DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

20 September 1994

Tuesday, 20 September 1994

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

QUESTIONS WITHOUT NOTICE

Nursing Costs

MRS CARNELL: Madam Speaker, my question without notice is directed to the Minister for Health. In April this year the Minister publicly released a review of ACT Health by Andersen Consulting which showed on page 60 that ACT nursing costs were significantly higher than average, compared with Victorian hospitals. Why then did the Minister choose not to release another report by Andersen Consulting, "Woden Valley Hospital Inter Hospital Comparison", given to ACT Health just one month earlier - and I accept that it was when Mr Berry was Minister - which showed that ACT nursing costs were, in fact, just below average when compared to a mix of Victorian public and private hospitals? Which one is true?

MR CONNOLLY: Why I did not release a report which did not come to me when I was not Minister is a little hard for me to answer. I must say that I had assumed that that earlier report was a public document. It presumably is a public document, because Mrs Carnell has a copy of it. If it is not, I am happy to bring a copy down and table it. It is certainly not a secret document. The views in that document on nursing costs are different to the final Arthur Andersen report, which is itself consistent with every other inquiry into ACT Health. The fact that we have high nursing costs, I thought, was a notoriously well-known truism. How we resolve that and how we create a nursing structure that provides a better service to the clients, better opportunities for career nurses and satisfactory professional development for nurses is a difficult issue; but the fact is that we have higher nursing costs than the national average. Every inquiry bar that one seems to have confirmed that. We have higher medical costs than the national average, which every inquiry has confirmed. That we have some administrative costs at Woden that are higher has been confirmed.

Mrs Carnell says that she will fix health by slashing over $30m - yes, I would smile too if I were responsible for such a foolish policy - from the health budget, which amounts to a 13 per cent expenditure reduction, which is an expenditure reduction on a par with what Jeff Kennett has done in Victoria. If you are concerned about nurses, Mrs Carnell, you should explain to the nurses what you are going to do to them with a 13 per cent expenditure reduction. Unless the nurses say, "Gee, Mrs Carnell, we would like to reduce our salaries by 13 per cent", and the doctors say, "Gee, Mrs Carnell, we would like to reduce our VMO contracts by 13 per cent" - unless both the doctors and the nurses say that, and I somehow do not think they will; I know that you are a magical person with great powers because you can produce money from the bottom of a hat - your 13 per cent, or $30m, expenditure reduction is going to lead to scenes at Woden just like Melbourne, where nurses by the hundreds got the chop.

We do not want to see that happen. We want to work with the nurses to achieve better and more effective ways of deploying our nursing resources so that we can have more nurses nursing. That was one of the widespread public concerns that were raised in the *Canberra Times*'s recent super Saturday on health, where a number of people were saying, "We were concerned that there seemed to be lots of nurses there, but they were in the administrative structure positions and we wanted more nurses by the bedside". We want to have arrangements where we can pay our nurses appropriately, where we can respect them as professionals, which is what they are, and where well paid professional nurses can be providing more direct care to patients. There are some issues of cost there. If Mrs Carnell is going to say, "Gee, there is no problem with nursing costs; the nursing cost is the national average" - assuming that she accepts everything else - she is saying that the entire overcost at Woden is from the doctors. I invite her to go and explain that to the next AMA function.

MRS CARNELL: I have a supplementary question, Madam Speaker. I am sure that the Minister will be aware that the report that he pooh-poohed by Andersen Consulting - by the way, the same people that reported just one month later - used 1992-93 figures and the other report used 1991-92 figures. The 1992-93 figures show that nursing costs were not above the average; in fact, they were slightly below. The 1991-92 figures show that they were above. Which is true?

Mr Berry: Madam Speaker, on a point of order: I do not mind listening to the question, but was that a story or a question?

MADAM SPEAKER: Order! Supplementary questions must by nature be brief.

MR CONNOLLY: Madam Speaker, all the outside consultants that we and previous governments have used at the hospital tell us that we have some major cost problems, and those cost problems are pretty much evenly distributed amongst medical costs, nursing costs and administrative costs. Mrs Carnell apparently believes that there is no problem with nursing costs. So, nursing is fine; we do not have to do anything with nursing; that is terrific. That means that the $26m has to come totally from medical costs and administrative costs. I do not know how you can do that, Mrs Carnell; nor does anybody else.

The advice that I get, Madam Speaker, is that the later Arthur Andersen report is the best and most accurate assessment of costs in the ACT and is consistent with every other report that has been made. That is the issue we are working on. What we want to do, Madam Speaker, is - rather than propagandise and carry on like Mrs Carnell - sit down with the nurses and work out how to improve things at Woden. But, on Mrs Carnell's statement today, there is no problem with the way we structure ourselves at Woden. Mrs Carnell, for months, has been telling me to get in there and fix up issues with the nurses. Now she says, "There is nothing to fix". That is wonderful. Mrs Carnell's magic wand strikes again.

Environment - Protection and Enhancement

MS ELLIS: My question is directed to the Minister for the Environment, Land and Planning. I ask the Minister: Noting continuing concerns about the state of the environment in Australia as aired, for example, on the recent TV program about the clean up the world campaign, as also seen last night on the *Lateline* program, is the ACT Government fulfilling its obligation to protect and enhance the ACT's environment?

MR WOOD: Madam Speaker, the ACT Government gives, as I believe all ACT citizens do, the highest priority to the environment - to maintaining and, indeed, enhancing our local environment. We will see evidence of that, Madam Speaker, tomorrow when I table the first report of the Commissioner for the Environment. It was a landmark decision by this Government to establish the commissioner on a statutory basis. It is unique in Australia, and I believe that tomorrow we will see a very important step as the commissioner reports on the state of our environment. We were reminded of the priority we give to the environment last week when this parliament unanimously passed amendments to the Nature Conservation Act to ensure protection for our threatened and endangered species and habitats. That was a very important issue, one that was worked through with the community over a long period. Members will recall also, on another matter, that we are currently developing integrated environmental protection legislation that would encompass all issues, draw together a number of Acts that apply at the moment and considerably improve our ability to handle pollution, should it occur.

Perhaps overriding all these issues is the development of the ACT environment strategy - the overview of what we do. Again, in keeping with what the Follett Government does, there has been very extensive community consultation in the development of that strategy. I believe that that consultation will come to a successful end in November or perhaps December of this year when the Government is able to bring down its strategy, which will guide people in and around the ACT on the way we should be proceeding. These are four key points that we have pursued. It has taken us some time. We have been pursuing those over the last two to three years, and they are now coming to fruition or are already there. They certainly demonstrate our high priority for care of the environment.

I might mention a couple of other matters of significance that have arisen underneath that. For example, the last budget that Rosemary Follett brought down set aside $80,000 to look into strategies to develop further green jobs or environmentally friendly jobs. I notice that the Federal Government has also embarked on that task and has used our Commissioner for the Environment, Dr Joe Baker, to carry through that work. I am delighted that they, too, are pursuing that role. Another matter which is of very great importance to the environmental groups is that I have separated out from the heritage area grants that had formerly been given for environmental activities.

Not only have I separated them out, but I have expanded considerably the amount of money that is available to environmental groups. That is a reflection of the importance we give to that. Members will also recall the 740 hectares of Mulligans Flat that we have added to the Canberra Nature Park - a very significant area much respected by conservationists in the ACT. One of the very early decisions that I took, with the support of this Government, was to incorporate that into the Canberra Nature Park. These are just a few of the things at particular levels that back up those four key points that I mentioned earlier, that demonstrate just how important the environment is to Canberra and just how much we are doing in that area.

