DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

24 August 1994

Wednesday, 24 August 1994

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

COMMUNITY REFERENDUM BILL 1994

MRS CARNELL (Leader of the Opposition) (10.31): I present the Community Referendum Bill 1994.

Title read by Clerk.

MRS CARNELL: I move:

That this Bill be agreed to in principle.

This Bill marks a major threshold in the evolution of democracy in Australia and is the most important item of legislation ever to be presented to this Assembly. It puts into effect the principles of giving average people, firstly, the right to initiate their own laws and, secondly, the right to vote on those laws. This pioneering piece of legislation reflects our commitment to the principle that the people, not governments, have the ultimate sovereignty. It empowers ordinary electors to have a genuine say in the sort of legislation that governs them.

The idea has been well tested. Various versions of direct democracy have been operating successfully for several years in Switzerland, Spain, Italy, Austria and the United States, where 26 States have some form of direct voter participation in law-making and a further 20 have Bills in the pipeline. In February this year New Zealand's Citizens' Initiated Referenda Act became effective. The important point to note is that no country or State which has introduced a formal process of direct democracy - such as community-initiated referenda, or CIR - has ever voted to get rid of it. When Californians were asked whether they wanted to continue CIR, they voted 85 per cent in favour. When the residents of Burnie Shire in Tasmania were asked whether they wanted the right to initiate and vote on legislation, they voted 87 per cent in favour. That is a huge vote of confidence.

What is clear is that fundamental and inevitable changes are taking place in liberal democratic societies such as ours. Modern democracies have evolved from a period when control was in the hands of the aristocracy and property owners. Some of the early State parliaments in Australia continued this tradition. Then came the dramatic change of women being given the right to vote, but power remained - and some would say it still remains - in the hands of a parliamentary and bureaucratic elite.

Representative government worked well when information was difficult to transmit and travel was arduous and expensive. It made sense for those times. But now the traditional concept of representative government is under challenge. How times have changed with the revolution in communications and the emergence of a well-informed, well-educated electorate. Today many voters know as much about what is happening as their representatives do, and they know just about as quickly. Armed with this information and the ability to understand it, people are no longer prepared to accept that their leaders or representatives always know best. Hence, society is seeing a demand for participation. The ACT Government acknowledges that in its emphasis, at least for public consumption, on community consultation.

In the Liberal Party we know that, if people are confident that the decision making processes are open and fair, and if they are able to participate in those decisions, then they are far more likely to own the result. This philosophy and conviction have led us naturally to develop a formal process which gives voters, in addition to elected members of the Legislative Assembly, the power to initiate laws and to vote on them. We believe that the knowledge and common experience of ordinary people in the ACT are a marvellous resource for the rules by which the community is governed.

This Bill to put our policy into effect has been drafted by the Parliamentary Counsel's Office. I am most impressed with how thorough and professional the office has been in converting the concept of elector-initiated laws and our instructions into legislative form. I am therefore pleased to place on record my appreciation for the commitment far beyond the normal call of duty which the office has applied to this task and for the excellent quality of the finished document.

The Bill is explained in detail in the accompanying explanatory memorandum, which I will distribute to members. However, in a nutshell, the process is this: The sponsors of a proposal need the support of 1,000 people to have the proposal registered; then they have six months to get the support of 5 per cent of electors - that is, some 9,500, on current voting numbers; if successful, legislation to put the proposal into effect is drafted and presented to the Assembly; the Assembly can pass it or refer it to a referendum; if the Assembly does nothing, the proposed law goes to a referendum automatically; provided four months has elapsed, a referendum is held in conjunction with the next general election; and, if a majority of electors support the proposed law, it goes to the Assembly to be passed into law.

Mr Berry: Compulsory voting?

MRS CARNELL: Compulsory voting, Mr Berry. As the self-government Act stands, only the Assembly can make laws. That is, until the self-government Act is amended, it is not possible for the people of the ACT to pass a proposal directly into law.

Madam Speaker, this Bill is not revolutionary. It takes a very careful approach to ensure that proposals will be well thought out and will result in good law. It will complement the role of the Assembly. Before a proposal can be registered it will have to be cleared by the Electoral Commissioner, to make sure that it is within the powers of the Legislative Assembly and cannot interfere with the budget by proposing or prohibiting expenditure of specific amounts of public money for particular purposes.

The threshold of 5 per cent of electors required to support a popular request before it can go to the Assembly in the form of a proposed law means that it would have to be supported by 9,500 people, as I said before, at current population levels. This would be quite difficult to achieve and is right at the top of the range in the light of international experience. Indeed, Professor Geoffrey Walker has noted that threshold levels of more than 5 per cent mean that the community consultation process may not be used. A Bill with higher levels could be dismissed as merely providing the illusion of democracy.

The argument runs that if the threshold is too low - 2 per cent seems to be cited as too low - it will encourage frivolous or crackpot proposals. However, that would not occur under this legislation because of all the conditions a proposal has to meet before it can be accepted by the Electoral Commissioner for registration. At the other end of the scale, a very high threshold, such as 10 per cent or even higher, is sometimes cited as necessary to rule out frivolous or extreme proposals and, at the same time, discourage frequent attempts to initiate referenda.

Again, this barrier to the process is not necessary because of the acceptance tests applied by the Electoral Commissioner. Indeed, behind most claims for high thresholds there is a hidden agenda which is actually designed to stymie voter-initiated referenda altogether. In any case, the debate about thresholds does rather miss the point, because it focuses on only the number of supporters to trigger a referendum. The real test, and the only one that really matters, is the result of the referendum itself.

The case for a high threshold is even less relevant for this legislation because of the high level of support needed for a proposed law. In most other jurisdictions a referendum is passed if it is supported by the majority of those who decide to vote at a voluntary poll. By contrast, this Bill requires support of the majority under compulsory voting. That is, leaving aside informal votes, more than 50 per cent of eligible voters have to be in favour. That obligation totally eclipses the argument for a high threshold.

Another check built into the system is that, once a proposed law has been tabled in the Assembly, the Auditor-General does an estimate of what it is likely to cost or save. The reason for having this provision is that if a proposal is to be enshrined in law it is necessary for the community to have reliable information on how much the proposal would cost to implement or the savings that might be made, just as the Executive does when deciding on legislative proposals in this place. It is appropriate for the estimate of costs or savings to be done at the time the proposed law has been prepared, because it is the legislation, not the proposal, that governs what is and what is not to be done. If the Executive needs this financial information, then so do the people. The Auditor-General is appropriate for this task because of his knowledge of the processes of costing public expenditure, his objectivity in conducting the analysis and his credibility with the public.

Madam Speaker, most of the opposition to direct democracy comes from career politicians or from those who have influence in established party structures. This is understandable, but it is not excusable. Essentially, the rejection of direct democracy amounts to thinly disguised self-interest. When analysed, most arguments against the concept of allowing the community to initiate its own laws and vote on them are generally arguments against democracy itself. Let us look at the main ones.

Mr Lamont: Tell Alexander Beetle that.

MRS CARNELL: Maybe you should talk to your leader on Hilmer, on corporatising and privatising, Mr Lamont. The argument is sometimes run that noisy minorities will gain too much influence; giving people the power to initiate their own laws will mean that fringe groups can get up lunatic proposals. The fact is that this Bill has the opposite effect. At present it is much easier for a noisy and well-organised minority to get its way by persuading a few key politicians, as we know, than it would be to persuade a majority of all voters. That is why lobby groups flourish under the current system. Direct legislation is a very effective way of taking controversial issues out of the hands of extremists, pressure groups and power elites.

An alternative argument is also put, but this one asserts that minorities will suffer at the hands of the majority. Experience also shows that the opposite is true. For example, notwithstanding the great unpopularity of the small Communist Party in Australia in 1951, a referendum to ban it was lost. In Queensland the Government introduced daylight saving against the wishes of a minority living in rural areas, but when the question was put to a referendum most Queenslanders chose to respect the special needs of people in the country and voted against daylight saving.

The cost of running a referendum is sometimes cited as the reason for denying the community the opportunity to initiate laws and vote on them. To the extent that there is some expense, it will be reduced by ensuring that most referenda are held at the same time as general elections. Another factor that will reduce cost, and in some cases eliminate it altogether, is that all referendum proposals will first be tabled in the Assembly and the Assembly can pass the law itself if it wants to, in which case no referendum will need to be held.

You hear of voter apathy as a reason for not allowing direct democracy. "Nobody knows and nobody cares" is what you hear; but, to a large extent, voter apathy is a product of the present political system. People are not inherently apathetic; but, if they feel excluded from the action and powerless to do anything about it, then why bother? They might seem ill-informed or prejudiced or naive; but they would not be if they were part of the action, if they had real power.

Another argument cited is lack of understanding on the part of the punters. It is argued that ordinary people are not capable of understanding the complexities of issues and legislative proposals, but I say that the level of political understanding in the electorate depends much more on interest than on ability. Hence, although opponents of direct

legislative initiatives use the argument that the public is too ignorant to initiate and vote on the rules of the community, the mere act of participating in the process would dramatically increase the level of public interest and knowledge. That is certainly the experience in the United States.

Does anybody in this Assembly believe that people are incapable of understanding issues? I certainly hope not. Does anyone here think that average voters are too ignorant or irresponsible to decide on issues that affect their everyday lives or the lives of their families? It appears that nobody thinks that. Are there any members of this Assembly who believe that people are not able to make sound judgments on the rules of our community? If you do, I invite you to tell the Assembly right now; but I am sure that you will not. That being the case, does anyone here believe that the people of the Territory should not be allowed to participate directly in deciding on matters that affect them?

Madam Speaker, the tide of events is flowing so that this Bill, hopefully, will pass. It is only a matter of when rather than if. The community does not want any more power for politicians. You only have to look at their response every single time they are asked. The only power that needs increasing is the power of the people themselves. Whatever happens in this community in terms of the rules by which we live should not be decided by a few politicians and should not be imposed by narrow interest groups via the political party in power at the time. Whatever happens should happen because the people decide that that is what they want. Surely that is democracy. This legislation gives the people of the Territory that power. I commend the Bill to the Assembly. I seek leave to present the explanatory memorandum.

Leave granted.

MRS CARNELL: I present the explanatory memorandum to this Bill.

Debate (on motion by Mr Stevenson) adjourned.

CRIMES (AMENDMENT) BILL (NO. 2) 1994

MR BERRY (Manager of Government Business) (10.49): I present the Crimes (Amendment) Bill (No. 2) 1994.

Title read by Clerk.

MR BERRY: I move:

That this Bill be agreed to in principle.

In the Australian Capital Territory, Labor's policy on the provision of abortions is unequivocal. It calls for safe and legal abortion on request. Clearly, this policy recognises that safety and legality are interdependent. More importantly, it recognises that the decision belongs with the woman. Labor's platform is therefore pro-choice. Let me say at the outset that I wholeheartedly support our platform.

I believe that abortion should be safe, legal, accessible and rare. Abortion is and will always be a controversial issue in the community. I accept this, and I want to make it clear in introducing this Bill that I accept those strongly held views. All I ask is that you consider the question: Should we ignore the reality of 80,000 abortions which occurred across Australia last year? Should we accept that on a strict interpretation of the law many of these women and their doctors would be threatened by a gaol sentence?

Abortion itself, of course, remains a controversial issue which appears irreconcilable. I know this; but I ask for acceptance of the fact that abortions, legal or otherwise, will continue to occur. Regardless of anyone's views on the moral question, we have the collective responsibility to ensure that we cannot be charged with turning a blind eye to the reality of ACT women having access to abortion and at the same time running the risk of criminal sanctions.

As you all know, I feel very strongly about this issue; and it is my commitment to law reform in this area which has led me to my actions today. It is a woman's right to choose whether or not she has an abortion, and most in the community accept this position. It is worth while to look at how we got to this position. The Crimes Act 1900, which I seek to amend with this Bill, has three sections which make an abortion illegal - sections 42, 43 and 44. They provide a penalty of up to 10 years in prison for a woman who procures her own abortion; for someone, say a doctor, who performs an abortion; and for someone, say a pharmacist, who provides drugs which may be used to perform an abortion.

Our Crimes Act is modelled on the New South Wales Crimes Act, which in turn was based on the United Kingdom's Offences Against the Person Act 1861. Let us now consider how things were in 1861 when this law was put in place in the United Kingdom. Women in those days were considered the property of their fathers until that possession was transferred to the women's husbands. Continuing the family line - that is, bearing children - was considered essential. Women did not work outside the home. Women were not allowed to own property until 1870. Women could not become members of the Parliament in the United Kingdom until 1919, and they did not get to vote until 1928.

In Australia we were much more progressive. Women were granted the vote in 1902, but the Crimes Act was passed in 1900. Things have changed since then, and the attitudes that prevailed in 1861 are, thankfully, a thing of the past. The way the changes in community attitudes have been recognised is through the court. Rulings by judges have meant that the Crimes Act 1900 has not been enforced. I do not know about you, but I have moved along a bit since the 1950s. This law has not moved since the 1900s, though in practice much has changed.

We cannot ignore, however, that court rulings may be altered by later decisions. I think this was demonstrated starkly by the recent Newman ruling in New South Wales. In that decision, members may recall, Judge Newman reaffirmed that under the Crimes Act abortion is illegal. Of course, that began alarm bells ringing all around the country. We have relied on the Menhennitt ruling and the Levine ruling, which are well known by people who are concerned about this area of the law, for over 20 years; and now a judge in a higher court has reminded us that the illegality is still there.

Equally, we cannot ignore our responsibility as legislators. Ineffective and outdated laws are bad laws and should be ditched. If we believe that they are no longer to be enforced, we must do our duty and change these laws. In my view, it is a sign of weakness inherent in the legislation that the harshness of the law has been ameliorated by the judiciary to reflect community standards. We have to make sure that that weakness does not prevail. We are, after all, the law-makers.

In the specific case I have raised today, the penalties under the Crimes Act are up to 10 years' gaol. Quite simply, I do not believe that the community would countenance laws which could result in a woman being sent to gaol for 10 years because she had had an abortion. Nor would they accept that her doctor should suffer the same fate for performing that abortion. Surely a woman faced with the difficulty of such a decision should be granted our support, not threatened with a gaol sentence. Society has moved a long way from 1861, and it is time we brought our laws into line with community attitudes on this issue.

Some will express concern that this will open up the floodgates for abortions performed by unqualified people or for abortions in late stages of pregnancy. These are, in my view, scare tactics by those who do not want women to clearly exercise that choice free of criminal sanctions. This is not the experience in Canada, where in 1988 their Supreme Court struck down the criminal provisions in their law, as my Bill seeks to do. There has been no avalanche of abortions in Canada. It has been claimed that there are protections in place that will be swept away by my Bill. My Bill sweeps away only one thing - the threat of a gaol sentence.

I need to debunk some of the myths being put around in the debate in the community. The first is the myth that there will be late abortions. There is nothing in the current law which sets a time limit. There are, however, protections in the law, and I am not proposing to repeal those. The existing section 40 of the Crimes Act, the section dealing with child destruction, is another section steeped in early law which provides for penalties for contributing to a child's death or for preventing a child from being born alive. This section of the law applies to the period nearer to childbirth. The simple fact is that under the current system applying in relation to abortion, which will not change under my amendment to the Crimes Act, late abortions do not occur. The mechanisms that prevent late abortions are already in place. It is not the law that is stopping late abortions; it is women and their doctors. Doctors are not going to act against the interests of women and their unborn babies. Women in the later stages of a pregnancy are not going to seek an abortion, because as a pregnancy progresses they come to know their unborn child as a person.

Myth No. 2 concerns the backyard abortions. The law that is preventing them now is not affected by this Bill. It is the Medical Practitioners Registration Act. The only way we would see a return to backyard abortions is if the current Crimes Act provisions were enforced. Myth No. 3 is that we need law to enforce counselling. I strongly support counselling. That is why as Health Minister, as members may recall, I allocated extra funds for it. At such a difficult time for a woman we have to provide the counselling and support she needs. But, in my belief, it would be difficult to legislate for counselling, and, in my belief, there should be no such provisions in a Crimes Act. It is not the place for them. Of course, there are provisions which indeed deal with this.

I am not trying to increase the number of abortions done in Canberra. As I said at the beginning of this speech, I believe that abortion should be safe, legal, accessible and rare; and my record as Health Minister demonstrates this belief. I increased the funding for counselling, demonstrating my commitment to ensure that women have access to counselling. I do not believe that women will try to use abortion as a means of contraception. To suggest this is to misunderstand what a difficult decision it is to make. I know that health care providers will certainly work against it.

Madam Speaker, the fact remains that you cannot legislate for morals. To do so, in my view, would lead to flawed legislation. The issue in this Bill and the issue on which we all have to focus is the decriminalisation of abortion. The choice for this house is whether or not archaic laws which provide for up to 10 years in gaol for a woman and her doctor should remain in place.

Many would simply wish that the issue were not debated. May I say to you that for too long many have been saying that this issue should not be debated. May I also say, with some regret, that throughout the years it has been mostly men who have said that it should not be debated. A grave responsibility falls on the shoulders of men, male legislators, for failing to do their duty in the past. Wishing that the issue would go away will not help. It will not go away while ever sections 42, 43 and 44 of the Crimes Act stand.

We as legislators have to accept that it is our responsibility to make law and not to condone its breach. But, as I have mentioned, it is also our responsibility to ensure that we move in line with community standards. We have to accept the failure of legislatures in the past to address this issue. I do not think we have to be fearful of any groundbreaking moves that this Bill might suggest, although it is groundbreaking in the Australian context. I think it gives us the opportunity as a mature legislature to send a message to the rest of Australia, to the other legislatures, which are dominated by males and have for many years ignored their responsibilities.

A lot has been said about conscience votes. It is well known that the major parties in this house will allow a conscience vote. For me, the issue is clear. It is not my conscience which will decide whether a woman has an abortion; it is the woman's conscience. I seek leave to present the explanatory memorandum.

Leave granted.

MR BERRY: I present the explanatory memorandum to the Bill.

Debate (on motion by Ms Szuty) adjourned.

ANIMAL WELFARE (AMENDMENT) BILL 1994

MR STEFANIAK (11.06): Madam Speaker, I present the Animal Welfare (Amendment) Bill 1994.

Title read by Clerk.

MR STEFANIAK: I move:

That this Bill be agreed to in principle.

Madam Speaker, the current Act had its genesis back in October 1990 in a policy statement by Mr Duby which was duly taken away and acted upon by government officials.

Mr Lamont: Madam Speaker, I raise a point of order. I refer you to order of the day No. 15, which is the Animal Welfare Act (Amendment) Bill 1993 introduced by Mr Stevenson. I seek your ruling, Madam Speaker, on whether the Assembly is able to accept a Bill proposing to amend the Animal Welfare Bill in the terms announced by Mr Stefaniak while Mr Stevenson's Bill is still on the table.

Mr Humphries: It is not the same Bill.

MADAM SPEAKER: It probably is the same Bill, but under standing order 136 it is a matter of whether a question which is the same in substance has been resolved in the negative or affirmative in the current year.

Mr Humphries: It is not the same Bill.

MADAM SPEAKER: Order! The question is not whether it is or is not the same Bill. Under the standing order which applies, the question is whether we have or have not made a decision about the issue before us. Because the issue has not been resolved, Mr Stefaniak is in order. Please continue, Mr Stefaniak.

Mr Lamont: I seek clarification, Madam Speaker. Do I take it that - - -

Mr Humphries: Is this a point of order or not?

Mr Lamont: Yes, it is. It is a point of clarification within the point of order. Should Mr Stevenson's Bill be debated first if Mr Stefaniak's Bill is accepted, or would they end up being cognate Bills?

Mr Humphries: There is no rule about that.

MADAM SPEAKER: Mr Humphries, I will determine that question when it comes up. You will desist from interjecting. The question, in fact, will be decided by the Administration and Procedures Committee, at which point you will be allowed to give your opinion.

MR STEFANIAK: In 1992 a Bill was introduced in this Assembly. That Bill, after considerable amendment, ultimately became law. That Bill, when it first went before the house, did not make any reference to exotic animals. I understand that the provisions banning certain exotic animals from circuses were inserted by amendments moved by the Deputy Chief Minister, who was then a backbench member. The effect of those amendments was to ban circuses from Canberra. To my knowledge, we have not had one here since.

Mr Lamont: False. That is misleading. The Flying Fruitfly Circus and Circus Oz have been here repeatedly.

MR STEFANIAK: On page 4 of the Animal Welfare Act - - -

Mr Lamont: The Flying Fruit Flies have been here. It is a great circus. The Liberal Party AGM is a great circus.

MR STEFANIAK: The Labor Party conference is a great circus. You are probably right there, Mr Lamont. There have certainly been a few activities in Canberra that could be classed as circuses. However, Mr Lamont's amendments and the 1992 Act have effectively banned certain circus animals from Canberra. A prohibited circus animal is defined as a bear, cheetah, elephant, giraffe, leopard, lion, puma or tiger, or an animal prescribed under section 52. It is interesting that technically a cross between a lion and a tiger, for example - I forget the term for it - could slip through the net. There are a number of other provisions in the Act which arose from Mr Lamont's amendments. Subsection 51(3) states:

A person shall not conduct a circus using a prohibited circus animal.

There is a penalty provision.

Mr Lamont: Madam Speaker, I raise a point of order. I believe that Mr Stefaniak, in addressing this matter, is reflecting on a vote of this Assembly. They are not "Mr Lamont's amendments". They, in fact, are provisions in legislation endorsed by the Assembly.

MR STEFANIAK: They were in your Bill. You introduced them, and they are now law which we are trying to repeal.

MADAM SPEAKER: Mr Stefaniak, I am sure that you are well aware of the provisions about alluding to votes. Please continue.

MR STEFANIAK: Subsection 51(4) also makes it an offence for a person to import a prohibited circus animal into the Territory as part of a circus troupe, whether or not for the purpose of using the animal in a circus, and again penalty provisions apply. That, of course, relates to transportation through the Territory. We saw the effect of that when the Great Moscow Circus performed in Queanbeyan in May of this year. I understand that some of my colleagues went to see it.

Mr Lamont: Yes; was that the elephant they had to shoot in Honolulu?

MR STEFANIAK: No, that is not the elephant. That was the elephant in 1992, David.

Mr Lamont: Was that the elephant that Mr De Domenico was photographed with?

MR STEFANIAK: It could have been with his elephant. It was not with mine.

Mr Lamont: Was that the one that was shot in Honolulu on Tuesday night? Was it the same elephant?

MR STEFANIAK: No. I can understand why Mr Lamont is a bit frustrated.

Mr Kaine: Madam Speaker, could we have a bit less of the cross-chat and fewer interjections?

MR STEFANIAK: I have heard, David, that when you were a nipper in Braidwood you used to nick off school to go to watch the circus. How things have changed.

MADAM SPEAKER: I do not think Mr Stefaniak even noticed that one, Mr Kaine.

MR STEFANIAK: I missed Mr Kaine's remark, Madam Speaker.

MADAM SPEAKER: Order! I realise that Mr Stefaniak is new, but I do not think he needs all this assistance. Please carry on, Mr Stefaniak.

MR STEFANIAK: It is good to be back, Madam Speaker. There are a number of other provisions which I will not go into in any great detail. Subsection 54(2) affects the conduct of a circus through a circus permit. Subsection 56(1) deals with the conditions of circus permits. My Bill simply seeks to delete subsection (2) from section 54 and to replace the reference to subsection (2) in subsection 54(4) with a reference to subsection (3). I think that even the Government, when they have a look at the second of those amendments, will realise that it fixes up a typographical error.

The effect of the exotic animals Bill, Madam Speaker, was to ban circuses using animals in the ACT. This, sadly, was not done by the Government consulting with the people concerned - the people who ran circuses and the people who had concerns about this particular issue and the banning of animals. It was also done, Madam Speaker, against the wishes of many Canberra people. My party stated at the time and still states that it is blatantly misguided ideology.

The arguments used to ban exotic animals from circuses can be logically extended, Madam Speaker, to include fish in bowls, birds in cages, horse racing and dog racing. Why did the Government not try to ban those as well? However, in fairness to the current Government, I suppose I should mention that, through VITAB, they have done their best to ban racing. Also indicative of the Government's inconsistency on this issue is the fact that it has not banned zoos. Subsection 51(1) states:

A person shall not conduct a circus without a circus permit.

Subsection 51(2), though, states:

Subsection (1) does not apply in relation to a circus in which there are no performing animals, or in relation to a travelling zoo.

On the Government's logic, what is the difference between a travelling zoo and a circus using animals?

Mr Lamont: They are still required to get a permit - ha, ha, ha!

MR STEFANIAK: But you cannot get a permit if you have these exotic animals in a circus.

Mr Lamont: That is dead right.

MR STEFANIAK: There are inconsistencies there, Mr Lamont. Madam Speaker, this Act, whilst it had a rather tortuous process through this Assembly in 1992, did come out with a number of safeguards which we certainly have absolutely no problems with. In fact, I understand that during the debate we moved to strengthen some of those safeguards. Section 7, for example, makes it an offence for a person, without reasonable excuse, to commit an act of cruelty on an animal. I understand that my party, in fact, wanted to delete the "without reasonable excuse", thus strengthening that section. However, that is an offence, as it stands. Similarly, subsection 8(1) states:

A person shall not, without reasonable excuse, deliberately cause an animal unnecessary pain.

And there are penalties for such conduct. Section 9 deals with confined animals. It states:

(1) A person in charge of a confined animal shall not, without reasonable excuse, fail to provide the animal with adequate exercise.

(2) A person shall not, without reasonable excuse, confine an animal in a manner that causes injury, pain, or undue distress to the animal.

Penalty: $10,000 or imprisonment for 1 year, or both.

These are sensible, strong provisions against the mistreatment of animals. We have absolutely no problems with them. In fact, we tried to strengthen sections 7 and 8, as I indicated. Section 9 especially is a section which provides protection to any circus animal. Subsection 56(2), which will remain if the Liberal Party's Bill is accepted by members of this house, provides:

The Authority may grant a permit subject to such other specified conditions as he or she considers, on reasonable grounds, to be desirable in the interests of animal welfare, including conditions in relation to the following matters:

(a) the welfare of animals used by the circus;

(b) the provision of facilities and equipment for those animals;

(c) compliance with an approved code of practice.

