DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

15 December 1993

Wednesday, 15 December 1993

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

PETITION

The Clerk: The following petition has been lodged for presentation:

By **Ms Szuty**, from 122 residents, requesting that the Assembly prevent any residential development on the Tuggeranong Homestead and environs site and ensure that any other development is in strict accordance with heritage protection guidelines.

The terms of this petition will be recorded in *Hansard* and a copy referred to the appropriate Minister.

Tuggeranong Homestead

The petition read as follows:

> To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory.
>
> The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly: That Tuggeranong Homestead and Environs (Richardson Section 450) is of great historical, architectural, cultural and aesthetic significance, declared by the Australian Heritage Commission to be worth keeping for present and future generations.
>
> Your petitioners therefore request the Assembly to: Prevent any residential development on the Tuggeranong Homestead and Environs site, and ensure that any other type of development is in strict accordance with heritage protection guidelines.

Petition received.

DISCRIMINATION (AMENDMENT) BILL (NO. 4) 1993

MR MOORE (10.32): I present the Discrimination (Amendment) Bill (No. 4) 1993.

Title read by Clerk.

MR MOORE: I move:

> That this Bill be agreed to in principle.

There are many reasons why the Discrimination Act needs to be amended to include the words "profession, trade, occupation or calling". It is interesting that recently there have been a number of amendments to the Discrimination Act. The amendments have to do with adding new categories to the obvious ones such as race, sex and so forth. That illustrates more than anything the success of the Act in that members, realising how successful that Act has been in its process, have been prepared to add other areas where we believe some discrimination is occurring. That process, instead of being resolved by somebody having to go to court and say, "I have been discriminated against", actually provides for somebody to go to the commissioner and the commissioner then attempting to resolve the situation by bringing the parties together. My understanding is that in 95 per cent of cases that is successful. There is the possibility for the complaint to go further, should that be necessary.

We saw an example earlier this year of someone whose previous employment in a trade union was an impediment to subsequent employment. There are examples of politicians who have found it impossible to move back into various jobs after they have served a term in a political party. Mr Wood has had one such experience under the Bjelke-Petersen regime in Queensland. Members would probably be aware that, having been a serving Labor politician in Queensland, he was denied employment as a teacher simply on the grounds that he was a member of the wrong party as far as Mr Bjelke-Petersen was concerned. That was an entirely inappropriate and appalling situation. No doubt many people in Queensland have fitted into that category. Health workers who have spent time working closely with HIV-AIDS patients have been discriminated against for reasons of ignorance and prejudice. The AIDS Council of Australia has many accounts of doctors, other health professionals, and even volunteers working in this area, being discriminated against when it came to future employment. Ignorance being the basis of prejudice, many of these people were treated as lepers simply on the grounds that they had been in contact with HIV-positive patients.

These are the normal situations that are attached to prejudice, that are attached to discrimination, which is why this Assembly passed the Discrimination Act in 1991. I suppose we can all think of instances of discrimination against people who have worked as undertakers or garbage collectors. The examples are many. Somebody mentioned parking inspectors to me today. Journalists who have achieved a high profile as a result of exposing certain business or political practices may be discriminated against in future employment outside the media because of their views. One could well imagine what Matthew Abraham's chances of getting a job pumping petrol at a Caltex service station would be.

Mr Connolly: Of going anywhere near a service station.

MR MOORE: One wonders how he manages to fill up his car with petrol.

Mr De Domenico: Or Grahame Bates trying to get a job as a doctor.

Mr Kaine: Mr Connolly will be okay in Burmah Oil.

MR MOORE: I hear interjections from members about other examples. Perhaps one area of employment that is overlooked in terms of future employment is that of the police. There are many instances where former police officers have complained of discrimination on the grounds that they were once described as "cops" or "pigs" or "the enemy". This sort of prejudice, this sort of discrimination, is entirely inappropriate. Apart from employment in the obvious area of security, many police officers have found it very difficult, because of suspicion and prejudice, to obtain employment in organisations on the basis of merit.

One area of persistent discrimination which has health and social justice ramifications that demand our serious attention is that shown by medical practitioners, legal practitioners, insurance companies and others against workers in the sex industry. We have come a long way in our attitude to those involved in this industry. This Assembly reformed our legislation on prostitution on a vote of 16 to one, as I recall. We have had to be pragmatic, for various sound reasons based on community health. We cannot, I believe, give dangerous mixed messages to the community. Sex workers need to be checked regularly and treated by doctors, just like everybody else in our community. There have been reports of workers being denied treatment because of prejudice, with perhaps a little ignorance. The ramifications of this discrimination are that the worker is discouraged from taking proper health care, which is in dire contradiction to the health policies demanded of this now controlled industry.

In the past, members of the police force have also been reported as not attending assault cases involving sex workers or, if they do, dismissing it as part of their job. This is a particularly frightening attitude which conveys the message that violence against a woman in a sexual transaction is okay. Unfortunately, the discrimination goes on further, into the courtroom, where this attitude has also been carried through. We have seen examples of that in other places in Australia, although I am not aware of any in the ACT, certainly in recent times. Cases have been reported of women who have demonstrated that they are exemplary parents in every way but have lost custody and even domestic violence orders against their violent partners simply on the grounds that they once worked or are still employed in the sex industry. Too many cases have been reported of a man being acquitted of a violent assault against a woman because she happens to be employed in the sex industry. These are very serious indictments of a hypocritical community, which on the one hand keeps the industry thriving with customers and on the other hand punishes it with moral judgments and contraventions of basic human rights.

Another serious example of discrimination comes from the insurance industry in regard to insuring sex workers. We come face to face with a catch-22 situation, where the Government demands - in fact, this parliament demands - that all industries be insured for workers compensation and fines heavily any company that does not insure its workers. However, out of sheer ignorance, insurance

companies in the ACT have deemed sex workers to be high risk and have offered workers compensation premiums of 20 per cent and over. In Victoria, the Government set the premiums for workers in the sex industry at 1.6 per cent, and in the Northern Territory, where it is a free enterprise system, it is approximately 12 per cent. Nurses and doctors, who probably have a similar risk factor, are insured at about 5 per cent. Why is there this discrimination against workers in the sex industry? It is probably because insurance agents are not aware that, with existing controls on the industry, the health risks are minimal.

There also exists a very worrying prejudice based on a societal judgment that those working in the sex industry should expect violence and injury from their customers as part of their job. It is appropriate that insurance companies use a range of statistics on which to base their premiums, provided that those statistics are valid and not based on moral judgments. That is what we would expect. In many cases, brothel owners' response to the insurance problem has been not to take out cover by deeming all their staff to be self-employed, and it seems to me that that was not the intention of the Bill that passed through this house.

My proposal to amend the Discrimination Act to include the words "profession, trade, occupation or calling", ironically enough, paves the way for those in the sex industry to comply with the Government's demand for workers compensation as well as assisting in the arenas of the courts and the community where human rights and justice have been denied through discriminatory practices and ignorance. After all, that is what the Discrimination Act is about. The Discrimination Act has contributed a great deal to the just treatment of many people in our community who were discriminated against for their race, religion, marital status, sexuality and so on. This amendment addresses the injustices endured by those who are discriminated against simply because of their previous occupation.

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

SUBORDINATE LAWS (AMENDMENT) BILL 1993

MR MOORE (10.41): I present the Subordinate Laws (Amendment) Bill 1993.

Title read by Clerk.

MR MOORE: I move:

> That this Bill be agreed to in principle.

This is a very simple mechanical Bill that provides the opportunity for members not only to be able to disallow subordinate legislation but also to amend it, and I would like to give one example to members to illustrate why I think this is necessary. Madam Speaker, you may recall that I presented in this house a Bill to amend some regulations to do with insulation. I have no intention of reflecting on how the house voted in that situation but, rather, to use it as an example. In the case of the insulation, the Scrutiny of Bills Committee drew attention to the fact that this was effectively a Henry VIII clause - I believe that that is the correct term - where the department not only made a piece of law but also immediately passed the power back to the Minister so that the Minister could change it. That is a particularly cumbersome method of dealing with subordinate legislation.

The result was that that particular piece of legislation was lost, and the Minister introduced a piece of subordinate legislation to provide for compulsory insulation in walls and floors. Had the Subordinate Laws (Amendment) Bill been enacted at that time, it would have given us the opportunity to move an amendment to vary that requirement so that the provision of insulation in ceilings could have been debated in this Assembly as well. It may well be that I would have lost that, but at least it would have provided, in a sensible way, the opportunity for members to be able to amend a piece of subordinate legislation. That is the purpose of this Subordinate Laws (Amendment) Bill 1993. I think it will provide for a situation where members will have more say in the actions of government as far as legislation goes.

There is a very good reason why regulations are referred to as subordinate laws. They are part and parcel of the impact of laws on people in the Territory, and for members to have the opportunity to modify them slightly is an appropriate way for us to deal with them. I think it was Mr Connolly who introduced an amendment to the Subordinate Laws Act that provided for the principle of disallowance. That was a very positive move, and it has been used on a number of occasions. But there are times when either we decide that we must move disallowance of the whole thing because of a small part of it or we move disallowance the other way around - we want to achieve a simple change, but we have to disallow the lot. This amendment will allow us simply to modify those regulations.

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

LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY) (AMENDMENT) BILL (NO. 2) 1993

MR DE DOMENICO (10.45): Madam Speaker, I present the Long Service Leave (Building and Construction Industry) (Amendment) Bill (No. 2) 1993.

Title read by Clerk.

MR DE DOMENICO: I move:

> That this Bill be agreed to in principle.

The building industry long service leave scheme commenced in September 1981. Employers contribute to the scheme on behalf of their employees, and in some cases on their own behalf, at the current rate of 2.5 per cent of ordinary wages paid. The history of this saga goes back to November 1990, when Mr John Ford, from John Ford and Associates and a former Commonwealth Government Actuary, recommended a levy reduction to 1.5 per cent. His report said that the fund was overfunded by 125 per cent, or $12.3m. In January 1991 Mr Ford reviewed the finances of the Building and Construction Industry Long Service Leave Board, covering the three years to 30 June 1990, and once again recommended that the board should reduce the levy from 2.5 per cent to 1.25 per cent.

In April 1991 the board wrote to the Government, as the Act requires it to do, and recommended that, effective from July 1991, the levy be reduced to 1.25 per cent, plus 0.25 per cent, the latter percentage being utilised as a contribution to training in the building industry. The then Alliance Government made the appropriate decision and said, "Yes, we should be taking part in the recommendations of the Board". Nothing was done because, it will be remembered, very shortly after that time the Alliance Government was no longer in office, and the Labor Government took over. We know that the Government has still not implemented the recommendations of the board. We are also told that these recommendations have not been implemented totally because of union demands that the levy not be reduced until a formal scheme for industry training is introduced.

In April 1992, further representations were made to the Minister by the board. On 7 May 1992, at the most recent executive meeting of the ACT Regional Building and Construction Industry Training Council, it was resolved:

> That this Executive Committee sees no nexus between the proposal to institute a levy on building permits to fund industry training in the ACT and the matter of a reduction to the Long Service Leave Board Levy, except in so far as funds from that levy may assist the operations of this Council.

The next document I wish to refer to is the Auditor-General's report No. 6 of 1992. In effect, that report says that the contribution rate could be reduced from its present level without affecting the ability of the board to meet its current statutory obligations. Let us skip a year or so. At the Estimates Committee hearings this year, in October 1993, the board said in its annual management report:

> The Board expects the matter to be resolved before the end of 1993.

Based on contribution levels in 1989-90, and assuming no pay increases, the fund has continued to be overfunded by between $1.3m and $1.6m each year. Four years at $1.6m is $6.4m, which has been literally taken away from the building industry unnecessarily. Long service leave awarded is a finite amount, obviously - 13 weeks' paid leave after 15 years' service - and the fund is 100 per cent overfunded at more than $17m. So $8.5m has been earned from the sweat and tears of the building and construction industry and will sit in the Government's coffers and never be called on for the function for which it was collected. It is, to our way of thinking, unjust. The Government, instead of acting with integrity as soon as the oversight was identified, has literally sat on its hands and done nothing.

In addition, the Government gave assurances to members of this house that it would be making appropriate changes and adjustments that it never intended to deliver and has not delivered thus far. It is interesting to look back to 17 June 1993, when Mr Berry said:

> ... work is proceeding now, as you are aware, on developing a proposal where the training levy will be collected through building permits.

I then suggested to Mr Berry:

> Why don't you reduce the levy in the meantime?

Mr Berry said:

> Because I have given an undertaking ...

I said:

> To whom?

Mr Berry said:

> To one or two workers in the industry.

I said:

> Was it to the unions?

He said:

> Of course, because they are parties to this.

I suggested:

> They don't pay the levy.

So there it is in the Minister's own words: A promise to one or two people in the union movement justifies the collection of millions of dollars more than necessary, to sit in a fund doing nothing.

Let us look at what happens in other States and Territories. In New South Wales the levy is zero because New South Wales also became overfunded; Mr Fahey realised this and saw more advantages in returning the money to the industry to employ people and to the community in reduced building costs. In South Australia the levy is 1.5 per cent; in Western Australia, 0.7 per cent; in Victoria, 0.5 per cent; in Tasmania, 2 per cent; and Queensland has just reduced its levy from 0.5 per cent to 0.4 per cent. The ACT is 2.5 per cent, 100 per cent overfunded, and we still do nothing.

It is interesting that, for the first time, the Estimates Committee this year called on the Long Service Leave Board to come before the Estimates Committee, and they submitted their figures. Under "Income", the board estimated that this year it will collect $1.5m from contributions. Guess what? The board said that their estimation is based on a contribution of 1.5 per cent. The board itself said to the Estimates Committee, "We estimate that next year we will be collecting this levy at a rate of 1.5 per cent". Why? Because the board had been given an undertaking that it would be reduced. It has even calculated its figures on this undertaking. Yet still the Minister has failed to deliver. There is also an expenditure amount of $70,000 for training, calculated for four months only, with the comment, "To be replaced by a levy on building permits". This is the Long Service Leave Board at the Estimates Committee in October this year.

The problem is that Mr Berry could not negotiate his way out of a paper bag, it seems, let alone negotiate the building permit training levy. His incompetence is costing the building industry millions of dollars. It is costing the community jobs and higher prices for houses. It is about time the Assembly said to the Minister, "We will no longer be supporting your incompetence. You have had more than a fair chance - more than three years to negotiate the changes you wished for building permit training levies. You have been unable to do this. The industry cannot be held to ransom any longer. In the future, you will have to negotiate the levy from building permits without the long service leave levy involved in this process".

The Long Service Leave Board was set up to collect funds for long service leave. It is arguable whether it should be collecting training funds. The board advanced $700,000 to the ACT Building Industry Training Council and holds a further $400,000 for this purpose. Once again, in June 1993 there was another actuarial review. We have had two or three so far. In June 1993, the most recent actuarial review recommended a reduction in the levy to one per cent, and the board supported the reduction to one per cent. In September 1993 the board, in briefing notes to the 1993 Estimates Committee, said:

> Delay in implementing the Board's original recommendation for reduction of the levy has resulted in the industry paying at least $3m more than recommended actuarial needs since June 1990. If the legislation is not finalised until the end of 1994 this amount will have increased to ... $4.4m when the Board would expect to refund only $2.4m.
>
> The Board currently has assets of approximately $31m and its liabilities do not require it to be funded at anything like the present 2.5 per cent. Even at the recommended rate of 1 per cent, the Board's financial position is still very secure.

That is what the board says. Even at one per cent, the board's financial position is still very secure. Keep in mind that we continue to take out 2.5 per cent.

On the delays regarding the funding of the training fund, the board says:

> None of the above issues are legally relevant to the Long Service Leave Board's function and should not be delaying the implementation of the Board's recommendations.

Let me summarise very quickly. As far back as 1991 the former Commonwealth Government Actuary, Mr John Ford, recommends to the then Alliance Government, "You are 125 per cent overfunded. I recommend, as the former Commonwealth Government Actuary, that you should reduce your levy to 1.5 per cent". The Alliance Government puts that in train. It is voted out of office and a Labor government takes over. The same actuary says, "You are overfunded by 100 per cent; reduce the levy to 1.5 per cent". The board says to the Government, "The actuary recommends, and we agree, that we are overfunded". Minister, your own board is telling you, "We are overfunded; change it to 1.5 per cent". Another actuary report comes out saying, "You are so much overfunded that you are collecting more money in interest than you are collecting from the levy itself. Change it to 1.5 per cent".

We can take it a step further. The Auditor-General's report No. 6 of 1992 says the same thing: "Having regard to the two actuarial reports, having regard to the Board's own recommendation, we agree that you are overfunded. Please reduce the levy from 2.5 per cent to 1.5 per cent". Once again, there were some amendments to the legislation in this house. The Minister said, "Advice given to me tells me that everything is going to be fixed by the end of 1993". Based on that recommendation, the Independents in this place said, "We are prepared to give the Minister the benefit of the doubt. He has given an assurance that his advice says that things will be settled by 1993".

Mr Berry: On what date was it that I said that?

MR DE DOMENICO: Do you want me to quote what you said?

Mr Berry: Yes. What was the date?

MR DE DOMENICO: I am not sure of the date, Mr Minister, but it was when you introduced certain amendments to your own Bill. Mr Moore, Ms Szuty, Mr Stevenson and everybody else will verify that the indication you gave, loud and clear, was that you would fix it by the end of this year. That was the assurance you gave this Assembly.

Mr Berry: Don't reknit the web, Tony.

MR DE DOMENICO: We are not reknitting the web. That is the assurance you have given this Assembly. Minister, what the Liberal Party is saying to you right now is that you have disregarded advice given to you by actuaries; you have disregarded advice given to you by the Auditor-General; you have disregarded advice given to you by your own board. Why? Because of a promise you made to a particular union, or perhaps to a particular individual within the union.

Interestingly, in January 1991 private actuaries reviewed the finances of the board covering the three years to 30 June 1990 and recommended that the board should reduce the levy from 2.5 per cent to 1.25 per cent. In April 1991 the board wrote to the Government and recommended that, effective July 1991, the levy be reduced to 1.25 per cent, plus 0.25 per cent, the latter percentage being utilised as a contribution to training in the building industry. Under questioning from the Estimates Committee, Mr Bob Yeomans, the chairman of the board, when asked, "Is it not true that the money allocated solely for the purposes of training is set aside in a separate fund and not utilised for anything else but training?", quite correctly responded, "Yes". In other words, any argument that anybody might bring up, trying to link training with the 2.5 per cent, will not wash, on the admission of the chairman of the board under questioning from the Estimates Committee.

Quoting again from the briefing notes:

> Although the Board has no formal obligations to the Building Industry Training Council it has been putting aside funds for training use and has advanced them to the ACT Building Industry Training Council for special training projects. The Board advanced approximately $700,000 for industry training and presently holds around $400,000 of these existing training funds which have not been utilised.

A new actuarial review just completed for the three years to June 1993 recommends a further reduction of the levy from 1.25 per cent to one per cent. So much money is being collected that the board continues to recommend lower and lower amounts to be collected. If we wait any longer, by next year the board will say, "Please stop collecting anything, or what we say in our annual report will be embarrassing because we are so much overfunded". Still the Minister does nothing, except to hold up on doing anything at all because of some promise he may or may not have made to some member of the trade union movement. That is what the board briefing says, for heaven's sake. Let me read it again:

> Delay in implementing the Board's original recommendation for reduction of the levy has resulted in the industry paying at least $3m more than recommended actuarial needs since June 1990. If the legislation is not finalised until the end of 1994 this amount will have increased to approximately $4.4m when the Board would expect to refund only $2.4m.

As I said, the board currently has assets of $31m. Its liabilities do not require it to be funded at anything like the present 2.5 per cent. Let us look at what the briefing notes say about why this delay in doing anything has happened:

> The initial delay in progressing the Board's recommendation appeared to have been caused by a backlog in making legislative changes.
>
> However, from late 1991 it has been delayed by the union movement gaining the Minister's support to tying a reduction in employer long service leave contributions to the introduction of a levy to fund a formal industry training scheme.

After employers and unions have agreed on the appropriate training levy and collection arrangements, there are arguments about who should control the training industry funds. So we have a further matter coming in now. Notwithstanding that the unions and the employers have agreed to a new system of collection, there is an argy-bargy about who should control the training funds. To quote again:

> None of the above issues are legally relevant to the Long Service Leave Board's function and should not be delaying the implementation of the Board's recommendations.

So the board itself is saying, "Notwithstanding any argument that might be brought up by anybody regarding the training funds, they have no legal standing whatsoever with the long service leave training levy. That is an erroneous argument".

It should be noted that recent changes in the Long Service Leave Board's legislation provided some relief to employers making contributions on behalf of apprentices, and the Government ought to be congratulated for making those changes. This has resulted in the board rebating approximately $175,000 to employers. However, once again, the board says, quoting from the briefing notes:

> ... this is a drop in the bucket compared to the over contributions which have continued to flow from employers to the board's funds.

So there it is: Three actuarial reports, the Auditor-General, and the board itself time and time again. There is no link with the training argument that may be brought up. Everybody is saying, "We are taking more money from this industry than we are entitled to take, than we need to take".

It is also of note that it is the building industry that has provided an increase in the number of young people employed under the employment scheme the Chief Minister launched down near Lake Burley Griffin. It is this same industry that is saying, "We are prepared to employ more young Canberrans, but please make it easier for us purely and simply by implementing recommendations - not recommended by us, but recommended to this Minister by three actuarial reports, the Auditor-General, the board itself and, most importantly, this Assembly".

The Minister, at the Estimates Committee and in this Assembly, gave the impression that things would be done by the end of this year. Mr Minister, let us see what you are prepared to do. I can tell you that, if you are going to come into this Assembly and suggest things on which the Assembly says, "Okay, we will give you a chance", and they are not done, this Assembly may have to do the job for you.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport): Mr Deputy Speaker, I seek leave to make a short statement.

Leave granted.

MR BERRY: From all the invective and vitriol, we need to distil some of the facts of the matter. I should, first of all, raise with you a point of order. There is a question about whether this Bill has been introduced within six months of a similar matter, which the Speaker might have to look at. I am not sure of the dates, but it looks pretty tight to me.

MR DEPUTY SPEAKER: We will take the matter on notice, Minister.

MR BERRY: I think that needs to be looked at to make sure that it is in order. Aside from that, as I have said, we have to distil some of the facts of this matter. What was intended when I last spoke on this very issue was that we would have this matter before the house by the end of the year and that the debate would occur early next year. There is no question about that. The reason was that there was a lack of faith by the parties that one could proceed without the other. From my point of view, I have given a commitment and I intend to stand by that commitment as far as possible. What Mr De Domenico is on about is no more than a stunt.

