill will extend this to all labour contracts. *(Extension of time granted)* It would appear that the Opposition has missed the most important factor of the service contract and employment agent provisions - that is, that the emphasis of the provisions is not on the structure of the arrangement but on the substance of the relationship between a principal, or employment agent, and the person or persons performing the labour. That point they have consistently missed or misrepresented.

Madam Speaker, Mr De Domenico also wishes to compare the ACT's position in partnerships with that of other jurisdictions that have payroll tax on service contracts. I think it should be noted immediately that no jurisdiction that has payroll tax on service contracts and employment agents has legislation that provides exemption from tax where only the partners are engaged on a labour service contract. The exemptions, where applied, are available only through the use of the relevant State taxation commissioner's discretion. Maybe Mr De Domenico should go back and research what he is saying. Madam Speaker, Mr De Domenico, in the presentation speech to his Bill, stated:

> The ACT is the only Australian jurisdiction to rely upon rulings instead of legislation for the main exemptions from payroll tax on service contracts.

Madam Speaker, the only substantial exemption Mr De Domenico is interested in obtaining is for partnerships, and this exemption is not provided in any other Australian jurisdiction except by commissioner rulings.

The smokescreen gets thicker. Mr De Domenico, in his speech, used the term "buddy gang" in reference to a partnership and, by inference, attempted to give the term some meaning in law as a formal working relationship. Madam Speaker, no jurisdiction in Australia allows exemptions for informal groups or persons, or for buddy gangs, as they were described by Mr De Domenico. In New South Wales the chief commissioner, in the revenue circular that Mr De Domenico referred to - which is actually payroll tax ruling PT11 - requires that a buddy gang partnership, in establishing its bona fides, must have evidence in the form of a formal partnership agreement, use of a joint bank account or lodgment of a partnership income tax return. In South Australia it must at least be a genuine partnership.

In every case the rulings emphasise the relevant anti-avoidance provisions. If in the examples given by Mr De Domenico those arrangements were entered into with the intention of either avoiding or evading payroll tax, he is correct in saying that the commissioner would challenge the basis of the relationship. In fact, any taxation commissioner would. Madam Speaker, anyone can enter into a partnership or other working relationship with another person or other persons and, if there is opportunity to reduce or eliminate tax, that is all the incentive that may be required. It is surely very plain to see that, if the principals in such a relationship actually provide the labour in a service contract, that is no different from those same people providing labour as individuals.

The Commissioner for ACT Revenue has closely studied the way these provisions are administered in New South Wales and in Victoria. These were the first two States to introduce service contract provisions to curb tax avoidance. The ACT was the third, with Tasmania and South Australia following. Looking at the substance provided in this Bill, I believe that the commissioner is to be congratulated. I express grave concern at officers of the ACT Administration being slighted by a number of the comments made here this afternoon. I am extremely concerned and will study very closely the transcript of the speeches this afternoon by both Mr Kaine and Mr De Domenico. If it is borne out that they have impugned these people, I will be seeking redress before this Assembly. Madam Speaker, I call upon this Assembly to reject out of hand the amendment which Mr De Domenico and the Opposition propose to facilitate tax avoidance in the ACT and call upon members to support the Government's Bill.

MR DE DOMENICO (4.47): Madam Speaker, let me attempt in one or two sentences to tell you how irrelevant the past 15 minutes have been. Mr Lamont, proposed new subsection (3) retains the anti-avoidance provision; it has not been altered. For Mr Lamont to stand up here and talk about the noisy demand of members of the building industry and then suggest that - - -

Mr Lamont: Some.

MR DE DOMENICO: For Mr Lamont to talk about the noisy demand of some members of the building industry and then to suggest that some members of the building industry do nothing except attempt to avoid tax is absolutely - - -

Mr Kaine: And you were supposed to have impugned somebody.

MR DE DOMENICO: Thank you, Mr Kaine. I was supposed to have impugned somebody else's character, which I do not believe I did. But here is Mr Lamont standing up here in this Assembly and in one fell swoop, on the one hand, when building approvals go up - - -

Mr Lamont: You said that the taxation commissioner makes a ruling one month and a different ruling on the same matter the next month. If that is not impugning his character, what is?

MADAM SPEAKER: Order, please!

Mr Lamont: It is outrageous and you should withdraw it.

MADAM SPEAKER: Order! Mr De Domenico, please proceed.

MR DE DOMENICO: Madam Speaker, I thank you for protecting me from that garbage. As I said before, Mr Lamont stood up here and suggested that the building industry or some members of the building industry do nothing else but attempt to avoid tax and have approached the Opposition simply to avoid tax. You should withdraw that, and you should read very carefully what you said. What you suggested is not the case. The Opposition did consult widely - unlike the Government, it seems. The Opposition consulted with the Canberra Business Council, the Chamber of Commerce, the Australian Information Industry Association, the HIA, the MBA and various other business groupings and individuals, who all said - - -

Mr Berry: And they all said that they do not want to pay tax.