An approved code of practice, no doubt, would be drawn up by the Minister. Those provisions would remain. Those provisions would provide safeguards in relation to any concerns any reasonable people might have.

Madam Speaker, the circus operators were quite happy with the provisions of the original Bill as they stood. They are used to being regulated, as each State and local council has inspectional regulations relating to their operations. We are talking here of some 900 government instrumentalities and authorities watching their every move, not to mention such organisations as the RSPCA. With all this, the members of the National Circus Association have only ever been charged with two offences of cruelty - and we are talking about circuses and animals that go back for many generations.

The circus owners engaged the services of a veterinarian, Dr Karl H.C. Texler of the Bright Veterinary Clinic, to prepare their own code of ethics for management of animals in circuses. That was a very comprehensive code of ethics and demonstrated the high level of responsibility of the circuses to be, in fact, self-regulating, let alone to meet all the other obligations that they compulsorily have to conform to. Exhaustive studies carried out on circus animals gave rise to no condemnation of using them. Circus animals, such as budgies in cages, are bred over many generations for the life they lead. They have not been captured from the wild and brought immediately into circuses. Ashton's Circus has felines that go back seven generations.

Many learned people - including Dr Marthe Kiley-Worthington, one of the first ethologists to go and actually live and study wild animals in Africa and to recognise the behavioural problems of the captive and domestic animals - have included in their work studies of large mammals, animal welfare and training. Since 1971 she has been an animal behavioural consultant. After 3,000 hours of scientific observations of animals during training, travel and performance and after many visits to circuses and zoos, Dr Kiley-Worthington concluded that, whilst there are improvements that must be made, circuses do not by their nature cause suffering and distress to animals. She stated in her book *Animals in Circuses and Zoos*:

On balance, I do not think that the animals' best interests are necessarily served by money and activities diverted to try and ban circuses and zoos either locally or nationally. What is much more important is to continue to encourage the zoos and circuses to improve their animal welfare.

Madam Speaker, the banning of animals from circuses was an overreaction and perhaps was based on misinformation. A number of surveys were conducted at the time. One of them showed that 53.89 per cent of Canberrans had been to a circus in the last five years. A North Sydney Council report asked the question, "Should circuses with performing animals be banned from operating on public land?", and 57.21 per cent of respondents said no, they should not. In 1992 there was an ACT survey, Madam Speaker, and the question was asked, "Should circuses with exotic animals be banned?", to which 59.8 per cent said, "Do not ban them", 28.5 per cent said that they favoured a ban and 11.7 per cent said that they were undecided. Close to 60 per cent of Canberra citizens at the time did not want circuses banned.

Madam Speaker, the only people who have benefited from the ban on circuses here are the people and the businesses of Queanbeyan. I will now read two extracts, one from the *Queanbeyan Chronicle* of 2 May and the other from the *Canberra Chronicle* of 3 May. The *Queanbeyan Chronicle* states:

Queanbeyan's economy is again rubbing its hands with glee at the prospect of the Moscow Circus arriving in town for performances at the Queanbeyan Showground.

The town has reaped the benefits since the ACT Government banned exotic circus animals from performing in Canberra in August 1992.

The ban under the Animal Welfare Bill also forbids the transportation of prohibited animals through the ACT.

Queanbeyan Chamber of Commerce and Industry president Edith Buckley welcomed the circus with open arms for both its short and long term benefits.

"It is the best thing the ACT Government has done for Queanbeyan. We love circuses in Queanbeyan because people come here and have a positive experience, see there are many other things to do, and come back for other things," Ms Buckley said.

Queanbeyan Mayor Frank Pangallo said the town benefited more than economically.

"It's very good to have a circus, as it does a lot for our image and maturity.

"[As far as we're concerned] it is a decision that has been made. We're not upset about the decision and their loss is our gain," he said.

Mayor Pangallo said the circus' Cossack Horseman would receive the keys to the city as a gesture of friendship on Wednesday.

The *Canberra Chronicle* of 9 May carried the headline "Box-office smashed at circus".

Mr Lamont: "Elephant rampages box office. Trainer gored by elephant".

MR STEFANIAK: No. It was not smashed by an elephant or by people. The headline refers to people going through the gate. The article states:

The Moscow Circus broke its box-office records with more than 22,000 people turning out for the seven performances under the Big Top at Queanbeyan Showground.

Circus publicist Coralie Wood thanked Queanbeyan for hosting the circus as it was obvious people wanted to see the show.

"Queanbeyan and their mayor have supported the circus to the hilt and the support was just phenomenal," Ms Wood said.

Betty Percy from the Queanbeyan Tourist Information Centre said she had no official figures but several hotels had been booked out.

"It has been good for the community, they caused no problems and we're sad to see them go," Mrs Percy said.

Queanbeyan Chamber of Commerce president Edith Buckley said all traders had been delighted with a definite increase in trading over the past week.

Queanbeyan certainly has benefited from the incorrect decision made by this Assembly back in 1992. How much business has Canberra missed out on? How many employment opportunities have been missed out on because of this move - a move made when, as I have indicated, there were relevant safeguards in the original Bill to protect the welfare of the animals concerned?

Mr De Domenico: A lot of people like to work for circuses, too.

MR STEFANIAK: Yes, they do indeed. Circuses have also offered traditional family entertainment. Madam Speaker, in this Year of the Family - with the constant complaints of the breakdown of the family unit, problems emanating from violence in the home, violence on TV, drugs, X-rated movies, et cetera - here is a form of entertainment that all members of the family and all generations have traditionally enjoyed. The safeguards are there already. A code of practice can further enhance those safeguards.

Madam Speaker, this Assembly has an opportunity to reverse a misguided decision. I commend the Bill to the house for its due consideration. I ask for leave to present an explanatory memorandum.

Leave granted.

MR STEFANIAK: I present an explanatory memorandum to this Bill.

Debate (on motion by Mr Wood) adjourned.

Mr Stevenson: Madam Speaker, I wonder whether I could move to give the Liberal Party time this morning to bring on any other matters I have on the notice paper. I think they have missed one or two, although I am not sure.

MADAM SPEAKER: I do not think so, Mr Stevenson. Thank you for trying.

HEALTH COMPLAINTS (AMENDMENT) BILL 1994

MR MOORE (11.26): Madam Speaker, I present the Health Complaints (Amendment) Bill 1994.

Title read by Clerk.

MR MOORE: I move:

That this Bill be agreed to in principle.

Madam Speaker, what we present here today is a sensible and logical piece of legislation which will improve what is already a very good Act that passed through this Assembly, as I recall, with minimum dissent - that is, the Health Complaints Bill 1994. Madam Speaker, this Bill contrasts greatly with the Bill that was just presented to the Assembly by our new member, Mr Stefaniak. His Bill was a publicity stunt and reiterated something that is already on the notice paper from Mr Stevenson.

Mr Humphries: You are embarrassed by it, Michael.

MR MOORE: There is an interjection from Mr Humphries that I am embarrassed by it. I am not embarrassed by it at all, Mr Humphries, and I have made it very clear that I am not changing my vote. The whole exercise is totally futile and reflects the sort of approach that was part and parcel of the First Assembly when Mr Stefaniak was part of the Alliance Government.

Madam Speaker, this Bill, in contrast, makes a very sensible and rational adjustment to the Health Complaints Act by drawing to ordinary people's attention that, if they go to a general practitioner, an acupuncturist, a chiropractor or a physiotherapist and are dissatisfied with the service they get, there is something they can do. This Bill requires that a small piece of paper - an A4 piece of paper, the same size as I am holding up at the moment - be displayed in each part of the premises that is attended by users and in a position of such prominence that it is likely to be seen by those users. That is a very simple thing for people to do. That sheet of paper will be headed "Health Complaints Unit" in characters of 24-point type. Most of us know the size of points nowadays because we use them on our computers.

Mr Stevenson: It is the size of the title of a Bill.

MR MOORE: The notice also identifies where the people can get in touch with the Health Complaints Unit. The heading, as Mr Stevenson interjects, is the size of the title of a Bill.

Madam Speaker, it also means that ordinary people with a problem will know exactly where to take that problem. It does not mean to say that they have some incredible power to resolve the issue then and there. It means that they can go through the process that is set out in the Health Complaints Act. We are just suggesting a very small improvement to a very good Act, to empower people to deal with the medical profession - and I am using that term in its broadest possible sense. It is not an attempt in any way to pick on doctors or to pick on natural therapists, but rather to ensure that the balance of power is such that people know that they have somewhere they can go to have issues of concern to them dealt with. Madam Speaker, I commend this Bill to the house.

Debate (on motion by Mr Connolly) adjourned.

DISCHARGE OF ORDER OF THE DAY

MR STEVENSON (11.31): Madam Speaker, in accordance with standing order 152, I move:

That order of the day No. 1, private members business, relating to the Electors Initiative and Referendum Bill 1994, be discharged from the notice paper.

As members will recall, in June this year, I reintroduced a Bill that I had initially introduced nine months ago - the Voice of the Electorate Bill - to give citizens the right to call binding referendums. I reintroduced that Bill with amendments after another look at it by the Scrutiny of Bills Committee. I left in the Bill a number of things that were there from the start. The first, and most important, is the fact that the Electors Initiative and Referendum Bill gives the people of Canberra the right to have a binding say on legislation, the right to have a say on what happens in their lives.

As someone said very recently, "The community does not want any more power for politicians". That is a quote. The Bill that I introduced does not give any more power to politicians. Specifically, it does not give the politicians the power to ignore the referendum, to ignore the will of the people. One might ask, "But does the legislation in the ACT allow a Bill to be binding where the people in the ACT have decided, by referendum, that something is binding?". The answer to that is simple. The Bill went before the Scrutiny of Bills Committee three times. Each time it was gone over in detail. I note that Mr Humphries nods his head. That is quite reasonable, because Mr Humphries is a member of the Scrutiny of Bills Committee. Mr Humphries is also a lawyer.

Mr Humphries is a member of the Liberal Party. Mr Humphries agrees, as does every other member of the Scrutiny of Bills Committee, that the Electors Initiative and Referendum Bill, which grants the people the right to have a binding say, is valid. That is only fair.

The people have the right to have a binding say. The result of a referendum should be introduced into law. Let us say that someone wanted to introduce a Bill that had no engine - a sort of citizens referenda vehicle without an engine - that would not make the referendum result binding. The Scrutiny of Bills Committee have already agreed that, provided this Assembly wants to pass the legislation, the result of the referendum can be made binding on this Assembly. Once again, I make the point that all members of the Scrutiny of Bills Committee and Professor Whalan agreed with that. So the suggestion that the Bill should be advisory only is not valid.

Something that I left in the Electors Initiative and Referendum Bill when I retabled it was that the citizens should have the right to determine how some of their money is spent. Obviously, any proposal that does not allow the citizens to determine how some of their money is spent is a nonsense. After all, what is government about if it is not about spending taxpayers' money - in our case, $1.3 billion in the last year, plus whatever was borrowed? So, naturally enough, if you ruled out any expenditure of taxpayers' money in a citizens referenda Bill, not only would it be like a car without an engine but it would not have any wheels after the tyres had already been stripped.

Something else that I left in the Bill was that the citizens should have the right to determine, by referendum, an urgent matter. Naturally enough, if there were a legislative proposal by politicians to, say, knock over a building, particularly a school or a hospital, and build a tunnel, if we had anything approaching direct democracy in the ACT the citizens would have the power to bring on an urgent referendum, not at the next election and certainly not a year or so later. They would need time to do that. Within three months would be about right. The Electors Initiative and Referendum Bill allows that. As members know, normally, I do not spend much time talking about these matters. However, I think members will well understand that what we proposed to do this morning is all but over; so it is not as if we are pressed for time. Mr Berry came around to see me a couple of minutes ago and said - - -

Mr Humphries: Madam Speaker - - -

MADAM SPEAKER: Mr Stevenson, Mr Humphries is attempting to take a point of order.

MR STEVENSON: I just thought I would make the point.

MADAM SPEAKER: You did, Mr Stevenson.

Mr Humphries: Have you sat down, or are you going to continue?

MR STEVENSON: You have the floor, if you want to raise a point of order.

MADAM SPEAKER: You have to be a mind-reader in this forum.

Mr Humphries: Madam Speaker, I wanted to say that there is other business before the Assembly today. I do not think we will get through it all if we do not press on.

Ms Follett: Oh, sit down!

Mr Humphries: I note the interjection from the front bench over there, Madam Speaker. Mr Stevenson is, I think, attempting to discharge a matter from the notice paper; but, in the course of doing so, he is debating another Bill presented today.

Mr Moore: He is talking about his own Bill that has been on the notice paper for months and months. You are embarrassed because the Liberals have put on today two Bills that are already on the notice paper.

Mr Humphries: Madam Speaker, I have no objection to Mr Stevenson debating either of the Bills when they actually come up for debate. What he is debating today is a motion to take one of his Bills off the notice paper. There are other Bills that I would like to see passed today, and I do not think there is any point in this speech that we are hearing at the moment.

MADAM SPEAKER: Mr Humphries is perfectly correct. In terms of relevance, Mr Stevenson, you are straying widely. Would you mind coming back to the point and explaining to us why this Bill has to be discharged from the notice paper.

MR STEVENSON: Madam Speaker, I must admit that I am always concerned about the time that I spend in the Assembly, particularly when there are important matters on the notice paper; but, as I mentioned, Mr Berry came around to see me just five minutes ago and said, "It looks like we are going to get through what we planned this morning and we might go into some other things". So, from that point of view, I thought it was perfectly valid to speak. I will finish off on why I am removing this particular Bill, but why I left certain things in the other Bill. When I removed it, I could have changed it; but I decided to leave some things in, particularly the percentage similar to the Swiss percentage, so that citizens can actually make sure that a matter can be introduced.

Question resolved in the affirmative.

POISONS AND DRUGS (AMENDMENT) BILL 1993
Detail Stage

Clause 4

Debate resumed from 11 May 1994.

MS SZUTY (11.39): Members will recall that I adjourned the debate on the amendments of my colleague, Mr Moore, to the Poisons and Drugs (Amendment) Bill, to enable further discussion to occur between a number of members of this Assembly, which it was thought would lead to a compromise position with respect to this issue. I understand that, despite discussions which have occurred, compromise or agreement has not been reached. That is unfortunate. My colleague, Mr Moore, has developed a well-deserved reputation for being at the forefront of drug law reform, not only in the ACT but in Australia. As convener of the Australian Parliamentary Group for Drug Law Reform, he has more and more successfully advocated a position of harm minimisation in relation to drugs usage, as opposed to the more traditional prohibitionist approach. So it is with some regret that I speak to these amendments, knowing that they will not be successful. I am sure that Mr Moore will have more to say about these issues and others during this debate.

Question put:

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

The Assembly voted -

AYES, 2 NOES, 15

Mr Moore	Mr Berry
Ms Szuty	Mrs Carnell
	Mr Connolly
	Mr Cornwell
	Mr De Domenico
	Ms Ellis
	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Kaine
	Mr Lamont
	Ms McRae
	Mr Stefaniak
	Mr Stevenson
	Mr Wood

Question so resolved in the negative.

Clause agreed to.

Proposed new clauses 5 and 6

MR CONNOLLY (Attorney-General and Minister for Health) (11.43): Madam Speaker, I move:

That the following new clauses be added to the Bill:

Insertion

"5. Before section 48 of the Principal Act the following section is inserted:

Prescription, dispensing or sale of anabolic steroids

'47ZB. (1) A person shall not, without reasonable excuse -

(a) administer to himself, herself or another person; or

(b) prescribe, dispense or sell to another person for human use;

an anabolic steroid.

Penalty:

(a) if the offender is a natural person - $5,000 or imprisonment for 6 months or both;

(b) if the offender is a body corporate - $25,000.

'(2) Subsection (1) does not apply to administering, prescribing, dispensing or selling an anabolic steroid -

(a) that is registered under the *Therapeutic Goods Act 1989* of the Commonwealth; or

(b) for the purposes of a clinical trial conducted under that Act.

'(3) In this section -

"anabolic steroid" includes -

(a) a substance specified in Schedule 1 and any -

(i) salt, active principle or derivative of such a substance;

(ii) stereoisomer of such a substance; or

(iii) preparation or admixture containing any proportion of such a substance;

(b) a salt of an active principle or derivative referred to in subparagraph (a)(i); and

(c) a salt of a stereoisomer referred to in subparagraph (a)(ii).'.

Schedule

"6. After section 55 of the Principal Act the following Schedule is inserted:

Section 47ZB
SCHEDULE

ANABOLIC STEROIDS

Androisoxazole
Androsterone
Bolderone
Clostebol".

As was said earlier, Mrs Carnell's original Bill implemented half of what had been agreed as an intergovernmental approach to steroid use. The Government's amendments fill out that picture and mean that this Bill will, in effect, deliver the ACT into the national regime.

MRS CARNELL (Leader of the Opposition) (11.44): It is with pleasure that we support Mr Connolly's approach to this Bill. It makes a Bill that initially set out to solve one problem solve a number of others as well. It brings the ACT into line with decisions that were made at Health Ministers conferences some time ago. I think it is particularly useful today, when we are in the middle of the Commonwealth Games, for this Assembly to be passing legislation of this nature.

MR MOORE (11.44): Madam Speaker, I should start by saying that I am not opposing the amendments moved by Mr Connolly, although I intend to oppose the Bill as a whole. The argument has been put again and again that one of the real reasons for doing this is that Australia is going to host the Olympic Games and we need to be seen to be absolutely clean in relation to steroids. There is no doubt that where people are using drugs in sport they are cheating. I have no difficulty with having laws in place to catch those cheats. The difficulty with this Bill is that it also includes people who are using steroids for reasons other than just cheating; for example, when they are using them for building their bodies and making them, as they perceive, beautiful. I feel that this approach is not an appropriate approach. However, I accept what members are trying to achieve. I just think that it is going to take us down the wrong path.

Proposed new clauses agreed to.

Title agreed to.

Question put:

That this Bill, as amended, be agreed to.

The Assembly voted -

AYES, 15 NOES, 2

Mr Berry Mr Moore
Mrs Carnell Ms Szuty
Mr Connolly
Mr Cornwell
Mr De Domenico
Ms Ellis
Ms Follett
Mrs Grassby
Mr Humphries
Mr Kaine
Mr Lamont
Ms McRae
Mr Stefaniak
Mr Stevenson
Mr Wood

Question so resolved in the affirmative.

Bill, as amended, agreed to.

LAND (PLANNING AND ENVIRONMENT) (CONSEQUENTIAL PROVISIONS) (AMENDMENT) BILL 1994

Debate resumed from 15 June 1994, on motion by Ms Szuty:

That this Bill be agreed to in principle.

MR WOOD (Minister for Education and Training, Minister for the Arts and Heritage and Minister for the Environment, Land and Planning) (11.50): Madam Speaker, in the June sittings, Ms Szuty introduced into the Assembly a Bill which sought to amend the Land (Planning and Environment) (Consequential Provisions) Act 1991. The amendment sought to repeal a provision which enabled lease variation applications that had been

received before the Land (Planning and Environment) Act 1991 commenced to be processed under old leasing legislation. The Government supports this initiative. It would seem to be an appropriate time to draw to a close the ability to vary a lease outside the provisions of the Land Act. I hasten to add that there are only some 30 known applications that are still being processed in this way.

Ms Szuty's proposal offers these applicants the opportunity to resolve any outstanding issues that they may have and to finalise their applications by 30 June 1995. Ms Szuty suggests that at that time the application be taken to be an application made under the Land Act. It is considered, however, that if the application has not been finalised by that time the application should be deemed to be refused. This makes the break clear and gives the applicant the opportunity to apply under the Land Act if they wish to pursue the lease variation. If an application is deemed to have been made under the Land Act, it is not clear at which stage of the process the application has entered the approvals process.

My department will undertake a program of informing applicants of the implications of this Bill, should it be agreed to by this Assembly. Applicants will be advised by letter and there will be public notices placed in the local newspapers. I will be moving an amendment shortly. I understand that it has all been agreed to.

MR CORNWELL (11.53): The Liberal Party also supports this amendment Bill introduced by Ms Szuty. I believe that it is rather timely, in view of the events of last weekend and the concern out there in the community in relation to the whole question of leases and lease variations. I think it is appropriate to quote these words from the explanatory memorandum:

There is growing community concern that lease variations are still being processed by the Department of the Environment, Land and Planning under old legislation, such as the City Area Leases Act 1936 and the Leases Act 1918, that, unlike the Land Act, do not have requirements for public notification, and resultant third party appeal rights, in respect of lease variations.

Surely this is one of the nubs of the problem that we are facing right at the moment. I think it is also fair to say that, even with public notification and resultant third party appeal rights, there are many people in the community who do not believe that they go far enough. But perhaps the short, three-month inquiry that Mr Wood has announced will improve the existing situation.

I also give notice that the Liberal Party will be supporting the Minister's amendment. It is reasonable that applications under the old leasing legislation which have not been finalised by 30 June 1995 should be deemed to have been refused. We believe that that is quite long enough. It still gives applicants time to action the lease variation option that they currently hold.

MR MOORE (11.55): The Bill that we have before us is a very sensible and rational view of what needs to be done. Indeed, the amendments presented by the Minister also will assist in improving this piece of legislation. It contrasts markedly with Mr Stefaniak's circus stunt, which delivers basically nothing for the community and has no chance of delivering anything. What Ms Szuty has done is to attend to a particular difficulty and problem in the community instead of just looking at the notice paper, seeing what other people are trying to do and then repeating what is being done by somebody else, trying to pinch the agenda in a cynical, political manoeuvre. It can be seen as nothing else. Madam Temporary Deputy Speaker, it is with pleasure that I support this piece of legislation that Ms Szuty has presented to the Assembly.

Members interjected.

MADAM TEMPORARY DEPUTY SPEAKER (Mrs Grassby): Could I have a little order. I cannot hear what Mr Moore is saying.

Mr Humphries: It is no great loss, Madam Temporary Deputy Speaker.

MADAM TEMPORARY DEPUTY SPEAKER: No; it is very important. I want to hear what Mr Moore has to say.

MR MOORE: Thank you, Madam Temporary Deputy Speaker. The Bill that Ms Szuty has put before the house - we have a clear sense that it will have the support of certainly a majority of members and perhaps all members - will improve on the system that is currently before us. That is the way that we should be attempting to operate in this Assembly. Perhaps Mr Stefaniak can learn a lesson from Ms Szuty.

MS SZUTY (11.56), in reply: I would like to thank members for their contributions to the debate and for their support of this Bill. I particularly welcome the support of the Minister, who has announced today that, prior to the sunset clause taking effect, he will inform the outstanding applicants of the new arrangements. At the time I first proposed the Bill, there was considerable discussion about its potential retrospectivity. I would like to quote this passage from the report of the Scrutiny of Bills Committee, which, I believe, presents this discussion very effectively:

This Bill enacts a "sunset" clause under which all applications made under a number of repealed Acts (which dealt mainly with leases or valuations relating thereto) or the review by a court or tribunal of decisions in relation to such applications, will be dealt with under the Land (Planning and Environment) Act 1991 from 1 July 1995.

The Bill will not affect any existing applications, review of decisions or rights until 1 July 1995. However, if there are still any existing applications under the old laws or court or tribunal review processes relating to those applications outstanding at that time, then they will be deemed to be under the Land (Planning and Environment) Act 1991.

I think the Minister's amendment to that particular clause changes that situation slightly and, I believe, makes the situation even clearer. The report goes on:

It is possible that the terms of the Land (Planning and Environment) Act 1991 may be less advantageous to those whose applications or review processes are incomplete and, if that is so, the present amendment could possibly act retrospectively to prejudice existing rights.

We have heard from the Minister today that there are about 30 applications still to be processed. I also welcome that advice, because I think that there has been some confusion in the past as to exactly how many applications are potentially outstanding. The passage of this Bill will mean that, from 1 July 1995, all applications for lease variations in the ACT shall occur under the Land (Planning and Environment) Act and not under a variety of repealed Acts. This will bring more certainty to the process and will enable members of the community to better understand planning processes in the ACT.

I acknowledge that there is still much to do in terms of the review of planning legislation in the ACT, which review will be undertaken by the Assembly's Planning, Development and Infrastructure Committee. I look forward to participating in the review as a member of that committee and I welcome the days that have recently been set aside for public hearings during which many of the key players affected by the planning process in the ACT will participate. The passage of this Bill will, however, at this time go a small way to reforming the process for the variation of leases. I believe that it is a timely measure. Once again, I thank members for their support of this Bill.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR WOOD (Minister for Education and Training, Minister for the Arts and Heritage and Minister for the Environment, Land and Planning) (12.00): Madam Temporary Deputy Speaker, I move:

Clause 4, page 2, lines 9 to 15, proposed subsection 26(1B), omit the proposed subsection, substitute the following subsection:

"(1B) On 1 July 1994, any application made under a provision of a repealed Act but not determined before that date shall, by force of this subsection, be deemed to have been refused.".

I present the explanatory memorandum, which has been circulated.

Amendment agreed to.

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

Bill, as amended, agreed to.

GOVERNMENT CONTRACTUAL DEBTS (INTEREST) BILL 1994

Debate resumed from 20 April 1994, on motion by Mr Humphries:

That this Bill be agreed to in principle.

MS FOLLETT (Chief Minister and Treasurer) (12.01): The Government is not able to support Mr Humphries's Bill, which concerns government contractual debts, although Mr Humphries has raised a concern which is certainly shared by the Government. What we have done is to take a different tack in addressing that concern. The concern that both Mr Humphries and the Government are seeking to address is the effect that late payments of debts have on our local community. As I am sure Mr Humphries knows, Treasury direction 8.9 requires that claims be processed to ensure that cheques are issued two days before the due date, which is 28 days after the receipt of the goods or service and a properly rendered invoice, or otherwise, in accordance with any contract that has been entered into. Accordingly, Mr Humphries's Bill addresses a matter that is covered by existing legislation. Indeed, it is this requirement that has significantly contributed to the Government's performance in this area. Mr Humphries himself conceded that, in fact, the ACT Government may have a better record than other Australian governments on this matter of payment of debts.