Tharwa Village - Water Supply

MR DE DOMENICO: Madam Speaker, my question without notice is to the Deputy Chief Minister in his capacity as Minister for Urban Services. My question, Minister, relates to the water supply in Tharwa village. You are no doubt aware, Minister, that for many years the village has operated a pump from the Murrumbidgee River which supplies the village with water and which is controlled and maintained by the local storekeeper. The storekeeper advises that the system - and the pump itself - is unlikely to be able to supply water next year. Will the Minister investigate the matter to see whether it is feasible to extend the water lines from the now very close suburbs in South Tuggeranong or, alternatively, provide funding to fix the present system?

MR LAMONT: I do thank you for that question. As you are aware and as you have outlined in your question, the issue about reticulating water into the village of Tharwa has been one that has been ongoing for some time. It has been the subject of consultation with the Tharwa community over identifying appropriate strategies to deal with reticulated water within the village of Tharwa. Mr De Domenico, I will undertake to provide you with a detailed briefing on the strategies that will be implemented in cooperation with the Tharwa community - not only brief you personally, but provide a written answer to the Assembly to back up that personal briefing.

Land Use Policy - Russell

MS SZUTY: Madam Speaker, my question without notice is to the Chief Minister, Ms Follett. I refer the Chief Minister to the draft amendment to the National Capital Plan - amendment No. 12 (Russell) - which proposes a new statement of land use policy for Russell. On page 6 of the draft document it is stated:

Commonwealth offices, other than for occupation by the Department of Defence, will not be approved until a review of the Employment Location Policies of the National Capital Plan has been completed.

My question to the Chief Minister is: Given that the dispersal of employment among the town centres is fundamental to the planning of Canberra, what representations is she making to the Commonwealth Government about the need for Commonwealth Government offices to be located in Canberra's town centres?

MS FOLLETT: I thank Ms Szuty for the question, Madam Speaker. I will say, first of all, that I have not seen this draft amendment to a land use policy. It is a matter, as I understand Ms Szuty's question, that has arisen from the National Capital Planning Authority. I will certainly look at the document and establish whether there is a need to make the kinds of representations that Ms Szuty has mentioned to the Commonwealth.

I am aware, of course, that in the past the Commonwealth has in fact had policies about the number of public servants and the number of offices that might be accommodated in Civic. As a result of that policy, we have seen a range of Commonwealth officers dispersed into the regional centres - Belconnen springs to mind; also Tuggeranong, more recently. So, there clearly has been a move by the Commonwealth to take that kind of action. I will, as I say, have a look at the document to see whether representations to the Commonwealth to ensure that they do carry on with that policy are required. I will need to consult also with the Minister for Planning, Mr Wood, whose portfolio does appear to cover the bulk of the issue that Ms Szuty has raised. I will provide Ms Szuty with a substantive response on that matter as soon as I can.

Woden Valley Hospital

MR BERRY: My question is to Mr Connolly, the Minister for Health. Many of us have grown rather tired of the constant carping by Mrs Carnell about our public hospital system and the heaping of derision on that wonderful public hospital system which is being strengthened by the Labor Party. I saw today in the *Canberra Times* a story about the opening of an outpatient unit at Woden Valley Hospital. Would the Minister try to get that good news to this Assembly, past the constant carping of Mrs Carnell, in order that the Canberra community can be better informed about the good news in health?

MR CONNOLLY: Members opposite will hear some if they just keep quiet for a minute. It is very easy to be the Opposition, to constantly carp, to constantly criticise, to promise everybody everything. You name it as a health problem and Mrs Carnell will spend money to fix it, despite pledging herself to slash $30m, or 13 per cent, from the health budget.

There has been concern, and understandably, in Canberra about Woden Valley Hospital. For the last four years we have been embarking on the largest hospital redevelopment project in Australia around a working hospital, and that has caused enormous stress and strains for both the public of Canberra and, particularly, the people who work in the hospital. As I have said before, it is a significant tribute to the professionalism of the nursing and medical staff that Woden Valley Hospital last year - - -

Mrs Carnell: The ones you have just said are overpaid.

MR CONNOLLY: No; you silly, silly person, Mrs Carnell. The shallowness of your analysis of health is breathtaking. Those staff have been working under very difficult conditions; nonetheless, last year they were given three-year full accreditation by the Australian Council on Health Care Standards for the level of professional work they have provided at Woden. The medicine has been good; but the public perception, I have to say, has been pretty poor, and understandably so. It has been a building site; it has been chaotic.

A good example has been the way we treat heart patients. Canberra has always had at Woden Valley Hospital the coronary care unit separated from the cardiac outpatients unit. In recent years the cardiac outpatients unit has been in a demountable. That has meant, from the perception of members of the public, that you see your GP; you are told that there could be a problem with your heart, which to most is news that is pretty worrying; you are referred to a specialist at Woden Valley Hospital - - -

Mrs Carnell: And then they say, "Off to Sydney".

MR CONNOLLY: No. Just be quiet, you silly, silly person. You are referred to Woden Valley Hospital to see one of our specialist cardiologists; so, you go there with some confidence that you will see a good specialist, as indeed you will, because our cardiac specialists at Woden are very highly qualified people. For the last couple of years you have been then directed out through to the back of the car parks to demountable buildings which have been where the cardiac tests have been done, where your ECGs and so forth have been done.

Mr De Domenico: Then it is off to the airport.

MR CONNOLLY: No. Then it is off to the coronary care unit in many cases. If surgery is required, it is probably off to one of the great hospitals in Sydney like St Vincent's. That will be addressed. Again, it is "Promise them more" Kate saying, "You can have it; fix it tomorrow; the magic wand is working overtime; fix it all and spend $30m less". Why did I not think of fixing every problem and saving $30m? Silly me, silly me!

Madam Speaker, that was the situation until Friday - a situation that, I have to acknowledge, is not something that is going to inspire a lot of confidence, with people wandering around in demountable buildings. That has been fixed. We have now opened a coronary care and cardiac ward, which was described by the director of that unit, a very senior doctor, as one of the best in the country. "One of the best in the country", is what he said. But Mrs Carnell does not seem to worry or know about that. The patients who are coming into the cardiac unit for testing are, as Ms Follett said, outpatients. We could have put them in beds if we had wanted to. Since they do not particularly want to be in beds, because they are outpatients, that would seem a silly thing to do. Again we have facile and shallow statements from the Opposition.

What the Government has been able to do - what has occurred over a period of years, because this is a project that has been embarked upon for some time - is to put at Woden a very high-quality coronary care and cardiac unit and to design it. Where is it in the hospital, Madam Speaker? It is on level 3 - the closest unit in the hospital to intensive care; the closest unit in the hospital to the theatres; and with space that is designed and dedicated to be used in the next phase for a cardio-thoracic unit. It is all in hand, but "Promise them more" Kate, "Whinge and carp and criticise" Carnell, never wants to know about the solid progress that is being made at Woden to turn what has been a building site into one of Australia's finest hospitals.

MR BERRY: Madam Speaker, I have a supplementary question. The community is subjected to this constant cacophony of ill will about our public hospital system. The cockies on the fence over here are always screeching about it. Does the Minister think that we can ever hope to quieten Mrs Carnell down on this issue, with this constant flow of good news stories?