Mr De Domenico: No, it is not. You have had two years.

MR BERRY: You knew, Mr De Domenico, that the change was going to happen, and it was going to happen simultaneously with changes to the legislation. I have talked to my colleague Mr Wood in relation to this matter, and he tells me that the legislation, except for a few very minor points, is almost ready and will be in the chamber in the early part of next year. There are powers under section 37 of the legislation which provide for me to make certain declarations in relation to that amount. As I have said to you, as soon as the legislation hits this chamber, I will make that declaration. It will be in accordance with the resources available to the board at the time and will also be consistent with the commitments that have been given to the players.

It is all right for Mr De Domenico to pull a sharp little stunt on this issue, but he could have come to me and said, "How far have you gone with the legislation?". I would have told him that we were on the verge of introducing the thing and there was no need to stir - - -

Mr De Domenico: You need to tell the Assembly. It was the Assembly you made promises to, and the Estimates Committee.

MR BERRY: No; it was expected that the debate would occur next year.

Mr De Domenico: No; you read carefully what you said at the Estimates Committee.

MR BERRY: You have a look in here. It was expected that the debate would occur early next year, and it is still expected that that will be the case. So do not come in here spinning that web of deception. You might be trained by Mr Humphries to spin the web of deception, but you are not going to get away with it.

Mr De Domenico: You do what you promised, and get off your hands. You are incompetent, and everybody in this house knows that you are incompetent.

MADAM SPEAKER: Order! Mr De Domenico, you have had your turn.

MR BERRY: You know what was promised. We always said that we were going to try to get the legislation into this chamber in the early part of next year and that as soon as the legislation was available I would make the necessary moves under the Act. Do not try to mislead the community or mislead this chamber. It will not work because you are just not up to it. Mr De Domenico, you have been caught out again. It is just a stunt. Orderly action is under way - not back-of-the-envelope amendments - to deal with the issues and to keep faith with the players, that is, the workers in the industry who benefit from this scheme and the employers in the industry, and to ensure that the issues that have been raised by the actuary and so on are recognised.

It is very clear that this issue had to be addressed in consultation with the players. As Mr De Domenico will recall, when the long service leave provisions were put in place in the Territory it was a controversial issue. The portability of those entitlements was controversial, and it did not happen without a great big blue, a heap of disturbance out there in the community. All of the workers in the industry are aware of that. Quite frankly, they find it hard to trust anybody on this issue, and I do not blame them, given the history of it. What I am saying to them is that we will alter the arrangements for collection of the levy and we will change - - -

Mr De Domenico: But you have been saying that for a year.

MR BERRY: And it will happen, as I said it would happen. As usual, when we promise, we deliver. This will be delivered, but I can tell you that it will be delivered stunt-free. Your stunt will not count.

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

DISCHARGE OF ORDER OF THE DAY

MR STEVENSON (11.12): In accordance with standing order 152, I move:

> That order of the day No. 1, private members business, relating to the Voice of the Electorate Bill 1993, be discharged from the Notice Paper.

Madam Speaker, I take this action as a result of the fine work done by the Scrutiny of Bills Committee. The committee was good enough to go through the VOTE Bill clause by clause. I certainly understand how much time that would have taken. I thank the members of the committee - Mrs Grassby, Mr Humphries and Ms Szuty - and, of course, Professor Whalan, for the job they took on. After this matter is discharged, with the agreement of members, I will move to introduce an amended Voice of the Electorate Bill which covers the matters raised by the Scrutiny of Bills Committee.

Question resolved in the affirmative.

VOICE OF THE ELECTORATE BILL 1993 [NO. 2]

MR STEVENSON (11.14): I present the Voice of the Electorate Bill 1993 [No. 2].

Title read by Clerk.

MR STEVENSON: I move:

> That this Bill be agreed to in principle.

As a result of the first VOTE Bill being introduced on 13 October this year there has been a pleasing level of public debate. I should mention that this amended Bill in no way changes the various matters I raised in my speech on 13 October. I know that Canberrans will be encouraged by the in-principle agreement to the right of citizens to have a binding say on legislation that most members of the Assembly have agreed to. Because of the detailed nature of the suggestions made by the Scrutiny of Bills Committee, along with some valuable advice from legal people, I have made quite a number of changes in the Bill that I now table, although none of them change the principles that were in the Bill tabled on 13 October. I trust that this Bill is now even easier to read than the first one. Perhaps, when members are having a break - - -

Ms Ellis: It is thinner.

MR STEVENSON: It is thinner, yes. When members are having a break during the Christmas period, when they are on a beach with a glass of freshly squeezed orange juice in their hand, they might like to read the Bill. I commend the Bill to the house.

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

STAMP DUTIES AND TAXES (AMENDMENT) BILL (NO. 4) 1993

Debate resumed from 24 November 1993, on motion by **Mr Kaine**:

> That this Bill be agreed to in principle.

MADAM SPEAKER: Members, on Wednesday, 24 November 1993, Mr Kaine presented to the Assembly the Stamp Duties and Taxes (Amendment) Bill (No. 4) 1993. I examined the Bill and I noted that clauses 4 and 5 are the same in substance as amendments moved by Mr Kaine during the detail stage of the Stamp Duties and Taxes (Amendment) Bill (No. 2) 1993 on 21 October 1993. Those amendments were subsequently negatived by the Assembly. Standing order 136 states:

> The Speaker may disallow any motion or amendment which is the same in substance as any question, which, during that calendar year, has been resolved in the affirmative or negative, unless the order, resolution or vote on such question or amendment has been rescinded.

There have been precedents in this Assembly when Bills infringing this standing order have been ruled out of order and ordered to be withdrawn. I therefore rule the Bill out of order and I call on a Minister to move the appropriate motion under standing order 170.

Mr Kaine: Madam Speaker - - -

MADAM SPEAKER: No; I am calling on a Minister to move the appropriate motion under standing order 170, Mr Kaine.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.17): I am here to help, Mr Kaine. I move, pursuant to standing order 170:

> That the Stamp Duties and Taxes (Amendment) Bill (No. 4) 1993 be withdrawn.

MR HUMPHRIES (11.18): Madam Speaker, I move for the suspension of so much of the standing orders - - -

MADAM SPEAKER: You can just vote against the motion, Mr Humphries. There is a motion before us, Mr Humphries, and you can vote against it.

MR HUMPHRIES: Madam Speaker, it is quite apparent that the issue dealt with in Mr Kaine's Bill, by agreement on both sides of the chamber, following the Chief Minister's realisation that the matters raised in particular by the Liberal Party during debate on the earlier legislation dealing with stamp duties and taxes, needs to be revisited. Mr Kaine's Bill reinstates the concerns that the Liberal Party expressed at the time of the debate on Ms Follett's earlier Bill. It seems to me entirely appropriate that the Assembly should have the chance to revisit these issues, given the acknowledgment on both sides of the house that there is an issue to be faced up to which was overlooked, for whatever reason, during the course of the earlier debate. It is my submission, Madam Speaker, that the Assembly should reject the motion moved by Mr Connolly in order that we may debate Mr Kaine's Bill and deal with that issue which, by general agreement, now has to be faced up to once again.

MS FOLLETT (Chief Minister and Treasurer) (11.19): Madam Speaker, I hope members realise that I could have taken the same action that Mr Kaine is now proposing to take. The reason I did not is that I had assumed that such action would be ruled out of order, for the very reasons that you have outlined. I believe that this is a spot of grandstanding by the Liberal Party, and in some ways it is redundant. As members know, the Government did amend the previous arrangements for imposing stamp duty at conveyancing rates on long-term leases. We changed the arrangement from leases of 15 years to leases of 25 years, and that change has been in place administratively ever since.

Madam Speaker, I think that there are two issues here. One is the principle of the standing orders of the Assembly. I had already assumed that this action would be out of order, and if I had not made that assumption I would have brought forward amendments. They were drafted, but I have withheld them for the very reason that I had assumed that they would be out of order. So there is that point. I think the standing orders of this Assembly are worth protecting. There is a question of precedent in members taking the course of action that I presume they are to take, and, indeed, Mr Stevenson could have taken it many times. He has introduced one Bill repeatedly, always with the required period in between. It is up to members to respect those standing orders. I also believe that the Liberals are simply trying to grandstand on this issue when they know that substantially it has already been dealt with.

MR KAINE (11.21): Madam Speaker, I oppose the motion. I believe that the Chief Minister is simply burying her head in the sand and trying to avoid major issues, issues on which this Government made a major mistake when it put its legislation on the table only a matter of weeks ago. Members will be aware that at the time that the legislation was on the table I brought to the Chief Minister's attention a letter from the Law Society which she clearly had not seen. That led to a delay of the debate for one day while she reviewed the letter; but, having reviewed it, she simply set it aside. That letter raised very serious issues and very serious questions about the legislation. Since then I have discovered that the Canberra Business Council has written to the Chief Minister three times and raised very serious issues in which this Bill is at fault.

The Chief Minister rushed into legislation which was wrong from the beginning. She has acknowledged that, because she has already amended it by determination. She issued a determination to make a significant change to it. At the same time this consultative Government did not consult with any of the people that were affected by it. She has had plenty of advice since that what she did was wrong, and she continues to try to avoid the issue. She says that she did not bring her amendments forward because it would offend against the standing orders. That did not stop her putting out a determination to make a major change to her own legislation within a matter of days. She partly accepted what the Business Council and the Law Society told her, but only in one respect. There are a number of major issues to which these people take exception and on which they find her legislation at fault.

It is all very well to say that we cannot do it until next year. There is an interesting matter of retrospectivity here. Her own determination was commented upon by Professor Whalan, who noted the retrospectivity. He said that the retrospectivity is in the interests of individuals and therefore he supports it. The very things that I am trying to achieve now to put her legislation onto a sound footing have exactly the same connotations.

Her defective legislation was effective from 15 September, and there are people who are victims of that legislation unless we change it. The longer we let it go, the more people are going to fall through the hole and the more people are going to be victims. Under her legislation, if they have to pay large sums of money by way of stamp duty, it is not refundable, unless the Chief Minister is going to put in retrospective legislation making it refundable. The present legislation does not provide for refunding.

These are major issues. They are major issues that need to be addressed now, not in six months' time. The Liberal Party is not interested in grandstanding on this issue. We made the point at the time the legislation was put on the table that it was defective, and we sought to amend it. But the Chief Minister, in her dogged, bull-headed, stubborn fashion, insisted that the legislation go through in its defective form. She herself has acknowledged that by putting through a determination that in fact amends one part of it. She has acknowledged only one of the defects in the law. There are a number of them. This will affect not only the business community. The activity level of business is going to affect the number of jobs available, and it is going to affect the revenue that Ms Follett collects. These matters are too substantial to just leave in abeyance for months to come.

I submit that the members of this Assembly should look at the rationality of the matter that is before them. Forget the Chief Minister's talk about grandstanding. She is the one who is grandstanding, because she made a major mistake with the legislation in the first place. For heaven's sake, let us deal with the matter. People are likely to fall through the cracks in her legislation, the very substantial financial cracks. Let us paper them over before it does substantial harm to individuals, if not to the community at large. I submit that the case for delaying debate on this matter has no substance to it. The argument for considering it now is very substantial. If the Assembly falls for the Chief Minister's cheap trick about political grandstanding and the like, a lot of people are going to suffer from it.

Question put:

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

The Assembly voted -

AYES, 8	*NOES, 9*
Mr Berry	Mrs Carnell
Mr Connolly	Mr Cornwell
Ms Ellis	Mr De Domenico
Ms Follett	Mr Humphries
Mrs Grassby	Mr Kaine
Mr Lamont	Mr Moore
Ms McRae	Mr Stevenson
Mr Wood	Ms Szuty
	Mr Westende

Question so resolved in the negative.

MADAM SPEAKER: We will now proceed with the debate on the Stamp Duties and Taxes (Amendment) Bill (No. 4) 1993.

MS FOLLETT (Chief Minister and Treasurer) (11.28): Madam Speaker, in speaking to the amendment Bill that has been moved by Mr Kaine I repeat that the substance of this matter has been dealt with administratively. It has been dealt with by the change which I have made to the stamp duty on longer-term leases. As members will know, I have changed from the original legislation which required that leases for over 15 years be charged stamp duty at conveyance rates. That has been changed to 25 years. That change was made in the light of advice that we had had from a number of industry groups, including some that Mr Kaine has mentioned. It was made because this legislation was not intended as a windfall gain for the Government but rather as an anti-avoidance measure. I am sure members realise that it is possible, by having very long-term leasing arrangements, to avoid paying stamp duty at conveyance rates and that this is not fair to the broader community who, of course, do not have those sorts of options available to them. So the provision was intended as an anti-avoidance measure. It was clear to us that long-term leases take on the attributes of ownership and, as such, the Government did consider it inequitable that they should be charged on the same basis as conveyances.

Mr Kaine has not presented a valid basis for supporting his 30-year period, but I have said on previous occasions that the selection of any period is at best arbitrary. The line does have to be drawn somewhere and the initial 15-year period was chosen in order to provide some balance between the planning needs of businesses and the need to provide tax equity. As I have said, on the basis of representations that we have received, that 15 years has been varied administratively to 25 years. I consider, Madam Speaker, that, where lessors or lessees would prefer to have a longer-term lease, then those persons should be required to face the same tax regime as taxpayers who are purchasing property. I can see no reason why they should not. Madam Speaker, with the 25-year period the overwhelming majority of leases in the Territory would not be subject to this new regime.

There have been arguments put forward that a long-term lease is necessary in order to amortise the fit-out costs, and the move from 15 to 25 years, I consider, more than adequately deals with that factor. Changes to tax policy in relation to depreciation allowances now mean that the taxpayer determines the reasonable life expectancy of depreciable costs. The instances quoted of anchor tenants in large retail shopping complexes requiring more than 15 years to amortise set-up and fit-out costs are very difficult to reconcile with the extensive and frequent refurbishment that occurs in these premises. Advice from industry sources suggests that fit-out costs often occur on a very regular basis, and in some cases as frequently as every four to five years.

The nub of the issue is whether the policy of dutying long-term subleases at conveyancing rates is correct. I would submit that it is. Businesses that operate out of owned premises absorb stamp duty at conveyance rates regardless of the length of their ownership. If they own it for a short time they have still paid the full cost of that conveyancing at the higher rate. Businesses operating from leased premises incur the lower lease duty. Madam Speaker, it is simply a question of deciding the most desirable balance between the integrity and the equity of the tax system and the economic effects of the tax. Also, one must ask: At what point should a sublessee be deemed to be gaining the benefits of ownership as a result of long-term leasing contracts and that transaction be dutied accordingly?

Madam Speaker, the amendment made by this Assembly during the last sittings did provide certainty in respect of commercial contracts. It must be remembered that the parties to a contract for sale have 30 days in which to lodge the document, and a further 30 days after assessment in which to rescind and still obtain a refund. I think Mr Kaine, in his remarks, has skated over that a bit. He would have us believe that it is all a sudden death matter. It is not. It must also be remembered that when parties sign a contract for sale the purchaser has a legal interest which can be sold and that the primary reason for the amendment was to stop avoidance practices. Like the first amendment, it was an anti-avoidance measure. Avoidance practices have been detected by the Revenue Office. Parties have been on-selling their interest, rescinding the original contract and, of course, obtaining a refund.

In proposing the change made during the last sittings, and when speaking against the amendments proposed then by Mr Kaine, which are identical to those being moved by him today, I outlined the reasons why the Government believed that conditional contracts should not be encouraged; why parties to such contracts should not expect ACT taxpayers to bear the cost, through refunds of duty paid, when speculative projects failed. Madam Speaker, the Government does not intend to alter our position on this issue, and we oppose Mr Kaine's second attempt to make the changes to section 28 unworkable.

We have received representations from the business community arguing that the changes made to section 28 will have adverse effects on certain development projects. I am prepared to look at these concerns, and to look at them very closely. Indeed, Treasury officers have been holding discussions with members of the Business Council to ascertain whether the concerns that are now being pressed by the business community raise issues which were not taken into consideration by the Government. In the event that this is shown to be so, and there are specified circumstances which, if they occur beyond the 30 days limitation period for unconditional refund, justify an extension of the refund period, then the Government will be prepared to amend the legislation to specify all those reasons.

Madam Speaker, I repeat that I remain committed to the anti-avoidance measures that we have put in place, but if it appears that there is some specific circumstance where this anti-avoidance imperative is overridden by some other consideration we will take that on board and make the appropriate changes. Consultations on that matter are continuing; but I repeat, Madam Speaker, that clause 5 of Mr Kaine's Bill, I believe, produces an unworkable piece of legislation, and it is therefore opposed by the Government.

To sum up on the first point that Mr Kaine has made, the Government has taken action on that matter. It has been undertaken administratively on a retrospective basis, as Mr Kaine has said, quite correctly, and it has been implemented for some time now. I think that to change the period from 25 to 30 years is only going to confuse the issue further, without, in my opinion, any appreciable benefit to the business community. I think they are satisfied with the 25 years. All that I have seen from them indicates that they are satisfied with that 25-year period.

On the second matter, Madam Speaker, if there is a substantive reason to do what Mr Kaine suggests, we will certainly look very closely at that, but at this stage consultations are continuing. I am not aware that a substantive reason has been brought forward. I repeat that I regard it as important to try to take anti-avoidance measures where they are possible, and not to burden the entire community with refunds to people who have sought to speculate on projects that subsequently fail. I should say, Madam Speaker, that in this rescission of contracts arrangement people's principal place of residence is clearly not an issue here. If an ordinary person is seeking to get a new property as their principal place of residence and for some reason that arrangement falls through, because of lack of finance, failure to proceed with the new building, or so on, then that person, of course, will receive a refund; but I do think it is important to not encourage the speculative on-selling of properties that certainly has occurred in other States. I do not believe that it is at all desirable that it occur in the ACT.

MS SZUTY (11.38): I well recall the debate on the Government's Stamp Duties and Taxes Bill because we debated the Business Franchise (Tobacco and Petroleum Products) Bill at the same time. We had a quite lengthy debate on that particular Bill. I well recall my position and that of Mr Moore on the Government's Bill at that time. We took on board legitimately the Government's argument that it was putting up anti-avoidance measures. I am sure that Mr Moore and I believed at the time that we voted on this particular measure in good faith. It was with some surprise, I might say, that some weeks later the Chief Minister did move to extend the period of application for this measure from 15 years to 25 years. I recall it because I was away from the ACT at the time, interstate with Mr De Domenico and Mr Lamont, as a member of the Assembly's committee on the public service. I did mention to Mr De Domenico at the time that I was quite surprised that the Chief Minister was moving to change that provision so soon after the Assembly had passed the Bill.

I must admit that I am rather puzzled that the Government has not accepted the very sensible amendments put forward by Mr Kaine. Mr Kaine has his reasons for extending the period further, from 25 years to 30 years. He obviously has done that in good faith and for reasons which I am sure he will explain to the Assembly at the conclusion of this debate. At this point I would be inclined to agree with Mr Kaine that a 30-year period, as opposed to a 25-year period, is appropriate in these particular circumstances. The Chief Minister herself said that it is a question of where the line is most appropriately drawn. Given that we are in the extraordinary situation of having debated these measures just a few months ago, it seems surprising to me that there is still some confusion, I guess, on the part of various members of the Assembly as to where that line should be legitimately drawn.

As for Mr Kaine's second amendment - I must admit that I had to look at the Bill and the Government's amending Bill fairly closely to determine my position on it - the current situation is:

> The Commissioner may determine a longer period for the purposes of paragraph (3A)(c) if he or she is satisfied that -
>
> (a) the agreement was for the transfer of an estate in land intended to be used as the principal place of residence of the transferee.

The amendment that Mr Kaine is moving effectively deletes that provision from the Bill. However, the provision would still remain:

> The Commissioner may determine a longer period for the purposes of paragraph (3A)(c) if he or she is satisfied that -
>
> ... ...
>
> (b) there is a bona fide reason for the agreement being rescinded or coming to an end.

I believe that Mr Kaine has been thoughtful in the amendments that he has proposed to the Stamp Duties and Taxes Act, and I would like to indicate to the Assembly that I will be supporting his amendments.

MR KAINE (11.42), in reply: In concluding the in-principle debate I would like to comment on matters raised by the Chief Minister and by Ms Szuty. I would note, Madam Speaker, that my amendment seeks to do only two things. There will be continuing dissatisfaction with this Act, even after these amendments are incorporated, because the Canberra Business Council and the Law Society have advised the Chief Minister of a number of other matters with which they are dissatisfied. Unfortunately the Canberra Business Council's concerns on some issues were not brought to my notice until the day before yesterday when I specifically asked them what they thought, but the Chief Minister has known them for some time. I hope that the Chief Minister's reconsideration of this Act, which she says is taking place, will extend to considering these other matters that the Canberra Business Council in particular has brought to her attention. It was too late for me to incorporate them, so we are dealing with only two things here.

The first is the question of the 30-year period. The Chief Minister has clearly acknowledged that she was wrong when she said 15 years. She would not have amended it otherwise. But, when she comes to the amendment, whose advice has she taken? She did not take any notice of any debate that took place in this Assembly. She did not take the advice of the Law Society which she had before her original Bill was brought down. She has not taken the advice of the Canberra Business Council as to what is an appropriate period. Why? She acknowledges that this is arbitrary; yet she has taken two bites of the cherry, both of them arbitrary and neither of them based on anything but her own intuition, presumably.

The 30-year period is one that has been carefully considered by the people who are affected by this. They have come up with some very good reasons why, in their view, 30 years is a good period. In fact, the Canberra Business Council point out that that is the minimum. They would have preferred a longer period, but they accept that a decision has to be made and they have accepted, generally, that 30 years is something that they can live with. The reason has to do with business decisions about taking leases or not taking leases. I accept their advice, in the absence of any contrary advice, and the Chief Minister has not tendered any. I come back to the question: Where did she take her advice from? If 25 years is okay and if 15 years is okay, on what basis are they okay? She has not demonstrated it.

The people who are directly affected by this and who have made submissions to the Chief Minister, which she has bluntly ignored, have good reasons for putting forward the proposition that 30 years is a reasonable period, and I accept that, in the absence of any other contradictory advice. That is why I went for the 30 years. It seems to me to be reasonable, the business community finds it reasonable, and the Law Society finds it reasonable. The only one who does not is the Chief Minister - and, presumably, the Revenue Commissioner. One has to ask: If this is a tax avoidance thing, why are we using a broadsword instead of a scalpel to fix it? If we go slashing around with a broadsword and chop everybody off at the knees, we fix the problem. We might fix the tax avoidance problem, but we injure a great many other people in the process. So much for my first amendment.