The inclusion of an interest penalty in Mr Humphries's Bill does appear to be a side issue, in that it is the threat of penalty rather than the penalty itself which Mr Humphries hopes will assist in this area. Mr Humphries, in speaking to his Bill, referred to a number of alleged cases of late payment; but he cited only one specific example. I do not believe that legislating for one example is legitimate. The reference that he made to outstanding claims held by ACT Health related to the period before Health was transferred to the public account and its administrative independence was repealed. This transfer, which occurred from the start of 1993-94, actually brought Health under the scope of Treasury direction 8.9. So there is legislation which applies also in that case.

Mr Humphries made a comparison between government's payment to business and Territory taxation, which in some instances provides penalties for late payment; but I do believe that a more appropriate comparison would be where the Territory is owed money by local business in a normal commercial situation - and that occurs. In this case, the Territory is also open to late payment, and in some cases to non-payment. In contrast, while very rarely the Territory may make a late payment, you can be absolutely certain that all of the Territory's accounts are paid, unlike the reverse situation.

In many instances, the Territory deals with business through a normal contractual arrangement. These contracts specify the due date and, in many cases, provide for penalty interest for late payment. The Territory is bound by the conditions of any contract that we enter into. So, again, there is an enforceable arrangement that is already in place.

Moreover, the principles underlying Mr Humphries's Bill do not appear to be terribly well thought out. A number of clauses - in particular, those which deal with due date - are extremely convoluted. In fact, they may provide a disadvantage where the due date is specified in the contract. Clause 7 is very convoluted. I understand the purpose of it; but it may mean that, where there are existing penalty clauses in a contract, the Territory will have to pay interest twice. I know that your intention in the clause is to avoid that; but, because of the drafting, that may not be the case.

Furthermore, clause 8, while attempting to attribute interest costs to the program area, may have the side effect - I presume, unintended; but certainly unfortunate - of excluding the Trust Fund, through which many of the Territory's commercial transactions are actually made, and possibly also some statutory authorities, as sources from which interest payments can be made. I think that would make the effective operation of this Bill extremely difficult, if not impossible.

So, Madam Temporary Deputy Speaker, I can assure Mr Humphries that I share his concern about late payments; but I do not believe that the Territory should have two pieces of legislation addressing the same issue, particularly when one of those pieces of legislation - namely, Mr Humphries's Bill - is less than clear and very convoluted and may have some unfortunate side effects. In fact, Mr Humphries has not shown any deficiencies in the current legislation. I do not think that there is sound reason to believe that small business would be better off under Mr Humphries's Bill. For all of those reasons, the Government will not be supporting the Bill.

MR MOORE (12.07): When questions have been asked at various estimates committees about this issue of late payments by the Government, invariably the answer has come back to us that part of the problem is that the matter has been in dispute. I think that one of the difficulties with this Bill is that it does not deal with that issue of matters being in dispute. When a matter is in dispute between the Government and somebody to whom they owe money, clearly, the question of interest is a difficult question. That is not addressed by this Bill, and I feel that that is one of the inadequacies here.

Ms Follett raised the issue that there is a Treasury direction, which she refers to as legislation, on this matter already. I must say that, to be persuaded to support this Bill, I would need Mr Humphries to deal with these two issues in particular: Why we would need to have a second piece of legislation and what you are trying to achieve by that, and how you would deal with disputation. As it is for Ms Follett, this is a concern for all members. I know that Mr Stevenson has asked a number of questions during question time - maybe it was in the previous Assembly - on late payment of bills by government and government authorities. The number of times that this has occurred in the last six or eight months, or the last year, must have reduced somewhat. The number of complaints that I was getting previously was probably similar to the number that other members were

getting. They were coming quite regularly. I must say that I have not had those sorts of complaints lately. Maybe part of the reason for that is that Mr Humphries's Bill has been tabled; hence the Government's attention is drawn to it; and so people are a little more on their mettle in dealing with such things. Either way, there are still those two fundamental questions that have to be answered by Mr Humphries before I would consider supporting this Bill.

MS SZUTY (12.09): I note that Mr Humphries introduced this Bill to combat the problem of the Government paying their creditors late for no good reason. At the time, Mr Humphries did cite a number of cases where late payment was made by the Government to particular creditors. He also referred to the Enfield inquiry into health finances in 1991. It was an initiative that the Estimates Committee of 1993-94 took up. We commented on it under "late payment of accounts" in our report of 1993-94, recommending that steps be taken to ensure payment of all accounts by agencies of the ACT Government, where no dispute exists, within 30 days of an invoice being rendered. I must say that, for me, "steps be taken" does not necessarily mean that we need a new piece of legislation to deal with the matter.

I think Mr Moore has covered a number of the arguments quite well. I would also like Mr Humphries, in his summing up, to provide the Assembly with more information about the scope of the existing problem. Ms Follett has referred to one particular case that she knows of; but that is all at the moment. I, like Mr Moore, have some concerns that the area of disputation is not covered in your Bill and I would like to hear your remarks on that particular issue.

MR HUMPHRIES (12.11), in reply: Madam Speaker, in closing the debate, let me say that I am happy that members on the cross benches have left those issues open and will allow themselves to be persuaded on these subjects. I believe that it is possible, and I hope to do that. First of all, may I say, Madam Speaker, that when this Bill was foreshadowed by the Opposition quite some time ago - the Bill was introduced in April - there was a challenge thrown down by the Government. The challenge was to indicate or to prove that there were any late payments of government accounts where there were no disputes concerning the payment of certain accounts.

It was asserted at the time, by both Mr Berry and Mr Connolly, that there were no cases where the Government paid accounts late for no valid reason. As a result of a number of issues that were raised, both outside and inside the Estimates Committee, that assertion was disproved. I would like to quote what I think is an extract from last year's Estimates Committee report. Minister Berry was questioned concerning the late payment of creditors of ACT Health, including suppliers of goods and services. Mr Ayling outlined the procedures for the payment of accounts in use in the system, indicating that the department used "normal trade practices". He advised that, once an invoice is certified for payment, the automated accounts system produces a cheque some 30 days later. The department confirmed on notice that, as at 30 June 1993, there were 11 accounts outstanding for more than 30 days which were not subject to any dispute. The Chief Minister said that there was one case. There were 11 cases, in fact.

Ms Follett: No. I said that Health is now under the Trust Fund.

MR HUMPHRIES: The point is that I issued the challenge at the time by saying that the Government was paying its accounts late. You came back and said that the Government was paying its accounts late. You did not say that the Government was paying its bills on time where those accounts were being paid through the public account. You said that the Government accounts were being paid on time, at that time.

Ms Follett: No, I did not. I said that you had cited one instance.

MR HUMPHRIES: That is what Mr Connolly said and what Mr Berry said. Very clearly, that was what they said. It would seem to me, with great respect, Madam Speaker, that we have here a case where accounts at that time were not being paid on time.

Mr Moore: That is the 1993 report of the select committee.

MR HUMPHRIES: That is right; it was the 1993 report of the select committee. There were 11 accounts which were not subject to dispute, on the department's own admission, which were paid outside that 30-day period. I do not pretend that the problem is always at the same level of intensity. I do not pretend that every day there is the same number of outstanding accounts before this community which would give rise to concern. What I do allege is that, from time to time, this does arise as a problem. It is also quite clear that, from time to time, departments of government in the ACT have used the late payment of accounts as a way of balancing short-term cash flow problems.

The Estimates Committee last year noted that the Enfield inquiry into health finances in 1991 identified a serious problem with the late payment of outstanding accounts. That involved an outstanding amount of, I think, more than $1m that was carried over from one financial year to the next. That has certainly involved very large accounts in some cases being outstanding for considerably longer periods than 30 days.

Mr Moore: They are not caught under your legislation, though, are they, because you have a $10,000 limit?

MR HUMPHRIES: It may well be the case that that is not covered by the legislation; that is true. But we do not know what the details of those accounts are. It almost certainly involves some accounts that would be caught by the legislation. The point is that when government departments are facing that kind of challenge - and they all do from time to time - the temptation to push some bills to one side is very great. I am sure that there are Treasury directives which say that they should not do so. I think the Chief Minister talked about legislation. She did not actually cite any legislation. She talked about a Treasury directive, which, with great respect, is not legislation.

Ms Follett: It has the same force.

MR HUMPHRIES: The Chief Minister says that it has the same force. With respect, that is not true. It might have the same imperative in the minds of the public servants who administer that directive; but it is not legislation. Moreover, there is no penalty for their failing to comply with that directive, particularly if, by doing so, they

manage to bring a particular budget in on target or reduce the level of overspending in a particular budget. With great respect, the case has been made out for this legislation to be necessary. There is no existing legislation which says that you must pay an account within 30 days or pay some interest on that amount. I welcome the statement by the Chief Minister - - -

Mr Lamont: This is nonsense.

MR HUMPHRIES: It might be nonsense to you; but the fact is that there are people in this community who say, repeatedly, that they have an ongoing problem with the way in which the Government handles their accounts. Last September, when I talked about legislation being introduced, I received more than 20 phone calls from small Canberra businesses, all of whom were waiting, or had in the past waited, for outstanding payment of accounts by ACT government agencies and some of whom at that stage were still waiting more than 30 days for those accounts to be paid.

Since the legislation has been tabled, members will recall an issue which was reported in the local media concerning the payment of accounts by ACTEW to Canberra plumbers for work done on account. There was debate at the time about who was responsible for that account. I accept the ACTEW claim that, in some cases, they were not responsible for those accounts. But the fact of life is that the Master Plumbers Association of the ACT made it clear that some plumbers who were waiting for payment of accounts from government agencies were waiting between 60 and 90 days. With great respect, the problem is an ongoing one. You cannot say and have not said on the floor of this chamber that there are not still government agencies which breach this Treasury directive. They do do so. With great respect, the Treasury directive is a toothless tiger. It sets out a rule which it is open to agents of government to ignore or to put to one side when it is expedient to do so.

I welcome the Chief Minister's statement that the Government shares a concern about this problem. That is a positive sign. It is certainly an improvement on the assertion that it does not happen. But I do dispute that the Treasury directive provides a solution to the problem. It clearly does not. With great respect, when the legislation was first mooted, you alleged that there was not a problem when, in fact, there was. The Chief Minister has said that I have shown no deficiencies in the current legislation. As I point out, the deficiencies are that the legislation does not actually have any teeth. Mr Moore asserted that he believes that these problems of delay were invariably the result of a dispute. With great respect, that is not what the Estimates Committee found last year and it is certainly not an assertion which has been made and supported by anybody here today.

Mr Moore: How do you deal in your legislation with accounts that are under dispute? That is what I am asking.

MR HUMPHRIES: Under this legislation, if accounts are in dispute they are not caught by the legislation. That is perfectly clear here. It is perfectly clear that, if there is a dispute between the agency and the supplier of the services or the goods, it is not required that this be dealt with in this fashion.

Mr Lamont: But the plumbers issue would not be dealt with anyway, Gary.

MR HUMPHRIES: I will put it this way to the Assembly, Madam Speaker: If there is no problem with late payment of accounts, if this Government has licked the issue and does not need to worry ever again about a government department making a late payment, where is the problem in passing the legislation today?

Mr Lamont: Great one, Gary!

MR HUMPHRIES: No; where is the problem? If you do not ever have to face a problem of undisputed accounts being paid later than 30 days after being properly invoiced, then you would have to say that there is no harm in passing the legislation. The fact of life is, Madam Speaker, that there is an ongoing problem. I concede that the ACT probably has a better record than most other places; but that is not to say that there is not any good reason why it should have any problem or that there is not any issue where citizens, particularly small businesses in this town, can come back to the Government and say, "I cannot get my bills paid because some government department is mucking me about".

You on that side of the chamber know that it does happen. We have all had complaints about these things taking place. It should not be the case. I think it is fair to expect the Government to set a high standard. If I pay my rates late, I am hit with a very substantial interest rate. If I pay my water rates and my sewerage rates late, the same rules apply. My land tax is in the same boat. I think it is only fair to say that the Government should live by the standards which it sets. There is an incentive in this Bill for government agencies to seek to negotiate discounts in those contracts, those commercial arrangements which the Chief Minister referred to. That also is an appropriate arrangement to enter into. But there does need to be some incentive for managers of budgets in our government agencies to manage those accounts in such a way that these late payments do not occur. If you are managing an agency budget and you happen to be running down to 30 June and you do not have the budget on target, the temptation to let somebody else pay for your problems is very great. It has happened, it does happen, and this legislation is designed to avoid that problem happening in the future or at least to ensure that a penalty is paid if it does occur.

MR MOORE: Madam Speaker, I seek leave to make a further comment.

Leave granted.

MR MOORE: In Mr Humphries's speech he dealt with the question of where an account is in dispute. His response to an interjection from me on that subject was that it is well covered in the legislation. Let me say, with respect to Mr Humphries, that I have read the legislation carefully on a number of occasions and I seem to be missing this particular point. To me, it is a critical point. I think I would have to ask Mr Humphries to seek leave, as I have, or, under standing order 47, to explain where it is in his Bill that this is covered, or to take the Bill away and ensure that it does deal with this particular issue, which is a critical issue as far as I am concerned.

MR HUMPHRIES: I seek leave to make a statement as well, Madam Speaker.

Leave granted.

MR HUMPHRIES: This issue was raised with the legislative drafters when they were drafting the legislation. It was put to them that we need to have a provision there saying expressly that, where a dispute exists between a government agency and a supplier of goods or services, there needs to be a hole in the provisions of the legislation. The draftsman's response to that question was that it is dealt with implicitly by the concept of disputes being taken to some process of resolution in a court. When a matter is under dispute in a court, an agency would have to say, "I am not going to pay this account. Take us to court if you want the account paid, because we are not going to pay this account unless, for example, the services that were rendered badly have been rectified or the goods that were supplied and were defective have been fixed up".

Unless that can take place, the agency has the prerogative of saying, "We are not going to proceed to pay this account". In those circumstances, a dispute exists. Clearly, if the agency goes to the court and obtains a judgment, that judgment overrides the legislation. The agency will not be forced to pay interest to a supplier where it has obtained a judgment to say that it does not have to pay the account in the first place, or has to pay only part of the account, will it? Mr Connolly, I am sure, would concede that point.

Mr Connolly: You are going to have to litigate all these things.

MR HUMPHRIES: If the Government does not believe that it should pay an account and is not prepared to negotiate some other arrangement with the supplier of the goods or the services, then it should go to court and it should deal with the matter in the Magistrates Court or the Supreme Court of this Territory.

Mr Connolly: You have the "Mediate first" poster up in your office, which says that we should not have to go to court.

MR HUMPHRIES: Indeed, they should mediate. The parties can negotiate, pursuant to clause 10 of this legislation, to ensure that there are some mediation provisions in the agreement between the agency and the supplier, if they wish to have them.

Mr Moore: Are you prepared to adjourn the debate at the detail stage? We have to deal with this, and you are not dealing with it satisfactorily. Will you adjourn it at the detail stage?

MR HUMPHRIES: Are you prepared to talk about this during the adjournment?

Mr Moore: I can accept it in principle. Yes, we will adjourn it at the detail stage, at clause 1.

MR HUMPHRIES: All right. Will you adjourn the debate?

Mr Moore: Yes, I will adjourn it.

MS FOLLETT (Chief Minister and Treasurer): Madam Speaker, I seek leave to make a very short additional comment.

Leave granted.

MS FOLLETT: In the course of Mr Humphries's concluding remarks, he may have given the impression that the Treasury directions are not law, or do not have the force of law. I would like to make it clear, Madam Speaker, that the Treasury directions are issued subject to section 125 of the Audit Act 1989 and also pursuant to financial regulation 81, and they do carry the full force of law.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 9 NOES, 8

Mrs Carnell	Mr Berry
Mr Cornwell	Mr Connolly
Mr De Domenico	Ms Ellis
Mr Humphries	Ms Follett
Mr Kaine	Mrs Grassby
Mr Moore	Mr Lamont
Mr Stefaniak	Ms McRae
Mr Stevenson	Mr Wood
Ms Szuty	

Question so resolved in the affirmative.

Bill agreed to in principle.

Debate interrupted.

Sitting suspended from 12.30 to 2.30 pm

QUESTIONS WITHOUT NOTICE

ACTTAB - Contract with VITAB Ltd

MRS CARNELL: My question without notice is to the Chief Minister and Treasurer. I refer the Chief Minister to a press conference last week in which she supported Mr Lamont's claim that the $3.3m payout to VITAB would not cost the ACT taxpayer anything because it would be borrowed from and repaid to Treasury. Is it not true that currently all ACTTAB's profits, assuming that there are any, are split between the Government and the racing industry? Which of these bodies will miss out when ACTTAB's profits are siphoned off to pay for the Government's mistakes?

MS FOLLETT: Madam Speaker, there are two issues here that have escaped Mrs Carnell. The first is that the $3.3m is a loan from ACTBIT to ACTTAB and it will be repaid.

Mr De Domenico: By whom?

MS FOLLETT: By ACTTAB. I can say, as Treasurer, that it is my view that, as ACTTAB got themselves into the VITAB agreement, it is only fair that they should pay to get out of it. The other issue that has escaped Mrs Carnell is the fact that the Government derives its income from ACTTAB not from dividends derived from profit but through a percentage of the gross betting turnover. So we do not rely on receiving a dividend from the TAB which would be dependent on a net profit result.

Members interjected.

MS FOLLETT: The fact is that that $3.3m loan will have to be repaid by ACTTAB from their operating expenses, and it is up to them to ensure that their - - -

Mr Berry: I raise a point of order, Madam Speaker. The Chief Minister is trying her best to answer this question and she is being continually harassed by Mr Humphries, who has demonstrated that he is pretty good at harassing people, and a couple of others thrown in as well.

MADAM SPEAKER: Members of the Opposition will come to order.

MS FOLLETT: Thank you, Madam Speaker. I have virtually concluded my remarks. As I was saying, that $3.3m will have to be found by ACTTAB over the period of the loan from their operating expenses and not in a way that would affect the return to the Government from ACTTAB's turnover.

MRS CARNELL: I ask a supplementary question, Madam Speaker. If the TAB is paying back ACTBIT from its operating expenses, can you guarantee that neither the Government nor the racing industry will receive less money as a result of those repayments?

MS FOLLETT: Madam Speaker, I believe that, given that the Government derives its income from ACTTAB from turnover, ACTTAB obviously have to work hard to increase their turnover. The deal they have done with the Victorian TAB, I believe, puts them in a good position to do just that, and that is why the Minister has been at such pains to ensure that the outcome from a very difficult situation was the best that could possibly be negotiated for ACTTAB and for the punters of the TAB.

We have seen consistently throughout this attempts by members opposite, members of the Liberal Party, to sabotage the Minister's efforts. There is no doubt in my mind that members opposite have put their politicking ahead of the well-being of either ACTTAB or the punters of the ACT. They have continued to try to undermine the TAB - they are doing it again now - and that is exactly what the TAB does not need. If they had any interest in this organisation or in the racing industry in the ACT, they would offer support to the TAB and to the Minister - - -

Mr De Domenico: You have not got a clue.

MADAM SPEAKER: Mr De Domenico, the Chief Minister would have a better chance of answering the question if you did not interject.

MS FOLLETT: I will leave it at that, Madam Speaker.

Hospital Equipment - Vietnam Project

MS SZUTY: My question without notice is to the Minister for Health, Mr Connolly. Last evening's WIN news referred to obsolete hospital equipment being sent to Vietnam for use there. I am sure that, in normal circumstances, all members of the Assembly would compliment the ACT Government on this initiative. However, is the Minister aware that a number of requests had been made through the community health area of the Department of Health for the provision of, in particular, emergency trolleys from the former Royal Canberra Hospital before the decision was taken to send the equipment to Vietnam?

MR CONNOLLY: Madam Speaker, I am certainly aware that there have been a lot of requests for surplus bits and pieces from Royal Canberra Hospital. A decision was made some years ago by my predecessor, and I am confident that it was the right decision, that we could maximise the impact of that surplus equipment if we focused it in one direction. Wayne Berry's decision to accept the offer from Vietnam Outreach, which is a church based group that has been providing support to a range of organisations in Vietnam, I am convinced, was the right one. Certainly, in any given time, with tranches of equipment, we could no doubt have put an ad in the paper asking who wanted bits and pieces, and there would have been people in Canberra who would have said, "Yes, I could use a trolley" or "I could use a bit of dental equipment", or what have you. We could have put it all up for sale, but we probably would have got very little for it.

Given that we have such high standards of medical equipment use in Australia, when equipment does not meet our standards no-one would want to buy it for medical use in Australia; but it is well and truly above the standard of equipment that is available in Vietnam. We have had lots of requests from other international aid groups asking could they have something for this country or that country. The fact that we have focused it all on the Vietnam project means that the Canberra contribution is now really meaning something, and a nursing hospital - the first university nursing course in Vietnam, I am told - some 100 kilometres from Hanoi has been the recipient of the bulk of the equipment. They are now training some 1,200 Vietnamese nurses a year. It is the first time there has been training in nursing, and those nurses are moving throughout the country with the skills they have gained using Canberra equipment. I am told that this is having a real impact on people-to-people relations and that the Canberra donation is well known in Vietnam in that region. For that reason, the decision that was made originally by Mr Berry, and strongly supported by me, to focus our donations on one project is, I believe, the right one.

Government Service - Appointments

MR DE DOMENICO: My question without notice is to the Chief Minister. Chief Minister, yesterday you denied that any union official had lobbied you for Mr Townsend not to be appointed Head of Administration. Today's *Canberra Times* quoted Mr Des Heaney of the AFMEU as saying:

People frequently express their views but no-one expects politicians to take a view and act on it just because one player expressed it.

Chief Minister, do you or your Government have any indication of what Mr Heaney was referring to when he made this comment?

MS FOLLETT: None whatsoever, Madam Speaker. I am not responsible for Mr Heaney's pronouncements, and if you look back over time you will realise that I could hardly take that position.

MR DE DOMENICO: I ask a supplementary question, Madam Speaker. Chief Minister, which player expressed it and to whom in the Government?

MS FOLLETT: I suggest that the question be directed to Mr Heaney.

Housing Trust - Water Conservation Rebates

MR BERRY: My question is directed to the Minister for Housing and Community Services. Will the Minister give the Assembly some more details about the new system of water conservation rebates for Housing Trust tenants?

MR LAMONT: I thank the member for his question. Madam Speaker, the Housing Trust's policy up until 1 July 1994 was to pay for water usage up to the standard level of 350 kilolitres and recover from tenants excess water costs for usage above that rate, except the excess water charge for community organisations, refuges, et cetera, Narrabundah caravan park, or where there had been a change in the tenancy during the year. In light of the announcements of the new water charging policy, the Housing Trust is introducing new options that will encourage public tenants to conserve water and reward those who do. Under the new arrangements, the Housing Trust will charge those public tenants exceeding the 350-kilolitre threshold the full cost of the excess water; retain the current policy of no additional charges for tenants consuming between 300 and 350 kilolitres; forward on the full annual saving of $36 provided by ACTEW to the 4,200 tenants living in flats and aged persons units; and provide a water conservation rebate to the estimated 3,500 tenants who will have an annual consumption level below 300 kilolitres. This system ensures that all tenants are encouraged to conserve water, without disadvantaging the larger families, many of whom can be expected to consume between 300 and 350 kilolitres each year.

The Housing Trust will provide the rebates as offsets against tenants' rent accounts and will also charge the excess water cost to those accounts.

Mr Cornwell: On a point of order, Madam Speaker: Should not the person who asks the question actually listen to the answer?

MADAM SPEAKER: I have no way of judging whether he is actually listening or not, Mr Cornwell; so I will let Mr Lamont proceed.

MR LAMONT: Thank you, Madam Speaker. Unlike Mr Cornwell, Mr Berry can do two things at the same time. Tenants in flats and aged persons units will receive a weekly rebate adjustment, while tenants in houses who are eligible for the water conservation rebate will receive a one-off adjustment in ACTEW's last quarterly billing period for the 1994-95 year. It is correct to say that this is the first step in finetuning the changes in water billing policies that were announced by the Government, effective on 1 July. I look forward to working with Housing Trust tenants, ACTEW and the bureau to ensure that in future years and in future billing cycles we target better the water consumption and conservation program this Government has announced.

ACTTAB - Contract with VITAB Ltd

MR CORNWELL: Madam Speaker, my question is addressed to the Treasurer. I am impressed by her comprehensive knowledge of the VITAB situation and I ask, therefore: What was the total cost of the ill-fated "it is money for jam" VITAB contract to the people of Canberra, including legal fees, travel costs, the settlement, computer upgrades, software changes, loss of the Northern Territory TAB link, increased linkage fee, reduced franchise revenue, loss of turnover, the Pearce report, et cetera?

MS FOLLETT: Madam Speaker, I have recently answered fairly detailed questions from both Mrs Carnell and Mr De Domenico on the cost of this agreement. There are some aspects of Mr Cornwell's question on which I do not have advice; I would have to consult with the Minister responsible, Mr Lamont. In terms of the costs of the inquiry, I can certainly provide you with those costs, as I have provided them to Mrs Carnell and Mr De Domenico previously. Those costs fall into three categories. First of all, there were legal costs; there were the fees paid to Professor Pearce and the associated administrative and support costs for him; and the cost of printing the report, though that was not a major cost. The legal fees were one of the larger items.

I should note that Mrs Carnell urged this inquiry at any cost, no matter what the cost. She showed some foresight for once, so she is hardly in a position to complain about it.

Members interjected.

MS FOLLETT: Madam Speaker, I do know their names, if you want me to help you name them.

The costs have been explained before. The ACT, of course, met the reasonable costs associated with Mr Berry's counsel, Mr James, QC. The Government Solicitor has arranged payment to Mr James of $34,938. Mr Redpath was the solicitor instructing Mr James and his fees were $5,390. ACTTAB, as a separate statutory authority, arranged its own legal representation at its own cost, presumably met from its operating expenses. The legal representation for my own department and the Department of the Environment, Land and Planning was provided by the Government Solicitor's Office and there was no additional cost for that.

The fees paid to Professor Pearce in his capacity as the board of inquiry totalled $51,300. That was calculated at a rate of $300 an hour. In addition, there was a small support service cost and administrative expenses totalling some $13,000. The cost of printing the report was $1,500 or thereabouts. The other major cost associated with the agreement was the payment agreed upon, as we have discussed in previous questions. As I have said, this is a loan from ACTBIT to the ACTTAB, and it is certainly my intention, though clearly not that of members opposite, that that loan be repaid by ACTTAB, and therefore the ACT taxpayer will not bear that cost.