MR CONNOLLY: Madam Speaker, basically, it is a question of whether you think the public of Canberra who are interested in the health issue are serious people who look at the issues seriously, or whether you think the public of Canberra are fools. If you think the public of Canberra are fools, you will treat them like Mrs Carnell does, namely, pledge to slash the budget by over $30m, or 13 per cent, but at the same time promise them everything - a cardio-thoracic unit, a paediatrics unit, more beds, more this, more that.

"Wait, there is more. I will throw in a set of steak knives", Mrs Carnell promises. Promises, promises; but the bottom line of the Liberals - as it is with the Liberals in every State in Australia - is to slash spending on health by over $30m. Anybody who takes a serious interest in public health in this Territory and who thinks that they are going to have their lot improved by having $30m slashed from the budget should come and see me, the Government, if that is what people want. If the public want us to slash $30m we will slash $30m, but they do not. They want better services; they want a continuing commitment to public health, which is not what you will get from these opportunists, these shallow, facile individuals opposite. You will get promises, promises, promises, with a set of steak knives thrown in.

Health Services

MR HUMPHRIES: My question is also to the Minister for Health. The Minister told the Assembly last week, after a question from Mrs Carnell - "that silly woman", as you put it - relating to a case of mismanagement - - -

Mr Connolly: No, I did not. I said "silly person".

MR HUMPHRIES: Do not try to cover up. It was relating to a case of mismanagement in our health system. You said, "Mrs Carnell, running people's individual health matters in the Assembly is fine ethical politics!". Has the Minister's memory been so taxed by the cares of his office that he has forgotten about the many questions raised about individual

health matters by him and his colleagues in opposition? Does the Minister recall, for example, Mr Berry's several questions about the case of a terminally ill man, needing oxygen, who was trying to avoid hospitalisation? Mr Berry said on 20 March 1991:

The man's health deteriorates further every day, and the high cost of this oxygen is mounting up. When will the Minister respond?

Can the Minister tell the Assembly why, for a Liberal member to ask a Labor Minister about a patient's personal case history is "a silly political stunt", but for a Labor member to ask a Liberal Minister the same question is in the public interest?

MR CONNOLLY: Madam Speaker, the first point I want to make is that I did not call Mrs Carnell a "silly woman". I said that she is a "silly person" and her policies are silly, facile and shallow. I would not use belittling, gender specific language in this place. I will rubbish the Liberals for being Liberals. Mr Humphries's little comment there reveals a certain Liberal view of the world.

The basic difference, I think, is that, in that case, the facts of that matter were well-known matters of public debate, known to the Minister at the time, who was you. You had the opportunity, as I understand the facts of that case, as Minister to address those specific constituent matters; whereas you raised matters which were completely unknown to me and not known to members, as though that was my fault. I note that we have 50,000 in-patient admissions every year; we have 80,000 emergency presentations a year; that is 130,000. I should, of course, personally be totally across the individual file details of every one of those citizens! Silly me for not doing it! If you expect me to look at constituent matters, as you know that I will, if you raise them with my office, we will pursue the matter. If you want to pursue general issues of policy, the Assembly is a great place to do it. If you want to pursue constituent matters with a view to assisting the constituent, you know that there is a process to do it; it is available through my office. I would urge you to do it. If you choose instead to play this silly, political game, that is the Liberals, I suppose.

Bushfire Prevention Measures

MRS GRASSBY: My question is to the Deputy Chief Minister in his capacity as Minister for Urban Services. With all the publicity lately about bushfires in New South Wales, what will the Government be doing about the dangerous threats of bushfires for our coming season in Canberra?

MR LAMONT: I thank the member for her question. It is appropriate, Madam Speaker, that we address this matter, particularly given the seriousness of bushfires that are currently spreading across New South Wales. I have taken the liberty today of providing to each member a copy of the information material provided cooperatively by a number of agencies in the ACT: The ACT Bushfire Council, the Australian Capital Territory Emergency Services and the ACT Fire Brigade. It makes very compelling reading, given those circumstances.

Madam Speaker, the ACT has just experienced its fourth driest winter on record. A special program of hazard reduction for this year has been put together; burning off and mowing have already commenced and will continue as long as possible, to provide better protection, particularly between parkland and the edge of the city. This is a comprehensive program which includes activities such as the burning of accumulated grass, which is not undertaken during normal years. The ACT Bushfire Council has issued useful information for householders in the form of a fridge magnet and a leaflet entitled, "Prepare Your Home for Bushfires This Summer". These will be on display and available from major shopping centres during Fire Awareness Week from 9 to 15 October. They include such advice as to recommend to householders that they clear dry timber, vegetation and rubbish well away from the house; keep grass around the home short and green; clear undergrowth from fences; and clear gutters of leaves, bark and twigs. Bushfire brigades alone, Madam Speaker, cannot provide complete protection for all community and individual assets in all circumstances.

It is essential to understand that the success of these programs, in terms of protection of lives and property from grassfire and bushfire, demands cooperative community effort. Given the experience over the last bushfire season, I think it can be placed on record quite unequivocally that we do have an exemplary service in the ACT that has, I think, wide support, wide cross-party support, because of the activities they undertake. It is of particular concern to me as the responsible Minister that we, at an early stage this year, draw the attention of the public to this issue because of the severity, as far as all projections are concerned, of bushfire danger over this summer and alert the wider community that there are ways that they can also reduce the hazard and the hazardous material that occurs naturally in this beautiful garden city. Madam Speaker, officers of Emergency Services, the ACT Bushfire Council's constituent parts, the Rural Firefighting Service and the ACT Fire Brigade, as I have said, are available to provide information to householders for specific circumstances or, in fact, to commercial property lessees. I would encourage the widest possible dissemination of the information here and, in fact, would call upon the media representatives who listen avidly to the answers, and the questions asked in this place, for their cooperation in highlighting the availability of the information contained in these brochures and booklets in order to reduce potential difficulties over this summer.

Tuggeranong Homestead - Capital Works

MR KAINE: Madam Speaker, through you, I have a question to Mr Wood in his capacity as having responsibility for land management. Mr Wood, in this year's capital works program, under program 9, there were three different provisions in connection with the Tuggeranong Homestead. First of all, there is a carryover from last year of $756,000 for infrastructure stage 1, which was not spent last year and has been brought forward into this present year. Then there is a new provision of $2.714m for estate servicing. In addition, there is a small amount of $42,000 under the heading "Forward Design" relating to the forward design of infrastructure stage 2 at Richardson. Can you tell me in fairly specific terms what each of these three provisions is intended to cover? Secondly, has any work been done at Tuggeranong yet, given an approximately $3.5m total appropriation for the homestead? If so, what? Finally, what are the expected completion dates of the infrastructure works for stages 1 and 2?

MR WOOD: Madam Speaker, I accept Mr Kaine's figures. He is reading from the document and they are certainly of the order that I recall. The first thing I should say is that this is good news because this marks, along with North Watson, the return of the ACT Government to the profitable area of land development. This development is being done by the Government for the people to build there; but the profits, instead of going into private hands, will be returned to the ACT community. I notice that a private land developer last week had a few caustic words to say about me or the Government; but that should have been placed in the context that the day before he said anything there had been some advertisements in the paper calling for expressions of interest for further joint ventures, which is another way that the ACT Government gets into the land development game and ensures that the Canberra people benefit from it.