The second one has to do with this question of the refund of moneys payable, and Ms Szuty is quite right. The Chief Minister says that this will make the legislation unworkable. It will not make the legislation unworkable. All it will require is that the commissioner actually look at propositions put to him for extending the period of the refund beyond 30 days. Under the Chief Minister's legislation he is bound to do that if it is in connection with the principal place of residence anyway. All I am saying is that, if the Revenue Commissioner can make a determination that a longer period than 30 days should apply in connection with a transaction relating to a principal place of residence, he is just as competent and capable of doing it in connection with a commercial lease or any other kind of lease. There is no justification for saying, as the Chief Minister appears to be saying, that everybody that engages in a commercial lease transfer is a crook and therefore we have to chop them off at the socks, take their money up front and provide no possibility of them having the money refunded after 30 days if something does not work out. It is a proper thing for the commissioner to make a decision, case by case, on that matter, and that is all that this amendment does.

It does not make the legislation unworkable at all. It just requires the Revenue Commissioner to exercise some judgment and some discretion instead of having behind him a law that blindly says, "After 30 days no refund". That is unacceptable; it is punitive. Again the Chief Minister has put forward no good reason, other than the general assertion of tax avoidance, for putting this forward in her legislation. It was draconian; it remains draconian. The people who are affected by it have put forward very effective arguments to say that this is unreasonable, and it is, and that is why I seek to amend the Act. Those are the two matters that I dealt with particularly.

I mentioned, Madam Speaker, that there have been some very reasonable arguments put forward on other issues which I hope the Chief Minister will take up, and one of them is the question of options. Even under the 30-year rule, if I take out a 20-year lease with a 10-year option the Chief Minister is going to take my money on the whole 30-year period; but in fact all I have is a 20-year lease and I have to renegotiate that at 20 years. If I am successful then, under the law, I ought to become liable to pay an additional fee; but not up front. I do not have a 30-year lease; I have only a 20-year lease. The Canberra Business Council has pointed out the inconsistency in that. It is like other legislation where the Government is anticipating that something might or might not happen and it is making a decision right up front. Here they are saying to the businessman,

"You have a 20-year lease with a 10-year option. You will pay the tax as though you had a 30-year lease". At the end of the 20 years the businessman may not proceed with the option, but under this law he has no right whatsoever to get any of his money back. That is not tax avoidance; it is a backhanded way for the Government to collect revenue they are not entitled to. I think the Chief Minister needs to take that issue under advisement as well.

All I can do, apart from dealing with the two particular proposals that I put forward today, is ask the Chief Minister to do some of that consultation that she always talks about, to have a look at the matters that are being put to her by the people who are directly affected by this legislation and see whether there is not some validity to it. If she does that honestly, I am sure that she will conclude that her legislation is punitive. It goes much beyond the question of dealing with tax avoidance. There are other issues that need to be rectified and I put her on notice that, if she does not move to rectify some of these other matters, then, in the new year, I will.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clauses 1 to 3, by leave, taken together, and agreed to.

Clause 4

MS FOLLETT (Chief Minister and Treasurer) (11.50): Madam Speaker, I move:

> Page 1, omit "'30 years'", substitute "'25 years'".

I listened very carefully to what Mr Kaine said about the leasing period that is covered by the action that is contemplated here and I did not hear him put forward any reason whatsoever for his intention to change the period from 25 years to 30 years. I have said before that the industry organisations that I have been in touch with have expressed the view that 25 years suits them. It also is the case, Madam Speaker, that that 25-year period is based on an analysis of leases which have been lodged for assessment, so we are talking about the real situation here. There are no leases between 25 and 30 years. I think that is fairly significant. Therefore the 25-year limit, which was my proposal, and which is now the subject of my amendment, will not affect any normal commercial leases. Mr Kaine is dealing with a hypothetical situation. If you were to look at what has actually occurred you would see that the 25-year period is satisfactory.

However, Madam Speaker, this is an anti-avoidance measure and, as many members have commented, including myself, a line has to be drawn somewhere, and there is always a certain arbitrary quality when you are drawing that kind of a line. No doubt leases will now occur just within the period that the Assembly sets, whatever that period might be. I have no doubt that that will be the case. Therefore, I would submit, Madam Speaker, that the period should be as short as we can possibly make it without affecting normal commercial leases. I would submit that the 25-year period is the one that is being worked upon at the moment. To make a change at this stage will cause confusion, and I am quite sure that we will see future leases being written up to that 30-year period.

Madam Speaker, in conclusion, I would ask members to support the amendment that I have proposed. I am pleased that no members have queried the anti-avoidance nature of the underlying principle of this legislation. It is a fact, Madam Speaker, that there have been a couple of incidents of leases being written for 90-odd years, and it seems to me that clearly that is an attempt to avoid stamp duty at conveyance rates, and clearly that is not in the broader interests of our entire community. Madam Speaker, I will, of course, accept whatever period the Assembly decides to put forward today, but I do believe that there is no substantial reason to vary from the 25 years. Certainly no reason at all has been put forward by Mr Kaine.

MR KAINE (11.53): The Chief Minister is quite wrong, of course. I do not support her amendment, any more than I supported the original provision of 15 years. My argument is based not on what I believe, or what I say, but on what has been put to the Chief Minister by two bodies of some consequence.

Mr Connolly: Business says, "Give us a tax break".

MR KAINE: Mr Connolly is not interested in listening to the business community. He is the great entrepreneur. He does not give a hoot what the business community says. It is obvious that this Government does not. They could not have set aside everything that has been put to them if they were truly consultative and if they were at all interested in hearing what the business community has to say.

Mr Connolly: I regard them as I regard any other trade union. I listen to what they have to say, but do not always accept it.

MR KAINE: In this case you did not even listen, obviously. You are not interested. Your view is that these people are only interested in tax avoidance. That is not the case. The Law Society put this to the Chief Minister before she brought her first Bill down. They said that the 15-year period is too short. The anchor tenants in many shopping centres sign up only if the lease is of a long duration. They do not sign up for 15-year or 20-year leases. They sign up for long durations. This is because the up-front costs of establishing major departmental stores are high, and they need a long lease period to amortise those costs. They are referring here to the 15-year period, but they say:

> If the 15 year period is adhered to, business will be driven out of the ACT.

If the Chief Minister is interested in jobs she should be listening to that. The Canberra Business Council makes the same point. They have written to her on this issue three times over the last two months, not just once. They say:

> We note the proposed increase from an announced 25 years to 30 years still has problems for businesses, particularly for businesses in retail areas, which have high set-up costs. These types of businesses require long terms to amortise costs. In some cases 50 years would not be inappropriate.

Ms Follett: Ha, ha!

MR KAINE: See, this is just a joke. The business community would not know. Rosemary Follett knows, but the business community would not know. She discovered that 15 years was not so good, so 25 years is a good old guess. In connection with this there is this letter of 1 December:

> In regard to the application of stamp duty over 25 years, -

this was after she had her second thoughts and came out with her 25-year period -

> the following points remain pertinent.
>
> The legislation equates a long lease with a transfer of an interest in land.

That is the first point. The letter continues:

> Of course it is not the same.

Nor is it. The letter goes on:

> The natural extension of the Government's argument is to impose duty at the transfer rate.

This is the point that the Chief Minister and Mr Connolly, the Attorney-General, ought to listen to:

> However in the case of a transfer it would be a transferee who would pay the duty, not a transferor. The higher duty in the case of a long term lease is being placed on the lessor.

So, in other words, they are not only changing the nature of the law but also imposing the obligation on a different person. This is what this law does. Are you listening, Mr Connolly? Do you think this is good law? The Canberra business community is giving you contrary advice.

Mr Connolly: Because the Canberra business community always wants a tax break. It is all they ever want.

MR KAINE: But, of course, you do not want to know. You say that this is tax avoidance. I would like to see some statistics on how much tax avoidance there has been. Can you produce any? I come back to the question: Why do you not take to your tax Act with a scalpel and have a little delicate operation rather than attack it with a broadsword? You are doing injury to a lot of people who do not deserve it, but you do not want to listen. They tell you this, they give you the good advice that they have at their fingertips, and you just thrust it aside.

I do not accept the Chief Minister's argument that 25 years is a good term, any more than I accepted her advice that 15 years was. I accept the advice of people who are in the business, who know the problems, who have advised the Chief Minister, and whose advice has been arbitrarily set aside without any justification whatsoever. I come back to the point. The Chief Minister has

given no argument for setting aside the advice that she has been given by two reputable organisations, the Law Society and the Canberra Business Council. Unless she can do that, unless she can refute it with substantial evidence, I am not prepared to accept her word. It is not good enough.

Mr Lamont: So you are prepared to revisit the 80 teachers, because the Business Council said that you were wrong.

MR KAINE: I am not talking about teachers. I am talking about your tax Act, Mr Lamont. Focus on the debate at hand.

MS SZUTY (11.59): I too have listened again to the words of the Chief Minister and Mr Kaine, who presented the amendments to this Act today. The Chief Minister said that Mr Kaine had really presented no reasons for the 30-year period that he was contemplating, rather than the 25 years. I think Mr Kaine presented very good reasons, as he outlined when he spoke after Ms Follett, based on the views of the Law Society and the Canberra Business Council. It is not a question that there is no evidence of support - - -

Mr Lamont: Hello; Ms Szuty is also going to cut by 80 teachers because the Business Council said that you should. Take their advice now.

MS SZUTY: I listened to the debate, Mr Lamont, and Ms Follett did say that she saw no reason for supporting the 30-year period. I am refuting that that is actually the case. She also said that the decision that she made was based on leases taken for a 25-year period. Presumably, at the moment, there are not leases taken for a longer period than that; so, presumably, Mr Kaine's amendment as it stands will not have any immediate effect whatsoever. It really does puzzle me that, when this Government gets into a situation where it believes that it has been wrong, it simply cannot accommodate the arguments that other members of this Assembly or the Opposition can present which will legitimately give it cause to change its mind. I really think that that is a very puzzling situation. I think Mr Kaine has presented his arguments in support of the 30-year period well to this Assembly this morning, and I believe that we should support his Bill and reject Ms Follett's amendment.

MR MOORE (12.01): I would like to start with the fact that the Chief Minister appropriately said that whatever the Assembly decides she will implement. That is a very pleasing thing and a great contrast with her attitude to referenda for the people of Canberra. Whenever the people of Canberra have presented what they wanted through a referendum it has been totally ignored by this Chief Minister and the Labor Party in a treacherous betrayal and a total cop-out.

MADAM SPEAKER: Could you talk about the Stamp Duties and Taxes (Amendment) Bill, please, Mr Moore?

MR MOORE: That is exactly what I am doing, Madam Speaker. It is appropriate, in dealing with the Stamp Duties and Taxes (Amendment) Bill and the words of the Chief Minister, saying that the Assembly's decision will be implemented, that we highlight the contrast there with her treacherous attitude to the referendum and the way she has misled this chamber.

Ms Follett: Madam Speaker, if Mr Moore wants to accuse me of misleading the chamber he must do so on a substantive motion or withdraw it.

MADAM SPEAKER: That is quite correct. Mr Moore, would you please withdraw?

MR MOORE: That is indeed correct, Madam Speaker, and that is why I withdraw it while I consider a substantive motion. The particular situation we are dealing with here is whether the period should be 25 years or 30 years. The Chief Minister was offered by Mr Kaine the opportunity to provide reasons and statistics in terms of tax avoidance as to why she has chosen 25 years. The one reason that carried some validity was that she looked at the range of leases available and there are none that fit into that 25 to 30 years category, and therefore there is not much difference.

She then argued that what will happen is that leases will be drawn in accordance with the longer period. The implication of that, as I understand it, is that in the future - in 30 years' time, basically - there will be less revenue available. I think that the argument has not been able to be sustained very well at all. I imagine that by the time that 30 years comes around there will be major changes anyway to taxation systems here. It really has very little relevance to this particular situation. I think the arguments put by Mr Kaine have been much more substantial, so I will be opposing the amendment.

Question put:

That the amendment (**Ms Follett's**) be agreed to.

The Assembly voted -

AYES, 8	*NOES, 9*
Mr Berry	Mrs Carnell
Mr Connolly	Mr Cornwell
Ms Ellis	Mr De Domenico
Ms Follett	Mr Humphries
Mrs Grassby	Mr Kaine
Mr Lamont	Mr Moore
Ms McRae	Mr Stevenson
Mr Wood	Ms Szuty
	Mr Westende

Question so resolved in the negative.

Clause agreed to.

Clause 5

MS FOLLETT (Chief Minister and Treasurer) (12.07): Madam Speaker, I rise to oppose Mr Kaine's clause 5 in which he seeks to amend section 28 by giving the commissioner very wide discretionary powers to decide whether bona fide reasons exist for the rescission of a contract of sale. If such bona fide reasons exist, in the commissioner's opinion, he may extend the period in which a refund of duty can be made beyond the 30 days specified in the legislation. I said in the previous debate that I consider a clause such as Mr Kaine has put before us to be unworkable.

Madam Speaker, the Act does not contain any definition of "bona fide reasons", and in fact the Bill does not propose one. However, decisions of the commissioner are appealable, and I would ask members to bear that in mind. The amendment that is proposed by clause 5, I consider, will result in continual very costly and certainly time consuming legal challenges, for the reason that there are no clear or objective grounds which would guide the commissioner in making his decision, and therefore every adverse decision would be subject to potential appeal.

We acknowledge, Madam Speaker, that the term "bona fide" is used in the current legislation in respect of contracts for the purchase of a person's principal place of residence. I discussed that issue earlier in the debate. Discretion was extended to the commissioner in respect of people purchasing their principal place of residence for a variety of reasons, not the least of which is that people purchasing a principal place of residence do not get a great deal of practice at this matter. They are, for the most part, inexperienced in matters of great moment such as buying homes. For that reason, Madam Speaker, we considered that it was equitable towards those people to recognise that they are usually inexperienced and to provide additional safeguards for them. I believe that this is the appropriate course of action to put in place where people are unable to complete a contract, and that could be for a variety of reasons. It could be, for instance, that they are unable to obtain finance, or it could be that the property in which they have an interest is not completed. Madam Speaker, I think that in terms of a principal place of residence it is only fair and just to make sure that people in that position have the maximum safeguards.

As I said earlier, the provision is, again, an anti-avoidance provision. We wish to avoid the kind of speculation that we know has occurred in other States. By bringing some discipline to bear on the arrangements for refund of duty on rescission of contracts I think we are at least discouraging that kind of speculation. Madam Speaker, I do think that Mr Kaine's clause 5 is not workable. It could result in endless legal action because it does open the way for every adverse decision by the commissioner to go down that track; there is a potential for appeal every time the commissioner draws the line and says, "This is speculative or this is the kind of rescission that we consider should not be subject to a refund of duty".

I would urge members to vote against Mr Kaine's clause 5 for those reasons and respect the anti-avoidance nature of the principal Act as it stands, and not force the Commissioner for Revenue into what I think will be a quite convoluted situation of having no clear guidelines on how he is to act and no clear guidelines as to in what cases he should refuse a refund and which could legitimately be considered to be speculative. I think that Mr Kaine's clause, whilst I realise the reasons why he has put it forward, is simply not workable and could in fact cause a lot more trouble than it is worth.

MR KAINE (12.12): I find the Chief Minister's defence of her position quite unconvincing. I hope for her own case that she is more successful in explaining why she is tampering with the Electoral Bill. She is going to have a hard time justifying that if she cannot do better than she is doing today. Her argument that this gives - - -

Mr Berry: She is not tampering with it. She is providing choice, the very choice that you Liberals always want.

MADAM SPEAKER: Order!

MR KAINE: Madam Speaker, the Chief Minister's argument that my amendment gives - - -

Mr Berry: Of course you are edgy about it because you know that what has been proposed is popular. You know that it is popular. That is your big worry.

Mr De Domenico: That is a good election line, Wayne.

MADAM SPEAKER: Order! Mr Kaine has the floor.

MR KAINE: Are you all having fun?

Mr Berry: They are all agitated.

MR KAINE: You are agitated. We are just having fun. Madam Speaker, to return to the Chief Minister's arguments, which are quite spurious, she talks about my amendment giving the Revenue Commissioner wide discretionary power. I am not giving any power that her present Bill does not give. It is obviously okay for her in her Bill to give the commissioner wide discretionary power, but when I merely perpetuate that she finds something offensive about it.

She also raises questions about the Revenue Commissioner's ability to decide what "bona fide" means. I would remind her that she put those words in the Bill, not me. If he is capable of defining the words "bona fide" when he is exercising a discretion conferred on him by the Chief Minister, why can he not do the same when he is exercising a discretion which I am giving him? How does this suddenly change his capacity and his competency to make a decision? She says, "What factors will he take into account?". My question is, "What factors does he take into account now when he exercises this discretion?". He will take into account the very same considerations. Presumably, they will be those factors which legitimately prevent the original transaction being brought to a conclusion. If they were legitimate reasons for not being able to bring the contract to conclusion, then the person should not pay the duty. He is quite capable of making that decision.

The other thing that the Chief Minister reminds us of is that if the commissioner makes a mistake his decision is appealable. I am not changing that either. If he does make a mistake in respect of a principal residence it is appealable. If he makes a mistake in a transaction that is not in connection with a principal residence it is appealable, and so it should be. Madam Speaker, none of the things that the Chief Minister raises have any substance to them. That is not unusual in debates of this kind, I might say. I have to conclude that her arguments are singularly unconvincing. None of them stand up to any sort of analysis. I conclude by saying that, if the Act was workable before I make this amendment to it, it is going to be just as workable after the amendment is made.

MS SZUTY (12.15): I will not take up too much time of the Assembly because the points I was going to make are exactly the same points as Mr Kaine has made. In fact, I was quite surprised that Ms Follett said that the words "bona fide" were not defined in the Act and therefore there could be a potential problem with them, because, as Mr Kaine said, they are included in the Government's own Bill which it presented to the Assembly earlier this year. If the Government has a problem with the words "bona fide" at the moment, it certainly did not have that problem some weeks ago.

MR MOORE (12.16): I quite clearly see why the Government has a problem with the term "bona fide", Madam Speaker. It has been illustrated by the way they are dealing with the Electoral Bill. It is quite clear that that is where the problem is. They do not understand the words "bona fide". If they now understand them we might, by tomorrow, see a variation so that the Bill that is presented will be acceptable.

Mr Connolly: I raise a point of order, Madam Speaker. We are discussing the stamp duties Bill. It is clear that Mr Moore's votes on all of this are agitated by his fantasies about other matters. He should attempt to address the issue before the house.

MADAM SPEAKER: Mr Connolly, I was listening with interest to see whether he would ever come back to the matter at hand.

MR MOORE: I am leading to the point about the term "bona fide", Madam Speaker. I point out to the Government that they still have time to get each one of those Bills and draw a line through the offensive parts before they table it tomorrow.

Madam Speaker, turning specifically to section 28 of the principal Act, there will be no problem with the term "bona fide". It is clear that the Commissioner for Revenue understands what that means. It is well defined in dictionaries and we do not need that definition in the Act. Courts are quite capable of dealing with that. It seems to me that this clause will provide an opportunity for people to have a fair hearing from the Commissioner for Revenue. If appeals are taken on and the commissioner's view is supported there is likely to be little cost to the Government because costs will be awarded. I do not think that it is a major problem. I think that the amendments that Mr Kaine has presented will allow business to work more successfully and will be an appropriate contribution to the business sector. At the same time they allow for what the original amendment Bill was intended to do, and appropriately so, and that is to overcome situations of tax avoidance. Madam Speaker, that Bill was not quite right. Mr Kaine has moved to fix up a few of the problems, and has done so in an effective way.

Clause agreed to.

Title agreed to.

Bill agreed to.

CHILDREN'S SERVICES (AMENDMENT) BILL 1993

Debate resumed from 8 December 1993, on motion by **Mr Cornwell**:

That this Bill be agreed to in principle.

MR MOORE (12.19): Madam Speaker, at about this time last week, or just a few minutes later, I was well into my speech on the Children's Services (Amendment) Bill. In that part of my speech I pointed out the advantages of what Mr Cornwell is trying to achieve and, on the other hand, the disadvantages. In many of the decisions we make in terms of Bills, in one way or another our conclusions are reached in terms of a cost-benefit analysis, not just in dollar terms but also in terms of social achievements and losses.

With this particular Bill I would like to identify my concerns. I think the biggest worry about forcing parents to pay for their children's vandalism is that it may exacerbate an already difficult situation between parents and youth. If you look at it in terms of a cost-benefit analysis, that, in fact, could wind up costing the community a great deal more than the cost of a particular piece of vandalism. It could well put parents in the position where they would be reduced in their ability to support their children in some other way. Creating that area of conflict, or exacerbating that area of conflict, is not the way to resolve problems associated with a difficult relationship. So often things like vandalism are a result of a difficult relationship that children have with their own parents. I accept that that is not the situation in all cases. Mr Cornwell emphasised that he is talking about the hardline repeat offenders.

Mr Cornwell: Wilful and habitual.

MR MOORE: Yes, I was looking for the terms in the Bill - wilful and habitual offenders. It is the wilful and habitual offenders who are most vulnerable and we really need to try to ensure that their relationship with their parents is one that is positive. The particular young person involved does not take on responsibility for his or her own actions and I think that is the most important thing. We as a community cannot really interfere with that relationship, although we can attempt to facilitate a better relationship where possible.

The most important thing is that we now say to young people, "This is your responsibility; you wear it". That is why I gave that example of the magistrate in Warwick, Queensland, and the solution over the trees last week. There is a problem in that the Bill assumes that the parents own their children, instead of youth being held to account by the community as a whole. There certainly is that ownership concept involved with this Bill. One of the difficulties with a Bill like this - it arises whenever we are dealing with children's law - is: At what time does a young person become an individual, responsible for himself or herself entirely, as opposed to an infant who is totally dependent on the parents?

There is no question in my mind about Mr Cornwell's motivation. That is why I have gone carefully through the pluses and minuses. I think there is a positive motivation behind what he is trying to achieve. Unfortunately, the difficulty is that we wind up in a cost-benefit analysis. It will cause more damage than benefit. That, by the way, is in terms of financial damage as well.

Even where parents are in major conflict with their children and they wind up paying, the extra costs to the community may well be more vandalism. These are the relationships that lead children to flout the law and wind up with us having to put a great deal more money into the criminal justice system as well as the social help system.

The legislation assumes that the sins of the children are the fault of the parents. There is a certain amount of that there and I think that it is a dangerous assumption. To a certain extent, that is an exaggeration of what Mr Cornwell's Bill seeks; but that is an underlying concept within that. The other point I would like to make is that young people invariably are much more influenced by their peers than they are by their parents. What we need to do is to continue to fund appropriate methods of influencing children who are involved in vandalism, rather than taking this particular approach.