MR CORNWELL: I ask a supplementary question, Madam Speaker. Will the Treasurer table the papers from which she quoted and take the balance of the question on notice?

MS FOLLETT: Madam Speaker, I will take on notice the remainder of the question. I can see no advantage to the Assembly in my tabling the paper. I think it sets a precedent. But, if ordered to do so, I will. Do you want me to table my notes? Mrs Carnell has all that information.

MADAM SPEAKER: We seem to have a disagreement about precedent here. I believe that there was a precedent set that we did not table ministerial papers at question time, but you may request it. It is a precedent that I thought people did respect, so I will not pursue that.

Mr Cornwell: Who am I to break a precedent?

Breastfeeding

MR STEVENSON: My question is to Mr Connolly as Health Minister and concerns breastfeeding. In a recent report in the August issue of the *Canberra Doctor*, the president's report talks about a dramatic potential improvement in health and cost savings that can be brought about by breastfeeding. The doctor says:

... such a public health measure is directly within our grasp. It could have as much public benefit as the elimination of tobacco; it is the encouragement of breast feeding. The best known benefit of breast feeding is that it protects the baby from diarrhoea, and diarrhoea is the major cause of death of babies in the developing countries and to our shame, in aboriginal communities.

He goes on:

It is claimed that more active breast feeding throughout the world could prevent 4000 deaths per day.

The final quote, which relates to cancer, reads:

The benefits to the mother in the first world are a dramatic reduction in the incidence of breast cancer, ovarian cancer and possibly decreased osteoporosis.

I ask: What is the level of breastfeeding in the ACT, and what is being done to increase that level? Also, what are the plans for the future?

MR CONNOLLY: I thank Mr Stevenson for his question because it does raise a very responsible public health issue. That column by Dr Bates in this month's *Canberra Doctor* arose from a conference I opened and Dr Bates attended, held at Woden Valley Hospital some weeks ago. The particular quotes come from a paper presented by Professor Short of Monash University, who is one of Australia's leading experts on this issue. He made the quite stunning claim - very supportable on the evidence, and supported also by documents from the World Health Organisation - that if we could get all of those women who could breastfeed to breastfeed we could have a public health impact that would be comparable to getting everybody who could stop smoking to stop smoking. Certainly, evidence is mounting that not only is there a massive health benefit for young infants in terms of gut diseases and general rates of immunity to diseases, but also there is a now demonstrable impact on breast cancer rates in women who have breastfed.

I was very pleased to host that conference, and I should also give the *Canberra Times* a pat on the head. Professor Short, in delivering that paper, expressed some frustration that he had presented it to a number of forums around Australia but had never been able to get any interest in what he was saying. It seemed to me that it was a very important message, and my media adviser went out to the *Canberra Times* with the paper. He gave the duty editor a copy of Professor Short's paper, which made the front-page feature story in the following day's *Canberra Times*, on the Sunday. So I am pleased that the *Canberra Times* was the first newspaper in Australia to run that very important public health message.

I cannot tell you the precise rates of breastfeeding; it is not something we keep statistics on. What can we do to encourage breastfeeding? This Assembly almost unanimously passed the Discrimination Act a few years ago. One of the grounds of discrimination is status as a carer. There is a ground for discrimination action against any restaurant or other people who take exception to a woman breastfeeding. Professor Short was calling on hospitals - and I am proud that the ACT hospital system has taken this approach for some years - not to distribute free samples of formula in the maternity wings of hospitals, because that can encourage the wrong message. I am proud that ACT Health does not do that. I am not sure when that occurred; but I assume that it was during Mr Berry's stewardship. Again, that is a very important message.

Staff in the ACT maternity hospitals are very enthusiastic promoters of the breastfeeding message, as anyone who has had association with the system in recent years would know. I was very pleased that something like 100 of our nurses and midwives took a Saturday off and attended this major seminar at Woden Valley Hospital to increase their knowledge and awareness of breastfeeding. So the message is strongly sent out both in the hospital and at the baby health clinics around Canberra, where again young mothers are encouraged to breastfeed and given the warnings about not breastfeeding.

One suggestion Professor Short made, and it is one that I think is worth exploring, is that we should look at requiring manufacturers of formula to, in effect, put a health warning comparable to the tobacco health warnings on their packaging. At the moment, they do usually have a message like "Breast is best", and we would encourage mothers to

breastfeed; but to put a health warning on is something that, as the evidence mounts, governments across Australia may well look at. Thank you for your question. It is a very important health message, and I think that in Canberra we are collectively doing a good job on it.

ACTTAB - Contract with VITAB Ltd

MR STEFANIAK: My question is directed to the Chief Minister. I refer the Chief Minister to recent media reports that one of the persons who were originally proposed as a director of the VITAB corporation in mid-1993 was a Mr Charles Wright, the former chairman of the ACT Tourism Commission Advisory Board and a Canberra businessman. When did your Government first become aware of VITAB's intention to have Mr Wright as a shareholder or director? Did you or your Government exercise any influence in the decision that Mr Wright not continue to be a shareholder in VITAB?

MS FOLLETT: Madam Speaker, it is not a matter of which I have direct knowledge; but, in consultation with the Minister responsible, I can answer Mr Stefaniak in the following terms: As far as I am aware, Mr Wright was not involved in any negotiations in regard to the agreement between ACTTAB and VITAB. I understand that Mr Wright was initially nominated as a proposed shareholder of VITAB, but his name was not put forward to the board of ACTTAB when the formal contracts were signed. The advice I have from the Minister is that Mr Wright was not registered on any documents as either a director or a shareholder of VITAB.

MR STEFANIAK: I ask a supplementary question, Madam Speaker. Chief Minister, are you aware of any documents that are held by your Government in relation to any proposed appointment of Mr Wright as a shareholder or director? If so, would you undertake to table any such documents in the Assembly as soon as possible, given that these matters are clearly now in the public interest and are no longer commercial-in-confidence?

MS FOLLETT: Madam Speaker, I would refer Mr Stefaniak to the final part of my answer. I said that, on the advice I have, Mr Wright was not registered on any documents as either a director or a shareholder of VITAB.

Telecommunications Towers

MS ELLIS: My question is to the Minister for the Environment, Land and Planning. I ask it in the knowledge that this issue has been one of great interest in the media and the community recently. Can the Minister advise the Assembly what progress has been made on the issue of the telecommunications towers throughout the ACT?

MR WOOD: Madam Speaker, it is probably useful to give a progress report on what is happening there. Members will be aware that the ACT, after some of the steps I took, was unique in Australia in that we were able to take some measures to prevent the proliferation of those towers. Since I last answered a question on this in the Assembly, we have provided some money - $2,000, to be exact; not a great amount at this stage - to work with the National Capital Planning Authority as we prepare a telecommunications tower management plan. That has been used to employ a consultant, and that consultant is knowledgeable in telecommunications. We want access to our own information on that so that we are not dependent upon the carriers and their statements. There is a pretty raw - I think that was the term used - draft report as a result of our activity with the National Capital Planning Authority. That is going to be refined and it will provide the basis of our further discussions with the providers as we draw up our plan, which will control the spread of those towers.

One other interesting matter is that we have had a great deal of interest expressed from around Australia. News has spread that we were able to do something about those towers. Local authorities around the country are interested to know, as is the media, how we did it. Of course, there was a specific provision; we are in the national capital and the National Capital Plan was able to be used. It is pretty likely that the various local authorities cannot call on any similar measure, but it has done one thing: It has galvanised them to get involved and to resist the random spread of those towers. They are making the same claims to the carriers that we made: They want to be involved in this process and they want some measure of control over it.

ACTTAB - Contract with VITAB Ltd

MR KAINE: I ask a question of the Chief Minister. During the development of the VITAB negotiations, you were provided, according to information obtained by the Opposition, with some answers to possible questions that might come up in this house on that subject. Clearly, somebody anticipated that some questions might have been asked. Can you tell us the date on which you first received those answers to possible questions on that subject?

MS FOLLETT: No, Madam Speaker, I cannot recollect the date. I will try to establish whether that is the case and, if so, the date of those documents.

MR KAINE: I ask a supplementary question, Madam Speaker. Given that the matter has been of great public interest for some months, will the Chief Minister table those documents when she finds them?

MS FOLLETT: Madam Speaker, I will undertake to examine any such documents. I certainly do not recall them, I must say. I can also recall pretty precisely how many questions I was asked, and that was none. I think the matter is entirely theoretical on Mr Kaine's part, but I will certainly have a look at what documents may exist.

School Cleaning Contracts

MR MOORE: My question is to the Minister for Education. Mr Wood, I spoke to you some months ago about a cut by about one-third to cleaning contracts to schools. Are you aware of the difficulties schools are experiencing because of the cuts to the cleaning budget at a time when any study of healthy environments would show that appropriate cleaning of public areas, particularly things such as toilets in schools, is a critical factor in keeping children healthy? Can you tell us what action you propose to take about this cut to cleaning in schools?

MR WOOD: Madam Speaker, Mr Moore did raise the matter with me some little time ago.

Mr Moore: Very informally, I must say.

MR WOOD: Yes, but you do not have to raise it with the greatest formality for me to attend to it. I have inquired into the situation, and there has been some change in the contracts. They are less specific than they used to be. Once there was quite a deal of detail about hours worked, numbers of people and the like, and I understand that that has been removed from some of the dealings. The contracts are becoming perhaps more competitive and therefore are putting some pressure onto the schools. The issue is one the department is keeping under review, at my request, so that schools are not disadvantaged by that outcome.

I might point out that there is quite a deal of interest in the way schools are cleaned. A great deal of cleaning activity is undertaken by students before they leave the schools, and that is a good thing. There is a view, certainly on my part, that the former system allowed a degree of flexibility to the cleaners that was built into their contract and which they did not really need. We do not, however, want to see schools disadvantaged. At the same time, we want to be very competitive and watch every dollar we can, and we want to ensure that the work done in schools is exactly what needs to be done. The short answer for Mr Moore is that the Education Department is continuing to monitor this process to see its impact on schools.

MR MOORE: I ask a supplementary question, Madam Speaker. Certainly, my information is that there are a number of principals who feel that their schools are being disadvantaged. Going on from what you have said, will you assure the Assembly that no school will be disadvantaged under this system?

MR WOOD: Let us have a debate about disadvantage. I am more than prepared to see the system become competitive. It is desirable that students continue to do their bit before they leave school. At the same time, if disadvantaged means that the schools should not be as tidy as they were before, that is disadvantaged and that should not happen.

Mr Moore: We are talking about cleaning carpets, cleaning toilets - those sorts of things.

MR WOOD: The toilets, certainly, should be cleaned every day. There is no question about that. At the school where you last taught you did not need to make the toilet visits; but certainly they should be cleaned every day, and there should be no difficulty cleaning windows and the more difficult areas of the school. I will see that that high standard is maintained.

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

Tobacco Franchise Fee Revenue

MS FOLLETT: Yesterday, Mr Stefaniak asked me a question about the higher than estimated revenue from tobacco franchise fees during 1993-94. I can provide a full answer for Mr Stefaniak. The tobacco franchise fees were expected to raise $25.5m in 1993-94. The actual receipts amounted to $30.9m - $5.4m above the estimate. I am happy to advise Mr Stefaniak that the additional revenue is not attributed to a vastly increased number of smokers but to a larger payment from New South Wales than was expected at budget time in respect of ACT fees incorrectly paid to New South Wales and further success in compliance activity by revenue inspectors which identified significant underpayments from wholesalers. In addition to the lump sum payments received, that compliance activity has created an increased tax base and, consequently, additional revenues on a permanent basis. That additional revenue will amount, we estimate, to $2.25m in 1994-95. I seek leave to incorporate that answer in *Hansard*.

Leave granted.

Answer incorporated at Appendix 2.

Traffic Offences

MR CONNOLLY: Madam Speaker, yesterday in question time Mr Moore asked me why police are asking for employer details when issuing traffic infringement notices. I am advised that there is a box on the traffic infringement notice with an occupation/place of employment section, and that that is sometimes, but not always, filled in or asked for by police to assist in identification of a person. Members would be aware that a year or so ago there were some publicised cases where a motorist had given somebody else's name and address when picked up for an offence. They then ignored the infringement notice, and the innocent person ended up being dragged before the court. So there is an attempt to assist in verifying identification by asking "Who is your employer?", on the basis that somebody could easily say that they were Fred Smith but, when asked, "Whom do you work for?", it may indicate whether they are not being truthful.

Mr Moore: This is when somebody does not show their licence?

MR CONNOLLY: If somebody does not show their licence, although they can ask for it even with a licence being shown.

Mr Humphries: So they will lie about their name but not about whom they work for?

MR CONNOLLY: Police advise me that they can sometimes tell. One presumes that an experienced police officer has a bit of an idea of when somebody is fibbing, and when there is a hesitancy in relation to this question they are perhaps more suspicious. The provision of the employer's details is absolutely voluntary. It is not a requirement of the Motor Traffic Act and drivers are free not to give those details.

I can also assure the Assembly that the very strict provisions of the Privacy Act which apply to the Australian Federal Police would mean that, if the police were to pass on such details to an employer - and I can understand that a citizen may be concerned that their employer may be notified - that would be a very serious matter indeed. Police do take breaches of the Privacy Act very seriously. In fact, I think there was recently a newspaper report of a prosecution where a person employed by the police had passed on not this type of information but other information. So it would be taken very seriously indeed if such information were passed to an employer.

PUBLIC SECTOR - STANDING COMMITTEE
Membership

MR HUMPHRIES (3.05): Madam Speaker, pursuant to standing order 223, I move:

That Mrs Carnell be discharged from the Standing Committee on the Public Sector, and that Mr Kaine be appointed in her place.

Apparently, there was a mistake in the printing of the names yesterday and Mrs Carnell was placed on that committee in error.

MADAM SPEAKER: Yes, Mrs Carnell nominated Mr Kaine; so it was done in error.

Question resolved in the affirmative.

QUARTERLY FINANCIAL STATEMENT AND TREASURER'S ADVANCE
Papers

MS FOLLETT (Chief Minister and Treasurer) (3.06): Madam Speaker, for the information of members, I present the statement of expenditure from the Treasurer's Advance, pursuant to subsection 47(2) of the Audit Act 1989, for the year ended 30 June 1994; the statement on variations to budget appropriations for the year ended 30 June 1994; and the Treasurer's quarterly financial statement for the period 1 April to 30 June 1994. I move:

That the Assembly takes note of the papers.

Madam Speaker, in accordance with the requirements of the Audit Act and undertakings the Government has given in response to the Public Accounts Committee, I table today the statements on the Treasurer's quarterly financial statement for the period 1 April to 30 June 1994, expenditures which were a final charge against the Treasurer's Advance in 1993-94, and a reconciliation between original budget estimates and budget outcome. Madam Speaker, these documents were also provided to you on 8 August 1994 for distribution to members as the Assembly was not sitting at the time of finalisation of the documentation.

The 1993-94 Consolidated Fund budget anticipated a cash deficit of $77m. The outcome was a cash deficit of $40m. The reduced deficit resulted from lower than anticipated expenditure, which was down by $50m, offset to a degree by lower than expected receipts, which were down by $13m. As a result of this reduced deficit, borrowings, which were projected at $34m, were constrained to $15m. The benefits of this will accrue to the ACT in future years as savings on debt servicing. As a further consequence, the Government reduced its use of provisions and reserves from an expected $43m to an actual $25m. This means that reserves available to meet future years' expenditures and contingencies are $18m greater than were estimated when constructing the 1993-94 budget.

The budget result will benefit the ACT's financial future and places us in an enviable financial position to meet the funding challenges we face. Capital expenditure was $30m, or 13 per cent, below budget. Planning delays in capital works projects such as the Magistrates Court complex and timing issues associated with capital equipment purchases had contributed to this result. Recurrent expenditure was $20m, or 1.8 per cent, below budget. Revenue was $13m, or one per cent, below budget. This was attributable almost entirely to reduced Commonwealth payments. I believe that the 1993-94 outcome is reaffirmation of this Government's commitment to responsible financial management, especially in limiting the ACT's debt burden, while still achieving social justice objectives.

I turn now to the documents I have tabled today. First, the Audit Act 1989 requires that the Treasurer publish a statement of the financial transactions of the Territory public account as soon as practicable after each quarter. The statement I have tabled is for the quarter ending 30 June 1994. Secondly, subsection 47(2) of the Audit Act 1989 also requires the Treasurer, as soon as practicable after the end of the financial year, to table in the Assembly a statement of expenditures remaining as a final charge against the Treasurer's Advance of 30 June 1994. The Treasurer's Advance was appropriated $12m in the 1993-94 budget. The final charge on the Treasurer's Advance for the year completed was only $2.4m.

Ultimately, nine programs had recourse to the advance, the two largest being Land, which required $528,000 for the negotiated settlement of a land development issue and for payment of taxation liability associated with past joint ventures, and Fire and Emergency Services, which required $457,000 for additional costs associated with the New South Wales bushfires and the above average ACT bushfire season. The saving to the budget from the original advance was $9.6m. The minimal use of the Treasurer's Advance in 1993-94 reflects not only prudent management but also our ability to reallocate funds during the year to meet changing priorities.

Thirdly, the Government has agreed to provide to the Assembly a statement reconciling by program budget supplementation with the original budget estimates. This is in response to recommendations of the Public Accounts Committee and the 1992 Estimates Committee. It includes information on the use of funds under section 7 of the Appropriation Act 1993-94. This indicates that, of the $7m provision originally estimated in the budget, $5.7m has been expended, with a saving of $1.3m. In accordance with that undertaking, I also table a statement to that effect, for the information of members.

In summary, the information tabled today indicates a very good result overall for 1993-94. The lack of progress in some capital projects was disappointing, though largely unavoidable. The trend in capital expenditure was known at the time of formulating the 1994-95 budget and has been taken into account in the 1994-95 estimates. Further information on the outcome of the 1993-94 budget will be available by 20 September. This will include information on government finance statistics, financial assets and liabilities, and audited aggregate and unitary financial statements.

Debate (on motion by Mr Kaine) adjourned.

OFFICIAL VISITOR
Annual Report

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (3.12): For the information of members and pursuant to subsection 19B(6) of the Children's Services Act 1986, I present the annual report 1993-94 of the Official Visitor and move:

That the Assembly takes note of the paper.

Madam Speaker, section 19A of the Children's Services Act 1986 requires the appointment of an Official Visitor. The current occupant of that position is Mr Bill Aldcroft, who was appointed in April 1992. The duties of this position include the following:

(i) to regularly visit and inspect shelters and institutions in the ACT;

(ii) to hear any complaints made by any children in shelter or institutions concerning their treatment in care or detention; and

(iii) to investigate any such complaints.

After investigating a complaint, the Official Visitor may make a report to me as Minister for Housing and Community Services, or a recommendation to the Director of Family Services. A range of specific concerns have been brought to the attention of me and the Director of Family Services, although, in the main, the comments provided by the Official Visitor have reflected favourably on the operations of institutions and shelters in the ACT in terms of the care provided to children.

The report currently before the Assembly indicates that concerns considered important by children, whether small or large, are brought to the attention of relevant agencies to ensure that they receive appropriate attention. Mr Aldcroft notes in his report that staff employed in the institutions and shelters he visits encourage young people in their care to bring any concerns they have to his attention.

It is encouraging to note Mr Aldcroft's favourable comments on the quality of care provided by staff in Kaleen Youth Shelter and Marymead Children's Shelter and that there were no complaints made by children in these shelters. It is also encouraging to note the level of praise Mr Aldcroft gives to staff who provide custody and care for young offenders in Quamby Youth Centre's committal and remand facilities. Mr Aldcroft comments in his report on "the attitude of mutual assistance and cooperation between staff and detainees".

The role of the Official Visitor is an important one in that it ensures that there is an independent advocate for children who reside in institutions or shelters and that any concerns that arise will be brought to my attention and, through me, to the attention of the Assembly.

Question resolved in the affirmative.

ESSENTIAL SERVICES REVIEW COMMITTEE
Report

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (3.15): Madam Speaker, for the information of members, I present the report of the Essential Services Review Committee and move:

That the Assembly takes note of the paper.

This is a report on the first 12 months of operation of the Essential Services Review Committee, the ESRC. The ESRC was established by this Government in August 1992, following an inquiry by the ACT Community Law Reform Committee into the guaranteed supply of essential services. At that time the Government undertook to conduct a review of the ESRC following its first 12 months of operation. That review, conducted by my Department of Urban Services, is now complete.

The ESRC provides a vital service to people of the ACT in financial hardship. The ESRC was established to provide an avenue for relief for people facing the possibility of disconnection of an essential service. At present, only electricity is defined as an essential service in the ACT, although, as I have announced recently, coverage of the ESRC is being extended to include water and sewerage. I have also received advice that suppliers of gas and telephone services in the ACT already have in place appropriate mechanisms for assisting people experiencing difficulty in paying their accounts.

By way of background, the ESRC comprises a chair, a deputy chair, a community panel of eight members, and a 12-member panel from ACTEW. The composition of the committee ensures that an appropriate cross-section of the community and the Government is represented at all times. Between August 1992 and June 1993, the time covered by this review, the ESRC considered 652 applications from people having difficulty paying their electricity bills. Many of these applications were referred by welfare groups such as the Salvation Army, the Smith Family, CARE, ACTCOSS and the Welfare Rights and Legal Centre. The report I table today identifies strong support for the operations and functions of the ESRC. I would like to stress that there is particularly strong support from community and welfare groups. Indeed, community organisations consulted during the review process were unanimous in stating that the ESRC successfully assists people in coping with power bills during times of financial hardship.

I must say that the findings of this report are very encouraging. Of particular significance, the report notes that there have been fewer applications than expected. To June 1993, only one in every 1,000 residential accounts was the subject of an application. Most of the applications reaching the committee were dealt with to the advantage of the applicant. Indeed, there have been few instances of applications being refused and no instances of clients being fined. The report also notes that there is wide support amongst referring groups and committee members for the existing application process.

No individual in our society should be denied access to an essential service such as electricity. Even in times of financial hardship, everything possible must be done to ensure that people receive the ongoing supply of such a critical service. Fundamental to this Government's policies is a strong commitment to improving social justice for all Canberrans and to strengthening links with community groups and welfare agencies. The ESRC is an excellent example of the way in which we are working closely with both businesses and community organisations to assist ACT residents, particularly the less advantaged groups in our community.

I believe that a report of this nature should be available to all interested parties and I am therefore releasing this document for public comment. Whilst I do not anticipate any major changes to the report, I will report to government any issues that emerge through the public consultation stage. Madam Speaker, I am sure that all members of the Assembly will welcome the findings of this report and, given the level of support the ESRC has received, it is my intention that the committee continue to operate in its present form.

Question resolved in the affirmative.

LAND (PLANNING AND ENVIRONMENT) ACT LEASES
Quarterly Report

MR WOOD (Minister for Education and Training, Minister for the Arts and Heritage and Minister for the Environment, Land and Planning): Madam Speaker, for the information of members and pursuant to the Land (Planning and Environment) Act 1991, I present a statement which details the leases granted in the quarter ended 30 June 1994.

PAPERS

MR BERRY (Manager of Government Business): Madam Speaker, for the information of members, I present the following papers:

Deed of termination and release of the development agreement between the Australian Capital Territory and the Chief Minister for the Australian Capital Territory and Casino Canberra Limited and Casino Austria (International) Aktiengesellschaft for the development of an interim casino on block 14, formerly block 13, section 65, division of City, dated 28 July 1994, pursuant to the Casino Control Act 1988;

Deed of variation of development agreement between the Australian Capital Territory and the Chief Minister for the Australian Capital Territory and Casino Canberra Limited and Casino Austria (International) Aktiengesellschaft for the development of the casino on block 16, formerly part blocks 6 and 13, section 65, division of City, dated 28 July 1994, pursuant to the Casino Control Act 1988;

List of statutory offices to be used as a guide in administering the provisions of the Statutory Appointments Act 1994; and

Department of Health's activity report for the June quarter 1994.

YMCA YOUTH PARLIAMENT
Papers

MS ELLIS: Madam Speaker, for the information of members, I present the following Bills, which were passed by the Canberra YMCA Regional Youth Parliament on 30 June 1994:

Car Registration Bill 1994

Media Awareness Bill 1994

Native Tree-Felling Bill 1994, including a letter from the Youth Chief Minister and Youth Leader of the Opposition; and

Child Pricing Policy Bill 1994.

Madam Speaker, I seek leave to make a very brief statement.

Leave granted.

MS ELLIS: Madam Speaker, I had the pleasure of accepting on behalf of this Assembly that package of Bills produced by the Youth Parliament on 30 June. In presenting the Bills to the Assembly today, I would like to congratulate everyone involved in the Canberra YMCA Regional Youth Parliament, and I am sure that I am speaking on behalf of all members when I offer those congratulations. The Canberra YMCA Regional Youth Parliament proved to be an extremely successful parliamentary session and is a great educational initiative we all hope to see continue into the future. The enthusiasm of the participants was evident, and I particularly note the awareness of topical issues reflected in the titles of those Bills that were debated and handed in today.

Madam Speaker, may I also acknowledge that we have several members of that Youth Parliament in the gallery today observing these proceedings, and on behalf of the Assembly I welcome them here.

MR CORNWELL, by leave: I would like to join with Ms Ellis. I had the pleasure of chairing the Youth Parliament once again this year. I enjoyed it as much as I did last year. I look forward to a continuing close association of this Assembly with the Youth Parliaments in future years, and I too most warmly welcome the members in the gallery.

COUNCIL OF AUSTRALIAN GOVERNMENTS MEETING
Ministerial Statement and Paper

MS FOLLETT (Chief Minister and Treasurer): Madam Speaker, I seek leave of the Assembly to make a ministerial statement on the fourth meeting of the Council of Australian Governments, held on 19 August 1994.

Leave granted.