MR DE DOMENICO: No. The AIIA seemed to support the Bill. They said, "It is not perfect but we can live with it". Naturally they could live with it, because they, the computer industry, are singularly exempt from the payroll tax. Everybody else was not very happy with the Bill at all.

Ms Follett said that the Opposition's amendment was unnecessary and dangerous. In the next breath she suggested that it could reduce payroll tax collections from the business community by $2m. We all know what her colleagues have said about that. Every Labor leader in this country, Federal and State, over the past 15 years has talked about the scourge of payroll tax and how it impedes employment. Yet Ms Follett calls this amendment unnecessary and dangerous. Ms Follett, in about four or five weeks' time - - -

Mr Kaine: It may result in a few more people being employed. That is how dangerous it is!

MR DE DOMENICO: Exactly. It may result in a heck of a lot more people being employed here in the ACT, probably in the building industry, probably also in the tourism industry - - -

Mr Lamont: If Dr John gets in, there will be nobody left in the ACT. Who would want to put up a building?

MR DE DOMENICO: We have 10,900 people in the ACT without any jobs at all, Mr Lamont, and without any chance of getting a job because of your Government's attitude. Mr Lamont, who is as white as the driven snow - - -

MADAM SPEAKER: Order!

MR DE DOMENICO: This former union thug stands up here in this Assembly and has a go at the Opposition.

Mr Berry: Madam Speaker, I raise a point of order. I think the imputation was clear, and it ought to be withdrawn. To call somebody a thug is over the top in this place.

MADAM SPEAKER: There will be order in this Assembly. I was calling for order when that accusation was made. Mr De Domenico, I would like you to consider those words. It does sound rather unparliamentary to me to call someone a union thug.

Mr Kaine: Would you also call it unparliamentary - - -

MADAM SPEAKER: Excuse me, Mr Kaine. You will not interrupt me. I will close this Assembly if it becomes disorderly, Mr Kaine. I am speaking. Mr De Domenico, you will withdraw those remarks and we will have order in this Assembly.

MR DE DOMENICO: Madam Speaker, could I ask, through you, which particular word Mr Lamont - - -

Mr Berry: Just "thug".

MR DE DOMENICO: I beg your pardon. I am speaking to - - -

Mr Berry: I raised the point of order.

MR DE DOMENICO: No, hold on. I am speaking to the Speaker - or do you want to change chairs? Madam Speaker, can I ask you which particular word - was it the word "union" or the word "thug"? - Mr Lamont - - -

MADAM SPEAKER: It was "thug" that I took offence to. I will be satisfied if you simply withdraw the word "thug".

MR DE DOMENICO: Thank you. I withdraw the word "thug". For Mr Lamont, a former union heavy, to stand up in this Assembly and pretend that he is as pure as the driven snow and that everybody else concerned about payroll tax is a tax avoider is a bit rich.

Mr Lamont, your speech was prepared, I imagine, by the ACT Revenue Office. Madam Speaker, there is no way known that the Commissioner for ACT Revenue is, in one fell swoop, going to deny himself the power that he already has in comparison to the power that other commissioners of revenue have. If you look closely at legislation and the powers of the Federal Tax Commissioner,

Mr Lamont, you will see that the Commissioner for ACT Revenue, in certain respects, has more power than the Federal Tax Commissioner. That is also a fact, Mr Lamont. That is what it is all about, Mr Lamont. There is no way known that the ACT Revenue Office is going to relinquish its power. The Liberal Party is saying that the Government should put its money where its mouth is. It should have the guts to tell the people of the ACT who is exempted and who is not - not the Commissioner for Revenue.

Madam Speaker, let me sum up. Some of us are getting hot under the collar. In about three months' time we will not need all this mishmash of legislation which is so confusing, even to the solicitors in this town and especially the people in the building industry. We will make all this irrelevant, because there will be no payroll tax in three months' time. There will be no complicated sets of legislation for people to read through and for solicitors to earn a living from, because Dr Hewson, when elected, will abolish it all, much to the betterment of business in this country. The number of unemployed, which is currently over one million because of Labor Party policies, will be reduced by at least 200,000, in the words of the current Prime Minister, who will be a feather duster by the time we talk about the next Bill.

For Mr Lamont and for the Government to pre-empt future debate on a future Bill in this Assembly, to me, goes to show what this Government thinks of the processes in this house. For all those reasons, Madam Speaker, the only sensible thing to do is to realise that you can show the business community in this town a sign that you really mean it when you say that you rely on them for future employment and accept this amendment.