I would like to finish by painting a scenario of parents with low income, with six children, and with one child perhaps not getting quite enough attention. One way that that attention is sought from the parents is through vandalism. The difficulty is that the parents wind up with a reduced income when they have to pay for that child's vandalism and invariably the other children miss out and the problems are exacerbated. So what do we get? We wind up with a very angry family with this recalcitrant, for want of a better choice of word to use, who actually is bailed out, not having to bear the responsibility of his or her actions. They have not been asked to wear the responsibility of their own action but in fact are left with a sense of guilt in terms of what they have done to the rest of the family. I use that scenario to illustrate why I am going to vote against this Bill, even though I would emphasis that I realise that Mr Cornwell has presented it with a good intention. On a cost-benefit analysis, really the costs far outweigh the benefits.

MS SZUTY (12.26): I, like my colleague Mr Moore, will not be supporting the legislation that Mr Cornwell has put before the Assembly. I take on board the very eloquent comments made in this debate by both Mr Connolly and Mr Moore. Another issue that I think probably has not been canvassed very extensively at this stage is that this is a Bill which basically penalises parents who can pay. It does not really say anything much about what happens in situations where parents cannot pay for the damage that their young people might do. Families who are already socially disadvantaged will be potentially at greater disadvantage and will not be offered any further support. Potentially, children from abusive or neglectful homes will be further put at risk as a result of Mr Cornwell's legislation.

Madam Speaker, I think it would be more appropriate to ensure that there are adequate intervention services available for dysfunctional families, measures such as appropriate and adequate school holiday and out of school hours entertainment for young people and children, to make sure that they are fully occupied and do not turn their attention to such activities as vandalism, including graffiti work which we have discussed at other times in this Assembly.

I believe that Mr Cornwell is trying to address an issue which is obviously of concern in our community, but they are very much punitive measures that he is proposing. I would prefer to see the Assembly and our community take a preventative approach to action of this kind. I think we will be doing much better by our community if we think of preventative measures that we can take to

minimise the vandalism that young people might do, rather than imposing punitive measures on young people's families. I also take on board Mr Moore's argument that what we are on about is making young people responsible for their actions and not necessarily their parents. Mr Moore outlined various case scenarios where parents really could not be held accountable for the actions of their young people. Madam Speaker, in conclusion, I will not be supporting Mr Cornwell's legislation.

MADAM SPEAKER: Mr Cornwell, do you wish to continue the debate?

Mr Cornwell: Put it to a vote.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 7	*NOES, 10*
Mrs Carnell	Mr Berry
Mr Cornwell	Mr Connolly
Mr De Domenico	Ms Ellis
Mr Humphries	Ms Follett
Mr Kaine	Mrs Grassby
Mr Stevenson	Mr Lamont
Mr Westende	Ms McRae
	Mr Moore
	Ms Szuty
	Mr Wood

Question so resolved in the negative.

Sitting suspended from 12.31 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Electoral System

MRS CARNELL: Madam Speaker, my question without notice is to the Chief Minister. Chief Minister, on 17 November 1992 you told the Assembly:

The commitment to the referendum result is one which I hold very dear.

You also went on to say that implementing the result is a matter that is somewhat above politics. Chief Minister, if implementing the result is above politics, will you put yourself above politics and assure all Canberrans that you will implement the Tasmanian model of the Hare-Clark system? If you will not, will you accept your own appalling lack of credibility and resign as Chief Minister?

MS FOLLETT: Madam Speaker, I will be introducing the electoral legislation into the Assembly tomorrow. When I do, members will be able to see that the referendum result as set out for us by the Canberra community has been implemented.

Mrs Carnell: With above-the-line voting.

MADAM SPEAKER: Order!

MS FOLLETT: I think it is somewhat premature and not a little counterproductive to enter into this debate on one particular element of that legislation in advance of having the legislation tomorrow.

Members will see, when the Bill is before them tomorrow, that it contains over 330 clauses, I believe. It is an extremely lengthy and detailed piece of legislation, and it is a matter on which members will want to inform themselves quite closely. I might also say again to members that I have made an offer to meet with them and to discuss the Bill, as we did on the first stage of the implementation of the electoral legislation. I believe that that process was productive in that it did lead to an outcome where we were able to set up the Electoral Commission and define its powers and so forth in an amicable way and in a way that allowed us to achieve the maximum of consensus and to clarify those issues on which we did not have consensus. Given that that process worked well with the shorter part of the electoral legislation, I would commend it to members for the much more detailed and lengthy part of the legislation, and I hope that they will take up that offer I have made to them.

I consider that I have honoured the referendum, and the legislation, when members see it, will show that. Tomorrow that legislation will be tabled, and I believe that members should consider their positions once they have the Bill.

MRS CARNELL: I ask a supplementary question, Madam Speaker. Chief Minister, can you tell me how the Tasmanian model of Hare-Clark can possibly work with above-the-line voting?

MS FOLLETT: If members have a look at the question on the referendum description sheet and compare that with what is in the Bill, they will see that the elements of that referendum are in the Bill.

Visiting Medical Officers Dispute

MS ELLIS: My question is directed to the Deputy Chief Minister in his capacity as Minister for Health. I ask: Does the Government have any plans to legislate out of existence the deed, signed in 1987, between the Australian Medical Association and the ACT Board of Health?

MR BERRY: I thank Ms Ellis for the question. The Government has decided to prepare legislation, where the need arises, to extinguish the deed. This recognises the concerns in the Assembly about the continuance of the industrial dispute and strike action by the VMOs over their contracts. Mr Moore has indicated his support for such a proposal, and we would need majority support to go down this path, if the decision is made to follow that course. Mrs Carnell has supported the Government's contract proposal in the past. We have offered a very fair and orderly approach to the issue and

a decisive end to the dispute by way of those contracts. If they were to sign the contracts, that would end the matter, one would hope, forever, because they include dispute settling processes, which would ensure that there would be no more of this fuss and bother again.

As far as the deed is concerned, this step can be described as a big hammer. It is an unusual step to take. It is not one that we take lightly; it is one that we have to consider very closely, if the decision has to be that we move down that path. We are very concerned that the AMA is using that very old deed that was signed with the Commonwealth as a bit of a sideshow to distract attention from the real issue. All of us agree, I think, that the real issue is getting people back to work. We have to ensure that the AMA and the VMOs are very clear on the Government's position in relation to this matter.

We are going to go down the path of a sensible contract arrangement which leads to a return to work and a resolution of the dispute. That is our aim, and we want it to be a fair and orderly approach to the matter. We have offered that. The chaos in the health system created by this strike action is extremely unhelpful. It is not only unhelpful for those poor patients who are upset by it but also unhelpful for the doctors themselves, because it is their profession that has been dragged down by this dispute. It took them a long time to recover, and I suggest that some never did, from the dispute in 1987. It is a weighty issue as far as the community is concerned; it is a weighty issue for the Government; but it is, most importantly, a weighty issue for the doctors.

I am very keen to get the matter resolved, but we have to make it clear that, from this Assembly's point of view, there are certain decisive actions that we are prepared to take. Although they are unprecedented in many ways, we are prepared to do this because of the very different industrial action we are suffering here in the ACT from what applies elsewhere, because of the different frameworks which cover settlement of those disputes. The approach that has been taken by the Government addresses the key issue, which is the need to get our skilful VMOs back into the hospital system, where we all know they want to work. The AMA has not been helpful in this matter. They have taken an extremely militant approach to the whole matter. They have been most uncaring of the ACT population.

Mr Kaine: So has the Minister.

MR BERRY: If it were as distressing for them as it is for the Government, Mr Kaine, they would not be getting much sleep, I can tell you. This is a very serious issue, but they have to accept that there is a way out of it. It is an honourable way out, it is a fair way out, it is an orderly way out, and it will give them a result they can live with.

DISTINGUISHED VISITORS

MADAM SPEAKER: Members, I would like to inform you of the presence in the gallery of a delegation from Tonga, led by the Speaker of the Legislative Assembly, the Hon. Fusitu, MP. On behalf of all members, I bid you a warm welcome.

QUESTIONS WITHOUT NOTICE

Electoral System

MR HUMPHRIES: My question is to the Chief Minister. I refer the Chief Minister to her comments this morning on the ABC's Matthew Abraham program. She said, "What we are doing is implementing everything that is on the referendum options description sheet under the heading, 'Model Proportional Representation Hare-Clark System'". I remind her that the sheet to which she referred on the Matthew Abraham program contains a sample ballot-paper for that model, and the copy of the ballot-paper which I have here in the chamber does not contain any above-the-line voting boxes. Does the Chief Minister wish to rephrase her comments on the Matthew Abraham program this morning? Does she concede that the only course for an honest government would be to deliver an electoral system that produces ballot-papers which, like the one in the options description sheet she referred to, contains no above-the-line boxes?

MS FOLLETT: No, I do not agree, and I believe that - - -

Mr Kaine: You never meant it right from the beginning.

Mr De Domenico: Credibility, zilch.

MS FOLLETT: I point out to members that the ballot-paper in the referendum options description sheet does not contain any candidates' names or any parties' names either. If Mr Humphries's question is whether I am going to reproduce the exact ballot-paper that is on that description sheet, the answer is no, and nor would he. As I have said, the electoral legislation I will introduce contains all of the elements that voters voted for in that referendum. It contains an additional option of above-the-line voting.

Mr Moore: That totally undermines everything else.

Mr Kaine: Why only one option? Why do we not have several?

Mr De Domenico: It is called the Brezhnev rotation.

Mr Cornwell: Why do you not just ban all other political parties, and be done with it?

MADAM SPEAKER: Order! I believe that the question came from the Opposition side. Perhaps if there was a little order you might hear the answer.

MS FOLLETT: Madam Speaker, as I said in answer to an earlier question, that is one issue amongst the 300-odd clauses of the electoral legislation on which this Assembly has the final say. I realise that members are enjoying themselves enormously in this debate, but I think they are overlooking the fact that the future of the Government's legislation is in the hands of this Assembly, and I have made it very clear that I am prepared to discuss that legislation.

Mrs Carnell: It is your legislation. It is a cop-out.

Mr Humphries: It is a blatant lie.

MADAM SPEAKER: Mr Humphries, I ask you to withdraw that.

Mr Humphries: Madam Speaker, I think the facts speak for themselves.

MADAM SPEAKER: I ask you to withdraw "a blatant lie".

Mr Humphries: In deference to you, Madam Speaker, I withdraw "a blatant lie".

MADAM SPEAKER: Thank you. Continue, Chief Minister.

MS FOLLETT: Madam Speaker, as I have said, the legislation I will bring forward tomorrow is long and complex. It contains any number of issues that are not even touched upon in the referendum options paper. Members of this house are going to have to vote on each of those 300-odd clauses. I realise that members are interested in taking political points today, but at the end of the day the future of the legislation is in their hands, and I hope that when they come to consider it they will do so in a rather more rational and calm and orderly fashion.

Electoral System

MR MOORE: My question is also to the Chief Minister. Chief Minister, on 21 May 1992, in answer to Ms Szuty's question in this house on Robson rotation and the implementation of the Hare-Clark electoral system for the ACT, you responded with the following words:

> I consider myself bound by the terms of the referendum, which I do not currently have with me; but I can assure Ms Szuty that the terms that are provided for a system of rotation will certainly be adhered to.

On 23 June 1992, in answer to Mrs Grassby's question, you responded:

> As I said before the referendum and as I have repeatedly said afterwards, I will implement the decision of the people of Canberra.

In tabling this electoral Bill tomorrow, will the Bill reflect the fact that you intentionally have misled the Assembly on this issue?

MS FOLLETT: No, of course not, Madam Speaker. As I have said, the elements of the referendum are in the Bill. It contains the Hare-Clark system, including the three electorates we have already established in the first part of the legislation on this matter. It is proportional representation. It includes the Robson rotation, which I am sure - - -

Mr Humphries: Come on; get honest, Rosemary.

Mr Berry: Hey, come on! You are going to have to withdraw that one too.

Mr Humphries: Get honest?

Mr Berry: The implication was that the Chief Minister was dishonest, and Mr Humphries should be ordered to withdraw that. He said, "Get honest".

Mr Moore: It is pretty close to the mark on this issue.

MADAM SPEAKER: Excuse me, Mr Moore. As usual, whether it is right or wrong, true or not true, is not the point. It is the imputation within either an interjection or a direct comment, as you know. I am afraid, Mr Humphries, that I am going to have to ask you to withdraw that.

Mr Humphries: I withdraw.

MADAM SPEAKER: Thank you, Mr Humphries.

MS FOLLETT: Madam Speaker, Ms Szuty's question to me about Robson rotation has been answered. The Robson rotation system is contained in the legislation. That system, as is recorded in the description sheet, is one where the names of candidates within party groups will not be printed in the same position within the group on every ballot-paper. That will be incorporated into the legislation. It is incorporated into the legislation.

MR MOORE: I ask a supplementary question, Madam Speaker. Mr Humphries drew attention to a visual representation of how the ballot-paper would look and how that would be undermined by above-the-line voting. Further, in the sheet that was handed out in terms of the arguments on page 8, it was also stated that the ballot-paper is simpler than the Senate's, without above-the-line and below-the-line options. Surely the Chief Minister recognises that to answer Ms Szuty's question in a clear and honest way and then to have above-the-line voting would mean that, at either that time or when introducing the legislation, the Assembly has been misled.

MS FOLLETT: No, Madam Speaker, I do not agree. As I have said on numerous occasions, the referendum was based upon the description sheet. If you look at the Commonwealth Act that sets out the referendum, you will see that it is based on those two models that are put forward on two page 2s of the referendum description sheet. That describes the single-member electorate system and it describes the Hare-Clark system.

Mr Moore: No; page 1 and page 2. It says "Description sheet continued". So it is page 1, which has a visual representation.

MS FOLLETT: The section Mr Moore has pointed to is not part of that description sheet. It is part of the "case for", if you read the heading, Mr Moore. I think it is drawing a very long bow indeed to say that that part is in some way binding. It is not. It is quite clearly a description. In fact, it is a description that, as I recall, was prepared by the Hare-Clark committee.

Mr Kaine: Are you saying that people did not vote for what was described there; they were voting for something else?

MS FOLLETT: What people voted on was not that. It was the description sheet that was incorporated in the Commonwealth's legislation, which members will see has been incorporated also into the electoral legislation they will see tomorrow.

Mr Moore: A slippery answer.

MS FOLLETT: But true.

Planning Standards

MRS GRASSBY: My question is to the Minister for the Environment, Land and Planning. Is the Minister aware of the statements by the new president of the Royal Australian Planning Institute, ACT Division, Ms Barbara Norman, that the principles underpinning Canberra's planning are being eroded? Are our standards slipping?

MR WOOD: Madam Speaker, our standards are not slipping. I congratulate Ms Norman on her appointment. She will provide, I know, outstanding leadership to that important body. However, I think some of the comments that are reported in the newspaper, and perhaps they were only part of her comments, reflect a touch of nostalgia for the good old days. In terms of the unlimited funding the NCDC had, they might have been good old days; in terms of planning they were good days, let me confirm. I think what we are doing indicates quite clearly that, in terms of planning, the days are getting better. I do not think there is any doubt about that.

In her article she really offered only one point in support of the claim that things are not as good. She was disgusted or amazed by the fact that there were no footpaths in Gungahlin. There are footpaths in Gungahlin, so I do not know how that statement could be made. In new suburbs, of course, the footpaths tend to come at the end of the process, so some parts of Gungahlin have yet to get footpaths. I point out that I live in a house that was built in 1959, I think, in the good old days of the NCDC. I do not have a footpath in front of me or over the road or, since I am on a corner, next to me. I think many of us live in streets without footpaths. So I think a poor argument was given to suggest that planning matters are not as good as they used to be.

Let me point to some areas where we are getting better. For example, we live in a system of freeways. Perhaps that was reasonable planning in the sixties and seventies, when the plan was drawn up, so I will not criticise too much our very substantial dependence on the car. The planners in those days did not have the good sense we have today in terms of planning for solar efficiency. I will give Ms Norman a briefing on our new subdivisions, which are of a sort you did not see in the days of the NCDC. Now the street alignments take as much account as is possible of solar efficiency; the streets are aligned to gain maximum solar benefits for the allotments, and many of the allotments are now shaped to facilitate that. That is a distinct improvement on what used to happen.

A further distinct improvement is the five-star energy rating that will soon become obligatory. The NCDC did not do that. I can say that we have taken the good foundations of the past and are building and improving on those, and I would be delighted to give a briefing to Ms Norman about that. Finally, as members of this Assembly know, in the good old days of the NCDC there was no such thing as consultation; there was a bit of an advisory committee. Members here know the processes that have been built into the system and the very considerable degree of consultation that now takes place.

There was one other matter she commented on. She regretted the fact that a professional planner was not on the Land and Planning Appeals Board. I point out that the appeals board is to interpret the planning laws. It is not to make laws; it is not to make the plans. We do not want that. It is to interpret them, to decide whether something has been done in accordance with the laws. On that matter, the article points out the difficulties of having planners on an appeals board. It refers to "the RAPI, whose membership is overwhelmingly composed of public sector planners in the ACT Planning Authority, NCPA, or the Federal Office of Local Government". It is simply not possible to have those people serving on an appeals board. There are other planners in the ACT; but, for the most part, as far as I have tracked them down, they are now providing advice to developers. So in that area too it is not desirable, or even possible, to have planners on an appeals board.

I look forward to working with the Royal Australian Planning Institute and its new chair. I find them very competent people. I think planners in the ACT have a world reputation, well deserved, and I look forward to working further with them on the very good and improving planning system we have in the ACT.

Electoral System

MR DE DOMENICO: Madam Speaker, my question without notice is to the Chief Minister. I refer to the Chief Minister's statement that her electoral legislation will contain above-the-line voting. Chief Minister, if I vote above the line, will my vote be recorded for the candidates in the order set out in the ballot-paper in front of me in all cases?

MS FOLLETT: Madam Speaker, I really do think this question is out of order in that it does anticipate the debate. I have made it very clear that the Bill I will introduce tomorrow contains as an option an above-the-line vote, and the common understanding of an above-the-line vote is that it is a party ticket vote. Because of the Robson rotation method, which does vary the order of candidates, it is undoubtedly the case that from time to time those two will be the same and from time to time they will not be. We have put forward this option in the knowledge that it will be debated in the Assembly and also in the knowledge that it is an option that has been supported by the Liberal Party in the past. In fact, it was put forward by the Liberal Party in 1983.

Mr De Domenico: Which century?

Mr Moore: With Hare-Clark and Robson rotation?

MS FOLLETT: In 1983.

Mr Kaine: In 1983? This century or last century?

MS FOLLETT: No, above-the-line voting, it was indeed. We put it forward also in the knowledge that it is a system of voting which is extensively used by voters in Australia, where it is offered in, for instance, Senate ballots. That system of above-the-line voting has been increasing in popularity, and at the Senate election this year in Canberra it was employed by over 84 per cent of voters. Clearly, the voters themselves find that system attractive.

As I say, I have put it forward in the interests of offering some choice. I accept that the Assembly will be voting on that, amongst any number of other issues to do with the electoral legislation. But to attempt to make out that I have not implemented the referendum decision is quite wrong. I have, and members who read through the legislation and the referendum options description sheet will see that that is the case. The referendum, as I have said before, is not exhaustive. It does not deal with how-to-vote cards, which we have heard Mr Moore deal with on any number of occasions. It does not deal with the filling of casual vacancies, I do not believe. There is a large range of issues which could be said to be additional to the referendum, and many of them are contained in our legislation.

I can let you into a secret and say that the banning of how-to-vote cards is not included in our legislation. I do not know whether Mr Moore wants to take issue with that. I think members are going to have to sit down with the legislation, deal with it in its entirety, and debate the issues - I hope that we will be able to discuss them between parties - but at the end of the day vote on them in this Assembly in what they see as the best interests of the community.

MR DE DOMENICO: I ask a supplementary question, Madam Speaker. Chief Minister, in all the other above-the-line systems you have described in your answer, the votes are allocated and recorded in the order in which the names appear on the ballot-paper. Will your system be similar or identical to that?

MS FOLLETT: If Mr De Domenico is asking me whether I will ditch the Robson rotation, no, I have not, and I will not.

West Belconnen Trunk Sewer

MS SZUTY: My question without notice today is to the Minister for Urban Services, Mr Connolly, and I did give Mr Connolly notice today that I would be asking this question. ACT Electricity and Water have recently advertised, calling for written submissions in response to a preliminary assessment report on environmental factors in relation to the proposed construction of West Belconnen trunk sewer, stage 1. On further inquiry it has been ascertained that "a more detailed cultural resource survey and ecological survey" mentioned in the preliminary assessment are yet to be conducted. Tenders for the construction of West Belconnen trunk sewer, stage 1, are to be called in January 1994. Is the Minister confident that full and proper public consultation can occur prior to the construction of the West Belconnen trunk sewer, stage 1?

MR CONNOLLY: I thank Ms Szuty for raising this with my office. I have been able to make inquiries to give a complete answer. I am confident that the proper consultation process has occurred. The final environmental impact statement for West Belconnen of August 1992, which was prepared by Dames and Moore Pty Ltd, investigated both cultural and ecological matters for the whole of the West Belconnen area. This included the project area for the proposed stage 1 West Belconnen trunk sewer. This report indicated minimal impact on the cultural and ecological resources of the project area. A further preliminary cultural survey of the area by a group called South East Archaeology in December 1992 also found no Aboriginal historical sites in the vicinity of the project area.

The preparation of a more detailed survey was specifically requested by the Planning Authority approving officer as a condition of approval to advertise the preliminary assessment for public comment. In the unlikely event that any cultural or ecological sites of value are discovered during this additional survey, the sewer will be rerouted to avoid areas of significance. So there have been two fairly hard looks, and we are now just taking the opportunity for a final look.

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

PAPERS

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

ACTTAB Limited - Report and financial statements, including the Auditor-General's report, for 1992-93.

Ombudsman Act - Australian Capital Territory Ombudsman - report for 1992-93.

Territory Owned Corporations Act - Totalcare Industries Limited - report and financial statements, including the Auditor-General's report, for 1992-93.

Urban Services - Report and financial statements, including the Auditor-General's report, volume 2, together with reports and financial statements, including the Auditor-General's reports, from:

Fleet Trust.

Forestry Trust.

Transport Trust.

Energy Research and Development Trust.

Trustees of the Canberra Public Cemeteries.

and reports from:

Fire Brigade

Chief Inspector Dangerous Goods.