MS FOLLETT: Madam Speaker, having participated now in four meetings of COAG and its previous incarnations as Special Premiers Conferences, I can say that the meeting on 19 August 1994 was one of the more difficult to date. The major item concerned competition policy. Indeed, discussion was so protracted that the great majority of other issues on the agenda were not covered. I think all Assembly members will agree that higher levels of productivity are essential to Australia's continued growth and international competitiveness. An effective national and legal framework to underpin and enhance competitiveness in the economy promises to deliver substantial incentives for such productivity improvement. In the context of the Hilmer report, COAG gave attention to the following aspects of competition policy: The scope of the Trade Practices Act; principles and regulations relating to the operation of public monopolies, public and private sector competition and restrictions on competition; prices surveillance; and the appropriate bodies to oversee such matters as prices surveillance.

After considerable discussion, the council agreed that draft legislation would be prepared which amends and applies Part IV of the Trade Practices Act to all persons within State jurisdictions; establishes pricing and access arrangements; and establishes the Australian Competition Commission and the Australian Competition Council. The draft legislation will be released for public comment.

The council generally agreed to the application by individual jurisdictions of agreed principles on structural reform of public monopolies, competitive neutrality between the public and private sectors where they compete, and a program of review of regulations restricting competition. It is important to emphasise that, although there has been general agreement to these principles, the ACT Government is free to determine its own reform agenda. For instance, there will now be a need to review periodically the regulations applying to the taxi and milk industries, but decisions about the outcomes of these reviews will be a matter for the ACT Government. Naturally, it will wish to consult the industries concerned in conducting such reviews. Further, areas of government that provide services in direct competition with the private sector in the future will need to ensure that their pricing regimes are on an equal footing with the private sector.

It was agreed that all governments should share the benefits to economic growth and revenue from Hilmer and related reforms to which they have contributed. The Industry Commission will be asked to estimate the effect of reform, and this assessment will assist the council in determining at its February 1995 meeting the increase in government revenue that might be generated by these reforms and the share that would accrue to the States, Territories and local government. The next meeting will also aim to finalise the legislative package.

A particular area of competition reform to which the council paid attention was the development of a national market in electricity. The principles to underpin the final form of such a market were agreed, and further work was commissioned in relation to the interim market arrangements that will apply from 1 July 1995. The development of a competitive national electricity market has the ACT's strong support as a consumer.

The Territory also supports the structure of the ultimate market developed by the National Grid Management Council. However, I drew the council's attention to our concern that the transitional market that is now in prospect may have specific weaknesses for the ACT. In particular, I expressed concern that the commitment to and the pace of reform of the Snowy scheme might not be matched by a similar certainty in relation to other aspects of the interim market structure. If this were to occur, the ACT would face the probability of increased costs from a corporatised Snowy, but without sufficient confidence that this could be offset by lower prices from other sources due to the slower pace of reform elsewhere.

Clearly, our preferred approach is to see reform across the whole electricity industry proceed speedily and relatively evenly. However, if this cannot occur, the ACT may be forced to pursue transitional assistance in relation to any additional costs resulting from the corporatisation of the Snowy which are not capable of being offset because of the inadequacies of a transitional market structure compared to the form of the ultimate market. I made it clear that the Government regards this issue as additional to our bilateral disagreement with the Commonwealth in relation to the prospect of losing access to our current Snowy power entitlement. I will be following up these matters with the Prime Minister in the near future.

The matters on the agenda that the council did not address will be progressed by correspondence or, where this is not practical, referred to the next meeting of COAG, which will be held in Adelaide on 23 and 24 February 1995. For the information of members, I have made available to the Assembly the communique of the fourth meeting of the Council of Australian Governments and a copy of this statement. I move:

That the Assembly takes note of the papers.

Debate (on motion by Mrs Carnell) adjourned.

CRIMINAL CODE - COMMONWEALTH BILL
Ministerial Statement and Paper

MR CONNOLLY (Attorney-General and Minister for Health): Mr Deputy Speaker, I seek leave to make a statement on the document entitled "Criminal Code Bill 1994" of the Commonwealth.

Leave granted.

MR CONNOLLY: I apologise that the Opposition was not advised of the type of this statement in advance. There was an oversight in our procedures. This Bill, Mr Deputy Speaker, was introduced in the Senate on 30 June 1994 and it has far-reaching implications. The Bill is based on chapter 2 of the Model Criminal Code, a project of the Standing Committee of Attorneys-General and a project which has had close ACT involvement since its inception. The aim of that project is to provide model criminal provisions capable of replacing the common law and existing statutory provisions in all Australian jurisdictions.

Essentially, the Commonwealth Bill codifies the general principles of criminal responsibility as they apply under Commonwealth law. In several Australian jurisdictions, including the Commonwealth and the ACT, these principles are largely unwritten, forming part of the common law. This body of unwritten principles governs a wide area of criminal law, including what constitutes "intent" and an "act" for the purposes of the criminal law, as well as many of the defences, such as self-defence and mistake. The code contains a number of significant measures which, if enacted in the ACT, would change the law of criminal responsibility as it currently stands.

First, common-law offences would be abolished. This is not as dramatic as it sounds, as many of these offences have already been codified by statute, and many are no longer relevant to modern society. South Australia has recently abolished many common-law offences as a separate exercise, and the Government would look closely at what South Australia has done before moving on this proposal.

Second, self-induced intoxication would no longer be a defence to offences of basic intent. This is contrary to the current law as stated by the High Court in O'Connor, where it was held that the defence of intoxication applied to all offences. The Standing Committee of Attorneys-General believed that O'Connor was unacceptable in principle and opted instead for a defence of intoxication based on the decision of the House of Lords in a decision known as Majewski. One effect of the change would be that evidence of intoxication might reduce murder to manslaughter, but would not result in a complete acquittal. I believe that this accords with community expectations.

Third, the defence of mistake would be widened to encompass a mistake of law in certain circumstances. The law as it stands says that ignorance of the law is no excuse. The code would make an exception to that general principle where copies of subordinate legislation have not been made available to the public and the person could not be aware of the law even by exercising due diligence. This proposal flows from the policy that the law should be accessible, and from that point of view it is an important breakthrough.

Fourth, self-defence would require a subjective belief in the need to defend against a threat and an objective standard for the level of response. This is different from the existing law as stated by the High Court in Zecevic, where a partially objective test was stated for necessity, namely, that the belief in the need to defend against a threat must be on reasonable grounds. A purely subjective test has been preferred in the code for this aspect of self-defence, which accords with the general philosophy of the code that fault for criminal offences should be subjective - that is, what the accused actually believed or intended.

Fifth, the offence of conspiracy would be completely revamped, both substantively and procedurally. Substantively, the offence would be changed to add a requirement that an overt act is necessary to establish the conspiracy, not just an agreement; the scope of the offence would be confined to conspiring to commit serious criminal offences; and the defence of withdrawal, which is currently available for complicity, would be extended to conspiracy. Procedurally, the courts would be given a discretion to dismiss a charge of conspiracy, where it is in the interests of justice; and the consent of the Attorney-General or the DPP would be required to commence a conspiracy prosecution. These proposed changes to the law of conspiracy have been advanced following repeated criticism of the offence by the courts over a long period.

Sixth, the law would require that a reversal of the burden of proof must be made explicit in legislation, otherwise the prosecution retains responsibility for discharging the burden. This proposal hopefully will lay to rest what has been a vexed issue, particularly where regulatory offences are concerned.

Seventh, there would be a statement of corporate liability so that a company may be criminally responsible for any crime, including murder or manslaughter. There are some innovative proposals to define this liability, including a "corporate culture of non-compliance", and the aggregation of negligent behaviour so that the company's conduct may be viewed as negligent, even though no single servant or agent has been negligent.

Those are the changes encompassed by this code. I want now to briefly address the primary issue for consideration, namely, whether this legislation should be adopted in the ACT. The codification of the criminal law is an important way of improving the accessibility of the law. Many commentators regard it as unacceptable that important matters like the general principles of criminal responsibility remain uncodified, requiring lawyers to search through sometimes contradictory case law in order to determine what those principles are. The few opponents of codification who remain argue that codification curbs judicial creativity, but I believe that this problem is best addressed by a vigorous law reform program as we have in the ACT.

A related matter is the uniform enactment of a criminal code across the jurisdictions. A national criminal code would be important in helping to ensure the equal and consistent application of the criminal law across Australia. As the Attorney-General of Queensland, Dean Wells, said recently:

In a modern democratic nation like Australia, all citizens should be equal before the law. This is only really possible if the law itself is equal between the States.

Of course, the achievement of uniformity requires compromise, and we must decide whether the changes embodied in this legislation are compromises that we in the ACT are prepared to make. The adoption of this legislation in the ACT is not an issue that needs to be resolved immediately. My tabling of the code is intended to initiate debate at the

local level on the merits of a national criminal code and the desirability of codifying the general principles of criminal responsibility, without committing the Government to that course. I table the document entitled "Criminal Code Bill 1994" and a copy of this statement. I move:

That the Assembly takes note of the papers.

Debate (on motion by Mr Humphries) adjourned.

VITAB CONTRACT
Discussion of Matter of Public Importance

MR DEPUTY SPEAKER: Madam Speaker has received a letter from Mrs Carnell proposing that a matter of public importance be submitted to the Assembly for discussion, namely:

The damage caused to the ACT by the Follett Government's decision to enter into the VITAB contract.

MRS CARNELL (Leader of the Opposition) (3.35): The origins of the VITAB affair can be traced back to a telephone call made by a Melbourne businessman to Canberra barely 14 months ago. When Dan Kolomanski spoke to Phillip Neck it led the ACT down from what appeared to be "money for jam for the Territory" into what became a licence to print money for a group of smart businessmen. We may never know the true cost of that telephone call, although we will continue to ask. In just over a year a business deal signed under a veil of secrecy between the Follett Labor Government and the world's only privately owned TAB has caused the Territory untold political and economic damage that will be felt for many years to come. The extent of this damage is hard to assess. The Chief Minister seems to have no idea.

Mr De Domenico: She is not even here.

MRS CARNELL: No. I understand why. In dollar terms the ratepayers of this city are probably out of pocket to the tune of at least $4m; but who knows? There is the $3.3m out of court settlement; undisclosed legal costs that will run into hundreds of thousands of dollars; a lost link with the Northern Territory TAB worth $350,000 annually; and a new link with the Victorian TAB that will probably cost at least an extra $60,000 a year in increased processing charges.

But the ramifications of the VITAB deal run much deeper than that. The reputation of our TAB has been set back at least 10 years. The image of our TAB now is not of a computerised, commercially astute agency but of a maverick organisation with questionable business acumen. Let us hope that the new board can make a better fist of it than the old one. It would not be hard. Canberra's TAB agencies came close to financial collapse, and the jobs of hundreds of people were placed under grave threat. Our racing industry was rocked by a deal that it did not even know about until it was too late. It was not even asked.

The ripples from VITAB have washed well over the boundaries of the ACT. This affair has confirmed what commentators have been saying over the last three years, and that is that the ACT is run by a group of amateurs. The image of the Government of the ACT in the eyes of Australians is in tatters. The incompetence and mismanagement in this entire affair of Mr Berry, who is not here, of Mr Lamont, who is not here, and of Ms Follett, who also is not here, which is interesting in itself, have made us the laughing-stock of Australia. They approved the signing of a deal that has already cost us, and will continue to cost us, a bomb.

Do not take my word for it, though; just listen to what other people are saying. The best way for this Assembly to reflect impartially upon the extent of damage caused to the ACT by the VITAB affair is to take an outsider's view. The influential newsletter *Inside Canberra* is distributed to Australia's top company executives and decision makers. Its subscribers range from Prime Ministers to chief executives, many of whom one day will have to consider whether or not to invest in the ACT. What message has the Follett Labor Government sent to potential investors outside this Territory? Only last week the Chief Minister told businesses in the ACT that they had to create an extra 1,000 jobs a year - they, not she, of course. Employment growth comes from expansion, and expansion from investment. How would any chief executive react when he or she was making an investment decision after reading this extract from *Inside Canberra*? I want to quote what is perhaps the most telling summary of the worst financial and political disaster to befall the ACT in its short history of self-government. I am going to quote quite extensively from this newsletter that goes to a very large number of influential people. It says:

On one or two occasions when he was Prime Minister and facing the Keating challenge, Bob Hawke declared he was not staying on for the money, but because it was his duty to Australia. To much sniggering by smart arse journalists, he said on more than one occasion he could earn a lot more money outside Parliament than in it. Well he showed them, didn't he? As an 11 per cent shareholder in VITAB -

mind you, he still cannot work out where his 11 per cent comes from -

he made apparently only one trip to Canberra to introduce the Vanuatu-based betting outfit to the last Stalinist Government in the western world, -

remember that I am quoting here -

the Follett Labor Government, which mismanages the ACT.

One bureaucrat involved in the affair told the inquiry conducted by Professor Pearce earlier this year that because Mr Hawke was involved, it was not thought necessary to check the antecedents of the people behind VITAB. Not that we are suggesting there is anything wrong with their antecedents, but it shows how useful it is to have Bob along to open doors.

It certainly would. The article continues:

One thing led to another and the ACTTAB was cut out of the Victorian TAB because of its connections with VITAB and it could not get into the New South Wales TAB for the same reason. The racing industry looked like coming to its knees in Canberra. The local racing club is the heart and soul of the very big racing industry in southern New South Wales. Payments from the ACTTAB make up 60 per cent of the club's revenue -

I repeat, 60 per cent, Ms Follett -

and as a result of the ACTTAB being out in the cold this revenue had fallen by 60 per cent. There was a threat to the Black Opal Stakes next Autumn. The new Sports Minister, David Lamont tried to opt out of the VITAB deal, but found the Vanuatu crew had a waterproof contract.

A great deal, Mr Berry! This article continues:

VITAB sued. On Wednesday the ultimate humiliation - the Government owned ACTTAB settled out of court for $3.3m. The Opposition Leader, Kate Carnell reckons Bob Hawke will get at least $330,000.

Just a fortnight later the same newsletter, the one that goes all over Australia to all the decision makers, said this:

... in the Federal Court this week lots came out; like the fact that the Victorian TAB was charging the ACTTAB an astonishingly generous 0.125 cents in the dollar for the pooling arrangement. Yet the ACT managed to throw this bonanza away by entering into the Vitab deal. And Vitab had everything in the contract with the ACTTAB nicely tied up. For example if the pooling arrangement failed Vitab could pull out of the contract, but the ACTTAB could not. Indeed if the arrangement failed Vitab could sue for damages AND continue the contract. And even though ACTTAB officials had canvassed with the Victorian TAB before it signed the Vitab contract the importance of the Victorian pooling continuing, no effort was made to get Victoria to enter into a binding contract on this vital point. It is worth recalling that the former Minister for Sport, Wayne Berry, who was Minister when all the action was taking place on Vitab, once said it was a good deal for the ACT ... If the petrol scandal and the TAB disaster in conjunction happened in any other State, it would go close to toppling the Government. But not in the ACT.

That was a straight quote. This is the view of one observer of the Follett Labor Government in the wake of the VITAB disaster. It is a view shared by many - a view of incompetence, mismanagement, naivety, greed and amateurism.

Not once has this Government apologised to the people of Canberra for the VITAB affair. Back in November you were climbing over each other trying to take credit for this supposedly wonderful deal. It was a deal that you wanted the Government to take credit for. Now, all you can do is duck for cover and blame others. Today is your opportunity to apologise - to apologise for sending us up the creek without a paddle because your incompetence and your greed blinded you to what was a bad deal for the people of the ACT. Amazingly, there are still one or two people left on this planet who walk around claiming that VITAB was a good deal for the ACT. One of them usually sits opposite. Of course, Mr Berry is not here at the moment. I think it is important to remind everyone of what Mr Berry said about the VITAB deal. He said:

It is safe for the ACT and it returns a profit, so that is good news on both scores.

He also said:

The deal that was offered to us was profitable for the Territory, and is profitable for the Territory ... and it is going very well.

He also said this:

What has happened is that the ACT Labor Government has struck a good deal ...

That was another wonderful Berryism. Then he said this:

We know a good deal when we see one. What we also did, and what I personally was involved in, was to make sure that the deal was safe with respect to the Territory.

The only other people on this planet who think it was a good deal, of course, are the principals of VITAB who walked away with over $3m in taxpayers' money for a few months' work. One of the players in VITAB - - -

Mr Humphries: You should be ashamed of yourselves.

MRS CARNELL: They certainly should. Mr Deputy Speaker, I will remind Mr Berry and his comrades of what Mr Bob Hawke said about the VITAB contract on the very day it was announced. He said, "It will reflect credit on the ACT and just perhaps produce a modest little return for a few battlers". It was absolutely amazing.

Mr De Domenico: We believed him, did we not? We all believed him.

MRS CARNELL: That is certainly true. It was very interesting to hear the Chief Minister say that the reason why the Victorian TAB pulled the plug was that it was going to be privatised. It was fascinating that the very day we relinked was the day we linked with Tabcorp, a new, privatised operation. Explain that, Chief Minister.

Yesterday, in true bovver boy style, Mr Lamont ended up really getting burnt. Mr Lamont stood there and alleged that I had spoken to the New South Wales Racing Minister the day before the Minister - - -

Mr Lamont: Office. The Racing Minister's office.

MRS CARNELL: The Racing Minister's office or the Racing Minister; it does not matter. He alleged that I had spoken to the New South Wales Racing Minister the day before the Minister issued a press release cautioning against a link between the two TABs. The New South Wales Minister, it must be remembered, said as early as 16 March that there would not be a link with ACTTAB while the VITAB deal was in place. I think it is necessary now to quote a press release put out today after he saw the *Canberra Times* this morning.

Mr Lamont: Oh, today! From my mate the New South Wales Minister! Oh, today! Look what came out today!

MR DEPUTY SPEAKER: Order, Mr Lamont! Please curb your enthusiasm.

MRS CARNELL: The press release is headed "Downy says Lamont claim is a lie" and it says:

NSW Racing Minister Chris Downy says a claim that a call from the ACT Liberal Leader Kate Carnell caused him to back off from a prospective ACTTAB-NSW TAB linkage is a lie.

It is quite definite; it says "is a lie". The statement continues:

Mr Downy said that he never received a call from Mrs Carnell prior to issuing a June 17 media release that poured water on claims a NSW-ACTTAB link-up was imminent.

He said discussions had been occurring between the two TABs.

But after his office heard from media sources -

media sources, Mr Lamont -

that a deal was imminent Mr Downy stepped in.

Mr Downy said ACT Racing Minister David Lamont had been identified as the source of the "deal imminent" story.

"I viewed that premature announcement as a deliberate political attempt by Mr Lamont to influence those TAB-to-TAB negotiations," Mr Downy said.

He went on to say:

But Mr Lamont's inference that we should have invited ACTTAB into our pool without restrictions or conditions on poaching punters from NSW is naive in the extreme.

Mr Lamont, naive.

MS FOLLETT (Chief Minister and Treasurer) (3.50): Mr Deputy Speaker, Mrs Carnell unfortunately started her incredibly fanciful diatribe with a statement that contained two fundamental errors. She said at the start that this was "a business deal signed under a veil of secrecy between the Follett Government and the world's only privately owned TAB". That statement alone demonstrates the depths of her ignorance or her absolute pig-headedness on this subject, which I suspect is closer to the truth. Mrs Carnell knows full well, as does every member in this Assembly, that that deal was not signed between the Government and anybody. Mr Deputy Speaker, the deal was signed, as members know, between ACTTAB and VITAB. They are an organisation statutorily established to have those powers, and that is what they did. She also referred to "the world's only privately owned TAB". That, I think, is a bit of a Freudian slip or a convenient lapse of memory. She has forgotten, obviously, that VITAB was not the only private TAB. In fact, it was not even the only one on Vanuatu. There was another, the Chung Corporation, and that was the one that the Victorians signed up with.

We have heard absolutely nothing new from Mrs Carnell. All we have heard is a rehearsal, in perhaps more vitriolic terms, getting ever more vitriolic, but nothing new. The issues that have been canvassed in this so-called MPI were canvassed ad nauseam in a very lengthy no-confidence motion debate, a serious matter. They have been inquired into in full by the Pearce inquiry, and they have had full media coverage and political debate constantly. They were debated in the Assembly when I presented the Government's response to the Pearce report. The Liberals seem to be operating on the basis that there is so much time and space available in the local media that anything that they say will be reported, no matter how many times they repeat the same rubbish and the same untruths. They are adopting a very old propaganda approach; that if you throw enough mud some of it must stick. This is the Goebbels technique, Mr Deputy Speaker; that if the lie is so big people will be inclined to believe it.

The first point that I want to make today is that the whole premise of the MPI is based on a big lie. There is no other way of putting it. As I said, the Government did not make a decision to enter into the VITAB contract. The facts of the matter are quite clear. The contract was a contract involving ACTTAB, which is a commercial authority with independent powers and legal responsibilities created by laws passed in this Assembly.

One of the requirements of those laws is that ACTTAB must seek the approval of the relevant Minister to enter into contracts beyond a certain value. In the case of the contract with VITAB they did so; but, as the Pearce report clearly shows, the advice to the Minister was inadequate. It is simply not true to say that the Government decided to enter into a contract.

Mr De Domenico: Why do you not sack the people who gave him the advice - all of them?

MS FOLLETT: I thought we had done very well on that score, Mr De Domenico. One Minister, Mr Deputy Speaker, approved a proposal recommended to him by the former ACTTAB management board and by departmental advisers. Those facts were clearly established by the Pearce inquiry. Only the Liberals would try to deny those facts or to misinterpret them.

I am not here to pretend, Mr Deputy Speaker, that the ACTTAB contract with VITAB was a success. With the benefit of hindsight we know that it was not. The circumstances in which that contract was negotiated and the former Minister's involvement in it were investigated thoroughly by a public inquiry. The findings of that inquiry were nothing like the nonsense that has been spouted here today by the Leader of the Opposition. The Pearce inquiry found that ACTTAB negotiated the VITAB contract in direct competition with the soon to be privatised VicTAB, with whom they had a contract allowing access to the VicTAB superpool. Given that that superpool contract could be terminated without cause, the contract with VITAB was indeed tempting fate, and the Pearce inquiry showed that very clearly. Professor Pearce showed that there was a lack of care and follow-up by ACTTAB, and to a lesser extent by officers of the Department of the Environment, Land and Planning.

The Pearce inquiry looked quite specifically at the issues of ministerial propriety and ministerial responsibility, and I will quote to you, again, the findings from that inquiry. Professor Pearce said this:

Mr Berry, his Departmental officers, ACTTAB officials and the various advisers to these parties acted in good faith throughout the negotiations leading to the entry by ACTTAB into the contract with VITAB.

Further on - you ought to listen to this - he said:

Mr Berry acted properly in his role as Minister in relation to the VITAB contract but was not well advised.

That is exactly what I said. This is a very different picture from the one that the Opposition seeks to present.

Two important facts have emerged from the welter of claims, accusations and innuendo which have come from the Liberals in recent months. The first of these is that not one of the wild allegations that have been made by the Liberal Party, and by Mrs Carnell, in particular, has been proved to be correct. If we are to assess Mrs Carnell's own VITAB performance, we can see that she has been swept along without thinking carefully about

what her colleagues have said and done. How can anybody forget the wild accusations and the innuendo that went on week after week in this place about supposed criminal involvement with VITAB? Do you remember the so-called evidence that they proudly produced to back up these smears? The Liberals were left shamefaced when their evidence, so called, was revealed to be a doctored version of leaked police criminal records. That so-called evidence was provided to them by the Victorian Liberal Minister for Racing to suggest a connection between Mr Berry and criminal activity. Of course, as we now know, the awful irony of that was that it was the Victorian Liberal Government which was forced to cancel its contract between VicTAB and a Vanuatu company, the Chung Corporation, when real criminal involvement became apparent.

Mr Deputy Speaker, these facts were barely reported by the local media - it seemed a little bit hard for them - but they were adequately reported by the national media, and the facts are very clear. Mrs Carnell was very hasty and very careless in accepting her colleagues' urgings and assurances about those forged documents. Nor has Mrs Carnell's credibility been helped more recently by the stupid prediction that the Government would be liable for a $50m pay-out to VITAB. Mrs Carnell, Mr Deputy Speaker, later modified her claim to $10m, which was equally stupid, equally mischievous and equally irresponsible.

The second fact, and it is a very sad one too, is that the Liberals have shown that they will stop at nothing to create what they think is a political story to suit them. They were so ruthlessly determined to see the relationship between ACTTAB, VITAB and VicTAB turn into a disaster that they actually set out to sabotage the interests of ACTTAB and the ACT community. Throughout this whole sorry affair the Liberals have sought to interfere in the relationship between ACTTAB and its Victorian and New South Wales counterparts. They have made numerous approaches to Victorian and New South Wales Liberal Ministers in an effort to induce them to interfere politically in the commercial relationship between TABs. Mr Lamont detailed one such interference in question time yesterday. The leaked and doctored police records, which I referred to earlier, were the result of another such escapade.

The Liberals, Mr Deputy Speaker, quite deliberately have decided that ACTTAB and the interests of our community are expendable in the interests of political scalps. Mrs Carnell should think very carefully about these issues. It does her no credit to associate with the hardliners in her party who feel no responsibility whatsoever to the wider community. Everybody expects politicians to put their point of view.

Mr De Domenico: What a joke! Why don't you just own up that it was a monumental stuff-up by your ex-Minister and say, "Sorry, people of the ACT"?

MR DEPUTY SPEAKER: Order!

MS FOLLETT: Mr Deputy Speaker, on a point of order: I would ask whether the term "stuff-up" is parliamentary.

MR DEPUTY SPEAKER: No, I do not believe that it is. I ask that it be withdrawn, Mr De Domenico.

Mr De Domenico: I withdraw.

MS FOLLETT: Would you like to stand up while you do it?

Mr De Domenico: No.

MR DEPUTY SPEAKER: Order! Mr De Domenico has withdrawn, Chief Minister.

MS FOLLETT: On a point of order: Mr Deputy Speaker, our standing orders require that members address the house while standing.

Mrs Carnell: Keep going.

Mr De Domenico: Keep going. Come on!

Mrs Carnell: It is because she is upset.

MS FOLLETT: I think it is just a sign of the standards opposite. As I have been saying, everybody expects politicians - - -

Mr De Domenico: I think it is because the kitchen is too hot and you should get out.