As to those three figures: The first figure, about three-quarters of a million dollars, is for the first infrastructure works, the connecting works from the surrounding roads and mains and the like, onto that site. That is the first part of the work. The second part, $2.7m or thereabouts, is for the 100-plus blocks that will be stage 1 of that development. The small amount, $42,000, is for design work for the next stage, when we add some further blocks onto that site.

There has been a delay on that development, for two reasons. The first is that we found - and people told us about it; we had not picked it up ourselves in the first instance, I have to say - that there was a former sheep dip on that site. There is some quite detailed surveying to be done to assess the extent of any contamination, how far it goes and how serious it might be. So, that work is under way, and it takes some time to do that. The second delay has been caused, not surprisingly, by the long process through our planning system and the fairly exhaustive consultation that emerged. In the end there was an appeal when a group sought to expand the heritage listing of the area. That appeal has, I think, concluded. I am just not sure whether the finding has been brought down. So, those things have delayed it.

In respect of all those works, there is design work under way, especially in relation to the 100 or so blocks. I believe that SMEC, the Snowy Mountains Engineering Corporation, is doing the work on that. But I cannot be precise for Mr Kaine as to dates when work will actually commence, because of these other factors that apply. Certainly, I am keen to continue the momentum, to get it up and running.

MR KAINE: I have a supplementary question, Madam Speaker. The Minister prefaced his comments by saying that this was good news. Is the good news the fact that we have not spent any of the $3.5m yet and are perhaps not likely to? At the end of this year are we going to find the Chief Minister claiming that by good management again we have saved $3.5m this year?

MR WOOD: I would ask Mr Kaine not to be peevish about this. It is good news. There has been a process. Mr Kaine, as a former member of the PDI Committee, knows the long process that we follow in that. I think the time taken is perfectly understandable in the circumstances.

Police Force - Alleged Assault

MR MOORE: My question is directed to Mr Connolly, the Attorney-General and the Minister in charge of police. You are aware that there has been a great deal of recent publicity regarding an alleged bashing by police of a young man while he was waiting in a taxi queue. Can you tell me what action has been taken in this case and where it is at?

MR CONNOLLY: Yes. I assume that Mr Moore is referring to the case that did receive some publicity. The formal complaint has been made by the young man concerned and, I believe, his father. He certainly corresponded with me and police, but it has been dealt with as a formal complaint. That means that the IID process is immediately cranked into gear. Complaints against the Australian Federal Police in Canberra are governed by the Federal legislation, the Complaints (Australian Federal Police) Act, which you will be familiar with and which is a law that is often seen in the States as a model for where police complaints should be. It is not without its problems, but it is far in advance of the position in most States.

I have expressed some frustration in the past, as has Philippa Smith, the Commonwealth Ombudsman, at the length of time that can sometimes be involved in these matters. I know that the Chief Police Officer - again, you must understand that IID operate purely at their own pace and do not obey directions of chief police officers in these matters - has urged them to proceed with this as quickly as possible, so that the matter can be dealt with as rapidly as possible while recollections and memories of the event are still fresh.

I believe that we do have a very rigorous arm's length process for investigating police complaints. It is sometimes suggested that there is a problem because police are investigating police. I do not think it would be sensible to set up a secondary investigation agency to do it, because I think the police IID are probably the best people to do it. We need to ensure that it is dealt with quickly. The Commonwealth Ombudsman has been working with IID at a very senior level to try to ensure that there is better cooperation and a more rapid processing of the complaint.

MR MOORE: I have a supplementary question, Madam Speaker. Minister, do you think that this situation would be avoided if, for example, the police had more power such as move-on powers or something along those lines?

MR CONNOLLY: Madam Speaker, absolutely not. I think that has absolutely nothing to do with that matter.

Woden Valley Hospital - Bed Numbers

MR STEFANIAK: My question is directed to the Minister for Health. Mr Connolly, in October 1993 Woden Valley Hospital had approximately 610 operational beds and there were about 3,418 waiting for elective surgery. I know that you were not Minister then. I think the person you referred to in a letter to my colleague Mrs Carnell today as Wayne Merry was in fact the Minister then. However, today there are well under 600 beds and there are now 4,416 - or an extra 1,000 - people on the waiting list. The week before last you stated that your target was to have only 600 operational beds, 10 fewer than last year. Given that both Woden and Calvary are operating at close to 100 per cent occupancy, how is the Minister planning to address the problem of waiting lists that have increased by almost 170 per cent since his Government came to office in 1991?

MR CONNOLLY: Madam Speaker, probably in much the same way as State governments around Australia are seeking to deal with the issue of waiting lists and hospital bed numbers. Increasingly, day surgery techniques are being used. The average length of stay in hospital is in Canberra, as everywhere, declining and declining quite rapidly. The turnover of patients in Woden is high and, in fact, is higher this year than last year. For example, in July 1993 there were some 3,479 in-patient admissions. In July of this year there were some 3,636 in-patient admissions. That figure is significant, because the Opposition likes to carp on the waiting list and say that it is still 4,000, to give the impression - which is a very easy impression to create in the media - that there are 4,000 people out there who are waiting and still waiting; and nothing is happening. In reality, if we could wave Mrs Carnell's magic wand and say, "Nobody gets sick", we would clear the waiting list in a bit over a month. Our throughput is about 3,600 at Woden alone.

We have, in effect, a zero waiting list for emergency cases, for urgent surgery. If you get very sick very suddenly, if you are hit by a car, if you are involved in a motor vehicle accident, or if you have a heart attack, you will go into hospital straightaway. Something like 43 per cent of those 3,600 are what we regard as emergency admissions - people who come through the doors of the Emergency Department, go straight in and go straight into the hospital. We have not seen in Canberra the sort of thing that has been seen in Sydney and Melbourne - and gets wide publicity - where people who are seriously traumatised, in motor vehicle accidents, or, in a recent Sydney case I saw some publicity given to, after a fairly serious criminal assault, taken by ambulance to an emergency department and told, "Go away, go away", and ferried across town looking for an emergency department that can admit them. If you are seriously, critically ill in an emergency situation you will get in.

We are putting people through the hospital at the rate of some 3,600 a month - more than last year - so while you say, "Things have got worse since last year", in fact, we are putting people through the hospital at a more rapid pace. We are bringing down the average length of stay as - - -

Mrs Carnell: The average length of stay has got longer.

MR CONNOLLY: To some extent, the list can be endless. What I am seeking to have done in Canberra is to categorise that list as the Victorian Government has categorised it, because I think that will show up some quite significant trends. I was quite horrified recently to find that on the waiting list there is at least one case - there may well be more; I suspect that there are more - that predates self-government. I said, "This is appalling. What is going on here? Imagine what Mrs Carnell will say when she finds out about this". Mr Humphries was looking after the case for 18 months. Nothing happened. When we find out what that case is, it is a case of purely cosmetic surgery. So, it is something that may well be on a list for years and years because the waiting list is not a static waiting list. It is not a first come, first served, wait your turn waiting list; it is a list that always will be adjusted by the clinical need. A case that is more urgent will always bump off.

We had a significant jump in the waiting list because we had a period towards the end of last year when, due to an industrial dispute, no elective surgery was performed for quite a period. When you look at the fact that we have 3,600 admissions in an average month, you can see that, if you have a period of a month or so of industrial disruption, the figures can rapidly boost up and then start to trend down. I am satisfied that we are starting to trim those figures down. It will take some time to get them right down. I am wanting to get a categorisation breakdown, so that members of this community and this Assembly can be better informed about the waiting list.