Question put:

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

The Assembly voted -

AYES, 5	*NOES, 9*
Mrs Carnell	Mr Berry
Mr De Domenico	Mr Connolly
Mr Humphries	Ms Follett
Mr Kaine	Mrs Grassby
Mr Westende	Mr Lamont
	Ms McRae
	Mr Moore
	Ms Szuty
	Mr Wood

Question so resolved in the negative.

Clause agreed to.

Title agreed to.

Bill agreed to.

ADJOURNMENT

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

That the Assembly do now adjourn.

Goods and Services Tax - ACTEW

MR HUMPHRIES (5.01): Madam Speaker, earlier today in question time Mr Connolly made some assertions about the effect of the GST on ACTEW and about the way in which the Territory would be worse off - in fact, to the tune of $45m - once the GST was implemented. Of course he was very positive about it being implemented. We realise that he means "when" rather than "if". But I was curious at the comments he made, and I went back and checked them out. I find that there is not very much truth in what the Minister had to say. The Minister quite rightly said that ACTEW does not pay sales tax, but of course it does pay sales tax indirectly. The Minister failed to mentioned this vital information. Most people find the concept of indirect taxation hard to understand and some, like the Minister, choose to ignore it altogether.

The fact is that in the current situation government departments pay no sales tax directly but indirectly do pay wholesale sales tax, payroll tax and fuel excise. For example, government departments do not pay direct tax on the purchase of toilet paper, but they do pay indirect tax. A department, for example, pays 50c for a roll of toilet paper, but that price has built into it a wholesale sales tax of 20 per cent for input into that roll of toilet paper, payroll tax from the factory where it was manufactured and fuel excise for the transport which brought it from the factory to the wholesaler and then to the department. The base cost of the roll of toilet paper, with all those built-in taxes abolished, will be a lot lower than 50c. For example, you could say that it would be something like - and this is a notional example - 35c. GST is an added - - -

Mr Connolly: How many rolls of toilet paper would get the $45m back?

MR HUMPHRIES: I will come to that. Be patient, Mr Connolly. GST is then added to the base price of each stage of production and thus the price of the roll of toilet paper might be 40c a roll, even with GST added; 35c plus 15 per cent is 40c approximately. Therefore, the government department ends up paying 40c per roll instead of 50c per roll.

When you consider that this applies to ACTEW purchases of stationery, office furniture, cleaning products, uniforms, electronic equipment - everything that ACTEW buys - you can see that there is a very substantial saving to be made by taking off those indirect taxes. Mr Connolly looks disbelieving. He does not believe me.

Mr Connolly: This is just marginal nonsense compared to a $45m additional tax slug.

MR HUMPHRIES: "Marginal nonsense", says Mr Connolly. You do not believe me. Would you believe, say, the Federal Treasury if they said to you that this would be the case?

Mr Connolly: Apply it to this organisation.

MR HUMPHRIES: Would you believe the Federal Treasury, Mr Connolly?

Mr Connolly: Yes, if you could apply it to that organisation's purchases.

MR HUMPHRIES: I have a document here which I will table. It is a confidential minute paper from the Federal Treasury. A joint Treasury-Finance briefing analyses a model of indirect taxation changes as a result of Fightback.

Mr Kaine: This is one of the projects they never undertook for the Government.

MR HUMPHRIES: Indeed. It says that for electricity, gas and water suppliers across the whole of Australia - this is a national figure, admittedly - after taking off indirect payroll tax, excise charges and wholesale sales tax, the net effect on the price is $699m.

Mr Kaine: Reduction.

MR HUMPHRIES: A reduction of $699m. This is according to a Federal Treasury paper. Even if you take out gas, which of course ACTEW does not supply, the net result is still $600m positive for ACTEW.

Ms Follett: For ACTEW?

MR HUMPHRIES: I beg your pardon - for electricity and water authorities. If it is so positive across the country, there is no reason at all why it should not be positive in the ACT as well. If ACTEW obtain a benefit in the ACT they can pass it on to consumers. I expect you, Minister, as the Minister responsible for ACTEW, to ensure that those savings made through the GST are indeed passed on to consumers. Madam Speaker, we have seen an awful lot of scaremongering going on about GST. This is one more example. We all know, though, that the people of Australia will not be fooled by these stupid tactics. They know. They are smart enough to realise that there are pluses and minuses, and the pluses are very big indeed.

Goods and Services Tax

MR LAMONT (5.06): Madam Speaker, I understand that at a recent race meeting in the bush a horse called GST came second, and it cost $1.15 to get a dollar back; so we rest our case.

Question resolved in the affirmative.

Assembly adjourned at 5.06 pm