MR DEPUTY SPEAKER: Order! Continue, Chief Minister.

Mr Kaine: On a point of order: Mr Deputy Speaker, that was clearly a reflection on the Chair, and I think the Chief Minister should be asked to withdraw it.

MR DEPUTY SPEAKER: I did not hear what was said. Did you reflect on the Chair, Chief Minister?

MS FOLLETT: No, I did not. I reflected on the standards opposite, Mr Deputy Speaker.

Mr Kaine: Mr Deputy Speaker, she referred to your response and said that that was typical of the behaviour opposite.

MS FOLLETT: No, I did not.

Mr Kaine: If that is not a reflection on the Chair, I do not know what is.

MS FOLLETT: My reflection was upon Mr De Domenico's discourtesy in failing to obey the standing orders of this place by standing to address the Assembly.

MR DEPUTY SPEAKER: Order! I do not uphold the point of order. Continue, Chief Minister. Could everybody just settle down a little.

MS FOLLETT: Thank you, Mr Deputy Speaker. As I was saying, everybody expects politicians to put their point of view, to argue their case, and to try to discredit their opponents' point of view. Nobody would blame the Liberal Party and Mrs Carnell for attacking the Government on real issues - indeed, I would not - and for holding us accountable; but, with leadership comes responsibility, and the hardliners in the Liberal Party believe in success, their own success, that is, at all costs and at any costs. They do not understand that there is a difference between the narrow political interests of the Liberal Party and the overall interests of our community.

When Mrs Carnell aspires to be a leader she has to accept that part of her responsibility is to take the broader view - to consider the community. Her responsibility should extend to controlling the darker forces in the Liberal Party, and there are plenty of them. Mr Deputy Speaker, real leadership is about recognising that winning is not always everything. Mrs Carnell should understand that there would be no joy for her or for our community in presiding over the smoking ruins which the leftovers from the Alliance Government - look at them over there - are prepared to create in an effort to win. I believe, Mr Deputy Speaker, that, if there has been any damage to the ACT, it is in no small part due to the desperate, irresponsible and reckless behaviour of the Opposition.

MR DE DOMENICO (4.03): Mr Deputy Speaker, what a pitiful attempt from this pitiful Chief Minister to defend what has to be the most incredibly monumental abrogation of responsibility and administrative muck-up that this Government will ever be in charge of! Those are not just my words; they are the words of every political commentator in this country, for heaven's sake. This matter of public importance is not just what the ACT has lost in terms of money, but what else it has lost.

Let us have a look. What a wonderful example this Government has shown the people of Australia of how to pick boards! It had to sack every member of the board it hand-picked itself. It demanded that they resign or it sacked them. Great responsibility was shown by the Chief Minister of the ACT. What a magnificent set of legal advice this Government listened to before the former Minister agreed that the TAB should sign the contract! That is good for the ACT as well, Chief Minister. What a wonderful example of how not to administer any portfolio that this Government controls! It controlled nothing. Who can ever forget the fact that the former Minister came into the other place, before we moved into this place, and said, "I am about to revert the ACTTAB to a statutory authority so that I can have complete control."? He got complete control, and guess what he did with it? We all know what he did with it.

The other thing it showed the world is what a great amount of business knowledge, a wonderful amount of business knowledge, this Government had. Time and time again we heard the former Minister and the Chief Minister say in this place, "It was a good deal. We saw a good deal and we grabbed it with both hands". They were the words that were used by the former Minister. What a marvellous deal it has proved to be! Whom has it affected? It has affected the reputation of the ACT throughout the length and breadth of this country. There is also the potential for job losses among the agents and subagents and in the racing industry, and very little was said about that. This was such a good deal that no-one thought of that.

What else did it do? It put $3.3m into the pockets of four or five or six people - none of them resident in the ACT, we think, and one of them a former Prime Minister with an 11 per cent share. Those were his words. He knows that he has an 11 per cent share. So, whilst this Government increased rates by up to 30 per cent for some people in northern Canberra, we paid out $3.3m to Mr Hawke and his mates. The Chief Minister stood in this place, tried to hurl vitriol across the floor of this house and denied what we all know is true - that this has been the greatest monumental act of incompetency of any government that this Territory has experienced since the time of self-government. They are the facts.

It would be made a lot easier, Mr Deputy Speaker, if the Government admitted to that. Everybody knows that that is true. Why will this Government not stand up and say, "Listen, the person we had in charge at the time of this deal being signed was incompetent. Maybe he was not personally incompetent, but the advice that he listened to made him incompetent. He gave instructions to sign a deal which is costing the people of this Territory millions and millions of dollars. They are the facts."? But, no; what does this Government do? It attempts to blame the Opposition, for heaven's sake. It was not the Opposition that gave directions to the TAB board to sign the contract. It was their former Minister, Mr Berry. We, the Opposition, as early as November last year, alerted the Government. We asked questions in this place. We said, "Listen, this contract is no good. Give us a look at the contract and we can show you where it is no good". But, no; it was all commercial-in-confidence. It had been signed under this veil of secrecy. They are the facts, Mr Deputy Speaker.

Let me get on to this other area that I need to talk about as well. The Chief Minister was waxing lyrical about how wonderful her Government is and how it was nothing to do with her. This afternoon Mr Kaine asked the Chief Minister whether she would table some documents that she had received, and she did not even know that she had received them, for heaven's sake.

Mr Lamont: Allegedly received.

MR DE DOMENICO: "Allegedly". Thank you, Mr Lamont. I am delighted that you interjected. Mr Deputy Speaker, I now seek leave of the Assembly to table a document obtained by the Opposition under FOI, which says, "Folio, 219; Nature of Document, Draft PAQ for CM; Action, E; Section 36 and 45(1);", et cetera, et cetera.

Leave granted.

MR DE DOMENICO: I would like also to reflect on some of the comments made by Mr Lamont and Ms Follett. Mr Lamont, interjecting yesterday, questioned the integrity of Mrs Carnell. Very slowly, but surely, Mr Lamont, let us have a go at what you said, and at you, in particular. Mrs Carnell has read into *Hansard* what the New South Wales Minister thinks of Mr Lamont. When Mr Lamont steps outside the ACT he should wake up to the fact that no longer is he the big fish in the union pond that he used to be. Small fish in big ponds have a habit of being eaten. But you cannot help yourself, Mr Minister.

On ABC radio last week, Mr Deputy Speaker, Mr Lamont said that the New South Wales TAB processing fee was five percentage points higher than that offered by Victoria. Mr Lamont - through you, Madam Speaker - for your information, it was 0.06 per cent higher. Last month, Madam Speaker, Mr Lamont wrote to all the TAB agents and told them that a deal with Victoria had been agreed to in principle and that the link would not be severed, yet on the very same day the Victorian TAB told Mr Lamont that a link was not possible at that time. Three days later, Madam Speaker, ACTTAB found itself without a major betting pool link, which caused punters to leave in droves and plunged our racing industry into financial crisis. If people do not want to believe that, I can quote you one example. Just to test it out, when I put $50 on a horse in a Sydney race via ACTTAB its odds went from 12/1 to 6/1. That was with one $50 bet. That was the crisis situation that our TAB agents were in. I honestly wonder, Madam Speaker, whether Mr Lamont can ever lie straight in bed.

Mr Lamont: Madam Speaker, I seek withdrawal of that. It is a clear implication by Mr De Domenico that I have lied. I ask him to withdraw.

MADAM SPEAKER: Mr De Domenico, would you withdraw any imputation - - -

MR DE DOMENICO: If the Minister feels aggrieved by that statement, I withdraw, Madam Speaker.

MADAM SPEAKER: It is withdrawn. Carry on, Mr De Domenico.

MR DE DOMENICO: The VITAB affair has been the worst disaster faced by this Territory since self-government. The consequences, financial and political, are dire for the Follett Labor Government. The impact will not be forgotten by Canberrans when they cast their votes next February.

Let us look also, Madam Speaker, at what the Chief Minister attempted to do at question time and at other times, here in front of us. She treated members of this Assembly and the people of the ACT as fools. In response to questions asked by the Opposition, the Chief Minister said that it was not going to cost the ACT anything; the $3.3m was going to come from ACTBIT across to the TAB, and the TAB was going to pay it back. Allow me to give you the benefit of my business experience and that of some of my colleagues in the world of financial management. In considering whether any organisation or company can be termed a good risk for a loan, especially one for $3m or more, the first thing that would be looked at is the company's ability to repay the loan, Madam Speaker.

We would like someone to explain to this Assembly and the people of the ACT how ACTTAB intends to repay this rather large loan, when it has consistently made a loss over the last few years. Let me quote some of the figures from the ACTTAB corporate plan. In 1993-94 the net loss was $180,000. For 1994-95 there is a projected net loss of $350,000. For 1995-96 there is a projected net loss of $360,000. We have not factored in the fact that we are going to be losing $350,000 per annum by losing the Northern Territory link, and we have not factored in the fact that, whilst previously we paid Victoria 0.125 per cent, we are now going to be paying 0.19 per cent.

So how can this Chief Minister stand in this place and say that the people of the ACT are not going to be the losers on this deal? Of course, she cannot. It goes to show what she knows about business, and it goes to show what she will do in order to try to protect her political mates. That is what it is all about. This deal, from start to finish, has been a classic example of "Do not let your mates do the deals for you, because once you do that things will go wrong". It also says, "Do not keep things secret". The third lesson people have to learn is this: If you make a mistake, admit to it; do not try to run away from it, because the harder you run the deeper you get into it.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (4.14): Madam Speaker, I have listened with interest to the comments that have been made by Mrs Carnell and Mr De Domenico. I, too, have a copy of a press release dated 17 June, which was issued at 1.49 pm, I think. I will come back to that in a moment. It came out of the office of Mr Downy, the New South Wales Racing Minister. I found it absolutely incredible that Mrs Carnell would come into this chamber yesterday and suggest that it was "because of the arrogant way in which Mr Lamont had approached the New South Wales Minister's office". That is what Mrs Carnell said yesterday. This "arrogant way in which Mr Lamont approached the New South Wales Minister's office" was allegedly on 17 June. Is it not surprising that I never contacted the Minister's office prior to 17 June? I never spoke to Mr Downy prior to 17 June. In fact, the only correspondence that I had with Mr Downy on or before that date reads as follows, and you can judge for yourself the sheer arrogance of it:

Dear Minister - - -

Ms Ellis: That is pretty arrogant.

MR LAMONT: I am that sort of boy when I write a letter. I wrote:

Dear Minister

In regard to media speculation surrounding a pool to pool link between the ACTTAB and the NSW TAB I can give you my assurance that my staff were not involved in any way with the release of details of our meeting next Tuesday.

I intend to brief you personally regarding the delicate legal situation involved with the VITAB agreement.

It goes on.

Mr Kaine: Read us the arrogant bit. Do not leave out the arrogant bits.

MR LAMONT: This is the sheer arrogance! This is the last paragraph. Mr Kaine, this is it:

I remain grateful that you agreed to meet with me to discuss this issue, which of course is of great importance to the future of the ACTTAB as well as the racing industry in the South East Region ...

Sheer arrogance, Madam Speaker! I do apologise to you, Mr Berry, for speaking in these terms to a Minister of a Liberal government; but they were reasonable, I would suggest. Madam Speaker, this arrogance that I am supposed to have exhibited, as Mrs Carnell would allege, goes on. I would like to read to you a further letter. This one is dated 22 June. This was the day after I actually met with Mr Downy. Again I apologise if this is regarded as arrogance. I wrote:

Dear Chris,

Thank you for the opportunity to discuss the ACTTAB to NSW TAB linkage proposal yesterday.

I have a clear understanding of your position and desire to protect the NSW Racing Industry ...

It goes on. This is the last paragraph; this is the sheer arrogance:

It was a pleasure to meet you yesterday and I appreciated your open and frank approach to discussion of this important issue.

This is pretty outrageous and arrogant! Let me go on.

A couple of weeks later, following the TAB to TAB discussions, something started to go awry in those negotiations. That occurred up to and around 15 July. That is an important date. It was then that the whole thing started to go downhill in relation to the detailed negotiations with New South Wales. In one day the New South Wales Minister proposed that there be an increase in the processing fee from 0.25 per cent to one per cent - that is a $780,000 cost impost on ACTTAB - as part of that contract. On that same day there were suggestions that it come back to a one-year contract.

The two good things, following that sort of absolute nonsense as far as negotiation is concerned, were that both propositions were reversed. They were reversed so that the offer from New South Wales was 0.25 per cent in terms of a processing fee - - -

Mrs Carnell: You do not think I did that as well? Maybe I fixed it up for you.

MR LAMONT: Mrs Carnell, I am pleased to see you attempt to say, even with some jocularity, that you had some responsibility in the final contract with New South Wales. Do you know why, Mrs Carnell? I deliberately did not brief you from 17 June because I no longer trusted you to keep the confidence within which those briefings had been occurring. That was me, Mrs Carnell. I no longer trusted you in relation to keeping the faith in which these negotiations had been occurring. I did that for a very simple reason.

How could you then know that the New South Wales contract was such a good contract? You have implored me over the last six or seven weeks to sign the New South Wales deal. You said that it was a better deal.

Mrs Carnell: Just like the Racing Club.

MR LAMONT: Yes, they too. Their comment was based in ignorance. Their comment was based in ignorance of what was contained therein. You, Mrs Carnell, allegedly have had some inside information. Otherwise, why would you, in the process of negotiating with Victoria, come out the way you have? What I will say to you is this, Mrs Carnell: It is apparent that you have spoken to the office of the New South Wales Minister.

Mrs Carnell: After that went out. Yes, I said that.

MR LAMONT: Let us say between some time on 17 June and 15 July. You have admitted that you phoned the New South Wales Racing Minister's office. You have acknowledged that you have interfered. You have acknowledged that you have attempted to interfere in that process. It can be judged as nothing else. Your interference, Mrs Carnell, and the political interference of Mr Downy in those negotiations is absolutely reprehensible. You have implored me to enter into a contract with New South Wales and you stood here no more than 25 minutes ago and lambasted the Government for signing a deal that had no out and was deleterious to the ACT.

Mrs Carnell, if there is any fault on this side of the Assembly in relation to this matter, you have committed exactly the same sin. You have committed exactly the same sin in imploring us to sign a contract with New South Wales that would not be in the interests of the TAB. Let me quote to you, Mrs Carnell, what your contract with New South Wales would have meant to the ACT, what your preferred option would have meant. This is signed by Chris Downy, MP, and I quote:

In addition, my approval is subject to my receiving undertakings from the responsible Ministers in the ACT and the NT of their commitment to the prohibitions contained in Clause 8 of the draft contracts (with the exception of 8.1(b) in the ACT contract) -

which was in relation to telephone betting -

and to those Ministers agreeing to the establishment of working parties to be convened at my instigation to inquire into and report on the advantages and disadvantages of off-course services in the Australian Capital Territory and the Northern Territory being contracted out to the NSW TAB, such working parties to commence no later than 1st April and conclude by 1st July, 1995.

Along with the other provisions, you would support that, Mrs Carnell. You support the contracting out.

Mrs Carnell: I do not know. I have never heard of it before.

MR LAMONT: But you have supported the contract.

Mrs Carnell: I said that I supported negotiations.

MR LAMONT: Yes, you have. You have been on the radio repeatedly exhorting me to go with New South Wales. You, Mrs Carnell, have been exhorting me repeatedly to sell the TAB to New South Wales, because that is the effect of the signing of any contract with New South Wales. That is what your grubby little game has been all about - to put into place your ideology, the same ideology that in the last week has seen you exhorting the Minister for Health to contract out the whole of the health system, to sell it off to New South Wales. What is next, Mrs Carnell? We will have the education system contracted out to New South Wales. Mrs Carnell, you might convince Mr Downy to do a bit of a favour and get you out of the poo that you got yourself in yesterday, but it simply does not wash.

MADAM SPEAKER: Order! Mr Lamont, your time has expired.

Mr Lamont: By the way, I am prepared to name the person who told me that you phoned the New South Wales Minister. Do you insist that I do so?

Mrs Carnell: No; but I do not mind.

MADAM SPEAKER: Order! Your time is up.

Mr Lamont: Do you insist that I do so?

MADAM SPEAKER: Order!

Mr De Domenico: Mrs Carnell rang Mr Downy in my presence after the event, Mr Lamont.

Mr Lamont: Why did you tell me at 6.30 on Friday night that you had nothing to do with Mrs Carnell phoning the New South Wales Minister's office?

Mr De Domenico: No, no, Mr Lamont - - -

MADAM SPEAKER: Order! Members from both sides will come to order.

MR HUMPHRIES (4.25): Madam Speaker, I would have thought, after that little performance by the Deputy Chief Minister, that we would need only to quote the phrase "Mr Lamont's arrogance" to see that it was true. Merely observing Mr Lamont after that little performance is all that you need to satisfy yourself of the statement that he is a very arrogant person when it comes to looking at these issues. It takes a special kind of arrogance, Madam Speaker, for him to stare down his critics, or to try to stare down his critics, in the face of a decision to flush something like $4m in taxpayers' money down the toilet because of his own Government's incompetence. There simply is no other way of describing the debacle - I will not say the other word - the muck-up that this entire affair - - -

Mr Kaine: You were not thinking of "stuff-up", were you?

MR HUMPHRIES: I was, yes. There is no other way to describe the disaster that this entire affair has been for the ACT. We have spent, on the Government's own admission, $3.3m achieving something. What? What does the taxpayer of the ACT have to show for this $3.3m of his or her money? Absolutely nothing; not a bean. It is a complete and utter waste of the taxpayers' money. This Government does not have even the common decency to come into this place and say, "Oops, we are sorry".

Some members of this Government, like the man over here, still insist that this was a good deal. Some of them have not had the decency to work out that this has cost the Territory a great deal of money, and that it is their fault that it went very badly wrong. That, Madam Speaker, speaks volumes about where this Government comes from. These people believe in a black-and-white world. They believe that what they do must be right, and if things go wrong it is "the forces of darkness", to quote Mr Lamont, the Darth Vaders dwelling on the fringe, out to destroy this wonderful, altruistic Labor Government, who are the real cause of their problems. Madam Speaker, nobody is fooled by that.

Nobody doubts for an instant that the cause of this problem is Mr Wayne Berry, and Mr Wayne Berry alone. It was he who authorised the contract with VITAB. It was he who went to ACTTAB's headquarters in Dickson and held hands with Mr Bob Hawke and the other directors of VITAB and said, "What a great deal we have for the Territory!". It was he who was prepared to shoulder all of the credit which he thought was going to come from this VITAB deal. It is he who must take the blame for the fact that today the taxpayers of this Territory have been ripped off to the tune of something like $4m. How many weeks' pay would that be, Mr Berry? Certainly, more than you are likely ever to receive from working in this place.

Madam Speaker, we have seen in the last few weeks, indeed, since the beginning of the year when the VITAB deal started to go very badly wrong, extremely impressive examples of twisting and turning, of dodging and weaving, of catapulting and ducking in order to avoid the responsibility which this Government must face up to for having made a ghastly mistake. It is a great pity that the Commonwealth Games do not include the 100 metres blame dodging, because Mr Lamont, in today's exercise, would make himself an Australian champion in that sport. Let us go through some of the things that have been said in the last few weeks. Again I quote what he said to ABC radio on 18 August when talking about the New South Wales TAB offer at the time, which was being considered:

They had such things as a processing fee that was five percentage points higher than that which we achieved in the Victorian pooling arrangement.

Oops! I wonder why that five-page ministerial response to a question had to come out yesterday - a five-page ministerial statement masquerading as an answer. It was to get in the fact, buried somewhere in that answer, that Mr Lamont had - - -

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.

VITAB CONTRACT
Discussion of Matter of Public Importance

Debate resumed.

MR HUMPHRIES: Mr Lamont told us that there was a five percentage points difference between the New South Wales and Victorian offers. But yesterday he had to meekly admit - no doubt, before the censure motion came up - that, in fact, the difference was not quite five percentage points; that the New South Wales offer was actually 0.06 per cent higher than the Victorian offer. There is a slight difference. What is a factor of 100 between friends?

Then, when the plug finally was pulled on us, we had the incredible statement that we can survive being out of the superpool arrangement; we do not need to be in a superpool arrangement; we will be okay. That was before things started to go really badly and some TAB agencies in the ACT were losing up to 90 per cent of their turnover on a daily basis. Oops! Out came the foot from the mouth and the legs started to work like little pistons to make sure that the job was done in time; to make sure that this deal was stitched up before the six-month period of disqualification with Victoria elapsed and to get things back on track as quickly as possible after that point.

Mr Lamont has scarpered, I see. The other extraordinary statement was that we were kicked out of the Victorian TAB arrangement in the first place because they were privatising; that they did not want to have this wonderful ACTTAB with its link with VITAB as part of a privatised Victorian TAB. What happened? We ended up going back into the Victorian TAB on the very day it privatised, the very day it became Tabcorp, the new privatised Australian TAB. What happened to the problem with the privatised TABs? Apparently, we take whatever port we can get into, and this appears to be the only one.

Mr Kaine: Another big furphy.

MR HUMPHRIES: Indeed, another massive furphy. Let us look at some of the other things that have been claimed, incredibly, during this amazing avoidance of blame today. Mr Lamont and Ms Follett claimed that the Pearce inquiry had exonerated the Government and Mr Berry; that nothing the Liberal Party had claimed had been borne out by the Pearce inquiry. Obviously, we must have a different version from the one that the Government is looking at.

I want to make a point too, Madam Speaker, about ducking and weaving on the part of this Government. When we stood in this place to debate the question of Mr Berry having misled the house, the claim was made repeatedly by Government speaker after Government speaker that we could not allow the matter to be debated then because it was going to be dealt with by the Pearce inquiry. I particularly want to quote something that Mr Connolly said. I quote:

I say to the Independents that this is a matter that goes to facts; it is a matter that goes to the state of Mr Berry's knowledge as to particular matters at particular times; it is a matter that goes to Mr Berry's involvement in this VITAB agreement process. Clearly, on your allegations, this is what this goes to; and the fact that that matter is clearly before a board of inquiry indicates that we should, as the Chief Minister urged, wait until the verdict is brought in before we pass sentence.

In other words, let us not debate this matter; it can be dealt with by the Pearce inquiry. But when we put those matters before the Pearce inquiry - - -

Mr Connolly: After you had passed sentence.

MR HUMPHRIES: When we put them before the Pearce inquiry the Government said, "No, no; this is a matter of privilege. We cannot deal with these matters in the Pearce inquiry. They should have been dealt with on the floor of the Assembly". You took pains to make sure that those issues were not properly dealt with. You did not enter into debate when you spoke, Mr Connolly. You said, "This matter will be dealt with by the Pearce inquiry. I will save my powder for then".

The fact is, Madam Speaker, that after that rigmarole was gone through there was no forum left where Mr Berry could be judged, but he has been judged by the people of the ACT. Now we have the extraordinary claim that it was the Liberals who sabotaged the TAB's re-entry into the superpool. Here is a government facing absolute and utter disaster that needs to find a scapegoat and it says, "We will pull out some tawdry unsubstantiated claim about Mrs Carnell having made a phone call to Mr Downy's office to prove that it was all the Liberal's fault". Madam Speaker, this Government is going to have to do a hell of a lot better if it is going to fool the people of the ACT, come February, into believing that they, and they alone, are not the sole people responsible for this absolute and utter unmitigated disaster.

MR BERRY (Manager of Government Business): Madam Speaker, pursuant to standing order 46, I would like to make a personal explanation.

MADAM SPEAKER: Proceed, Mr Berry.

MR BERRY: Thank you. During the course of debate today questions were raised about my competence and the competence of other people who were advising me. Madam Speaker, you have to look at the background of this issue to determine whether one's competence could be called into question fairly or not. The background that I am talking about is the involvement of the Liberals opposite and the Victorian Government and the Victorian Racing Minister. We know from the public record that Mrs Carnell admitted to being in contact with the Victorian Racing Minister and other TABs. She admitted that on public radio. Mr De Domenico sat beside me, in front of a TV camera, Prime - - -

Mr Humphries: I raise a point of order, Madam Speaker. I think that Mr Berry is clearly transgressing the rule that no such matters may be debated during a personal explanation under standing order 46. We expect to hear what was said about him that was not true, and that should be all. I would ask you to bring him into line.

MR BERRY: No, the issue is not whether it was true or not. You drew into question my competence, and I am permitted to talk about it.

Mr Humphries: No, you cannot debate the matters. It says so in the standing order.

MADAM SPEAKER: I have ruled on this before, when Mr Stevenson, I think, was talking about a similar sort of thing. I have said that, if you can bring your argument around to the personal explanation, that is permissible; but it has to be a personal explanation, Mr Berry.

MR BERRY: Thank you. I go back to Mr De Domenico sitting beside me, in front of a Prime News camera, out at Bruce Stadium, on the super sevens football day, as he might recall, and saying, "Yes, I have been in touch with various people involved in the TAB and so on, and Ministers". I then look at a question without notice which was asked of the Victorian Minister. He was asked a question in relation to VITAB. What I am doing, of course, is drawing a link between those who - - -

Mr De Domenico: Madam Speaker, I raise a point of order. If Mr Berry is not debating the issue, what is he doing? We are quite prepared to debate Mr Berry, if he likes.

MR BERRY: There is no question before the chamber.

MADAM SPEAKER: I realise that there is getting to be a quite fine distinction here. I believe that Mr Berry is trying to produce a personal explanation as to why he is not incompetent, and he is using evidence to show that.

Mr Moore: Seek leave to make a statement under standing order 46.

MR BERRY: I have.

Mr Moore: Yes, that is the Speaker's leave. Why do you not seek the Assembly's leave to make a full statement on the issue? Then you have none of those restrictions.

MR BERRY: I have the leave of the Speaker to make a personal explanation about something that was raised in the course of debate. There was no question before the chamber. I presume that I am able to move on.

MADAM SPEAKER: Mr Berry, I think people want you to keep referring back to yourself and your own interpretation of these things. I think you could probably proceed to do that.

Mr Kaine: Tell us how you have been done wrong.

MR BERRY: No, no. It is all right for you to draw into question not only my competence but also the competence of other public servants, but you have to allow for the issues which you were involved in to be exposed as well. I am trying to demonstrate your connections with the undoing of the link between VicTAB and ACTTAB.