One thing Ms Tehan did in Melbourne, to great publicity, was to produce the category A waiting list, which she said was zero. She got fabulous publicity. "That was a great achievement", said Ms Tehan in Melbourne. Our category waiting list is zero, too, because every person who needs emergency surgery - a road trauma - gets straight through. If you are desperately, critically ill, you get fixed. If you walk into the hospital with an elective condition in Canberra or Sydney or Melbourne or Adelaide or Perth, you will wait a little longer.

MR STEFANIAK: I have a supplementary question, Madam Speaker. In the *Canberra Times* on 9 May this year, Mr Connolly, you said that you were determined to reopen 50 public beds that were closed at Woden Valley Hospital at Christmas. To quote you, "We will have them open by July 1". Minister, are they open? You only have to answer yes or no.

MR CONNOLLY: Madam Speaker, I did say that we wanted to get those beds reopened, and we provided the funding to have them reopened by 1 July. That was to get us to 600. We are currently at 584, I am told. We have still some beds to go. We are having some difficulties at the moment in attracting staff. That is, I understand, a condition that is not uncommon in Australia generally; but trying to attract staff in the middle of the year is a particular problem in Canberra. It is an issue that I am working on with senior health management, to see whether we can ensure that in future we have sufficient staff to ensure that these ups and downs can be dealt with.

Housing and Community Services Bureau - Appointment

MR CORNWELL: My question is to the Minister for Housing and Community Services, Mr Lamont. Mr Lamont, is it a fact that Mr Peter Guild really was moved into the new position of General Manager, ACT Housing, to sort out a $52m to $54m ACT Housing Trust debt? If so, how was this massive debt acquired? If Mr Guild has not been appointed for this reason, why has he been appointed, given that we already have a Commissioner for Housing, Ms Birtles, and a General Manager, Housing, Mr Horsham, and, at least in my understanding, the department is not being divided into separate departments of Housing and Community Services.

MR LAMONT: No, Madam Speaker.

Floriade

MR STEVENSON: My question is to the Minister in charge of Floriade, Bill Wood. With the official opening of Floriade last Saturday, there is great interest in this major tourist attraction for Canberra. There has been a suggestion that proposals have been made to move Floriade from its current site and also perhaps to charge admission in the future. I think most people would think it is a superb site for Floriade, with proximity to the city, the large grounds available, the lake and so on. Would the Minister please comment on this suggestion?

MR WOOD: Madam Speaker, Mr Stevenson was at Floriade on Saturday morning and we said good morning to each other, but perhaps he did not hear the Chief Minister's opening speech in which she said that there would be no charge for Floriade. That certainly expresses the Government's view of that issue. From time to time, it seems, the National Capital Planning Authority has suggested that Floriade might be located somewhere else since it is their park, in a sense. I am surprised at any such expression because I agree with Mr Stevenson - I think the Government agrees with Mr Stevenson - that it seems an ideal place. Nevertheless, when the NCPA makes such a statement - and it has been reported to me; it has never been said directly to me - it is then sensible that the Floriade board examine the issue. There have been some discussions, I believe, at board level at various times. I think the fact is pretty clear; there is nowhere better to go.

MR STEVENSON: I have a supplementary question, Madam Speaker. Is it true that the industrial conditions are so bad down there that the bees are on strike, and they want shorter flowers and more honey?

MR WOOD: Madam Speaker, I am speechless. My communication there is not all that great. I think it is a great event. The spectacle is developing as well as it ever has. I am sure Mr Stevenson enjoyed his morning there, and obviously he had some conversations that I did not have.

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

PERSONAL EXPLANATION

MR BERRY (Manager of Government Business): Madam Speaker, I seek leave to make a statement pursuant to standing order 46.

MADAM SPEAKER: Continue, Mr Berry.

MR BERRY: Thank you, Madam Speaker. During question time Mr Humphries tried to draw some comparison between a question that I raised on 20 March 1991, about a constituent who was in some difficulty about care at home, and the shocking behaviour of the Leader of the Opposition and others the last time we met in the Assembly, when a range of questions - - -

Mr Humphries: On a point of order, Madam Speaker: I think Mr Berry is trying to debate a point and raise new matter in his personal explanation.

MR BERRY: I want to explain where I have been misrepresented.

Mr Humphries: Indeed, he is free enough to do that; but, if he wants to make attacks on the Leader of the Opposition, who did not ask the question, I think, with respect, he is going beyond standing order 46.

MADAM SPEAKER: That is quite right. Mr Berry, please confine your remarks to a personal explanation.

MR BERRY: Certainly, Madam Speaker. I have been misrepresented by Mr Humphries's statements, and I intend to try to clear that up, with the leave of the Assembly. Mr Humphries tried to draw some comparison between the question that I raised - and, of course, he would not want me to talk about it because it will expose him for this nasty little trick that has been attempted today - - -

Mr Humphries: I will have to insist, Madam Speaker; this is time wasting.

MADAM SPEAKER: Mr Berry, you have my leave, but it does not allow further debate of the issue.

MR BERRY: It is not a matter of debate; it is a matter of clearing the matter up.

MADAM SPEAKER: Please continue.

MR BERRY: On 18 February 1991, I wrote to Mr Humphries:

Further to my request to your office this morning, this is to confirm my request for an urgent meeting to discuss a constituent issue. I have received a letter from a certain constituent in relation to oxygen supplies for her ailing husband.

She had also provided me with a copy of a letter to the Minister, Mr Humphries, on that issue. Mr Humphries had had lots of warning and plenty of time to discuss this issue. He did not mention, in the course of his suggestions to this Assembly, that I had said in my question to him, "A month ago I sought and was granted an urgent meeting with the Minister" to discuss this issue. No similar efforts were made by the members of the Opposition to try to discuss this issue with the Minister, Mr Connolly. I have been misrepresented and, in fact, I think there is a - - -

Mr Humphries: On a point of order, Madam Speaker: Nothing that Mr Berry has said is contradicted by what I said in my question today. He is debating a new matter. I said nothing of the kind that is contrary to what Mr Berry has said.

MADAM SPEAKER: Mr Berry can proceed with a personal explanation.

MR BERRY: Thank you. For Mr Humphries to try to compare what I raised with him on 20 March 1991 with the efforts of the Opposition last week is completely fallacious. You had plenty of time to deal with it and did not. You did not give Mr Connolly the same chance.

PAPERS

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

Australian Capital Territory Electoral Commission - Annual Report 1993-94, pursuant to section 9 of the Electoral Act 1992.

ACT Electricity and Water Authority - Annual Report 1993-94 including financial statements and the Auditor-General's report, pursuant to section 79A of the Electricity and Water Authority Act 1988.

Criminal Injuries Compensation Scheme - Annual Report 1993-94, pursuant to section 35 of the Criminal Injuries Compensation Act 1983.

Department of Health - Annual Report 1993-94 including financial statements and Auditor-General's report, pursuant to section 97 of the Audit Act 1989 and annual reports for:

Mental Health Act 1983
Chiropractors and Osteopaths Board
Dental Technicians and Dental Prosthetists Board
Dental Board
Medical Board
Nurses Board
Optometrists Board

Pharmacy Board
Physiotherapists Board
Veterinary Surgeons Board
Radiation Council

ACT Housing and Community Services Bureau - Annual Report 1993-94 including financial statements for ACT Housing and Community Services Bureau, ACT Housing and the Office of Rental Bonds and Auditor-General's report, and the annual report for the Children's Services Council.