ENVIRONMENT STRATEGY - DRAFT FOR PUBLIC COMMENT
Paper

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning) (3.02): Madam Speaker, for the information of members, I present a draft for public comment of the ACT environment strategy, and I move:

That the Assembly takes note of the paper.

In October this year I presented to the Assembly an outline of the Government's progress towards achieving an ecologically sustainable future for the ACT. Later in that month, I released a discussion paper on the development of integrated environment protection legislation. Today, I am delighted to release for public comment a draft environment strategy for the ACT, which will set the framework for the management of our environment well into the next century. I intend making the draft strategy widely available from today, and I look forward to receiving comments on it from all sectors of the community until the end of February next year.

The draft strategy has been prepared in the wake of a number of international, national and local developments. You would all be aware that over the past two years the environment has been the focal point for many international and national projects. Since the United Nations Conference on Environment and Development over a year ago, governments throughout the world have been putting into effect the commitments they made during that conference. I am referring particularly to the United Nations Framework Convention on Environment Change and the Convention on Biological Diversity. Through actively implementing environmental initiatives associated with climate change and biodiversity at the local level, the ACT is playing an important part in helping Australia meet its international commitments in these areas.

The ACT has also been a keen participant in the development and implementation of the national strategy for ecologically sustainable development, the national greenhouse response strategy, and the intergovernmental agreement on the environment, all of which were finalised last year. The international, national and local environmental developments which have occurred over the last 18 months provide a sound background against which we can determine the ACT's environmental goals for the future and assess the policies and actions needed to meet those goals. Furthermore, the draft strategy has been developed as a means to achieve the ecologically sustainable future described in the Government's report "Choosing our Future: Canberra in the year 2020". It complements the environmental goals and targets already identified in that report and provides a more detailed analysis of how these can be achieved.

The underlying goal of this draft strategy is to enhance the components of the environment and maintain their functional integrity. This will involve the maintenance of stable soils, biological diversity and high-quality air and water. In areas where parts of the environment have been degraded, it will be necessary to continue to identify and implement appropriate restoration programs. Another goal of this draft strategy is to improve the amenity of the ACT and provide a healthy environment for present and future residents.

Fundamental to the draft strategy is the implementation of ESD principles, namely, that decision making processes should effectively integrate both long- and short-term economic, environmental, social and equity considerations; that the lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation in cases where there are threats of serious or irreversible environmental damage; that the global dimension of environmental impacts of initiatives and policies should be realised and considered; that consideration should be given to economic growth and diversification which can enhance the capacity for environmental protection; that there is a need to maintain and enhance international competitiveness in an environmentally sound manner; that cost-effective and flexible policy instruments need to be adopted; and, finally, that there should be community involvement in decisions and actions which affect the community.

This draft environment strategy aims to provide a comprehensive framework for linking together many of the local initiatives which are in place and also to provide for the development, review and revision of a range of strategies and legislation needed to improve environmental management. The major sustainability issues for the ACT are examined in the draft strategy, including the significance of per capita resource use and the importance of regional cooperation on environmental issues. A range of key issues are identified and discussed. These include land use decision making, biological diversity, water management, energy, transport, waste management, cleaner production processes, economic development and cross-border issues. The current situation in relation to each issue is described, long-term objectives are outlined, and ways of meeting these objectives are also suggested. I am particularly interested in the community's views on the long-term objectives that are identified to address each sustainability issue in the paper and the suggested processes to achieve these objectives.

In releasing this draft strategy, the Government has been quite explicit about specific commitments it is prepared to make. Among these commitments are, in the short term, the development of a comprehensive environment education strategy, a 50-year water supply strategy, together with its implementation, and a solid waste management strategy. Further to this, commitment has also been made to a long-term environment sustainability strategy. This incorporates a comprehensive strategy for coordinating planning and environmental management activities in the region and a population strategy which includes a resource use strategy. The resource use strategy is designed to achieve a high level of amenity to residents and population levels the environment can sustain.

Each strategy will reflect the Government's commitment to ESD and its underlying philosophy, which includes integration of long- and short-term economic, environmental, social and equity issues. Each strategy will also reflect the values of all components of the environment, not only those that can be measured readily or given a dollar value. The state of the environment indicators will be identified, best environmental practice will be promoted, and action plans and mechanisms to monitor, review and evaluate progress of implementation will be incorporated into each strategy.

This is a comprehensive strategy which is designed to play a significant role in achieving an ecologically sustainable future for the ACT. I commend the draft strategy to the Assembly and look forward to receiving the views of Assembly members and the wider community on the material it contains.

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

ELECTORAL SYSTEM

MS FOLLETT: Madam Speaker, I wish to correct a statement that I inadvertently made in question time. In the course of a list of issues that I was going through that are not included in the referendum options sheet I inadvertently referred to the issue of casual vacancies. I was in error. That issue quite clearly is described in the referendum options sheet and is dealt with in our legislation.

BANKING SECTOR
Discussion of Matter of Public Importance

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

> The increasing concern by Canberrans about improper financial activities within the banking sector and particularly the State Bank of New South Wales.

MR STEVENSON (3.12): We have before the house today a matter that can have serious consequences for many citizens in the ACT. The Government Insurance Office's intention to lodge a notice of interest in the purchase of the State Bank of New South Wales, reported in the *Sydney Morning Herald* yesterday, 14 December, in itself has no major impact until a series of events are disclosed. These events raise questions about the true financial position of the State Bank.

The Victims of the State Bank of New South Wales - a registered association founded in the ACT in 1993, but now with members in New South Wales, Victoria and Queensland - claim that the State Bank has uncollectable loans of up to $3 billion above that which is currently admitted by the bank. This $3 billion figure was arrived at by adding up the loan repayments claimed by the bank from bank clients who have said that they either do not owe the money or cannot repay the moneys claimed, but in either case say that the loans are uncollectable. If the State Bank is taken over by the Government Insurance Office its shareholders, but more importantly its policyholders in our region, could be seriously affected if the State Bank's financial position has not been correctly reported.

In speaking with members of the Victims of the State Bank of New South Wales I was alarmed at the number of claims they have made that bank officers have committed fraud in their dealings with bank clients. These serious allegations, particularly in connection with a government owned bank, should have been

fully investigated by the authorities. However, I am informed that none have been. I have in my possession copies of documents that contain, as an example, evidence of at least one serious offence, if not fraud, committed by a State Bank officer in New South Wales. I will be seeking leave from members to table these relevant documents.

Company search documents show that a $2 company, Fouron Pty Ltd, Australian company No. 003 066 840, is wholly owned by the State Bank of New South Wales. Public company records show that Mr Allan Hugh Whitehead, Mr Richard William Turner and Mr Peter Gerard Friend are directors of Fouron Pty Ltd. The 1992 State Bank annual return and other information show that these three Fouron directors are also executives of the State Bank of New South Wales. The 1992 annual return of Fouron Pty Ltd shows that Fouron borrowed $216,963,011 and loaned out that exact same amount. Apparently the $216m all came from Fouron's ultimate parent entity, as the State Bank of New South Wales is referred to in the Fouron annual return. The return also shows that Fouron collected loans of $348,077 and repaid that exact same amount in borrowings. This one-quarter of one per cent hardly seems a good return on loans of $216m, either for Fouron Pty Ltd or for its parent, the State Bank of New South Wales.

The annual return shows a retained profit for a 15-month period to 1992 as a minute $344. The directors of this shelf company received, or were due, directors' fees of $385,611 from Fouron and related companies. Why, then, did the New South Wales State Bank, owned and held in trust for the people of New South Wales by the Premier and Treasurer, set up a $2 shelf company to which bank officers loaned $216m? As the State Bank is in the business of lending money, why was a separate company set up to conduct material activities outside the bank?

The answer to these questions is given in a State Bank document dated 18 January 1991 which states in part:

> Funds were lent to this company for on-lending to our customer as the security property in Goulburn Street operates an erotic theatre, the Eros Theatre, and a peep show (no concession State Bank staff).
>
> It was considered at time of original application that State Bank would not want to be associated with financing a building housing these businesses, as Nick Greiner had just led the Liberal Party to power and was talking openly and critically of closing such places.

The customer referred to as the purchaser of the property containing these businesses is Halbear Pty Ltd, to which the State Bank loaned $1.7m through Fouron. I am informed by reliable sources that one of the activities of Halbear Pty Ltd, listed on official company records as an investment company, included the operation of the brothel at those same premises previously occupied by the infamous Goulburn Club, located at 55-57 Goulburn Street, Sydney, this property being held as security by Fouron over Halbear. This means that employees of the State Bank of New South Wales had set up an elaborate front business to conduct dubious activities that they wished to hide from the owner of the bank, the Premier, Nick Greiner, and through him the people of New South Wales and the ACT.

This accounts for a loan of $1.7m, but the question remains: Who was loaned the other $214m; for what purpose; and, most importantly, were these loans secured? Company documents show that Halbear Pty Ltd, Australian company No. 003 443 338, was established in January 1988 and dissolved in September 1993. During this five-year period up to January this year, Halbear Pty Ltd failed to submit a single annual return to the Australian Securities Commission. This raises the serious question: Was any action taken during the five-year period to recover the $1.7m debt from a company that was repeatedly breaking the law by not submitting annual returns? Such action would simply be standard banking practice to protect their loan.

After ASC deregistration proceedings during 1993, Halbear Pty Ltd submitted a 1989 annual return on 3 September this year, but it was dissolved two weeks later. Halbear company records list its two shareholders as Salvatore - - -

Mr Connolly: Madam Speaker, I rise to a point of order. This is a matter of public importance in which very serious allegations are being made as to the solvency and alleged criminal conduct of a major financial institution. As far as I can follow from the debate, Mr Stevenson is making allegations about criminal conduct that occurs in New South Wales in relation to a New South Wales institution. I would question whether that falls within the guidelines for a matter of public importance. Certainly, making allegations that a bank is insolvent is one of the most irresponsible things that a person could do under parliamentary privilege; but the point of order I take is to question whether it is appropriate in the form of a matter of public importance in relation to this jurisdiction to make allegations about criminal conduct or alleged criminal conduct in another.

MADAM SPEAKER: Thank you, Mr Connolly. Would you wait a moment, please, Mr Stevenson? The concern at hand, Mr Stevenson, is that I allowed the MPI in the first place because I assumed that you were going to talk about "the increasing concern by Canberrans". An MPI has to be about matters that relate to the jurisdiction of the ACT and to the responsibilities of people of the ACT. Let me explain. In the course of your speech you have strayed right away from issues of concern to Canberrans. I have to be convinced that when you continue you are really talking about issues of concern to Canberrans that relate to the Canberra jurisdiction. Otherwise I will have to rule your remarks irrelevant, and the nature of your MPI then out of order.

Mr De Domenico: On that point of order, Madam Speaker: I ask you to take into account also the fact that the State Bank, the bank that Mr Stevenson was referring to, is the bank of this Government, and it also operates in the ACT. I think a lot of people in the ACT would be very concerned.

MADAM SPEAKER: I think that was, in part, what I was inferring in my ruling, Mr De Domenico - that that link has to be shown. What Mr Stevenson is alleging, because an MPI is a matter of public importance in relation to this jurisdiction, has to be absolutely clearly linked to responsibilities of people in the ACT. Is that reasonable, Mr Stevenson? Please continue.

MR STEVENSON: Thank you, Madam Speaker. Many shareholders and policyholders of the GIO and the State Bank live in our area. Were I not to bring this up, and were matters not to be investigated correctly that do have an effect on people in the ACT, and, indeed, our own Government, as Mr De Domenico correctly mentioned, I would be lax indeed. I shall continue.

Halbear company records list its two shareholders as Salvatore (Sam) Francipane and Raymond De Rubeis. Documents connect the activities of Fouron Pty Ltd, a director of Halbear Pty Ltd, namely Sam Francipane, and the State Bank of New South Wales. These documents were prepared at the instructions of a company titled G.A. Listing and Maintenance Pty Ltd, Australian company No. 001 238 651, by Dr Judie Walton of the Document Examination Co., and were presented on 14 June this year. Dr Walton is accepted in court proceedings as an expert in relation to the authenticity of documents, and in particular whether documents have been forged or altered. After the examination of documents, Dr Walton concluded, without qualification, that on key G.A. Listing and Maintenance Pty Ltd documents purporting to contain the signatures of two directors of that company, namely, Sam Francipane and George Athanasakos, Athanasakos's signature was a forgery, while the signature of Francipane was genuine.

The relevant point here is that the Francipane signature purporting to witness the signature of Athanasakos was a forgery. One document registered on 16 November 1990 and signed by a State Bank of New South Wales officer bears the forged signature of George Athanasakos. This means that - - -

MADAM SPEAKER: Mr Stevenson, I know that this is highly unusual, but I need to interrupt you. I ask you a direct question. Are any of the issues you are raising directly before a court at the moment?

MR STEVENSON: No, not that I am aware of.

MADAM SPEAKER: Thank you, Mr Stevenson. I also remind you, because it was the other element of the point of order that Mr Connolly raised and I did not proceed with that part, that when we were talking about citizen's right of reply we talked about the need to be mindful of your responsibilities when exercising your freedom of speech.

MR STEVENSON: Yes; thank you, Madam Speaker.

MADAM SPEAKER: Please continue, Mr Stevenson.

MR STEVENSON: This means that the documents either were signed not in the presence of that officer, which in itself is an offence, or were signed in front of the bank officer, which suggests a conspiracy. These documents prepared by the Document Examination Co. thereby show that forgery, fraud and a criminal conspiracy have occurred. Individually the documents I have drawn from pose questions that must be answered, but when linked together they paint a picture of graft and corruption that certainly cannot and should not be tolerated.

At this point another dilemma is raised. These documents have been presented to the Australian Securities Commission, but they indicate that they are unable to act on them because of their charter. The National Crime Authority has said that they cannot act upon this information unless directed to do so. However, I have a document, an internal State Bank office memorandum, which shows that the NCA was to investigate Fouron Pty Ltd accounts. The Australian Federal Police have difficulty in acting on this matter because of jurisdictional restrictions.

It has been advised that this matter falls under the jurisdiction of the New South Wales Fraud Squad. In February 1993 these matters were drawn to the attention of a member of the Fraud Squad, but no effective action has been taken. The Government of New South Wales was made aware of this situation, but has made little or no effort to right these wrongs.

I also have a copy of an answer to questions raised in the New South Wales Legislative Council by the Hon. Michael Egan, MLC, as to the activities of Fouron Pty Ltd and other shadowy instruments controlled by the State Bank of New South Wales. In answering these questions raised in the New South Wales Parliament, the New South Wales Auditor-General, Mr A.C. Harris, paints a rosy picture that suggests that all is well and that there is no need for concern. However, in doing so he skips lightly over the fact that just two of the State Bank entities, one being Fouron Pty Ltd, controlled between them over half a billion dollars.

On 31 March this year, I raised in this house another matter of public importance about unethical banking practices and I covered a number of unethical activities by banks and some banking officers. I referred in particular to the State Bank of New South Wales. It would seem, however, that the State Bank has in no way moved effectively to protect its clients from fraud and other unethical activities. I am also aware of other serious allegations in these areas. These questions must be answered before we allow the State Bank liabilities to be off-loaded onto the policyholders and shareholders of the Government Insurance Office. The shop staff of the banks, who are simply doing their jobs, are certainly not responsible for any of this, although it must have an adverse effect on them.

In conclusion, I ask the ACT Government to implore the New South Wales Government to immediately conduct a full and independent inquiry into the activities of the State Bank of New South Wales and its management. I seek leave to table the following documents: The annual return of the State Bank for 1992; Fouron's annual returns of 1991 and 1992; the Halbear annual return lodged this year; the Document Examination Co. evidence; the interoffice memo which shows the National Crime Authority interest in Fouron; the document from the State Bank referring to Mr Greiner; the Auditor-General's office document about Michael Egan's concerns; and, lastly, the Halbear company document and the Fouron company document.

Leave granted.

MS FOLLETT (Chief Minister and Treasurer) (3.28): Madam Speaker, a great deal of what Mr Stevenson has raised will need to be studied in more detail. I would like to address some remarks to the broader question of the matter of regulation of banks. I think it is the broader question which goes to the heart of a great deal of what Mr Stevenson has said. Mr Deputy Speaker, Mr Stevenson has raised similar issues to this on a number of occasions. The issues that he has raised today are most complex and I think we will need to look at them very carefully. One question that arises in my mind, Mr Deputy Speaker, is why these issues have not been more comprehensibly referred to the police. I wonder why it has come to be the case that Mr Stevenson is raising them in parliament and whether they have been fully investigated by the relevant law enforcement authorities.

I think I have said to members on other such occasions that it is the Commonwealth which has the major role in relation to the regulation of banking practices. The Reserve Bank of Australia is responsible for regulating banks under the Banking Act of 1959. The overall objective of that regulation of banks is depositor protection, and the Reserve Bank sets prudential standards, that is, levels of capital and liquidity, and it monitors compliance with those standards. So there is a regulatory regime in place. The Reserve Bank also sets the official cash rate and the interest rate for financing transactions between the banks and the Reserve Bank. Although these rates affect the mortgage and business lending rates offered by the banks, the RBA does not control the rates set by banks. They are set by competitive pressure between the banks in the marketplace in accordance with the lending policy and the business profile of each bank.

Mr Deputy Speaker, the State banks could remain outside RBA supervision, but all States have elected to come under the RBA. In some cases this is voluntary, but they are all under that regulatory regime. Since its corporatisation the State Bank of New South Wales has been directly under the Reserve Bank of Australia. Credit provision by banks to consumers, especially the disclosure and enforcement of loan conditions, is regulated under the Credit Act of each State or Territory. Consumer complaints can be lodged with Consumer Affairs, the banking cmbudsman or the Reserve Bank of Australia.

The Commonwealth, supported by Territory and State governments, has been taking a very close interest in the conduct of the financial sector and the Commonwealth has formed a task force comprising the Trade Practices Commission, the Federal Bureau of Consumer Affairs and the Federal Treasury to develop an industry code of practice. The Australian Bankers Association, however, has proceeded to introduce its own code of practice. The Attorney-General, my colleague Mr Connolly, has expressed concerns in recent times over inadequacies in the bankers code and he is seeking improvement, particularly in the areas of privacy and confidentiality. Mr Connolly is pursuing this matter directly with the Australian Bankers Association and I think it is fair to say that he is taking the national lead on this issue. He will speak on this matter, I believe.

One further matter I would like to touch on, Mr Deputy Speaker, is the selection of the State Bank as the ACT's banker. This came about as a result of the four-year banking contract with Westpac expiring on 30 June of this year. Tenders were sought from financial institutions with a presence in the ACT. They were issued on 8 March 1993 to 11 organisations and they were to respond by 1 April. Three organisations declined to tender. Tenders which were received were evaluated by a team of Treasury officers assisted by the consulting firm of Ernst and Young. The evaluation criteria that we used in this tender evaluation included the strength and the quality of services tendered, the presence of service outlets within the ACT, and the net cost to the Government.

As a result of this process the State Bank of New South Wales was appointed on 26 May as the Government's banker, and operations commenced on 1 July. The hand-over between Westpac and the State Bank was very well managed and I think we owe a debt of gratitude to both of them for handling what could have been a very difficult situation. Although the New South Wales Government is proceeding with the sale of the bank, the Territory has received assurance that the contracted services will be maintained. The sale of it should not make any difference to the service that we receive in regard to Territory banking from the State Bank.

Mr Deputy Speaker, I agree with the general thrust of some of Mr Stevenson's remarks - more on previous occasions than on this one - that the banks' and other financial institutions' relationships with their clients at times have been less than ideal. That matter has been canvassed publicly and quite widely. Even though the major regulatory role is with the Commonwealth, the ACT Government has taken steps, where it has authority to do so, through the adoption of, for instance, the uniform credit Act and through our current initiative in seeking improvement to the banking code of practice.

To conclude, Mr Deputy Speaker, I will look very closely at the issues that Mr Stevenson has raised. I think it is incumbent upon Mr Stevenson, and probably on all of us, to make sure that those matters are drawn to the attention of law enforcement agencies, if that appears to be the appropriate course of action. In setting out some of the regulatory framework for banks, and particularly the situation in the ACT, Mr Deputy Speaker, I have made some general comments on this matter of public importance. I have yet to deal with the detail of what Mr Stevenson has raised because it was a little difficult to predict from the title of the MPI what would be the substance. Mr Stevenson, as he often does, has caught us on the hop. I will have a close look at what he has raised, as I am sure all other members will, and if further action should be necessary that action will be put in train.

MR WESTENDE (3.35): It is not just Canberrans who are concerned about the banking industry; it is Australians and the international community. Like the Chief Minister, I did not quite know what tack to take in my speech about this matter. The behaviour of the banks and customer dealings have brought about a code of practice for banks. The draft code was circulated on 3 November and I believe that it is yet to be adopted by the banks. It provides quite detailed information as to how the banks should treat their customers, and what not to do.

The behaviour of the banks in foreclosing on mortgagees and customers has sometimes been quite unjustifiable. There are a number of cases where the banks have acted against very good customers, and often to their own financial detriment. In fact, I can quote an example that I experienced. From the receivers we bought back a business and, because a factory was located on our premises, the bank knew that it would cost us something like $150,000 to shift. They bumped up the rent by something like $40,000 per year, knowing that it was cheaper to stay and sign a three-year lease instead of shifting. What the bank did not understand was that we had enough liquidity to buy the building and change banks, so they lost a good customer of 20 years' standing. But not everybody is in that fortunate situation.

Excesses, and the need to make good losses on problem loans made during the heady 1980s and to those who were often smiled upon kindly by various Labor governments, have led banks to be harsh on good risks. Good businesses and good ideas simply do not get financial support because of those past excesses. There is moral concern about investment in Third World countries involving the International Monetary Fund, and ethical concerns about loans to rural people which in bad times are not honoured. Internationally and locally there is a growing concern about the ethics and morality of the practices of banking institutions.

Once upon a time banks were benevolent institutions, the pillars of society and the creators of wealth and opportunity. This image sadly has gone. Most people regard banks with ill-concealed contempt and loathing. They are treated as a nasty fact of life. People are feeling powerless in the face of the banks' laws, rules and regulations, and the resentment is still growing. Fees for putting your money in the bank and charges for transactions have all occurred when the actual labour cost of administering those functions is the lowest ever, with the introduction of computer technology.