Mr Kaine: I take a point of order, Madam Speaker. I think Mr Berry just blew his own story. It has nothing at all to do with a personal explanation.

MR BERRY: I am the one who has been attacked.

Mr Humphries: So you are attacking us instead.

MR BERRY: Give me leave to speak.

MADAM SPEAKER: Mr Berry has now sought leave to make a statement.

Leave granted.

MR BERRY: I can go a little wider now that I have been given leave. We have the situation where the Victorian Racing Minister had said that he had been informed by racing officials that VITAB had such a huge advantage over the rest of the TABs in Australia - - -

Mr Lamont: This is the Victorian Racing Minister who now will not speak to Mrs Carnell.

MR BERRY: That is the one. He had been informed that it could offer up to 5 per cent in rebates, or even more on losing bets, and so on. He said that that would undermine every TAB in Australia - this is what the Victorian Minister said - and:

It is a potential gigantic scam in the racing industry and I will not tolerate it.

The Victorian Racing Minister lied to the Victorian Assembly, because he knew very well that there were going to be no inducements offered by VITAB. That is the first fib. There are a few others.

Mr Humphries: Come on! Professor Pearce said that there could be inducements offered by VITAB.

Mr De Domenico: So Professor Pearce is telling lies too, is he?

MR BERRY: I will explain why. Early the next year I met that Minister from Victoria and provided him with a written undertaking from VITAB that they would not offer any inducements. At the Racing Ministers meeting he had the piece of paper demonstrating clearly to him that there would be no inducements, but he went on to say this in the Victorian Parliament:

It is a potential gigantic scam in the racing industry and I will not tolerate it.

Quite frankly, he fibbed to the Victorian Parliament. This is another interesting part:

As I said earlier, the Victorian TAB decided to sever its links with the ACTTAB. Last year I suggested that the third-party - - -

Mr Humphries: Madam Speaker - - -

MADAM SPEAKER: Just a minute, Mr Berry. We have a point of order.

Mr Humphries: I seek your ruling, Madam Speaker, about saying that people told lies. "Fibbing" has been ruled out of order in this place in respect of members, and I think that the term is generally frowned upon in any context. I would ask you, therefore, to rule on that matter.

Mrs Carnell: You would rule it out of order in this place, so how can he say it about another place?

MADAM SPEAKER: No. The standing order pertains specifically to improper imputations against members. That is one of the things that the lawyers get so angry about. Within the chamber you are not allowed to impute improper motives to another member. The rest is within the realms of what is parliamentary and unparliamentary language. Part of the right of free speech is that you are allowed to call other people names. Continue, Mr Berry.

MR BERRY: It was at the initiative of the Victorian Minister that the ACTTAB links with VicTAB were cut. That was at the instigation of the Victorian Minister. He had said earlier that it was because of inducements. I just demonstrated to you that he had not told the truth in respect of that, because he had a letter which made that very clear. In relation to the ACT Opposition's position, I will quote from his response to the question. He said this:

When I was asked by the ACT Opposition to assist in blowing the whistle on VITAB's scam -

it was not a scam, as I demonstrated earlier -

I was happy to assist ...

It shows the political involvement of those people opposite.

I now turn, Madam Speaker, to the *Financial Review* and where they discussed the campaign which was developed by the Liberal Opposition opposite and their colleagues interstate. The *Financial Review* said that the campaign included leaking what appeared to be altered or incomplete police information about VITAB's chief executive. We recall the altered information that was tabled in this place and handed to the committee. We know that you were silly enough to hand over that information with the Victorian Minister's fax number on the top of it, so that everybody would know where it had come from. What dills! You passed it on to the *Financial Review* with Mr Reynolds's fax number on the top. The *Financial Review* then went on to discover a copy of a 1988 court record which involved one of the principals being involved in three minor charges relating to amusement machines in his Melbourne hotel. Two of the charges were withdrawn. The third matter was adjourned and not proceeded with. By collaboration between you and the Victorians, you very clearly made sure that that doctored information played an important role in the whole process.

I now come to another matter which is of interest. I have before me a study trip report. This study trip report was submitted by Mr Tony De Domenico and it was signed on 5 April 1994. The study trip involved a visit to Melbourne on 13 March, Launceston on 14 March, and Hobart on 15, 16 and 17 March. The organisations and individuals visited were the State Department of Land and Management, Mr Andrew Watson, Launceston; the Hon. John Cleary, MHA, Minister for the Environment, Land and Management; the Hydro-Electric Authority; the Tasmanian TAB; and Mr Derek Haigh, former campaign organiser for the Tasmanian Greens. The purpose of the visit was discussions regarding shadow portfolio responsibilities, discussion of field trips regarding committee responsibilities, and discussions regarding the Hare-Clark political system. But did we ever discover what happened while you were in Melbourne on the 13th? No, it was not put in the report. What were you doing in Melbourne? Did you drop in to see your mates?

There has been little interest in the political involvement between the local Liberals and the Victorian Liberals who, with their massive majority, can behave as they will, and I think further discovery needs to be made. There is no question that there have been lies told in the Victorian Parliament. There have been lies told by way of doctored police information to blacken principals of the VITAB organisation. I do not speak out to protect them; I raise the matter merely to demonstrate the lengths to which you people are prepared to go in your campaigns. Let there be no mistake about it; there is enough evidence there to show clearly that the Victorian Liberals and the ACT Liberals

collaborated to bring undone the link between VicTAB and ACTTAB. Then we have to ask, "Who wears the responsibility for the subsequent losses?". I say to you that you share the responsibility because of the collaboration between you and the Victorian Liberals.

Those are the issues that the people in the community will begin to understand as time passes. It is clearly a matter of public record that you have been involved in that process. Reynolds admits that it was at your request that he dealt with the matter, and you have to accept the responsibility for it as well. I will not stand idly by and listen to you bleating about the arrangements which Mr Lamont has had to work out in relation to the matter and trying to blame him for something that you were very clearly involved in at the very early stages. You people were involved in this. You were in it up to your ears. There is more to be uncovered. I hope that it is uncovered, because I know that it is going to fix you lot.

Madam Speaker, that is all I have to say on the matter. I hope that there will be some more inquiries. I certainly intend to keep my eye on it. I think there is sufficient evidence for the community to be extremely disturbed about the involvement of the local Liberals and the Victorian Liberals at the early stages of this matter. We already have an admission by the Victorian Minister. What else is there? Plenty, I suggest.

MR DE DOMENICO: Madam Speaker, I wish to make a personal explanation under standing order 46. I would appreciate it if Mr Berry stayed here for this. Do not run away.

MADAM SPEAKER: Yes, you have my leave, Mr De Domenico.

MR DE DOMENICO: Mr Berry used a report on a study trip I undertook in March and April, Madam Speaker, and they are very important dates. He accused me of being in cahoots with the Victorian Government in severing the TAB link. For Mr Berry's information, the link was severed on 31 January. I need say no more.

MADAM SPEAKER: The discussion is concluded.

STAMP DUTIES AND TAXES (AMENDMENT) BILL 1994
Detail Stage

Bill, by leave, taken as a whole

Debate resumed from 23 August 1994.

MS FOLLETT (Chief Minister and Treasurer) (4.50), by leave: Madam Speaker, I move the following amendments together:

Page 4, line 24, clause 8, paragraph (c), proposed new subsection 41(3) (penalty provision), omit "6", substitute "12".

Page 5, line 18, clause 9, proposed new subsection 44(2), add at the end of the proposed new section 44 the following new subsection:

"(2) If tax or stamp duty has been paid under section 49F in respect of a change in beneficial ownership of a marketable security, tax or stamp duty is not payable under subsection (l) in respect of the transfer of the same security.".

Page 7, line 9, clause 9, proposed new subsection 45B(5) (penalty provision), omit "6", substitute "12".

Page 9, lines 12 to 36 and page 10, lines 1 to 11, clause 13, omit the clause, substitute the following clauses:

Heading to Division 3 of Part V

"13. Before section 50 of the Principal Act the following section is inserted in Division 3 of Part V:

Liability on change of beneficial ownership where tax or duty not otherwise payable

'49F. (1) The determined amount of tax or stamp duty, as the case requires, is payable on a change in beneficial ownership of a marketable security.

'(2) Subsection (1) does not apply to a change in beneficial ownership in respect of which tax or stamp duty is otherwise payable under this Part.

'(3) Nothing in subsection (1) is to be taken to require the payment of tax or stamp duty in respect of an agreement for the change in beneficial ownership of a marketable security.

'(4) The determined amount of tax or stamp duty referred to in subsection (1) is payable by the person who acquires beneficial ownership in the marketable security.

'(5) A person who acquires beneficial ownership in a marketable security in respect of which tax or stamp duty is payable under this section shall lodge with the Commissioner a statement in a form approved by the Commissioner.

'(6) A statement referred to in subsection (5) shall be lodged not later than 30 days after the change in beneficial ownership in the marketable security.'.

Substitution

"13B. Section 56 of the Principal Act is repealed and the following section substituted:

Prerequisites for registration

'56. A transfer of a marketable security shall not be registered in the books of the company or unit trust to which the marketable security relates unless -

(a) in the case of a non-SCH regulated transfer, the instrument of transfer -

(i) bears statements in respect of the transactions to which the instrument relates, made under section 41 or a corresponding law, to the effect that stamp duty, if payable, has been or will be paid; or

(b) in the case of an SCH regulated transfer - the transfer document has been endorsed with the participant's identifier; or

(c) in the case of a transfer by a prescribed corporation - the instrument of transfer has affixed to it the seal of the corporation.'.".

Page 11, line 2, clause 15, paragraph (b), proposed new paragraph (ma) (Schedule 4), after proposed paragraph (m), insert the following paragraph:

"(ma) made solely by way of security or by way of re-transfer to a person from another person who held the marketable security by way of security, and that is not made in connection with a tax avoidance scheme;".

I apologise for the fact that the amendments were not sent around to some members earlier yesterday.

Subsequent to the presentation of the Stamp Duties and Taxes (Amendment) Bill 1994 on 19 May, there has been further consultation with the Australian Stock Exchange and the Law Society. Following those discussions, it was considered necessary to clarify certain aspects of the Bill. Madam Speaker, the Bill creates a liability in respect of a change in beneficial ownership of marketable securities. The proposed amendment avoids the imposition of double duty by ensuring that the subsequent transfer of legal title in the same transaction is not liable for stamp duty.

During the course of consultation with the Law Society, concern was expressed that agreements for the change in beneficial ownership would be subject to duty, rather than the actual transfer. This is not intended. The amendment clarifies the position that agreements to transfer marketable securities are not liable for duty and maintains the status quo in that regard. To achieve uniformity with legislation of other jurisdictions, the Bill restricts the concession for securities lending transactions to those completed within 12 months. In other States, securities that are loaned for longer periods to be held as collateral for loans are subject to loan security duty. The Bill inadvertently provided for a liability for loan security duty on these transactions in the ACT. The amendment, therefore, expands the concession to ensure that loans of securities to be held as collateral are not subject to duty in the ACT.

Madam Speaker, Division 3 was deleted by the Bill, as it will no longer be required with the change in nexus to the place of incorporation. This division provides that transfers of shares in ACT incorporated companies are ultimately liable for duty in the ACT, even if the primary liability is to another jurisdiction. This amendment retains the existing Division 3 to close a potential opportunity for tax avoidance due to the change in the nexus provisions. It is possible in the transitional period for shares in an ACT incorporated company to be stamped as exempt in another jurisdiction. Restoring Division 3 ensures that, on the registration of the securities, they will be liable for ACT duty. The penalty provisions have been amended to ensure that the maximum period of imprisonment is consistent with other legislation in the ACT for the corresponding monetary penalty. I present a supplementary explanatory memorandum.

MR KAINE (4.53): I take no particular objection to the amendments that the Government has now brought forward to its own Bill; but I would comment that this, surely, is an example of sloppy work on somebody's part. They bring down a Bill that they tell has to be in effect by 1 September because it has to be uniform, and, even as we are debating it, we are given a bunch of amendments. I can understand that one or two of the amendments, perhaps, flowed from some complexity that needed to be clarified; but I cannot understand why the Bill was put before the Assembly before these matters were clarified. Is this the way the Government does all its work? The indications are that it is. That, I believe, reflects poorly on the Government's approach.

As I said, one or two of the amendments now before us probably flow from the complexity of the matter; but there are a couple that do not. One is simply increasing a penalty from six to 12 months. Why did they not look at that before they put the Bill on the table in the first place? If six months or $10,000 was the appropriate penalty in May, why has it changed? The answer is that the Government did not review it. It did not look for cross-comparisons between this and other law, to see what the appropriate level of punishment or penalty was. That is the thing that concerns me most.

I indicated yesterday that the Opposition supports the Bill. Its objectives are worthy. I also pointed out that, in my view, by implementing this new law, the Government may well be enhancing its revenue collection, because the mechanisms in place may well allow more efficient collection of the revenue. For the same reason, I have no particular objection to the amendments that they put forward at the last minute yesterday.

But I just cannot believe that the Government can be so slack in its approach to something that really is a quite significant matter. It seems to have been dealt with by the Government in a cavalier fashion. Unless circumstances have changed, the law has to be in place by 1 September so that it achieves uniformity with the States and the Northern Territory. We support the Bill. As far as I am concerned, it can be taken in its entirety in the detail stage.

MR MOORE (4.56): Madam Speaker, I have a slightly different view from that of Mr Kaine. When I received a briefing on this Bill I was also provided with information on the amendments to be moved by the Treasurer. So perhaps Mr Kaine had been briefed much earlier than I had. I note that that was the case with Ms Szuty as well. Madam Speaker, I am going to make some comments on behalf of Ms Szuty because she has lost her voice. She is unable to speak; but she whispered to me a couple of things. I am not going to whisper them back to the Assembly in the same way as she did, although the temptation is great.

With respect to amendment No. 1 - the penalty change from six months to 12 months - Ms Szuty asked those briefing her whether that was consistent across Australia. The reason for asking the question was that this is a mutual recognition Bill, and therefore it would be appropriate, as far as she was concerned, to have that sort of approach. The answer she was given was that, first of all, it was a consistent approach to criminal penalties across legislation in the Territory. That was the reason for changing from six months to 12 months. The answer that she was provided with in writing from the senior policy officer included these paragraphs:

A survey of other stamp duty jurisdictions (NSW, WA, VIC, SA and TAS) has revealed that they do not have specific penalty provisions for the offences identified in the supplementary Bill. We are penalising persons who use a CHESS participant's identifier number without the authority of the participant, which is a situation that could create a stamp duty liability for a participant, without their knowledge or consent.

Most other jurisdictions indicated that they would seek to penalise this situation using their general penalty provisions. The level of penalty that they could impose varies between jurisdictions, therefore it is impossible for the ACT to introduce a penalty that achieves consistency with all States and Territories.

This situation can be addressed as part of the project to rewrite the stamp duties legislation. Five jurisdictions including ourselves are participating in this project, and the CHESS provisions will be reviewed with the objective of achieving a greater level of uniformity where possible.

So, that concern with the clause is handled in that way.

Madam Speaker, I would like to thank the Chief Minister once again for making her officers available to us for a briefing on this matter - I see by her nodding her head that Ms Szuty also would like to acknowledge the clear and concise briefing that we were given - the return in time for the debate of information that Ms Szuty asked for, and certainly the very clear information that I was given on a matter that I had some difficulty understanding in the initial instance. It had to do with stocks and bonds and so forth - things that I rarely deal with. Having gone through with those officers the concerns that we had, Ms Szuty and I are both happy to support this legislation and the amendments.

MS FOLLETT (Chief Minister and Treasurer) (5.00): Madam Speaker, I would like to thank members for their comments and for their support of the Bill and the amendments. As Mr Moore said, it is a significant piece of micro-economic reform. I believe that it also means that the Australian Stock Exchange will be able to remain competitive in the face of extensive competition. The reason for the Bill - facilitating the electronic transfer of shares on the Stock Exchange - is a step forward for the Stock Exchange.

I take Mr Kaine's point about late amendments to legislation. It is a source of some frustration for me as well; but I have to admit that in this kind of legislation, which is complex and technical, I simply am not well enough up on the detail of issues to be able to spot some of the difficulties as legislation comes before the Government. In this particular case, as well, some of the amendments have arisen as a result of further consultation with the Stock Exchange and the Law Society. I believe that, where it is quite clear that that consultation will lead to better legislation, we ought to act upon it and introduce the amendments. That is what has been done, Madam Speaker.

I believe that this is a good and worthwhile piece of legislation. It is something that is being adopted nationally. It is also, as Mr Moore has said, something that will be subject to continuing review amongst a majority of the States and Territories, in order to get greater uniformity and greater consistency into these kinds of laws. The ACT Revenue Office has been very actively involved in that review process. I expect that much of our legislation, perhaps including this piece, will be modified in the coming months and years as a result of that continuing move towards uniformity. So I commend the Bill to the Assembly and I thank members for their attention to it.

Amendments agreed to.

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

Bill, as amended, agreed to.

LANDS ACQUISITION BILL 1994

Debate resumed from 16 June 1994, on motion by Ms Follett:

That this Bill be agreed to in principle.

MR CORNWELL (5.03): Madam Speaker, this Bill first came before the Assembly as an exposure draft in September 1993. At that time, the Minister indicated that he would be welcoming comment up until 16 November of that year. So, there has been quite a long time to examine the recommendations, which I have no doubt he received, between November 1993 and now, when the legislation has come before us. I think it is important, however, to remind members of what Mr Wood said in tabling the exposure draft. He pointed out that there was no general legislative mechanism for the acquisition of an interest in Territory land by the Territory since self-government. He then went on to explain why; namely, that self-government removed the ability of the Territory to use the Commonwealth Act to acquire, compulsorily or not, an interest in Territory land. However, he stated that, at the same time, the Land Management Act provided the Territory with the authority to acquire estates in Territory land, subject to the Territory enacting legislation for that purpose.

The Commonwealth's Australian Capital Territory (Self-Government) Act 1988 provided that, if laws were made by the Territory with respect to the acquisition of property, it could be done only on just terms. This Bill addresses this requirement and provides four important points that it is worth while enumerating: Firstly, openness in land acquisition; secondly, accountability of decisions; thirdly, statutory compensation provisions; and, fourthly, the expeditious process of an acquisition. It includes appeal rights at two levels - to the Executive and to the Assembly itself - in relation to the decision to acquire the land, while it provides appeal rights to the Administrative Appeals Tribunal in respect of the amount of compensation which is to be paid.

Of particular relevance is the Bill's importance to rural lessees. With its passage, the contentious withdrawal clause in rural leases, which currently exists, will no longer be necessary. This clause was inserted to allow the Government to withdraw land from a lease. However, it had the effect of raising doubts about the tenure enjoyed by a rural lessee, to the extent that some financial institutions would not lend money on that rural property. This was an unintended consequence; nevertheless, it caused some difficulty to ACT rural lessees. These lessees will now be able to renegotiate their leases on the passage of this Bill, and I believe that they should be encouraged to do so, because the effect of the renegotiation will remove this rather notorious withdrawal clause. Needless to say, the Rural Lessees Association are pleased with this Bill. I have spoken to them and have received their assurances that they would be happy for it to pass.

The Liberal Party, therefore, supports this legislation; although I rather wish, as perhaps the Government does, too, that we had had the legislation in place years ago. For example, the Paddy's River lease, which was known as block 13, was acquired compulsorily in the 1970s for housing. It has never been used for that purpose, following the decision not to expand Canberra across to the west bank of the Murrumbidgee and further westward. The lease was withdrawn 30 years early, and the lessees were

compensated only for the interest and charges for use of the land in the three-year period of their possession. There was no compensation at all for the loss of 30 years' use of the land, despite the fact that it was never taken up for the purpose for which it was acquired, that of housing.

In a letter to me recently, Mr Wood said that the loss of access to the land and equity held by the lessees in the land is not taken into account. That is not a criticism of Mr Wood, this Government or, indeed, the department. The fact is that, when the land was compulsorily resumed in the 1970s, it was under the Commonwealth. It was a Commonwealth government that resumed that land. However, I would like to draw attention to the fact that this same block - namely, block 13, Paddy's River - has recently been divided up and re-leased. It was done quietly, with a strange special dispensation - that its availability for re-lease not be advertised. On 29 June, I asked the Minister questions about this practice, which I believe to be irregular. I am awaiting his response.

Mr Kaine: Who are the lessees now?

MR CORNWELL: That may come out of those questions, Mr Kaine. Certainly, the previous lessees of the block were not included in any deliberations as to who would have the future use of this land. Not surprisingly, they are suspicious of the department's motives. I think they are reasonably sceptical of this Follett Labor Government's new rural policy, with its commitment to ensuring that the sales process is open, fair and equitable. One can say the same for the lease process. Only time will tell whether this process is going to be open, fair and equitable; but I state quite categorically that we, in opposition, will remain vigilant on this matter.

May I say at this point that we also support the amendments proposed by the Government. I thank the Minister for providing me with the details of the amendments in sufficient time for me to examine them. That was in marked contrast to the Chief Minister's action. She introduced amendments to the Bill which we have just debated, at five minutes' notice yesterday. I conclude by saying that we will also remain vigilant on the matter of ownership changes that might occur relatively soon, before the land is acquired by the Government through this legislation, and particularly on the matter of who acquires the land. I think we need to recognise that the potential is here for big profits to be made from the public purse by those in the know. We must guard against even the suggestion that all is not kosher.

It is a problem that I do not believe can be addressed in amendments to this legislation. To do so would disadvantage quite legitimate lessees who were looking for legitimate compensation for the compulsory acquisition of their land by the Government. I place on record that this Liberal Opposition will watch the land acquisition processes very carefully. We shall not be backward in coming forward and asking questions if we suspect that everything is not as it should be. With that qualification, we are happy to support the legislation.

MR MOORE (5.11): Madam Speaker, this legislation results from a very long process that the Assembly has been through. I guess that I was involved in part of that process as a member of the Conservation, Heritage and Environment Committee when we brought down our report on rural leases in the ACT. As I recall, that reference was actually suggested to the committee by Mrs Robyn Nolan, who was at the time a member of the ACT Legislative Assembly.

Madam Speaker, in November last year I received a letter from the Rural Lessees Association, which drew attention to some of the problems of the draft Bill, as they saw them. I have gone through that letter and have compared the points raised in it with the Bill that was tabled by Mr Wood. I note that, where I consider it appropriate, those concerns were taken into account in drafting the Bill. I should also draw attention to the fact that, generally, the rural lessees were particularly happy with the Bill, even in its original draft form; but they expressed some quite specific concerns about a number of clauses in the Bill. The Minister has responded to those concerns in a way that I consider to be satisfactory.

It is a change in approach that reflects the maturing of this city. It was appropriate that the withdrawal clause was in those leases when we were at the broad development stage of this city. The whole purpose of the Government holding those leases was to allow for the development of Canberra. But it has become clearer and clearer that it is inappropriate for us to allow the perimeter of Canberra to expand much further. It is also appropriate for us to allow those lessees to have some security of land tenure - and I think this is most important - so that they can take a pride in ownership of the lease and look after that land. When they have the opportunity to look after their land, we can expect to see far greater land care. I know that that is an issue of concern to all members of the Assembly.

As a side benefit - and in many ways it is connected with that - it allows rural lessees to approach banks and other lending institutions in order to have a reasonable mortgage situation. At the same time, it allows this community, should it change its mind and decide that we wish to use land in a different way, to acquire that land, in a way that is very similar to that achieved in other States. For those reasons, Madam Speaker, I am very comfortable about supporting the Bill. I congratulate the Minister on getting it to this stage.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR WOOD (Minister for Education and Training, Minister for the Arts and Heritage and Minister for the Environment, Land and Planning) (5.15): Madam Speaker, I rise to respond briefly to Mr Cornwell's comments about the Paddy's River lease. I might say that, when, routinely, some considerable time ago, that matter passed through my hands and, as I recall, before I was approached by the person who is complaining, I sent it back and asked for a full account of it because there might have been suspicions - I do not think they could have been more than that - in sections of the community about favouritism on rural leases and people being in the know. I reviewed that matter very carefully at that time, before being approached. I examined every aspect of it, and I believe that it was handled fairly and properly.

Mr Cornwell mentioned compensation. My memory of that - I will come back and give Mr Cornwell the precise figures - is that the person who had purchased the lease in the 1970s had it for only about a fortnight before he received a withdrawal notice and was told that it was not going to be his any more. After much debate, two years later, he received compensation which was getting up towards twice as much as he paid for the lease. So I am not sure that it was unjustly done; although, of course, there were processes which prevented the 30-year payments. I do not think there was any financial disadvantage. Indeed, it was probably a reasonable deal for that person.

To get back to the specific issue of this Bill, when I introduced it in June, I forecast that some amendments might need to be made. The Land Acquisition Bill relates, in the main, to the compulsory acquisition of land. Where the Executive acquires an interest in land through the marketplace, such activity should not be subject to the provisions of the legislation. The proposed amendments, in part, are intended to make this clear. As a consequence, a number of provisions which deal with the acquisition of an interest in the market are no longer necessary, and these are deleted.

I seek leave to move together the amendments circulated in my name, and I present the explanatory memorandum.

Leave granted.

MR WOOD: I move:

Page 7, line 18, clause 16, subclause (1), insert "under this Act" after "acquisition".

Page 7, lines 27 and 28, clause 16, paragraph (2)(a), omit the paragraph.

Page 8, line 24, clause 18, paragraph (1)(d), omit the paragraph, substitute the following paragraph:

"(d) the acquisition is effected by an agreement made when there was no pre-acquisition declaration or certificate under section 21 in force relating to the acquisition.".

Page 16, line 11, clause 32, paragraph (2)(b), add "or".

Page 16, line 12, clause 32, paragraph (2)(c), omit the paragraph.

Page 16, line 24 to page 17, line 5, clause 32, subclauses (5) and (6), omit the subclauses.

Amendments agreed to.

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

Bill, as amended, agreed to.

COMMERCIAL AND TENANCY TRIBUNAL BILL 1994

Debate resumed from 16 June 1994, on motion by Mr Connolly:

That this Bill be agreed to in principle.