Attorney-General's Department - Annual Management Report 1993-94 including financial statements and the Auditor-General's report and together with annual management reports of the:

Administration of Credit Act 1985
Administration of the Sale of Motor Vehicles Act 1977
Community Law Reform Committee
Office of the Community Advocate
Operation of the Freedom of Information Act 1989
Parole Board of the Australian Capital Territory
Guardianship and Management of Property Tribunal

Construction Industry Long Service Leave Board - Annual Management Report 1993-94 including financial statements and the Auditor-General's report.

Department of the Environment, Land and Planning - Annual Report 1993-94 and Financial Statements 1993-94 and the Auditor-General's report for the Bureau of Sport, Recreation and Racing and Achievement of 1993-94 2 per cent savings.

Head of Administration of the ACT Government Service - Annual Report 1993-94.

Public Trustee for the Australian Capital Territory - Annual Report and financial statements including Auditor-General's report 1993-94.

SUBORDINATE LEGISLATION
Paper

MR BERRY (Manager of Government Business): Madam Speaker, pursuant to section 6 of the Subordinate Laws Act 1989, I present the following paper:

Radiation Act - Determination No. 134 of 1994 (S192, dated 14 September 1994).

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

MRS GRASSBY: Madam Speaker, I present report No. 14 of 1994 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation and I ask for leave to make a brief statement on the report.

Leave granted.

MRS GRASSBY: Madam Speaker, report No. 14 of 1994 contains the committee's comments on two Bills and 16 pieces of subordinate legislation and one Government response. I commend the report to the Assembly.

ADMINISTRATIVE APPEALS TRIBUNAL (AMENDMENT) BILL (NO. 2) 1994

[COGNATE BILLS:

INTERPRETATION (AMENDMENT) BILL 1994
ADMINISTRATIVE APPEALS (CONSEQUENTIAL AMENDMENTS) BILL 1994]

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

That this Bill be agreed to in principle.

MADAM SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Interpretation (Amendment) Bill 1994 and the Administrative Appeals (Consequential Amendments) Bill 1994? There being no objection, that course will be followed. I remind members that, in debating order of the day No. 1, they may also address their remarks to orders of the day Nos 2 and 3.

MR HUMPHRIES (3.26): Madam Speaker, we have before the Assembly a package of three Bills which effect some mostly minor changes to the operation of the Administrative Appeals Tribunal in the ACT. The tribunal is now several years old in its ACT manifestation. It is a significant tribunal in that it deals with a great many, as the name implies, administrative decisions made by government in the ACT and gives citizens a less complicated right of access to a court to challenge or to question elements of decisions made that affect them than might have previously been available through the use of our courts.

Madam Speaker, the AAT is a body in which we all have an important interest and which we all, of course, need to see continue, and any measures which are designed to facilitate easier access by citizens of the Territory to that body deserve to be supported. Hence, today, the Opposition will be supporting the provisions of these three Bills.

The AAT in the ACT was born out of the Commonwealth Administrative Appeals Tribunal. Some time ago, in fact between October 1990 and November 1991, a review into the operation of the Commonwealth tribunal was conducted. That review revealed a number of changes that needed to be made, particularly to correct omissions in the operation of the tribunal and in the way in which this legislation provided for particular procedures to occur. Those are mainly minor in nature.

It follows, of course, since our own AAT is modelled so closely on the Commonwealth one, that to make changes at the Commonwealth level probably necessitates our at least examining those changes here. As a result, some three years later, we are now considering those changes before the Assembly today. The sorts of changes that the legislation envisages, Madam Speaker, are, for example, defining more clearly the role of the president of the tribunal so that his or her role in determining the business of the tribunal, for example, is spelt out more clearly and simply places in legislation that power to lead and to govern the operation of the tribunal.

There are a number of procedures currently being conducted by our AAT to facilitate the quick passage of matters or the quick dealing with matters - things like directions hearings, which are a common feature of courts but which are not provided for at the moment in the legislation; and the capacity of the tribunal to hear evidence otherwise than viva voce, that is, with a person sitting in front of the tribunal. The amendments before the house will allow the tribunal to take evidence by telephone, by closed-circuit television or by any other means that the tribunal sees fit. There will also be, interestingly, a power inserted to allow the court to dismiss an application on the grounds that the applicant has not properly prosecuted his application; where there is not a reviewable decision in relation to which the tribunal has authority; or where the application is frivolous or vexatious. I have no doubt that there would be a number of such cases that would come before the tribunal from time to time. It is important to underpin legally the basis on which the tribunal might reject them.

Perhaps the most significant element of the package is that the Government intends to proceed with a code of practice within the framework of the ACT Government which would set minimum standards for notices of decisions and rights of review. It is an interesting question to pose as to whether those who are affected by a whole range of standard kinds of decisions by ACT government departments - ranging from a refusal to allocate someone a Housing Trust house to a decision about whether a person's car needs to have certain things done to it before registration, to a whole range of other areas - or people generally understand what the nature of their rights is in respect of the AAT. Therefore, it is certainly in the interests of those people, be they well informed or not, to have some kind of standard advice on, first of all, the nature of the decision that has been made that affects them, and then what their rights are in those circumstances to challenge that decision. Information in that sense, knowledge about the process, is of the essence in ensuring that the system operates properly and protects the legitimate rights of people to the maximum extent possible. Madam Speaker, that is not actually achieved by this legislation; the way is laid open for that to happen. I believe that that is an appropriate whole of government decision which needs to be made.

It is also interesting to note that the legislation provides for mediation processes; for the tribunal to order that mediation should take place, that is, with the consent of both parties before the tribunal. That obviously is a process which needs to be encouraged at every turn. The Minister noted the "Mediate First" campaign run by the Law Society last year. We would certainly want to remove any restrictions in legislation that might inhibit the process of making mediation available to parties and to have the court refer matters to mediation if that was deemed to be expedient in dealing with a particular issue.

Madam Speaker, as I indicated, these three Bills make those changes. The Interpretation Bill merely provides that, when the words "Administrative Appeals Tribunal" are referred to in legislation, they mean our own AAT rather than the Commonwealth one. The amendments to the Administrative Appeals (Consequential Amendments) Bill make a number of amendments to a series of pieces of legislation that facilitate in particular that code that I referred to before. The reforms are appropriate and, as I indicated, have the support of the Opposition.

MR MOORE (3.33): Madam Speaker, I rise to support the comments made by Mr Humphries and congratulate the Minister on taking these steps to improve the Administrative Appeals Tribunal. It seems to me that, whenever we get the opportunity to take steps to improve bodies such as this, it is appropriate that we take them, and having the opportunity also to adopt the work from the Federal sphere is entirely appropriate. So, I would be supporting the legislation.

MR CONNOLLY (Attorney-General and Minister for Health) (3.33), in reply: I thank members for their support in principle. I will be moving some amendments in the detail stage of the third Bill, which I think I provided to the Opposition a day or so ago. I have just given them to Ms Szuty. They basically are minor technical matters. Since the Bill was introduced, there has been a whole range of matters passed by this Assembly. One of the problems with a Bill like this, which is a machinery appeals Bill, is that there has been a whole lot of amendments to other Acts, so the appeal points are different. I will explain all of that in detail in the detail stage.