Sadly, the banks are largely to blame for the feeling of resentment. Their actions have left them exposed to criticism and resentment. It is my hope that the banks will change; that the pressure from people dissatisfied with the current system will create a demand for a fairer and more equitable banking system. But there are great stakes at risk, as we have found in New South Wales with the Westpac letters and in the Federal arena with the Martin inquiry into banking, where the banks were found wanting. For example, it was found that credit charges on plastic cards were far too high. The banking sector's response has been to lower interest rates and charge fees, which does not offer lots of relief to clients. This system will probably lead to the banks making even greater profits on credit cards. The people on the street lose out again. It is the Federal Treasurer who must accept that his endorsement of this system of charges will lead or can lead to the ruin and unfair and inequitable fleecing of the customer yet again.

The State Bank of New South Wales came in for a lot of criticism for loans on rural properties. One example the Martin inquiry examined was the sale of a rural mortgage to another bank without consultation with the mortgagee. This is clearly unethical behaviour at a level which the common man finds bewildering and difficult to cope with. The mortgagee in the end found relief in the courts, but it was a David and Goliath competition, at great personal cost and distress. In most instances the banks are never questioned because the power imbalance is just too great. However, in recent years the courts are ruling in favour of the individual in disputes with banks. So there is an option to seek a remedy. However, as every little man knows, after banks, lawyers are also in for more than their fair share of the chop.

In New South Wales the Westpac letters revealed that Westpac had advised clients to take out foreign loans at a lower interest rate. This was fine until the Australian dollar fell. In some instances their loans nearly doubled almost overnight. Those with the foreign loans were facing ruin. However, Westpac was responsible for that because it did not advise customers to protect themselves by hedging their interests against the pitfall of a skyrocketing interest rate. Westpac was not alone, mind you, and another three major banks had to pay out on those loans. The cover-up in the frantic scramble after the event led to the Commonwealth Parliament using every available power to force the bank to reveal its documents and therefore own up to its conduct. One wonders what was worse, the bank's conduct or its attempts to cover up.

One complaint was regarding the fluctuation in home mortgages. The Advance Bank was found to be very quick in increasing interest rates, and therefore repayments, but very slow in decreasing interest rates. In fact, the consumer had to approach the bank and specifically request the reduction in repayments if they wished to take advantage of the decrease in interest rates.

One particularly bad issue has been the taking of guarantees. The bank would often request guarantees of high risk loans. Often the applicant had difficulties with English and did not understand what they were signing. Often the loan was unlimited, and so was the liability of the guarantor. It was not until the loan had blown out by significant amounts that the bank felt motivated to notify the guarantor of the situation. This clearly is uncaring, unethical and unconscionable. Nobby Clark, a chief executive of one of the four major banks, was asked to go guarantor on a loan for a family member and refused because he did not like the terms and conditions of such loans.

The committees which have examined banking practices have made many recommendations. Some have been accepted and some have been rejected. One which was accepted was the banking code of ethics. This has been accepted by the banks, the Trade Practices Commission and the Treasury, but not as yet by the consumer movement. In the end it all boils down to caveat emptor, or buyer beware. You have to be careful and ask lots of questions; ask why, when, how and who; ask about fees; ask about disclosure; ask about profit.

The community's dissatisfaction with the banking sector is leading to marketplace changes. For example, Metway in Queensland is a small bank concentrating on consumer banking, mortgages and credit cards. It has become very successful and is taking business away from the four major banks. Consumers are expressing their dissatisfaction by choosing smaller banks which offer better services and a more honest approach. Just recently the Commonwealth Bank was offering mortgages at a capped rate for 12 months. What they did not tell customers was that the capping started from the approval date, not the date that the money was actually drawn. Therefore, people who, for whatever reason, did not access their money immediately lost the benefits which had probably attracted them to the loan in the first place. The Trade Practices Commission was very quick to put a stop to this.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.46): Madam Speaker, at the outset I want to say how refreshing it was to hear a Liberal politician saying what Mr Westende just said about the banks. For the last three years I have been attending ministerial forums where we have been trying to develop a uniform credit Act, as the number of Liberal governments has been increasing, sadly, around Australia. But we have reached the high water mark. We start going the other way from here. On every point where we have reached agreement on reasonably rigorous provisions in the proposed uniform credit Act, whenever a new Liberal government has come along that agreement has been abandoned and we have weakened still further the proposed pro-consumer uniform credit laws. I am extremely disappointed about that. Only a couple of months ago we signed, in Sydney, under the chairmanship of Wendy Machin, the New South Wales Consumer Affairs Minister, what was the final version of the uniform credit Act. I am very disappointed that since then Liberal governments around Australia have got together and said, "No; we have to further weaken uniform credit laws".

I have written to all my ministerial colleagues urging them not to do that; urging that, in fact, the public has lost its confidence in the banking system, as Mr Westende said, and that it is appropriate for governments to try to redress somewhat the balance between the very large bank and the small business person or the individual. Mr Westende, I can only urge that, whenever you are

travelling around Australia, you call on your Liberal counterparts in those Liberal State governments who are responsible for consumer affairs and credit laws, because your commonsense on the problems with the banking sector and the inadequacy of some of the existing safeguards and protections was music to my ears. It is what I have been saying for the last three years to those same Liberal politicians. They, for some reason, do not seem to accept it when it comes from me because they regard us as some sort of socialist ogre. Perhaps when they hear it from you, Mr Westende, they might realise that there is indeed a need for tougher control of banks.

I am disappointed that we have seen further weakening of the proposed uniform credit Bill. I think that that will not do anything to increase public confidence in the banks. I am also disappointed, and I have expressed my disappointment to my Federal counterpart, the Treasurer, that the proposed banking code of conduct is a weaker document than it should be. There are some particularly poor shortcomings in that proposed document. There is a proposal that it apply only to new accounts. The Australian Bankers Association has persuaded the Federal Government that the code of conduct apply only to new accounts. That is a really weak provision because it means that it may be years before you can come under the protection. True it is that you can change accounts to get protection under the code of practice, but the Australian Bankers Association have thought of that. They have preserved the ability to charge fees for changing accounts. So it will cost you if you want to get under the code.

The provisions in relation to guarantors are extraordinarily weak, and the concern that Mr Westende raised about people not knowing what they have done when they have signed to be a guarantor is significant. There is one crucial issue that I have urged both the Australian Bankers Association and the Commonwealth Government to adopt. A bank makes the decision to require a guarantor only when it has information that suggests to it that there is a risk. I and the national consumers movement have been urging that, if the bank knows of a risk, when the bank is approaching the guarantor the bank should say to the guarantor, "We want your guarantee because of this risk". That would seem to be a fair thing to do. I cannot understand why there is resistance from the banks on that.

In relation to confidentiality, there is an extraordinary provision in the banking code of conduct which says that the banks are entitled to collect information about a customer's political, social and religious beliefs and affiliations, their race, ethnic and national origins, and sexual preferences or practices, for proper commercial purposes. The banks say, "We really want that because there is a product which is very popular in San Francisco now being marketed by the banks, a gay card rather than a MasterCard or a Visa card". It is a gay card and you can get your discount as well as the banking product. They say, "Well, it is appropriate and we may want to collect that sort of information". I have said that I do not think they should collect the information. I have said, "If you collect the information the customer should have a right to check the information that is held against them".

But no; the code gives them the right to collect this broad range of information but gives to the customer only the right to check information relating to their address, occupation, marital status, age, sex and account number. So the bank may hold on its computer that a particular person is a member of a political group that is a well-known urban terrorist group and also engages in whatever

form of bizarre sexual activity that the bank dreams up. It can hold that on the file and you cannot check it. It is bad enough that they need to collect some of this intrusive information, but it is a basic privacy principle that, if information on a citizen is held, the citizen has the right to check it.

I had Mr Alan Cullen, who is well known as the director of the Australian Bankers Association, sitting in my office about three weeks ago. I took him through this and he said, "Well, of course, we give people that information". I said, "Mr Cullen, if you are saying that you will give it to them, why not put it in the code of practice? What are you scared of? By giving yourself a power to collect this broad range of information and giving the consumer only a limited right to check the information, you are further fostering the contempt and suspicion that the public now has of the banking system". I said to the Australian Bankers Association, as I said to the Australian Consumers Association, that the banks have lost a lot of the confidence they once had, as Mr Westende pointed out and as Mr Stevenson has pointed out many times.

There are really two ways for the banks to get that public confidence back. One is to spend a lot of money on a lot of flashy television advertising campaigns to lift the corporate image of the banks, and if you watch commercial television it rather looks as though they are going down that path. The other is to adopt some proactive pro-consumer fair trading practices and get out there and show the consumers - I may say consumers, and Mr Westende may say small business people or small citizens, but it is the same thing - and the public that the banks are serious about fair trading and serious about reasonable consumer and trade practices.

Mr Westende: They are getting better.

MR CONNOLLY: They are getting marginally better, Mr Westende, but it disturbed me greatly that the ABA code of practice is such a weak document and that, on such extraordinary propositions, the Bankers Association think they have a right to collect intrusive information about a client's political beliefs, ethnic or racial origins, or sexual preferences or practices, but they deny the citizen the right to check that information. That is not the way forward to restore confidence in the banking sector.

MR LAMONT (3.53): I do not wish to elaborate too much further on the matters raised by Mr Stevenson or those covered by the Minister, but I do want to draw the Assembly's attention to the considerable problems that dealing with complaints in the banking industry provides for clients of the industry. The banking ombudsman is often portrayed as being the appropriate method for clients of banks to redress concerns they have about banking practice. In a case that I am currently investigating it is fairly obvious that the power of the banking ombudsman to inquire into and investigate the principal issues associated with a lot of complaints of clients is just not there. They just simply do not have the power to require banks to provide information and/or answer, in terms sought by the client, questions put by the client. To the extent that Mr Stevenson's MPI today again places that issue to the fore, it is appropriate that it be discussed as a matter of public importance.

I am concerned, particularly with the case that I am currently investigating, that we have a decision to allow for mortgages to be bought by a particular bank. Notwithstanding that the original mortgage would have had a rate around about 9 per cent currently, that bank is now applying some mortgage rates of in the order of 13 and 14 per cent on the floating rate. To me that is a fundamental breach of the bankers trust, or the trust that people should have in banks, and the trust that allowed the transfer of the mortgages to this particular bank. For them to say that it is a commercial decision and an option that is available to them does not justify, in my view, them charging the rates that they do.

This is of concern because the types of mortgages that I am talking about are generally for people on lower incomes who are seeking to purchase their own home when allowed to buy government housing. Those mortgages which have been transferred to a bank, I believe, were transferred in good faith and agreed to on the basis that a maximum capped rate would apply, being the Commonwealth commercial bank rate. That is not the case, and I think that it is a profit grab by this particular bank in pursuing this matter and it is not in the interests of the clients, the community or the Government - any government. This was on a recommendation that the clients would be no worse off with the transfer of those mortgages if the clients agreed to the transfer. That simply has not been the case.

I believe now that both the original owner of those properties and the bank which currently owns the mortgage have to redress that problem. It has been impossible to achieve an appropriate outcome through the ombudsman, and the clients of the bank, in frustration, have now come to me. They say, "Look, we cannot go any further. We have tried every other avenue. To pursue them through the courts would cost us literally hundreds of thousands of dollars and it is an unequal battle". While I have great concerns about naming individuals in this house and imputing any improper motive to them without necessarily providing them with their day in court, so to speak, I think it is appropriate that this forum be used to draw to the attention of the wider community, and of us, as legislators, the fact that these problems exist. The banking industry at this stage does not seem to be prepared, as the Minister has outlined, to come to a reasonable regime of openness and accountability. It may very well be that we need to consider in this chamber a further legislative remedy to ensure that members of the public in Canberra are not further disadvantaged.

MR DE DOMENICO (3.58): Madam Speaker, I compliment Mr Connolly, Mr Stevenson and all the other speakers on this topic. I was very pleased to note Mr Connolly's comments in particular. He praised Mr Westende and the Liberal Party for taking the approach that we have taken. I assure members on the other side of the house that we will continue to take that sort of approach if it means protecting the interests of the people of the ACT.

Mr Connolly: If only your colleagues around Australia were so minded.

MR DE DOMENICO: Notwithstanding what our colleagues around Australia may or may not do, you can rest assured, Minister, that this Liberal Party will make sure that the interests of the individual are protected and are paramount. There is some good news from out of all of this as well. Whilst it is good to criticise those things that we do not agree with, there are some financial institutions that do the right thing. I will mention St George. It was a St George chief executive, as I recall, who said to the Martin inquiry that he believed that his customers should not pay for the privilege of doing business with them.

That is a very simplistic comment, but it is one that we ought to reflect on. Perhaps the other comment we ought to reflect on is that banks should be as ethical as most of the people who try to do business with them. If banks had that in mind there would be very few problems.

Unfortunately, Madam Speaker, despite the good news, the positive hope that consumer choice will change the market, there is also the sinister and difficult aspect of powerful vested interests which still remains. There is no denying that. This must be dealt with by governments and by consumers becoming more aware and more educated about what their banks offer. Complaining is just one aspect. The Victims of the State Bank is another consumer campaign which has met with some success. Members will realise that the Liberal Party has been in the forefront of that, with Mr Stevenson, for a long time. It is not as if this is something that we on this side of the house have been speaking of on the spur of the moment. In the end, however, Madam Speaker, it will be the consumer who wields the axe, the consumer who politely removes his money from the larger banks and invests it with the smaller banks whose competitive products make up for the lack of size and perceived lack of security. In the end people will say, "How secure is a larger bank whose practices are or may be unethical? Why am I paying to give you my money? Why are you charging me to make money out of me? Why is not your service excellent? Why am I fighting for something I have already worked so hard for?". Perhaps, Madam Speaker, the market will change, and it will be about time.

MADAM SPEAKER: The discussion has concluded.

DAYS OF MEETING - 1994

MR BERRY (Deputy Chief Minister) (4.00): I seek leave of the Assembly to amend notice No. 1, executive business, standing in my name on the notice paper.

Leave granted.

MR BERRY: I amend the notice to add an additional sitting week of Tuesday, Wednesday and Thursday, 1, 2 and 3 March 1994. I move:

That, unless the Speaker fixes an alternative date or hour of meeting on receipt of a request in writing from an absolute majority of Members, or the Assembly otherwise orders, the Assembly shall meet as follows for 1994:

February	22	23	24
March	1	2	3
April	12	13	14
	19	20	21
May	10	11	12
	17	18	19
June	14	15	16
August	23	24	25
September	13	14	15
	20	21	22
October	11	12	13
November	8	9	10
	29	30	
December			1
	6	7	8

The Government has developed a Legislative Assembly sitting pattern for 1994 which, as is customary, has been provided in draft form for consideration by members. The proposed sitting pattern takes into account comments by members. It takes into account a number of important matters, including the Assembly's move to the South Building which is scheduled for March next year. The pattern also takes into account the recent decision by the Government to bring its budget down before the start of the financial year. It is intended that the budget will be brought down on 14 June 1994.

The proposed 1994 sitting pattern also reflects a number of other considerations, including a solid sitting pattern in April and May next year to consider the electoral and separate service legislation, and a sitting period in August to consider the Estimates Committee report and the 1994 budget. Provision is also made for a substantial sitting period in November and December in recognition of the fact that this will be the last opportunity for the Assembly to meet prior to the ACT election in February 1995. Madam Speaker, I ask members to agree to the proposed sitting pattern for 1994 which is now before the Assembly.

MS SZUTY (4.02): I would like to thank the Government for giving me the opportunity to comment on the proposed sitting pattern for the Legislative Assembly in 1994. There are several features of the sitting pattern which are worthy of comment. The first is the reduction in sitting days from 45 days this year to, I believe, 42 days next year. I realise that there is a balance to be struck between the efficiency of Assembly processes and the accountability of the ACT Government, and it will remain to be seen next year whether the balance has

been achieved or not. Towards the end of the discussions that I had with the Government we did earmark a possible additional sitting week for October, which is not shown in the motion as it appears on the notice paper. Three dates in October - 18, 19 and 20 October - may well be scheduled as sitting days for 1994.

It is noteworthy, Madam Speaker, that the Assembly has a two-week sitting period proposed for the beginning of the 1994 calendar year. I know, as a member of the Planning Committee, that I will appreciate that very much. It means that a number of variations that the Planning Committee has before it at the moment can be considered within that two-week sitting period, subject to the five-day disallowance period which currently exists in the legislation. I also note, as Mr Berry has noted, that allowance has been made in the sitting timetable for the move of the Assembly to the new premises in March next year. I believe that members and staff will have plenty of time to relocate and to adjust to what will be a much improved working environment for all of us.

Changes also have been made to the timing of the budget process which will mean, as Mr Berry has indicated, the delivery of the budget on 14 June next year and the passage of the budget on 25 August next year. The intervening weeks between those dates will be fully occupied, I am sure, by the Estimates Committee process and the capital works process to be undertaken by the Assembly's Planning Committee. I wish to thank members for their consideration of these matters and for their agreement to extend this period from eight to nine weeks.

Finally, Madam Speaker, the Assembly will be adjourning a week earlier in December than is usually the case. I believe this to be appropriate. It will enable a proper caretaker period for the Government prior to the 1995 election and also for members to spend time with their families at end of school year activities, in particular, and to attend the many functions organised by businesses and community groups that we are all invited to prior to Christmas. It was with some regret this year, Madam Speaker, that I was not able to attend several functions at my son's high school which he has been involved with. I look forward to doing that next year.

MR LAMONT (4.05): We also look forward to Ms Szuty being able to attend those functions next year. Madam Speaker, there has been some debate about the sitting pattern for 1994. I think it needs to be put on the public record that, while being sponsored by the Government in terms of the motion this day, this sitting pattern has been worked out following extensive discussions between all of the parties within the Assembly, as well as the Independents and the Abolish Self Government member.

Mr Stevenson indicated that he was prepared to accept the first draft that was circulated. We then were able, as Ms Szuty has said, to conclude that there may be a difficulty in the early part of the year in relation to a number of substantial planning variation reports which we hope to be able to bring down early in the new year, they being the North Watson and Tuggeranong Homestead recommendations. Both of those hearings have concluded and draft reports are being considered by members of the committee. Because of the issues that are

involved in those reports it will take some time for the Planning Committee to work its way through the very weighty amount of evidence that has been submitted to it. While that is necessary, it is a requirement that, within four or five months of concluding those hearings, we be able to table our reports here in the Assembly. That is the reason for the extra sitting week in March. I would also add that Easter next year falls in early April. The break between 3 March and 12 April allows for a quite clear period in which we have a very busy calendar in the ACT, including Easter.

There has been some concern expressed, Madam Speaker, about the length of the break between 16 June and 23 August. It is just on nine weeks. The normal break is somewhere between five and seven weeks. It is necessary next year because of the requirement for the capital works program to be inquired into by the Planning, Development and Infrastructure Committee. The Estimates Committee also will be required to sit through the same period. That is as a result of a change to the date on which the budget will be brought down next year. It is appropriate that there be time available. I think all members of the Assembly would be aware of the difficulties this year in fitting in the 90-odd hours of sitting which we were determined we would go through with. It is appropriate that a reasonable amount of time be given to ensure that members of the Assembly are able to investigate matters as far as the budget documents are concerned.

It is interesting to note that we have the two split weeks in November. The two split weeks in November are important. A third week would need to fit in between the first and the last week in November and would allow us to conclude any outstanding business which may be before us on the paper. It is interesting to note that as we come towards the end of this year, as it was when we approached the end of last year, we do not appear to have as much business on the notice paper to conclude as we did last year or, I am sure, we will have next year. If you look at the legislative program that is already in train, next year promises to be an extremely busy year. Now, with the return of the Minister, I have much pleasure in endorsing the proposal outlined.

MRS GRASSBY (4.09): I wonder whether everybody in the house realises, Madam Speaker, that because of your organisation of our move over to the new building we will be able to sit the extra week in March. It is really thanks to you that we will be able to do that. I was wondering whether the rest of the house realised that. You are taking on the enormous chore of getting us all moved over there, which we are all looking forward to. I wanted to make sure that the rest of the house knew that it was all up to you. Thank you, Madam Speaker, for that.

MR BERRY (Deputy Chief Minister) (4.10), in reply: Madam Speaker, I thank members for the chorused hurrah for the magnificent sitting pattern that has been placed before the Assembly. I hope that they show the same enthusiasm for attending in this place, and other places, in the course of the next sitting period.

Question resolved in the affirmative.

FOOD (AMENDMENT) BILL (NO. 2) 1993
Detail Stage

Clause 6

Debate resumed.

MADAM SPEAKER: The question is: That Mrs Carnell's amendment No. 1 to clause 6 be agreed to.

MR MOORE (4.11): Madam Speaker, there was considerable debate on this amendment the last time that we considered this Bill. The difficulty with the Bill is the notion of a prospective power. That is the power that Mrs Carnell has looked at and has moved to remove. I had sought to find a compromise position, Madam Speaker, having heard the arguments, particularly in respect of chicken and salmonella, that were presented in this house previously. I prepared a compromise amendment, which I think was circulated to members; but I have decided not to move it, because it still left prospective powers, although only in situations where there was a most grievous danger to public health.

I then determined that there was a far better way to handle this situation. The better way to handle this situation was to provide for an inspector, seeing chickens on a bench that were likely to become salmonella-ised, to have the power to say, "You must take some action now. If that action is not taken an offence is committed". I prepared drafting instructions for Parliamentary Counsel and wrote to them seeking to have that drafted. Parliamentary Counsel replied to me that it was unnecessary and that perhaps I could recall the last amendment to the Food Act which was passed in this house on 19 August 1993. In that amendment to the Act we provided for that power. The Assembly agreed that it was an appropriate power for the officers to have and it provided it. For that reason, Madam Speaker, it seems to me that this prospective power is entirely unnecessary.

One of the difficulties we have had in reading this Bill is the fact that we did pass the other one so recently. When I went to check my own legislation set, it had not yet been upgraded. That previous Bill, which I should have remembered but I must say I did not, was not there; so I was not aware of that power. Once again Parliamentary Counsel were very helpful. It is a good opportunity this close to Christmas for us to recognise what good work Parliamentary Counsel do. On issues like this, when one seeks advice, Parliamentary Counsel are always there to provide us with professional advice. I believe that I have done well by that professional advice over the last four-and-a-half years.

Mr Humphries: You have done very well, Michael.

MR MOORE: Very well. It is a good time to express appreciation and to say "Merry Christmas" to them, Madam Speaker. They certainly deserve that. I may be testing the standing orders a little, Madam Speaker, by digressing. Nevertheless, we also have to be careful at this time of the year that there is no salmonella in the turkey as well as the chickens that we were discussing previously.

Madam Speaker, the amendment clearly is very sensible. The prospective power is not necessary. There will be times, I think, when we may consider prospective power in regard to criminal acts. There will be times when it is appropriate, but in this case it is not necessary. It does not give the health inspectors any further power to be able to prevent a public health problem or a public health disaster. The argument presented in this house when we previously debated this Bill was clearly an exaggeration.