MR HUMPHRIES (5.18): I am assuming responsibility for this Bill with the retirement of Mr Westende. Madam Speaker, this is a very significant piece of legislation for a whole series of reasons. I might say at the outset that philosophically my party would generally strongly oppose legislation of this kind. Here we have a government which is proposing, through this legislation, to step into the marketplace, interpose itself between parties in the marketplace and say to those parties, "Here are new rules, and you parties shall comply with these new rules. What you might have contracted in the past, or even what you might contract in the future, is subject to these new rules".

Mr Connolly probably would not baulk at being described as an interventionist in the areas under his portfolio. I do not think legislation such as this could be much more interventionist. But, that said, it is also true to say that the Liberal Party supports this legislation and does so quite strongly. The reason that it does is that, despite our support for market principles and despite our belief that it is important that, where possible, individuals within a marketplace should be allowed to decide for themselves under what terms they treat their relationships and what results they achieve from those relationships, it is true to say that the ideal marketplace in which these kinds of arrangements are drawn up and individuals are treated on a free and even basis does not exist and probably has never existed in the ACT. We could have a debate about whether it exists anywhere, but certainly if any marketplace could be described as being unlike the ideal it would have to be that of the ACT.

The environment of ACT retail and commercial leasings has always been highly idiosyncratic. Canberra's marketplace has always been a highly structured and highly regulated marketplace. To suggest, for example, that a tenant who is unhappy with the behaviour of a landlord can just go down the road and set up shop where the conditions might be better, as tenants might do in Sydney or Melbourne, is simply nonsense. The planning rules of Canberra have operated to, in effect, ration the places where business can be done.

If, for example, you want to sell fresh fish in Weston Creek, you could probably count on the fingers of one hand the number of places where you could actually do so. The major shopping centre there has only one or two designated places where that can take place, and in other shopping centres the opportunities for that kind of activity are very limited, in part because one does not expect to go to a small shopping centre to buy a product such as fresh fish. Similarly, if one wanted to sell plants and seeds in Belconnen, a very small number of possible outlets would be available. We will not talk about selling petrol. That is probably too hot a topic to get onto today.

The fact of life is, Madam Speaker, that you cannot consider Canberra as an environment in which the rules that might apply in other jurisdictions in this country apply. It therefore follows that we need to ensure that the side effects of Canberra's highly regulated marketplace do not impact adversely on those individuals who choose to trade either as landlords or as tenants in that marketplace. I regret to say that in the past it has been true, and today it is still true, that landlords in particular have taken advantage of their position to operate unfairly with respect to tenants who have leased premises from them. I believe that the situation is such that those tenants in particular deserve some protection from this Assembly by way of legislation and the code of practice which this legislation will underpin.

In an ideal world, as I said, we accept that legislation such as this is not necessary. As Liberals, we support the role of the market to determine trading factors in principle; but where the market is not operating in a fair and constructive manner, for the smaller players in particular, government has a responsibility to make some recourse available. The first port of call, we would always argue, should be the terms of a lease, and the second, where those terms fail the parties, should be negotiations voluntarily entered into between the parties.

Madam Speaker, it is worth saying that we should not see in this legislation a chance to set up mechanisms to move out into the trading community and stamp heavily on all sorts of individuals, businesses and so on on a day-to-day basis. That ought not to be the objective of this legislation, at least as I see it. The objective ought to be to encourage good management and in fact foster an environment in which recourse to the legislation would not have to be a frequent occurrence at all. If we can create that environment, if we can adjust the parameters of behaviour in our marketplace, then we have achieved a great deal of value.

Part of the problem with retail and commercial leases in Canberra is that, as I have indicated, landlords are usually in a vastly superior economic and negotiating position. For some time agreement has been lacking on an approach to handle difficulties between landlords and tenants. The Minister has referred in the past to difficulties in getting a completely voluntary code of practice in place. I, of course, support the approach of a voluntary code of practice ahead of legislation which makes that code mandatory. But I recognise that it is very difficult in some circumstances to achieve that, and therefore it is important to ensure that where that cannot be achieved some other course of action which will achieve those important goals is adopted. This Bill, I think, is an attempt to create a level playing field in which landlords and tenants can resolve their differences.

Voluntary mediation, which obviously has to be part of legislation such as this, is a very sensible approach to sorting out problems between landlords and tenants. With a voluntary mediation approach, solutions should become easier to find at the level before the court or the tribunal needs to be employed. This law should be about allowing considerable discretion to both parties in respect of framing leases, but of course getting the lease right to start with will help avoid disputation.

Madam Speaker, in the last few months we have engaged in the process of talking to individuals in the Canberra community about what they see as the value of the exercise of arranging for a code to be underpinned by legislation such as this. Having spoken to probably a couple of hundred small business operators in the ACT, I must say that it has been my strong impression that there is concern about the ACT's lack of laws in this area. We all recall the problems that were faced by shopkeepers at Campbell shops only six months or so ago. We have all, I am sure, encountered other examples of behaviour which would be considered high-handed or capricious. It is important that we try to foster an environment in which that sort of behaviour does not occur.

We support a fair approach and recognise the right of both landlords and tenants to conduct their businesses and to make profits. We must remember that whatever code of practice we set up and whatever legislation we enact should not prevent individuals from entering into arrangements which are of advantage to themselves. That, after all, is what a profit generating or profit motive economy is based around, together with an ability to achieve those profits in an environment in which there is considerable business stability. One does not expect to have the environment change suddenly around one, but at the same time we expect certain minimum standards of behaviour. I think it is true to say that those standards of fairness have not been part of the scene in some circumstances up to date.

In indicating my support for this legislation, I do not pretend that there are not some concerns about aspects of it.

Mr Moore: The concern is that it does not go far enough.

MR HUMPHRIES: I do not think I would put it quite that way, Mr Moore. I know what your agenda is. I do not know that I would go quite so far.

Mr Moore: What is my agenda? You know what it is. What is it?

MR HUMPHRIES: We can come back to that another day. Perhaps I can make a personal explanation and we can have it all thrashed out, but to avoid the risk of having the bristles on the back of the Speaker's neck pop up I will refrain from that at this stage and say instead that there are some areas of concern which I hope that the Government will take into account. I realise that the Government is still in the process of negotiating the detail of this legislation - the terms of the Bill - and the code of practice with the parties concerned. Of course, we all hope that the detail will be sorted out at that level rather than here on the floor of the Assembly. I believe that it is true to say that, if we have to argue here about what terms this Bill should have and about the issues which have been thrashed out in round table discussions which I understand the Consumer Affairs Bureau is engineering, then to some extent we will have failed. At that stage there would be clearly a breakdown in the capacity of the parties themselves to set the terms which they consider fair and reasonable.

The first of the things which give rise to some concern, as far as I am concerned, is the element of potential retrospectivity in the operation of this legislation which the Scrutiny of Bills Committee identified. I think particular reference was made to the practice of ratchet or key money being exacted from tenants. The Attorney-General has written back to the committee about its original concerns and has indicated that he accepts that there is a certain element of that but argues that it is defensible. My party's views on retrospectivity are well known, and I will not go through them again; but I hope that that element can be kept to a minimum, to put it mildly.

I am also concerned about the definition of harsh and unconscionable dealing within the terms of the legislation. That term is not defined in the Bill. Although it has had judicial interpretation in other contexts, that may not be of use within the purview of the ACT's Commercial and Tenancy Tribunal. If we expect people not to engage in conduct which is amorphously described as harsh and unconscionable, we will perhaps engender that element of uncertainty which this entire package should be designed to avoid. I know that both the Building Owners and Managers Association and the Law Society of the Territory have raised concerns about the effect of those definitions. I simply note those concerns and hope that they can be properly dealt with.

The other major issue which the Assembly may, but I hope does not, have to deal with concerns leases that are to be renewed. The present legislation limits the freedom of a landlord to set new conditions in a lease when a lease expires and a renewal of that lease is sought by either the landlord or the tenant. In those circumstances certain rules governed by the legislation come into play, and those rules may effectively prevent a landlord from setting the rent, for instance, that he or she wishes to charge in respect of premises. That is, I admit, a considerable intrusion on the principle that a landlord is entitled to offer premises at a rental that he or she considers reasonable and to see whether he or she can get a better price from someone else. It would be unfortunate if the effect of this provision were that, rather than leases being renewed, they were automatically terminated at the end of the lease period and the landlord engaged in a process of simply calling for new tenants to take up a lease in order to avoid the operation of these provisions. Again, Madam Speaker, I indicate that these areas of concern can be dealt with through negotiation between the parties.

I emphasise also, Madam Speaker, that we must be extremely careful to ensure that through endeavouring to protect the historically disadvantaged small businesses - retail and commercial tenants - in the ACT we do not make Canberra an unattractive place in which to invest. It is unfortunate, perhaps, that this legislation comes forward to the Assembly at a time when figures from the Australian Bureau of Statistics indicate that private investment in the ACT is falling. Those recently released figures indicate that, although private investment in Australia generally has risen by of the order of 6 per cent, private investment in the ACT over the same period has declined by of the order of 8 per cent. We are obviously all aware that the market for that kind of investment is sensitive and that the ACT already suffers some perceived disabilities which may make it, in the eyes of some people, an unattractive place in which to invest. We should not exacerbate that by making it more difficult to extract those legitimate profits I referred to before. If we can preserve that environment and offer this protection, then clearly we are providing for winners on all sides.

Madam Speaker, I want to conclude by saying that there will clearly be a temptation in this exercise, at least in the negotiations between the real parties to this new arrangement, to try to raise the stakes; and it may well be that some landlords decide that they are in a position to jump the gun and to pre-empt the commencement of this legislation by forcing onerous terms on their tenants. I do not believe that that is a widespread danger at this stage. I clearly indicate that my party supports the concept that this legislation wants to see the position of a tenant more equitably dealt with by the law of the Territory than it has been to date. My party believes strongly in defending that position. If landlords engage in behaviour of that kind, leading up to the putting into practice of this legislation, then it would be reasonable to expect that the Assembly would have to take a stronger line on some of the issues on which there has been dispute between those parties. I hope, Madam Speaker, that that is not necessary because the parties realise that a cooperative environment is the best way of achieving both fairness in the marketplace and an environment in which investment - private investment, particularly - in the ACT remains an attractive option.

Madam Speaker, I commend this legislation, and I trust that it will usher in a new period in which all of us receive fewer complaints, of the kind that I am sure are familiar to us, about the sorts of things that happen in small shopping centres and elsewhere, and that we will see the ACT become a place where these sorts of problems are indeed few and far between.

MR MOORE (5.36): Madam Speaker, in rising to speak on this Bill following Gary Humphries's balanced approach, let me say that I understand the difficulty the Liberals have had in balancing those who might vote for them against those who might make big donations to their party. It has indeed been a difficult exercise. Apart from that, Madam Speaker, I think the issues that Mr Humphries raised are indeed sensible issues. There are just one or two that I may talk about a little later.

Madam Speaker, the ACT has been anticipating this legislation since 1972. In introducing my Commercial Tenancies Bill in 1993 and raising this matter on a number of previous occasions, I have drawn attention to - and I quoted from the House of Assembly *Hansard* - the promise made and later repeated by Ros Kelly. The legislation that is before us is quite different from that which I proposed, although it seeks to achieve the

same thing. Considering the process that this has been through, Madam Speaker, I will be delighted to withdraw the legislation that I have put down, in order to adopt this system of legislation and the code of practice which has the backing of the legislation and, therefore, has teeth.

There is some debate in the community as to whether the code of practice should be a schedule to the Bill or subject to modification by the Minister, in which case the Assembly, as part of our normal processes, could disallow or amend the modified code. Ms Szuty and I have a difference of opinion on what is the best way to handle it. Perhaps we will come to that when, with the Assembly's leave, I read the speech Ms Szuty cannot make herself.

Mr Humphries drew our attention to the fact that many small businesses in Canberra have been forced to close because of unscrupulous behaviour by landlords whose conduct has been allowed by a series of governments that have failed to deliver this sort of legislation. So the legislation that is finally before us is indeed welcome. Mr Whalan, in one of his early speeches in the Assembly, drew attention to the fact that he was going to do something about it, and no doubt he is still trying to do something about it.

The situation at the Campbell shops described by Mr Humphries brought the matter home to me. They are my local shops and I often use them when I am taking my children to or from school as well as at other times. The behaviour of one of the landlords in the Campbell shops was simply appalling. That landlord has since opened his own supermarket in those shops. I have not yet been into that supermarket, in spite of the fact that it has been open now for probably the best part of six months, because, if I can possibly avoid it, I simply will not deal with a person I consider so low.

The legislation is designed to send a clear message to landlords and tenants. Mr Humphries made an appropriate point. Of course, a huge number of landlords within this community conduct their businesses as reasonable people, but there is an inequity of power between tenants and landlords. This legislation is designed to address that inequity so that tenants have the right, as they should, to conduct their businesses and to plan their futures with some stability. Madam Speaker, the legislation now before the Assembly is important in ensuring that we assist small business. The Chief Minister has certainly made many statements in the public arena regarding her Government's support for small business. While small business is continually under threat, it cannot take the risk of employing more people. This legislation will play a role in assisting the employment of more people in the ACT.

It is important, though, that I talk about the reservations that I have regarding some parts of the Bill. When I talk about the Bill, I talk about the Bill and the draft code of conduct as one. In fact, most of my comments relate to the draft code of conduct. I have raised these points with Mr Connolly, and I hope that we can ensure that this Assembly as a whole manages to deal with not only what is in front of us but also these other vital points. My first reservation is that, because the tenants who are most in need of this legislation are currently those renting retail space, the legislation ought to be able to address inequity for all tenants and ought to apply to existing leases as well as to future leases. There are those who will argue that to apply the legislation to agreements that have been made in the past will make it retrospective legislation. In a sense that is true,

but it is also true to say that in introducing this legislation we introduce a whole new set of rules into the community, and those new rules should apply as of now. We must be sure that those who are not protected and who need to be protected by this legislation can be.

There is no doubt that in serious cases of inequity the code of conduct provides for appeals to be made to the tribunal. That is in cases of harsh and oppressive conduct. Nevertheless, the tribunal should be able to deal with all disputes that come about. Clearly, the tribunal is not going to ignore a lease that exists, and nobody is saying that it should. But the tribunal should be able to make those decisions. As Mr Humphries pointed out, it ought not to be an automatic thing that people seek to go to a tribunal. There should be a series of processes, as indeed is provided for in this legislation. There is a mediation process which itself ought to follow negotiation between the individuals.

The second issue that I think is important is the issue of the right of renewal. When people talk about the right of renewal, they do not mean that a tenant, having got into a position, is going to stay in that place forever. What they are saying is that people have a right to plan and conduct their business in a way that will ensure their stability and their security. If the landlord requires a modification to premises and requires the withdrawal of a lease, compensation is payable to the tenant, who has the right to plan his business. This matter is yet to be adequately addressed. I believe that it will always be a matter of contention for the landlords, but it is important that we recognise the inequity between the power of the landlord and the power of a tenant and at the same time recognise the importance of goodwill to so many businesses.

The need for this legislation arises because there are some unscrupulous landlords in Canberra who are prepared to shift a tenant because they believe that they can suddenly get higher than market rent from a different or similar sort of tenant. Yet it is the current tenant who has contributed to the lift in the value of the land through their business. I think that is an issue that still has to be dealt with. Finally, I think the provisions relating to compensation, lease renewal costs, rent setting, outgoings, rent rebate for damaged premises, assignments, relocations and valuation intervals should all apply to existing leases so that action can be taken after the code of conduct has commenced. Those are the three primary concerns that we ought to be dealing with.

Let me make one further comment before I conclude. Mr Humphries said that we must be very careful to protect Canberra investment. Interestingly enough, when we talk about investment in property as opposed to investment in productive activity, there would be actually some quite considerable advantages for a majority of residents of Canberra although some disadvantages for people who have invested in land. If the value of property went down, that would make it much more accessible to other individuals within the market. When you talk about investment, you ought not to talk about just investment as though it were all the one thing. The difficulty is that Mr Humphries talks about investment as though investment in Canberra were simply one thing. What we are most interested in is investment in productive enterprises. That is where we really need our

investment more than anywhere else. Whilst I accept - I do not want this to be misconstrued - that it is important to have a certain amount of investment in commercial property in order for us to have any commercial property in the first place, it ought not to be confused with the need for investment in productive activity.

With those few remarks, Madam Speaker, I would like to conclude by saying that I think that the Commercial and Tenancy Tribunal Bill and the code of practice are a major step forward in this area that the ACT has been trying to deal with for over 20 years.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (5.48): Madam Speaker, owing to Ms Szuty's loss of voice, I move:

That leave be given for Ms Szuty to table her speech on this Bill and for the speech to be incorporated in *Hansard*.

Question resolved in the affirmative.

Speech incorporated at Appendix 3.

MRS CARNELL (Leader of the Opposition) (5.48): Madam Speaker, it is with great pleasure that I rise to support this Bill in principle. It probably gives me more pleasure than anybody else in this Assembly, because I think I am the only member who is actually a tenant. Over the years since the first tenancy committee was set up in the ACT in 1974 I have been a part of most such committees. I have also been a member of CARTA and represented the pharmacists for many years. I actually appeared before the first Assembly committee on this subject, suggesting that there was a need for legislation such as this in the ACT. We still see, as we have in the last six months, people in the ACT having their rents increased by 100 per cent or 60 per cent - ridiculous amounts of money. And for what reason?

Mr Moore: I raise a point of order, Madam Speaker, under standing order 156. I think it is important that we take care on any occasion when there may be some conflict of interest, as there may be in what Mrs Carnell drew to our attention. Under standing order 156 the Assembly can resolve that Mrs Carnell does not have a conflict of interest and so resolve the matter. If the Assembly believes that it is acceptable for Mrs Carnell to express her opinion on this Bill, the matter can be resolved simply by the Assembly resolving under standing order 156 that she be allowed to speak. I think that would be an effective way to deal with this situation.

Mr Humphries: On the point of order, Madam Speaker: Standing order 156 refers to a contract made by or on behalf of the Territory or a Territory authority. We are passing legislation, not making a contract. We have all had some conflict of the kind that Mrs Carnell is referring to. For example, we pass tax increases. We all have some vested interest in not having tax increases; but we pass them anyway. With respect, Mr Moore is drawing a pretty long bow.

Mr Moore: On the contrary, my intention was simply to draw attention to standing order 156, under which this matter can easily be resolved, as it may be decided by the Assembly. So why do we not do it instead of having any conflict?

MADAM SPEAKER: Thank you, Mr Humphries and Mr Moore. The standing order says, quite clearly, "a contract made by or on behalf of the Territory or a Territory authority". Mrs Carnell is not making a contract with anybody to do with the Territory or a Territory authority. She is making a contract with a private lessor, and she is the lessee. She has declared that interest. Continue, Mrs Carnell.

MRS CARNELL: Thank you very much. There is no doubt that in the ACT there is a desperate need to have legislation of this type. There is no doubt that there has not been a balance of power between landlord and tenant in the ACT, simply due to our planning regulations. In other cities, it is possible to move around the corner, to move over the road, to move down the street. It is simply not possible in Canberra. As people have said before, in most shopping centres there is only one site that can be used for a particular purpose. In the situation at Campbell there needed to be a lease variation to allow the pharmacy to move to over near the medical surgery.

I must say that the Government worked very well and very quickly to allow that to happen; but it was only because there was a site there. That shows without doubt that there is a need for this legislation. There is a need for a tribunal to take on cases where all else has failed. We have only to look at other States where this has already happened. Most of the time, where a tribunal exists, problems are sorted out before you actually get to that stage. I think that everybody - certainly everybody on this side of the house - believes that we need to move to a more level playing field in this important area.

MR STEVENSON (5.53): It appears to be beneficial to all parties in Canberra to have legislation such as this. I think that to have the code of practice introduced along with the Bill is an excellent idea. This was not the situation with the animal farewell Bill, where the law prohibited horseracing in Canberra for many months until the Government got around to introducing the code of practice. Mr Lamont looks puzzled. Perhaps I could briefly remind him that the Bill outlawed cruelty to animals - and most people consider that horses are animals. They are now exempted under the code of practice; but they were not for a long time. So it is good to have the code of practice.

I make the point because I think it should be a standard. I do not think you should ever have a situation where members in this parliament, or any parliament, are expected to approve legislation for which a code of practice, which could say all sorts of things, is going to be introduced later on. The two should go together. It is good to see that, in this case, we have that; so tenants and landlords will have a clear understanding of what their rights and responsibilities are. It is vital that we help businesses in Canberra, both small and large. The principle of the Bill has the potential to do that.

Mr Moore made a very important point. When he talked about whether the law should apply to existing leases he said that there are those who will argue that that is retrospective. I suggest that there is no argument. If you make the law apply to existing leases, that is retrospective. If the Assembly decided to do that, we would be introducing retrospective legislation. Mr Lamont looks a bit puzzled as to whether that is the case.

Mr Humphries: That is his normal look. Do not worry about it.

MR STEVENSON: That is normal? If you have an agreement between two parties and the Assembly changes the law that existed at the time that agreement was made, that is retrospective legislation.

Mr Moore: In one sense.

MR STEVENSON: Indeed, in one sense. So, that is a concern that I have. I have mentioned some concerns about the powers of a tribunal. Section 43, on page 15, talks about the powers of a tribunal to require someone to give evidence and produce any document or thing specified in a summons, and so on. I have some concern about that; but I can go into that more thoroughly in the detail stage. As members are well aware, this Bill will not be taken through the detail stage and passed today. This Bill is simply - I should not say "simply", because it is an important principle - an agreement in principle that there should be legislation governing the interaction of tenants and landlords when it comes to leases. I think that principle is a sound one, and it is long overdue.

MR CONNOLLY (Attorney-General and Minister for Health) (5.57), in reply: Madam Speaker, I rise to close the in-principle debate. I thank members for their contributions. I think it is important that we give a clear message that there is very strong support in principle for this legislation. It has been too long in coming. I and my officers have been battling to achieve this result for quite some time. We had hoped to do it by consent. Mr Humphries says that that is the best way to do these sorts of things. Unfortunately, it became clear that it was not possible to get agreement between all the landlord interests and all the tenant interests. In the in-principle debate there has been some divergence of views within the Assembly. Mr Humphries thinks we have gone a bit too far in some areas. Mr Moore thinks we have not gone far enough in a number of areas. That probably indicates that we have attempted to strike a balance, and one may draw from that that we have perhaps got the balance about right.

The Government will obviously take on board all of the comments made tonight and Ms Szuty's comments which have been incorporated in *Hansard*. I am seeking to circulate a number of amendments, which I will be moving in the detail stage, which came up as a result of some quite detailed negotiations that have been going on. During the break, officers of my department, Mr Sorbello's team, have been working very closely with both the landlord groups and the tenant groups, and there has been an enormous amount of work done. The amendments that I am tabling today are part of that. We also have a range of detailed changes to the code. It is my intention, once that has been finalised - we have all been tied up in a certain inquiry for the last week or so - to circulate to members the amendments to the code and to make them public. In the September sittings, I hope that we can take this Bill through the detail stage. I have indicated to all groups that it is my intention, if the legislation is passed in the September sittings, to have it commence on 1 January. In that period, people will be able to get the leases drawn up and the lawyers will be able to get everything in place so that they can operate under the new law.

I have also indicated, and I indicate it publicly, that it is the Government's intention to monitor the ongoing operation of this code of practice. We are inviting the various groups - CARTA representing tenants, BOMA representing landlords, the Canberra Property Owners Group representing the smaller property owners - to have an ongoing dialogue so that, as it comes into operation, we can get a feel for it. I thank members for their in-principle support and I circulate the amendments in my name.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1

Debate (on motion by Mr Moore) adjourned.

ADJOURNMENT

Motion (by Mr Berry) proposed:

That the Assembly do now adjourn.

Circuses

MR STEVENSON (6.00): Earlier today, when Mr Stefaniak introduced my Bill - or a Bill to do with implementing the will of the people of Canberra who did not want - - -

Mr Lamont: No; that was Mrs Carnell.

MR STEVENSON: No; that was another one. I am talking about people who did not want circuses banned. I know that it is difficult to follow, with what has been going on. I thought that the comments about Circus Oz - - -

Mr Lamont: Madam Speaker, I rise on a point of order. I am sure that Mr Stevenson has not done it intentionally, for he never does these things intentionally at all; but, in case he is accused at a later stage of incorrectly informing the house, I think he needs to be reminded that the Animal Welfare Act does not ban circuses.

MR STEVENSON: Thank you very much. I agree. It is a point that one needs to hold in mind when talking about the Act that effectively bans circuses in Canberra. The word "effectively" is important. One should never say that circuses have been banned. That was the point I stood up to make, because it was said that no circuses had come to Canberra since that time. Mr Moore and others quite rightly made the point that, indeed, they had. Was one the Flying Fruit Fly Circus?

Mr Moore: Yes; and Circus Oz.

MR STEVENSON: Circus Oz and so on. Mr Stefaniak should have used a good dictionary. Mr Connolly uses the *Macquarie Dictionary*. In the *Shorter Oxford English Dictionary on Historical Principles* the definition of "circus" clears up the matter extremely well. It says that a circus is "a large building, generally oblong or oval, surrounded with rising tiers of seats, for the exhibition of public spectacles". I can understand why some people are laughing. Obviously, without going any further, it has just described the Assembly. When I looked at it, I thought, "Can this have anything to do with animals?". It went on to mention races and the like. If the Bill had banned circuses, I would have voted for it. Having stood for abolishing self-government, if the Bill had exactly stood for banning this particular circus, then I - - -

Mr Moore: Do not worry, Dennis; it will never be tested.

MR STEVENSON: Mr Moore says that it will never be tested. I think that is unfortunate. Would it not be a wonderful thing if it were tested? Would it not be a wonderful thing if the High Court had the opportunity - - -

Mr Moore: You tried. It has been tested in the High Court already.

Mr Stefaniak: The High Court said that it is a valid exercise.

MR STEVENSON: That is not what the High Court said. They were not asked that question. It is an altogether different question.

Mr Moore: You asked the wrong question. That is the trouble, Dennis; you always ask the wrong questions.

MR STEVENSON: I did not ask it; the pornographers asked it. It is fairly obvious that they would not be all that inclined to ask the specific question that I might like asked.

Question resolved in the affirmative.

Assembly adjourned at 6.03 pm