Mr Humphries is looking surprised, and I do apologise if he has not received the amendments. When we approved them only a couple of days ago, I did note on the file, "Pass to Mr Humphries". I apologise if my system has broken down. They are, as I say, minor technical points to ensure that the Bills that have since become law or the laws that have been changed through other amending Bills - the passage only last week of all those nursing, physiotherapists and other Bills means that the appeal points are somewhat different - are tidied up.

In principle, though, the Bill is a significant reform. One of the problems with the AAT is that the original intention of the people who put the Administrative Appeals Tribunal Act through the Federal Parliament has been frustrated somewhat. The intention of the Federal Parliament, when the AAT legislation was passed, was to have a simple, user-friendly, non-lawyerised tribunal, to allow the citizen to dispute matters with government and have them resolved swiftly and quickly. Unfortunately, over the years, as

is often the case, the processes of the AAT have become very legalistic. It is very common, in Federal AAT matters where issues such as Customs tariffs or rebates are subject to appeal, for applicants who are seeking to dispute perhaps millions of dollars worth of Customs duty or excise duty to march into the AAT with half-a-dozen queen's counsel and the Commonwealth Government will respond similarly; and arguments will go on for days and days in a very technical and legalistic manner.

The ACT Administrative Appeals Tribunal has, by and large, avoided that. Through the presidency of Mr Curtis, it is a quite user-friendly tribunal. We do get reports that applicants in person do not have that much difficulty in having their matters heard. Nonetheless, there is always the danger that a tribunal which is meant to be simple becomes complex. The intention of this legislation is to try to ensure that it is simple. The mediation provision which Mr Humphries particularly referred to is very important. I need to caution the Assembly, though, that to some extent there is a more limited scope for mediation in an Administrative Appeals Tribunal context than there would be in general litigation. Where you have a dispute between private parties, it is always a question for parties to come to whatever mediated arrangement they want. Appeals under the AAT are generally questions of statutory entitlement.

The Government is a little constrained, in the sense that the Government cannot sit down and do a deal that is mutually convenient to the Government and the applicant, a mediated matter, if doing that deal would take the applicant outside their statutory entitlement. While we think it is important to put a mediation provision in there and while we hope that it will be used to the maximum extent possible, I think the Assembly has to understand that we are not, in doing so, giving the Government, as a litigant, the ability to do deals that provide for outcomes that are in excess of statutory entitlements. The Government lawyers or agents for the Government - because in some matters we do not use ACT Government Solicitor lawyers; we have departmental advocates present - will not be able to negotiate as would a private party in private litigation; they will have to abide by the statutory entitlements. Nonetheless, it is an important principle. I thank members for their support in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

INTERPRETATION (AMENDMENT) BILL 1994

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

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

ADMINISTRATIVE APPEALS (CONSEQUENTIAL AMENDMENTS) BILL 1994

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

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR CONNOLLY (Attorney-General and Minister for Health) (3.39): I seek leave to move together the amendments circulated in my name.

Leave granted.

MR CONNOLLY: I move:

Schedule 1 -

Proposed amendments to the *Agents Act 1968*, page 2, lines 27 and 28, subsections 98(1) and (2), omit the proposed amendment, substitute the following amendments:

"Subsection 98(1), insert 'Administrative Appeals' before 'Tribunal'.

Paragraph 98(1)(h), omit 'or' (last occurring).

Paragraph 98(1)(j), add at the end 'or'.

Subsection 98(1), add at the end the following paragraph:

'(k) refusing to consent under subsection 99(1) to an agent employing a particular person.'.

Subsection 98(2), insert 'Administrative Appeals' before 'Tribunal'.".

Proposed amendments to the *Bookmakers Act 1985*, page 6, lines 10 - 14, proposed new section 51, omit the proposed new section, substitute the following section:

"Notification of decisions

'51. A notice given to a person under any of the following provisions shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989:*

(a) subsection 25(5);
(b) paragraph 30(3)(b);
(c) subsection 33(2);
(d) subsection 39F(3);
(e) subsection 39G(3);
(f) paragraph 39P(3)(a);
(g) paragraph 39Q(3)(a);
(h) section 39U;
(i) paragraph 39Z(3)(a);
(j) paragraph 39ZA(3)(a)'.".

Proposed amendments to the *Electricity Act 1971*, page 20, lines 1 - 28 and page 21, lines 1 - 16, omit the amendments, substitute the following amendments:

"*Electricity Act 1971*

Subsection 36AB(1), omit ', within 28 days after the date of the decision,'.

Subsections 36AB(2) and (3), omit the subsections, substitute the following subsection:

'(2) A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.'.".

Proposed amendments to the *Nurses Act 1988*, page 33, lines 29 - 31 and page 34, lines 1 - 28, omit the amendments, substitute the following amendments:

"*Nurses Act 1988*

Subsection 3(1) (definition of 'Tribunal'), omit the definition.

Section 54, insert 'Administrative Appeals' before 'Tribunal'.

Subsections 55(2), (3) and (4), omit the subsections, substitute the following subsections:

'(2) A notice under subsection 15(4) or 29(4) or subsection (1) of this section shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.

'(3) An order under paragraph 38(b) or 39(1)(b), subsection 39(2), paragraph 39A(b), subsection 39C(1), paragraph 39C(4)(b) or subsection 40(2) shall have endorsed on it or attached to it a notice in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989.'*.

Section 55A, insert 'Administrative Appeals' before 'Tribunal.'.".

Proposed amendments to the *Physiotherapists Registration Act 1977*, page 41, lines 8 - 29, omit the proposed amendments, substitute the following amendments:

"*Physiotherapists Act 1977*

Subsection 3(1) (definition of 'Administrative Appeals Tribunal'), omit the definition.

Subsections 35AA(2), (3) and (4), omit the subsections, substitute the following subsections:

'(2) A notice under subsection 9(4) or subsection (1) of this section shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.

'(3) An order under paragraph 30A(b) or 30B(1)(b), subsection 30B(2), paragraph 30C(b), subsection 30E(1), paragraph 30E(4)(b) or subsection 30F(2) shall have endorsed on it or attached to it a notice in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.'.".

Proposed amendments to the *Public Health (Prohibited Drugs) Act 1957*, page 43, line 11, before the proposed amendments to the *Radiation Act 1983*, insert the following amendment:

"*Public Health (Prohibited Drugs) Act 1957*

After section 6B, insert the following section:

Notification of decisions

'6C. (1) Where a decision of a kind referred to in section 6B is made, the Minister shall cause notice of the decision to be given to a person whose interests are affected by the decision.

'(2) A notice under subsection(1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*'.".

Proposed amendments to the *Rates and Land Rent (Relief) Act 1970*, page 46, lines 18 - 25, proposed amendment to subsection 10(3), omit the amendment.

Proposed amendments to the *Rates and Land Rent (Relief) Act 1970*, page 46, lines 32 and 33 and page 47, lines 1 - 3, proposed amendment to subsections 21BAA(2) and (3), omit the amendment.

Proposed amendments to the *Rates and Land Rent (Relief) Act 1970*, page 47, line 8, add the following amendments:

"Subsection 23B(1), omit ', within 28 days after the date of the decision,'.

Subsections 23B(2) and (3), omit the subsections, substitute the following subsection:

'(2) A notice under subsection 10(2), paragraph 21BAA(1)(b) or subsection (1) of this section shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.'.".

Proposed amendments to the *Taxation (Administration) Act 1987*, page 51, lines 21 and 22, proposed amendment to paragraph 91(1)(a), omit the amendment.