Mr Berry: No, it is not.

MR MOORE: I take that back following the interjection from Mr Berry that it is not. He is quite right. Problems associated with public health are always to be taken very seriously, but the powers are already in the Act. Mrs Carnell's amendment is an appropriate one and I shall be supporting it.

MR HUMPHRIES (4.16): Madam Speaker, as Mr Moore has indicated, the amendment moved by Mrs Carnell is a reasonable way of addressing a problem of giving members of the bureaucracy, whoever they might be, powers which might be considered to be unreasonably large. Members will recall that there was some debate on this question on the last sitting day. In the meantime there has been considerable discussion between members of the Government, members of the Opposition and members of the Independent benches about what practices are followed in other States.

Mr Connolly was very emphatic on the last sitting day of the Assembly to indicate that other jurisdictions of Australia follow the practices with respect to what we call future offences which the ACT Government proposes to include in the Bill. Perhaps it does not; I am not sure whether they are going to agree to this amendment or not. Certainly that was the case last week. I want to quote Mr Connolly. He said:

> You did not acknowledge that it is not a case of the Government trying to introduce new draconian powers but of the Liberals wanting to remove, from public health inspection in the ACT, a power which has always existed, and which exists in every other jurisdiction. That is what you are doing tonight.

I want to place on the record, Madam Speaker, that none of those statements are true. The powers referred to in other jurisdictions for their health inspectors are very different. Let us take the Victorian legislation, their Food Bill of 1984. That empowers an authorised officer to:

> ... require a person found by him committing an offence against this Act or who he believes on reasonable grounds has committed an offence against this Act or whose name and address are in his opinion reasonably required to state his full name and the address of his usual place of residence and, if he suspects on reasonable grounds that a name or address so stated is false, may require him to produce evidence of the correctness thereof; ...

That is the extent of the power referred to in the Victorian legislation. Similarly, in New South Wales, section 16 of the Food Act of 1989 says:

> An inspector may seize and detain, or take possession of, any food, appliance, package or labelling or advertising material, or any other thing at all, which the inspector reasonably believes is evidence that an offence against this Act or the regulations is being or has been committed.

There is no question there of any future offence capacity being handed to health inspectors. Again, section 28 of the Queensland Food Act of 1981 says that an authorised officer:

> ... may seize and detain for such time as is necessary any article found by means of or in relation to which he believes on reasonable grounds this Act has been contravened.

That is in the past tense. Subsection 29(4) of the Tasmanian legislation - I am not sure what the name of the Act is - says:

> Subject to section 62A an inspector may ...
>
> (d) seize any animal, or carcass, or any such article wherever found which is, or which he has reasonable grounds for believing to be dangerous or injurious to health, or unwholesome, or unfit for use, or to be a prohibited article, and any package or vessel enclosing or containing any such article; ...

Again, it says "is unwholesome" or "is dangerous", not "will be in the future". The Western Australian Health Act of 1911, section 246ZB, says:

> ... a health surveyor may -
>
> (a) enter any premises or other place in or at which he believes on reasonable grounds any article is sold or prepared, packaged, stored, handled, served, or supplied for sale and may therein ... seize and detain for such time as is necessary any article found by means of, or in relation to, which he believes on reasonable grounds an offence under this Part has been committed ...

Madam Speaker, it is clear that the situation is that there are no other jurisdictions in Australia, at least at the State level, to the best of our inquiries, which provide for anything like the power which is being provided for in this Bill.

Mr Berry: What about the councils and shires and so on?

MR HUMPHRIES: Mr Berry interjects something about shires or local government legislation. We have made exhaustive inquiries of local government organisations in Australia. The Northern Territory advises that they do not have any local government organisations conducting inspections, except for, I think, Alice Springs. But in Alice Springs they do not have the power to seize goods which they believe will, in the future, be used in committing an offence.

Mr Connolly: As you see, they do it anyway. They have just done it.

MR HUMPHRIES: That is not what that memo says, I do not think, Mr Connolly.

Mr Connolly: Yes, it does. It says, "Health officers seize and destroy and no power to do so" - a truck full of meat and meat products.

MR HUMPHRIES: Mr Connolly appears to be recalcitrant, Madam Speaker. I would again say, "Let him produce evidence of any jurisdiction, or any part of any jurisdiction, any shire or borough or anything like that, where this particular practice he proposes for the Food Act of the ACT is followed". It has been a week since we began this debate and you have not produced any evidence of any of the assertions you have made. Nor, might I say, Madam Speaker, is there any evidence of the assertion that the practice of seizing goods which will be used to commit an offence in the future has been the practice in the ACT. It has not, to the best of our endeavours, ever been the case in the ACT, and certainly is not now.

Madam Speaker, I take it that what was said by the Minister was said in good faith; that he was relying on advice. The advice, with respect, is not good advice. I think that the Assembly is well advised to look this particular proposal in the mouth and say to itself that there are better ways, such as the kinds Mr Moore referred to in his comments, of dealing with this problem than the method proposed by the Government.

MRS CARNELL (Leader of the Opposition) (4.23): I thank members for their support for this amendment. I think it is important that we do not give more power than is needed to any public servant, or to anybody else for that matter. I think that we really will be stepping in the right direction. I was fascinated by the debate last week. I want to quote some of the things that were said. Mr Berry suggested that passing this amendment would mean that we were going to poison people. There were comments about people dying in the streets. There were comments that we would be setting the ACT back - - -

Mr Lamont: Listening to another one of your speeches, Mrs Carnell?

MRS CARNELL: They were all in Mr Connolly's speech, except for one from Mr Berry that we were actually poisoning people. Mr Connolly suggested that absolutely - - -

Mr Moore: "Hyperbole" is the word you are looking for, Kate.

MRS CARNELL: Thank you very much, Mr Moore. You are always terribly helpful. There is one thing that I would like to put right, though, Madam Speaker. Mr Connolly, in his speech, suggested that the AHA, the restaurant association and so on also supported the Government's stance on this. That is simply not the truth, Madam Speaker.

Mr Connolly: No. What you have said is simply not the truth. You are quite right.

MRS CARNELL: No, what you said is simply not the truth. You referred to the AHA and the restaurant association. You said: "Does the AHA think this is a very good idea? Of course not". Well, you are quite right; the AHA and the Australian restaurateurs association think that these sorts of prospective powers are simply not acceptable. They believe that they will really cause huge problems for their industries.

Mr Berry: They all have little Liberal Party tickets burning holes in their pockets.

Mr Humphries: Anyone who opposes you must be a Liberal.

Mr Connolly: This is just playing politics in your usual cheap fashion.

MRS CARNELL: I was just making sure that the *Hansard* reflected exactly the reality of the situation. The reality is that the organisations and associations who are involved in this simply are not happy with the Bill. They are simply not happy with prospective powers. Mr Connolly was wrong again. I am the first to admit that in my interjection I was wrong, too. I am quite capable of saying that. I was wrong. Mr Connolly, how about you hopping up and saying, "I was wrong too". It is quite simple: "I was wrong too. But I was not only wrong in one interjection; I was wrong for 10 pages of *Hansard*". In fact you, Mr Connolly, tried to give the wrong impression. I will not say that you misled this house, but you certainly gave the wrong impression. You attempted to suggest to this house that by passing this very important amendment, but fairly minor amendment, the whole Food Act would fall over. They were your words. The whole thing would be useless. People would die in the streets and, to use Mr Berry's words, they would all be poisoned.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.27): Madam Speaker, it is disappointing that the Liberals choose to play politics in this fashion. It is the prospective offence on which the power to enter and search hinges. I do not see why it is a good thing to have these prospective powers in relation to animal welfare and gas, both of which were passed by this Assembly in identical terms, with the support of the Opposition, but a bad thing to have them in relation to the Health Act. The health regulations from which I quoted in their old form from the 1930s do give these broad and often unfettered search powers. It is unfortunate that the Opposition wants to go back.

We have been open about the type of advice the Government has acted on. We have circulated it to members. It indicates that there are broad search and seizure powers throughout Australia. Interestingly, the area where there is no formal seizure power is the Northern Territory. In that piece of advice we were given an example in the Northern Territory. Although it is acknowledged that they did not have the power to do so, they did exactly the sort of thing that we put this in place to deal with.

Mr Moore: Tell us about the example in the Northern Territory. Can you tell us about that one?

MR CONNOLLY: Yes; health officers seized and destroyed, with no powers to do so, a truck full of meat and meat products on its way to restaurant chains. Temperature measurements showed that the food was no longer frozen after being driven interstate. The food was not rancid, it was not unhealthy, but it was at that point that we have been talking about. It was going in that direction, so they hacked it. That is what local council inspectors do all over the place. That is what local food inspectors in the ACT have done for years. Mrs Carnell interjected and said, "Yes, they have". That was when I said that we are not aware of complaints from the AHA or the restaurateurs about the operation because they acknowledge the sweeping powers - - -

Mrs Carnell: No, that is not what you said. You said that they support the legislation. They do not.

MR CONNOLLY: No. What I said was that they are probably concerned at the way you have played politics to get a weaker level of protection in the ACT. Madam Speaker, it is nearly Christmas. What the Liberals will do is anybody's guess. The Government is not retreating from its position.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (4.29): Madam Speaker, as Mr Humphries said, there has been much debate about this, and I saw Mr Humphries on his feet extending that debate without addressing the issue which is at hand. The issue is whether or not a health officer's powers can be exercised in relation to an offence that there are reasonable grounds for believing is being or will be committed. What Mrs Carnell is saying is that, if, in the mind of a health officer, somebody is about to be or will be poisoned in the future, it is all right for that to happen. She wants to withdraw the protection from the offence that might happen in the future. The Bill says:

> A reference ... to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing is being, has been or will be, committed.

That relates to entry to premises where officers can examine matters concerning public health. It is about consent to entry.

Debate interrupted.

ADJOURNMENT

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

> That the Assembly do now adjourn.

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

Question resolved in the negative.

FOOD (AMENDMENT) BILL (NO. 2) 1993
Detail Stage

Clause 6

Debate resumed.

MR BERRY: It is about other matters under the powers - - -

Mr De Domenico: Which other matters?

MR BERRY: Mr De Domenico interjects, "Which other matters?". It is about the powers of health officers. I will read all of this, if you like. It is two pages.

Mr De Domenico: No; we have read the Act. Tell us your views of the other matters. Can they send the tanks in if they think something might happen?

MR BERRY: These are the other matters. They can inspect, examine, take measurements in relation to, inspect and test any containers, inspect and test any food, open or require a person to open, take such photographs, and so on. But if it is in relation to an offence that will be committed, Mrs Carnell wants the power to do those things to be withdrawn. That is the sort of process that Mrs Carnell supports. All she has to do is read the legislation and it will become crystal clear to her.

In any event, I recognise, Madam Speaker, that the numbers are not going the Government's way on this score. At the same time I think that this Food (Amendment) Bill will survive, and it will survive as a great big credit for the Labor Party because it was the Labor Government that brought this into play. It will survive as among the most advanced food legislation around. It will be less effective as a result of the actions of the members opposite, but it will survive and it will provide better care for the people of the ACT. I have said that, if this is withdrawn and it becomes a problem in the short or long term, we will be back here trying to change this; but I am not prepared to see the Food (Amendment) Bill as it stands further delayed as a result of the actions of the members opposite. We can count the numbers, but I think it is regrettable that an important power should be taken away.

Mr Moore: Helen has not even spoken yet. Hold your breath.

MR BERRY: If Ms Szuty is convinced, once she has had a look at the legislation, I will congratulate her.

Mr De Domenico: This is Wayne the Grim's clairvoyancy service.

MR BERRY: There is one thing we can always guarantee about you, Mr De Domenico. There is one instrument you can always play in this place; you can play the fool. You do it really well. Madam Speaker, I look forward to Ms Szuty's support.

MS SZUTY (4.34): In opening my remarks I would like to recall a very emotive debate on this issue in this Assembly last week in which we spent some time - I think it must have been upwards of about an hour - before we adjourned to further consider the issue over a longer period. I would like to compliment my colleague Mr Moore, who has actively sought to research this issue and to arrive at an appropriate resolution which would meet the Assembly's concerns.

I also commend the Opposition for the research they have done in examining legislation that applies in other States and Territories across Australia. We have been very proactive in gathering this information and it is disappointing that we still have a rather invective debate in this Assembly today. I believe, as a result of Mr Moore's attempts to investigate the matter further, that the advice from the Parliamentary Counsel is quite correct, as it always is. I believe, from that perspective, that Mrs Carnell's very sensible amendment to this legislation should be supported.

MR HUMPHRIES (4.35): Madam Speaker, I do not think Mr Berry is well advised to talk about playing the fool, because when it comes to - - -

MADAM SPEAKER: Mr Humphries, I think you have spoken twice already, so you need leave.

Leave granted.

MR HUMPHRIES: Thank you, Madam Speaker. I think that the two Ministers who spoke on this matter deserve a bit of a rap on the knuckles for their very poor interpretative powers. Mr Berry suggested a moment ago that by moving this amendment Mrs Carnell is putting at risk the power of health inspectors to enter premises and to do certain things as set out in proposed section 19YD. My response to that argument, Mr Berry, is that that is garbage. If Mr Berry looks at proposed section 19YB, it says that a health officer may enter prescribed premises in certain circumstances. The provision that Mrs Carnell is seeking to amend is the provision in proposed section 19YA which deals with the definition of offences. It says:

> A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing is being, has been or will be, committed.

Now Mr Connolly is telling Mr Berry, "You might have got it wrong, Wayne. Do not worry about it".

Mr Connolly: I am explaining how you are wrong.

MR HUMPHRIES: Madam Speaker, there is nothing in proposed section 19YA that affects the capacity of officers to enter premises under proposed section 19YD. It does affect the capacity to do certain things once they are in there, but there is no problem with them entering those premises. The power of entry is governed by proposed section 19YB, which is not affected by proposed subsection 19YA(2) because there is no reference to offences in proposed section 19YB. That is Mr Berry's rather inane point.

I come back to the comment made by Mr Connolly about this minute he has circulated. He talks about it as if to say, "Here is the Government making all this information fully available to the Opposition". I got this about an hour ago. I might say that this is one of the least helpful minutes or pieces of information I have ever seen released by a member of the Government or by a public servant to anybody else. The information in this is extremely unhelpful. It is so brief as to be incomprehensible. It is also rather incomplete. It says, "NT, no formal seizure powers at present; Tas, South Australia could not contact". What sort of advice to the ACT Assembly is this supposed to be?

The ACT Opposition managed to contact the Northern Territory, Tasmania and South Australia on at least two occasions each in the space of the last week. Why couldn't you? What is the problem? Is there a bar on the phones on the fifth floor or something?

Mr Cornwell: No; they were all tied up doing factional deals. That is what the problem was.

MR HUMPHRIES: They must have been. Is Fortress Follett on the fifth floor so impregnable that you cannot get telephone lines out? For goodness sake!

Mr De Domenico: But you can get above the lines, though, can you not?

MR HUMPHRIES: Yes, you can get above the line, but you cannot get under the wire. Madam Speaker, this is quite pathetic. Frankly, if the advice is, and it is not clear from this document, that there are powers like those proposed to be exercised by Mr Berry in his amendment, it is simply wrong, because the legislation I have quoted does not give that power and the advice from the local government associations of those States also indicates that there are no local governments with those powers either. Again I say: If we are wrong, show us the case where we are wrong. Cite the example. Pull out Prahran local municipality, pull out Bourke's municipal council, and show us where it happens. You cannot, because it does not.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (4.40): Mr Humphries has his little earnest suit on again and is out there busy twisting matters. He caught himself this time because he made a quick reference to "Division 2 - Health officers' powers - Entry to premises" as being some sort of resolution to the problem once they remove "has been or will be" from proposed subsection 19YA(2). What Mr Humphries forgot is that it is the Liberals' intent in their circulated amendments to remove the powers of entry to premises under proposed paragraph 19Y(B)(1)(d), which says:

> if the health officer believes on reasonable grounds that the circumstances are of such seriousness and urgency as to require immediate entry to the premises without the authority of a warrant.

Of course, the twisters intend to pluck that out of there. They want to take that power away.

Mr Humphries: I told you that yesterday.

MR BERRY: Yes, that is right, but you went straight to that as one of your defences today. You are not going to twist that one because you intend to pull that power off too. That in itself is an important power that ought not go as well. Mr Humphries can twist as much as he likes, but the fact of the matter is that the whole of that part of the legislation is dependent to one degree or another on the prospective offence that might be committed, as identified in the interpretation section 19YA. Do not wander at will all over the clause, just plucking and twisting, Mr Humphries.

Mr Humphries: Do not say it too quickly.

MR BERRY: All we need is for you to say it as it is. The powers of health officers to deal with offences which might be committed and which might result in serious illness or injury to people will be reduced as a result of the Liberals' determination to amend this clause.

Question put:
That the amendment (**Mrs Carnell's**) be agreed to.

The Assembly voted -

AYES, 8	*NOES, 7*
Mrs Carnell	Mr Berry
Mr Cornwell	Mr Connolly
Mr De Domenico	Ms Follett
Mr Humphries	Mrs Grassby
Mr Kaine	Mr Lamont
Mr Moore	Ms McRae
Mr Stevenson	Mr Wood
Ms Szuty	

Question so resolved in the affirmative.

MRS CARNELL (Leader of the Opposition) (4.46), by leave: I move:

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Line 1, proposed new paragraph 19YB(1)(b), add at the end "or".
Line 2, proposed new paragraph 19YB(1)(c), omit "or".
Line 3, proposed new paragraph 19YB(1)(d), omit the paragraph.

These amendments serve to negate the Government's proposal to allow entry into premises without a search warrant. We believe that a search warrant should be applied for. This should not cause any difficulties in operation. There is no need, Madam Speaker, in this age of modern communications, to allow entry into premises without a search warrant. We understand that search warrants can be obtained within 20 minutes or so, or should be able to be obtained. Remember that we are talking here about health inspectors. They would have to wait only 20 minutes or half an hour to get a search warrant. I believe that allowing entry without a search warrant is a total invasion of privacy and is totally unnecessary.

Mr Connolly: So they see the doggy being cut up in the kitchen - - -

Mr Moore: They cannot see it because they do not have a search warrant.

MADAM SPEAKER: Order!

MRS CARNELL: It is all right; we have people dying in the streets again, Madam Speaker. We believe that this is an invasion of privacy. It is something that should not happen, unless, of course, there was some danger to life and limb, or somebody was likely to be murdered or something; but we really cannot see that that is an option in a health Bill or a food Bill.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (4.48): Madam Speaker, the Liberals make light of this matter.

Mrs Carnell: We do not.

MR BERRY: You do make light of it. There are indeed circumstances where a health officer may need entry to private property on the spot and without time to organise a search warrant. I have been given some examples. An example might be the illegal slaughter and dressing of animals in a residential garage - it might be dogs, pigs, cats, or whatever - that might be intended for human consumption. The health officer may visit on the grounds of a complaint that has been laid by a neighbour who knows something of these matters and would not, in the first place, see that as a reason for obtaining a search warrant. If this power is removed it might well involve the procurement of search warrants on a more regular basis, which would, of course, lead to added expense for the Government when it may not, in most cases, be necessary.

Mr Moore: How often does it happen at the moment?

MR BERRY: Not very often. This is about serious risk to public health. We are not talking about - - -

Mr Humphries: About civil rights.

MR BERRY: No, we are not. We are talking about serious risk to public health.

Mrs Carnell: But not people's rights.

MR BERRY: Mrs Carnell says, "But not people's rights". I have heard Mr Stevenson in here arguing about people's rights on the issue of fluoride in the water supply. There are a number of people out there who do not like fluoride in the water supply.

Mrs Carnell: What has that to do with warrants?

MR BERRY: It has. If we went down your path we would take it out of the water for those houses; we would not infringe upon those rights. There are certain judgments made in relation to people's rights when it comes to the protection of the public. That is the nature of law, if you have not noticed.

We have a situation where these animals might be undergoing slaughter or might be being broken down. If people were aware that the health officer was there and he was refused permission to enter and was forced to go away to get a warrant, the breaking-down team, if we can call them that, could clean up the mess and be gone in no time. If the health officer has to leave the premises the evidence could be removed. That is the simple outcome of what is being proposed.

It is not going to be the end of the legislation if this is withdrawn, Madam Speaker. This is just a move by the people opposite to put their scent on every light pole. That is fine, but every one of these steps that they take weakens to one degree or another this very good legislation. Sure, as I said, it will survive; but the strength of the legislation in respect of health officers on this particular matter is a useful tool. It is not often used; that is agreed. But what about a serious situation? I have to draw attention to the wording of the legislation. It says:

> if the health officer believes on reasonable grounds that the circumstances are of such seriousness and urgency as to require immediate entry to the premises without the authority of a warrant.

This is a last resort. This has happened in respect of gas and animals this year. It was all right in relation to those - - -

Mr Humphries: I think it was last year, was it not, that we passed those laws?

MR BERRY: Whenever it was, you passed them. You passed them in relation to gas and animals because they are matters of importance. This is a matter of importance because it relates to the health of the community. Mrs Carnell claims to be a health spokesperson for the Liberals and it makes her look fairly shallow, but that would not be difficult. Madam Speaker, this issue, whilst it will not undo the legislation forever, will weaken the health officers' powers. They are powers that, I think, are reasonable in the circumstances. I think the community will accept that there has been no particular opposition to these powers. It will result in a weakness, but not one that would result in the very good and very effective food legislation put forward by this Labor Government being rendered unusable. It is legislation that is effective, but it will be less effective as a result of this amendment.

MS SZUTY (4.54): I believe that the Assembly has approached the question of entering premises without a warrant in the same way as the previous amendment. Following a discussion I had with Mr Connolly in this Assembly last week I decided to write to Parliamentary Counsel to see whether we could come up with an amendment which would strengthen the wording of proposed paragraph 19YB(1)(d) to make it absolutely clear that only in circumstances of really grave seriousness and urgency would immediate entry to the premises without the authority of a warrant be permitted. The advice that I received back from Parliamentary Counsel on the matter was:

> I have not provided you with such a draft as the dictionary meaning of "grave" -

which I had sought to insert in that paragraph -

> indicates that it would be a tautology to use it in conjunction with the word "seriousness". Your proposed amendment is also not necessary because paragraph 19YB(1)(d) does not involve just an abstract test of "seriousness and urgency", the health officer must believe that the "circumstances are of such seriousness and urgency as to require immediate entry".

The advice was:

> That legal test will satisfy your objective of the need for a heightened degree of seriousness before an officer may move without a warrant.

Madam Speaker, legislation that I presented to this Assembly earlier this year on the power of dog inspectors to seize dogs without a warrant following attacks on people was something that I believed in very strongly to protect the citizens of Canberra. On reflection, after considering Mrs Carnell's amendments, I will not support it on this occasion because I believe that there are grounds where the authority of a warrant should not be needed on health issues.

MR MOORE (4.56): Unfortunately, on this one, I think Ms Szuty has it wrong, as has the Government. Interestingly enough, none of us are sitting there like the Chief Minister reading *New Idea*. She probably will not get any. Madam Speaker, following that bit of jocularity, the notion of a search warrant is entirely appropriate because it is not that difficult with modern communications systems to get search warrants. The fax system is perfectly reliable and can be a very rapid way of getting search warrants. It seems to me that we can ensure that the requirement to enter premises is able to be achieved with the appropriate civil protections in place.

I must admit, Madam Speaker, that this is an issue that I raised with reference to the Land (Planning and Environment) Act, somewhere around section 270. I was searching through it a minute ago. The arguments that the Liberals are now putting could equally be applied to the Land (Planning and Environment) Act and its powers of search and entry. We may well revisit them after looking at this particular situation. I would encourage the Planning, Development and Infrastructure Committee that is revisiting that legislation to have a very careful look at what powers are required in that Act as well.

It seems to me, Madam Speaker, that because we do now have so much better methods of communication we probably ought to begin to revisit these sorts of powers and ensure that protections are in place.

Mr Berry: I do not have a fax in my car.

MR MOORE: Mr Berry suggests that he does not have a fax in his car.

Mr Berry: Nor have any of the health officers.

MR MOORE: Nor do his health officers. That is probably the case. But Mr Berry does have a phone in his car and once a magistrate assures him that a warrant is available I am sure he could act. Secondly, it is quite possible to have a fax in a car if that is necessary. I think that both the public health interest and civil liberties can be taken into account, thanks to modern communications systems. It seems to me that this is a quite sensible amendment.

MR HUMPHRIES (4.59): Madam Speaker, I can only confirm that in this day and age it is not difficult to obtain a warrant when there is some belief that there may be the need for this kind of thing to happen, for a health inspector to enter premises on that basis. This is a situation that appears to me to be used extremely rarely. We do not very often have situations where health inspectors exercise this kind of power - I assume that something of this kind exists in the present legislation - to enter premises in urgent and serious circumstances concerning the operation of food legislation. It is a very rare kind of occurrence. For that reason it should be possible to limit both the occasions on which you need to get a warrant and the cost of obtaining a warrant. If we are talking about a dozen times a year, is it really such a serious imposition to ask a person to go and get a warrant before they enter someone's premises? We are talking about people's homes here as well, not just about business premises. In fact, most likely it would be people's homes, given the wording of paragraph (1)(a), and I for one do not think it is appropriate for the Assembly to be looking at that sort of issue without bearing in mind the impact on people's rights.

Mr Berry said, in response to an interjection from over here, that we are talking about the state of the food people eat. Madam Speaker, we are not talking about just that; we are talking also about people's rights. People's rights are important in these circumstances. If someone's goods are seized, goods with which they make a living, be they goods that they sell for consumption or goods that they use to make consumable foods, that person's rights are infringed very seriously because their capacity to earn a living is affected, possibly extinguished, and that is a matter of some concern. It should be a matter of some concern to members of this Assembly. I commend the amendments Mrs Carnell has put forward.

MR MOORE (5.01): I thought I would speak once more to try to convince my colleague Ms Szuty of the difference between this amendment and the Dog Control Act. Ms Szuty proposed a very sensible amendment to the Dog Control Act to provide for powers of this nature. It was a very different situation. If a dog has just mauled somebody or there is a specific danger of a vicious animal attacking people, police officers can act because they have reasonable grounds. For a public health inspector to act, the same degree of urgency is not required. I accept that there is some degree of urgency, but it is a very different situation in terms of the measure of urgency. That is what we are talking about.

This is an opportunity to protect people's civil liberties, but at the same time the inspector does have the opportunity to get a warrant in very quick time. It really does not take that long. It really does not require that much effort. I believe that I am correct in saying that, a warrant having been obtained, even by phone, somebody can move.

Mr Humphries: Without having the piece of paper.

MR MOORE: Without actually having the piece of paper in their hand. In that case there could be a delay of two or three minutes.

Mr Berry: No; an hour.

MR MOORE: In the optimum situation the delay may be only a couple of minutes, but no doubt sometimes one would have to allow 20 minutes or something along those lines. Usually, though, a health inspector would have some suspicion and, thinking that might be necessary, could so move. Madam Speaker, through you, I would ask Ms Szuty to reconsider her position on this. In fact there is a significant difference between this and the Dog Control Act. The same sort of urgency is not required of a health inspector and in this case it is appropriate for us to allow a little bit of time. That is all that this amendment will do.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (5.04): I have to tout for Ms Szuty's vote too. I do not think she would cop what Mr Moore put to her because it did not amount to much. Ms Szuty will recognise that the carcass of a dog that has been broken down in a residential garage and is on the way to a restaurant is as much of a risk to people in the ACT in terms of the numbers. If it happens to be particularly rancid meat or some other product, it might lead to any number of people becoming seriously ill. Ms Szuty would recognise that there is an urgent need to deal with those matters very quickly. Mr Moore, if he has convinced Ms Szuty to go down

the path that he has suggested, will regret the day because one evening, working late in the night in his office, he will have called for some takeaway food and he will taste something a bit odd. He will say, "Gee, I am not sure. I am just not sure". If that food inspector had been at the front gate he would have been able to prevent that doubt. Ms Szuty, do not be swayed by those shallow arguments. This is a serious issue about public health. I know, despite all the laughter, that you recognise the very serious issue that I am talking about. I now call upon Mr Moore, having heard my comments, to reverse his position.

MR HUMPHRIES (5.06): I think it is worth contrasting the situation that the police face in these circumstances. We are giving to these people powers equivalent to powers that might be exercised by police in certain circumstances. As I understand it - and I am not the Minister for police, yet - police in our Territory operate on the basis that they usually do seek a warrant before they enter premises. That is the operating procedure on which they work. There are certain circumstances, as I understand it, where police are able to enter premises notwithstanding the lack of a warrant. It is usually in a situation where a crime is in the process of being committed, a car chase has ensued, and someone runs into a house. They are entitled to rush into the house afterwards and deal with it.

Mr Kaine: In hot pursuit.

MR HUMPHRIES: In hot pursuit; in that sort of situation. Is that really comparable to something like the circumstances that might apply under this legislation? No, of course it is not. Can you imagine the health inspector walking down a street or sitting in his car and suddenly seeing people from the restaurant loading crates labelled chihuahua chow mein into the back of their truck? So off they go and off goes the health inspector after them in his car. They pull in to the house and in rushes the health inspector.

Mr Connolly: As you know, precisely that situation has occurred in the ACT.

MR HUMPHRIES: Mr Connolly says, "Precisely that situation has occurred". To be quite frank with you, I am sure that that was the once in a century occasion. I think, Madam Speaker, that if an occasion like that has taken place in the ACT we are probably safe and it will not happen again in the lifetime of anyone in this place. The fact of life is that those sorts of things do not happen. In the vast majority of cases health inspectors are able to and should obtain warrants before they enter premises. I think that to give them powers, in effect, greater than the powers enjoyed by police is just not right.

Obviously, when someone has run into premises after committing a crime, or there is a rape or something like that going on inside the premises, or an offence going on, police have to have the power to enter without a warrant. That is a very important point. But how often is that going to occur in similar circumstances in respect of this kind of offence? Someone carving up or jointing a dog which is to go to a restaurant and be served is an offence of a kind very unlikely to be seen. They are hardly likely to be jointing the dog out in the backyard where everyone can see, are they? The fact is that in most cases the health inspector is going to have been tipped off. He is going to be told, "There is some hanky-panky going on in these premises. Go and inspect it".

If the health inspector has half a brain he will obtain a warrant. That is the situation we are talking about. The idea of chasing a truckload of chihuahua chow mein down the street is fanciful; it is airy-fairy stuff. It is not going to take place more than once a century. I do not think we need legislation like this for those very isolated circumstances.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (5.10): Madam Speaker, I do not want to prolong the debate; I just want to correct a matter that Mr Humphries referred to. He said, stirred up by the heat of the debate, that this includes residential premises. The definitions are quite tight. This is a power to enter prescribed premises. Prescribed premises are, under proposed subsection 19YB(4), food premises, and food premises are defined in the head Act as where there is a business of food going on, or premises, which could include residential premises, for the purposes of food for sale, or the records or the appliance; but they are only - - -

Mr Humphries: So it could be residential premises.

MR CONNOLLY: But only residential premises which are used as part of a food business. They are not going to knock on Mr Humphries's door or Ms Szuty's door, one again would expect, given the tight definition of the emergency entry power, and look for the records, that type of material, in the food owner's residential premises, or perhaps the food owner's accountant's residential premises. They would do that with a warrant. This is the emergency power and it is not, Madam Speaker, contrary to Mr Humphries's views, applicable to general dwelling houses of persons who are unconnected with the commercial production of food.

MS SZUTY (5.11): I appreciate members' attempts to change my mind on this issue. I remind my colleague Mr Moore and members of the Opposition that when I spoke to this amendment in the first instance I did refer to the grave seriousness and urgency about the particular occasions when health officers would want to enter premises without a warrant. I reiterate my view on this matter which I placed before the Assembly. I will not be supporting these amendments.

Amendments negatived.

MRS CARNELL (Leader of the Opposition) (5.12), by leave: Madam Speaker, I move:

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Line 19, proposed new subsection 19YI(1), omit "at any time".

Line 21, proposed new paragraph 19YI(1)(a), omit the paragraph, substitute the following paragraph:

"(a) either -

(i)at the expiration of a period of 6 months commencing on the date of the seizure, no proceedings have been commenced in relation to any alleged offence under this Act or the regulations in respect of the thing;

(ii)if such proceedings were commenced within that period - the charge has been withdrawn or the proceedings (including any appeal in relation to those proceedings) have otherwise been determined with no conviction being recorded; or

(iii)the Minister becomes satisfied that no contravention of this Act or the regulations has been committed in respect of the thing; and".

Madam Speaker, these amendments are to ensure that any items seized by a health inspector, by ACT Health, will be returned immediately to the person they have been seized from if no charges are laid, or if the prosecution fails, or if the charges are withdrawn. Currently the Bill does not require goods to be returned immediately. It could be necessary for somebody who has had goods seized - a sausage machine, or all sorts of things - to go to appeal to get their goods and machinery or whatever back. That obviously is not what was meant by the Bill. I understand that the Government may even support this amendment. Certainly as of last week they did.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (5.13): This is in relation to paragraph 19YI(1)(a). Madam Speaker, according to my advice, this paragraph was designed to provide the Minister with a quick and efficient way of returning food to the owner before it has lost its commercial value. Where a mistake is made it would be cheaper for the Government to return the goods quickly rather than to pay increased compensation as the food deteriorates. The New South Wales Act, according to my advice, gives this discretion to the Director-General of Health. In the ACT context that would be the Secretary of Health, I suppose. The current law is silent as to who owns seized property. The new law makes it quite specific and provides safeguards against their use. Madam Speaker, I do not know where Mrs Carnell got the idea that - - -

Mrs Carnell: Because you told me.

MR BERRY: I think you might be making that up. Are you? Madam Speaker, as to the first of these amendments, this is an efficient measure as far as the Government is concerned. The Act will not collapse as a result of the changes; but from my point of view, Madam Speaker, the Bill as it stands provides a sensible measure for dealing with the problem. That which is proposed by Mrs Carnell, whilst it will not undo the entire legislation - it will not change the world very much - will make it less efficient.

Amendments agreed to.

MR HUMPHRIES (5.15): Madam Speaker, I move:

Page 16, line 24, proposed new section 19YZ, add the following subsection:

> "(2) The fact that providing information or answering questions pursuant to a requirement under paragraph 19YD(j) may tend to incriminate an occupier of premises shall be taken to be a reasonable excuse on the part of that occupier for the purposes of paragraph (1)(b).".

This is the amendment to proposed new section 19YZ. Mr Berry has drawn attention to the fact that the Opposition might, at one stage, have removed paragraph 19YD(j) from the Bill. That is the power that allows health inspectors to require the occupiers of premises to provide information or answer questions reasonably related to the use of the premises. We were concerned about that provision, but we are happy to ensure that proper protection is given to citizens by means of an amendment to proposed new section 19YZ which provides that a person shall not, without reasonable excuse, hinder or obstruct a health officer in the exercise of powers under, for example, section 19YD.

We propose to add a provision which makes it clear that, in answering questions under paragraph 19YD(j), a person may refuse to answer those questions on the basis that they may self-incriminate. The amendment provides that a reasonable excuse for declining to answer those questions or to otherwise obey what will become subsection 19YZ(1) is that the person will incriminate themselves by providing that answer or otherwise cooperating in that way. That is a reasonable requirement. I believe that the Government, the Opposition and the Independents share the view that we should not be requiring people to answer questions that would provide for self-incrimination. This merely makes it quite clear - - -

Mr Connolly: Like, "Is that a rat in the soup?".

MR HUMPHRIES: I think Mr Connolly has eaten something that does not agree with him. We are spelling out very clearly that a reasonable excuse is that persons might incriminate themselves. That is a reasonable excuse, and I think we should spell that out very clearly in legislation of this kind.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (5.17): I note Mr Humphries's earnest presentation on this issue as it relates particularly to paragraph 19YD(j). I will just read from it. It requires the occupier of the premises to provide information or answer questions reasonably related to the use of the premises in connection with the manufacture, preparation, processing, treatment, handling, sale or disposal of food. My understanding is that in the normal course of events a defence is that one was refusing to answer on the basis that it might be self-incriminating. The words proposed by Mr Humphries, therefore, become not particularly necessary, but not particularly offensive to the Government either.

MS SZUTY (5.19): Mr Humphries has raised an issue which we did deal with at some length in the Scrutiny of Bills Committee. The Government response, which was received from the Attorney-General, Mr Connolly, on 24 November, says:

> I am advised that the Bill as drafted does contain adequate protection in relation to self incrimination as the Bill does not expressly or impliedly abrogate the privilege against self incrimination.

While that answer was technically correct, the Scrutiny of Bills Committee was not necessarily happy with the wording of the Bill as it appears at the moment. I think that Mr Humphries has taken the issue up legitimately on the basis of the Scrutiny of Bills Committee's concerns and this provision will improve the relevant piece of the legislation quite substantially.

Amendment agreed to.

Clause, as amended, agreed to.

Remainder of Bill, by leave, taken together, and agreed to.

Bill, as amended, agreed to.

AUSTRALIAN NATIONAL TRAINING AUTHORITY (TERRITORY FUNCTIONS) BILL 1993

Debate resumed from 9 December 1993, on motion by **Mr Wood**:

> That this Bill be agreed to in principle.

MR CORNWELL (5.20): Madam Speaker, last week we discussed the report of the National Committee on Violence and I felt in that debate that we were addressing the effect rather than the cause. I would say that the cause of much of the violence is inadequate parenting skills, poverty, unemployment and alienation. They are all causes of violence, but the cause in total so often is poor or inadequate education. I would hope that the functions that are proposed in this legislation for the Australian National Training Authority, and this particular aspect of that legislation which will facilitate it in the ACT, will assist in correcting some of these educational deficiencies. I would remind members of ANTA's purpose. I quote:

> According to the Australian National Training Authority Act 1992, the main aim of ANTA is to promote a national vocational education and training system, with agreed objectives and priorities, assured funding arrangements, consistent national strategies and a network of high quality providers, delivering nationally recognised programs.

I understand that something in the vicinity of an additional $720m is going to be provided for the triennium commencing from 1 January 1994. I hope that this commendable aim, Madam Speaker, can be translated into more than just words. Unfortunately the Labor governments, both Federal and local, often rely very heavily on words but not much on action. Therefore I have to say that I remain a little sceptical as to what the outcomes of this new initiative may be.

Nevertheless, I recognise that there is a real challenge presented for the successful implementation of ANTA because of the increasing demands being placed upon tertiary education at all levels.

We are all very much aware of the fact that the universities no longer can take all those people wishing to attend universities. This is putting increasing pressure on TAFEs and institutes of technology. I remain rather concerned about what happens to other students as a result of the downward pressure, if I could put it that way. That is not to be critical of institutes of technology or TAFEs. Obviously, because of a flow down from the universities into those tertiary institutions, other people are being denied the opportunity to go into institutes of technology and TAFEs. The ANTA proposals will not do anything to reduce the opportunities at institutes of technology or TAFEs, and therefore they deserve to be commended. Thus, despite my own scepticism about Labor's capacity to deliver in this, the Liberal Party will not be opposing this facilitating Bill, and we look forward to more detailed legislation which I understand is to be introduced later in 1994.

There are, however, two matters of concern that I would like to address briefly. The first is really beyond our power to correct because it is a Federal issue. Nevertheless, I would like to place on record the Liberals' concern, and we join our Federal colleagues in this, that the Federal Minister for Education, Mr Beazley, wishes to have the sole prerogative of withholding funds from a State or Territory for breach of agreement, rather than leave this prerogative with a ministerial council as was originally proposed. The Minister, Mr Wood, might like to respond to me when he closes the debate on this matter, as I understand that this particular aspect was raised at the Hobart meeting. I would be interested, Mr Wood, to know what your position was in representing the ACT. Did you support the Federal Minister in arrogating this responsibility to himself, and, if so, why? It seems to me that Mr Beazley's action in seeking to take over this role is not in the spirit of cooperation, nor, I suggest, goodwill between States, Territories and the Commonwealth. Therefore I do not believe that it is necessarily a step in the right direction.

The second matter is of a local nature, Madam Speaker, and it concerns the composition of the interim ACT vocational education and training agency to be set up under clause 6 of this Bill, pending legislation on a more permanent agency being established later in the year, as I said earlier. I understand that there are some 14 people to be appointed to this interim agency but that, despite representations, the ACT Council of Parents and Citizens Associations Inc. has not yet secured a position. I do not wish to be critical of the Minister or condemnatory of him at this point, because I understand that discussions are still continuing in relation to this matter and thus no final decision has been made to deny the ACT Council of P and C Associations a place on this interim board.

I would like to place on record that the Liberal Party is quite prepared to support the P and Cs' representation on this interim board. They have written to me making representations. The case they have made out is sensible. Frankly, increasing an already large agency from 14 to 15, or, if you wish, the non-government sector as well, from perhaps 14 to 16, I do not see as unreasonable, and I do not believe that that relatively minor increase would necessarily be cumbersome. With those two comments in relation to the legislation, Madam Speaker, I conclude by saying that the Liberal Party supports it.

MS SZUTY (5.27): This legislation does indeed mark a significant first step in the further development and coordination of training opportunities in the ACT by the Australian National Training Authority. While the passage of this Bill is a small step which basically defines terms and enables the Minister, Mr Wood, to nominate the State training agency for the Territory, and confers powers, a considerable amount of work remains to be done over the next 12 months to formally establish the Vocational Training Authority, its composition and functions, and the consultative forums and processes that will need to be developed alongside it.

I wish to inform the Assembly also that I have had representations from the P and C Council seeking a position on the Vocational Training Authority once it has been nominated as a State training agency, which, I believe, is a fairly imminent decision by the Minister. Madam Speaker, I too, like Mr Cornwell, support their application for membership as at present parents do not have a voice on the Vocational Training Authority. Indeed, one of the objectives of a national vocational education and training system, as defined in the Schedule on page 18 of the Commonwealth Act, which the Minister kindly provided to me as background information, says:

> improved cross-sectoral links between schools, higher education and vocational education and training.

It seems to me, Madam Speaker, that this can effectively occur only through active parent participation in the process. In conclusion, I would like to reiterate that I support the Bill in principle, and I look forward to hearing more information from the Minister next year as regards the progress being made to further develop training opportunities in the ACT.

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning) (5.29), in reply: Madam Speaker, I thank members for their contributions and their support. I am not sure that I agree with Ms Szuty that this is a small step. I think it is a fairly large and very significant step. I would refer members to clause 4 of the Bill, which says:

> The Authority has the functions, in relation to the Territory, that are expressed to be conferred on it by the Commonwealth Act.

The Commonwealth Act gives all the details of that. The formation of ANTA and our ceding of some of our authority to ANTA is a significant measure, but it is one that I am pleased that my colleagues here are supporting.

In response to Mr Cornwell, let me say that it puts the Commonwealth's money where its mouth is. Mr Cornwell said that he hoped that it was more than just words. Indeed it is. The $720m he indicated is additional, new money over the next few years. The Commonwealth is committed to this and it is backing it up with strong financial support and with strong legislative measures, and with a deal of activity elsewhere. For example, the Australian vocational certificate system itself, a major change to a national vocational training scheme, is a major initiative that has, in fairly rocky times, won the support of the States. Some of the flow-ons of that have had rocky times too, but we are getting there.

The meeting in Hobart certainly was a step forward, a return to a cooperative approach to these things. The national statements and profiles are firmly on the agenda. Indeed, the national curriculum is well under way, and the competencies - another aspect of the Federal agenda - are also back in the orbit of the States again. They are dealing with it; they are progressing on it, albeit in their own way and certainly with their own choice of words. Madam Speaker, I can assure Mr Cornwell that the Commonwealth is backing up what it is doing with a great deal of action and money.

It is the case that the universities take great numbers of students now. I support Minister Beazley's comment that it is not necessarily appropriate for every student to think they need to go to a university. Our own Institute of Technology here is perhaps a more appropriate body, a more important body, for many of our students.

Mr Cornwell made comments about withholding funds. I do not think there is a problem. New South Wales is having something of a debate on this. Let me be clear; the Commonwealth is aiming to have the power to withhold some funds. I am not sure - I have not checked - whether that legislation has gone through in the last few days across the lake, but the story is this: The Commonwealth is saying, "We want the power to withhold Commonwealth funds in circumstances where States are not spending". They want the power to withhold their own funds. I do not believe that that is a power they should not have. I think it is eminently fair and reasonable. They are not trying to withhold State funds, but they believe that they need a measure of control. There has been a deal of letter writing between New South Wales and the Commonwealth. I am not sure whether the New South Wales people have ultimately agreed to this or not, but I think there will be agreement in the end. The Commonwealth view, as I say, is a reasonable one.

Then we got on to a little bit of a different matter about when we establish our own State training authority, which is likely to be an enhanced VTA option. I note what the two speakers have said. I have been visited by the same people and the matter is under active consideration.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

ADJOURNMENT

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

> That the Assembly do now adjourn.

Assembly adjourned at 5.34 pm