Proposed amendments to the *Taxation (Administration) Act 1987*, page 51, lines 23 and 24, proposed amendment to paragraph 91(1)(d), omit the amendment.

Proposed amendments to the *Veterinary Surgeons Registration Act 1965*, page 54, line 6, heading to proposed amendments, omit "Registration".

Proposed amendments to the *Veterinary Surgeons Registration Act 1965*, page 54, lines 13 and 14, proposed amendment to subsections 28(1) and (2), omit the amendment.

Proposed amendments to the *Veterinary Surgeons Registration Act 1965*, page 54, lines 15 - 27, proposed amendment to section 28A, omit the amendment, substitute the following amendments:

"Section 35, insert 'Administrative Appeals' before 'Tribunal'.

Subsection 36(1), omit ', within 28 days after the date of the decision,'.

Subsections 36(2), (3) and (4), omit the subsections, substitute the following subsections:

'(2) A notice under subsection 10B(4) or subsection (1) of this section shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.

'(3) An order under paragraph 25D(1)(b) or 25E(1)(b), subsection 25E(2), paragraph 25F(b), subsection 25H(1), paragraph 25H(4)(b) or subsection 25J(2) shall have endorsed on it or attached to it a notice in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.'.".

Proposed amendments to the *Veterinary Surgeons (Amendment) Act 1994*, page 54, line 27, before the proposed amendments to the *Vocational Training Act 1989*, insert the following amendments:

"*Veterinary Surgeons (Amendment) Act 1994*

Subsection 30(1), omit 'Australian Capital Territory'.

Subsection 30(2), omit ', within 28 days after the date of the decision,'.

Subsections 30(3) and (4), omit the subsections, substitute the following subsection:

'(3) A notice under subsection (2) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.'.".

Schedule 2 -

Proposed amendments to the Public Health (Cancer Reporting) Regulations, page 61, line 2, before the amendments to the Schools Authority Regulations, insert the following amendment:

"Public Health (Cancer Reporting) Regulations

Subregulations 9(2) and (3), omit the subregulations, substitute the following subregulation:

'(2) A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.'.".

Madam Speaker, there are in total some 16 amendments which the Government believes should be made to this Bill. While we could generally be criticised for moving 16 amendments, I think the reasons will become clear. They are all very minor and principally arise from the commencement or intended commencement of other legislation ahead of the provisions in this Bill. This has made it necessary to amend some provisions in this Bill to bring them into line with that other legislation, including some legislation that went through this place only last week.

Of the 16 amendments, eight have arisen because of the passage last week of certain Acts and the proposed commencement of the provisions prior to the commencement of the provisions in this Bill. Those Acts were the Bookmakers (Amendment) Act (No. 2) 1994, the Electricity (Amendment) Act 1994, the Nurses (Amendment) Act 1994, the Physiotherapists (Amendment) Act 1994 and the Veterinary Surgeons (Amendment) Act 1994. Of the remaining eight amendments, four relate to the commencement in June of new provisions in respect of the Rates and Land (Relief) Act 1970 and the Public Health (Cancer Reporting) Regulations.

Two of the amendments relate to the provisions in the Taxation Administration (Amendment) Bill 1994, which is currently before the Assembly. The amendments to the Bill have been drafted on the basis that the provisions in the Taxation Administration (Amendment) Bill will commence first. However, I am advised that the provisions in the Bill, as amended, could commence first, provided Government amendments were made to the Taxation Administration (Amendment) Bill.

The other two amendments concern the Agents Act 1968 and the Public Health (Prohibited Drugs) Act 1957. An amendment has been made to the Agents Act to allow an appeal to be made to the ACT Administrative Appeals Tribunal from the decision of the Agents Board in respect of the employment by registered or licensed agents of certain persons disqualified under the Agents Act. That, in effect, was an appeal point that we had not been aware of and had not come to light. While we are going through this exercise, we think it is better to ensure that that appeal point is in. The other is an amendment that was made to the Public Health (Prohibited Drugs) Act to allow for the notification of persons whose interests are affected by decisions reviewable by the AAT. This notification process will have to be in accordance with the new code of practice which is provided for in the Administrative Appeals Tribunal (Amendment) Bill (No. 2) 1994.

I present the explanatory supplementary memorandum for the amendments. As I say, Madam Speaker, with the exception of those last two, they all come about because of the passage of time and the way in which different Bills move through this place at different speeds.

MR HUMPHRIES (3.42): Madam Speaker, I should indicate to the Minister that I did, in fact, get a copy of his amendments. I am not sure exactly when, but I did get a copy of them. I apologise for suggesting that I did not. The amendments are all acceptable as far as the Opposition is concerned.

Amendments agreed to.

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

Bill, as amended, agreed to.

MAGISTRATES COURT (ENFORCEMENT OF JUDGMENTS) BILL 1994

Debate resumed from 25 August 1994, on motion by Mr Connolly:

That this Bill be agreed to in principle.

MR HUMPHRIES (3.43): Madam Speaker, this particular Bill entails extensive changes to the law concerning the enforcement of judgments in our courts. Madam Speaker, as a solicitor I did work in this area and I am certainly aware of the many shortcomings in the present state of the law. It would not infrequently be the case that I would attempt to take a creditor's judgment to a court to attempt to obtain a remedy on his or her behalf and find that most or all of the available options simply produced no satisfaction at all. I think it is reasonable to say that the law is extremely urgently in need of some greater satisfaction for those who do obtain judgments in our courts.

Many of the changes will be welcomed, I am sure, for that reason by the ACT profession. Some of the changes appear to be quite obvious and would, I think, not surprise a reasonable thinking person. At present, for example, if one has a judgment and wishes to obtain a garnishee order over the wages of a person from whom one is owed money, one may obtain that order. But it operates as a single, one-off kind of order of the court which, therefore, affects only one obligation, one pay, by the employer of that particular judgment debtor. By using the order, one obtains one lot of money from that particular employer. If one wishes to proceed to obtain a further payment in the next week or from the next fortnight's salary, one has to obtain another garnishee order - a continuous process of doing this week by week or fortnight by fortnight. Clearly, that is not an acceptable arrangement. I understand that generally government departments, when such orders are served on them, will talk to the employee concerned and seek to make arrangements for a continuous payment to be made, rather than to have individual orders made week by week. But that is not always the case with other debtors, as it were, and therefore some better procedure needs to be put in place.

A second difficulty which people have encountered in enforcing judgments is that the bailiff of the Magistrates Court has no power to enter premises to seize goods which might be available at the home or place of business, or whatever, of a judgment debtor. A writ of execution, I understand, is still very often being returned to the court, with the debtor indicating that entry has been refused. In those circumstances, at the present time, there is not much that the judgment creditor can do, even if he knows that there are goods available to satisfy the judgment at that particular place.

Both of those problems are to be addressed by this legislation and I think it is appropriate that that be the case. In the case of the bailiff's access to premises, it would be possible for an order to be made to allow the bailiff to enter by force if necessary and for appropriate assistance to be rendered to achieve that. Although there are some protections built into the legislation for judgment debtors, for the most part I think it is true to say that this Bill strengthens the position of judgment creditors by clarifying the procedures available for enforcing judgments and expanding the options available to such people. This gives a person who has a judgment in their favour a better chance of recovering that debt.

It is not, you might say, Madam Speaker, the sort of legislation that the former Minister for the Territory, Tom Uren, might have introduced into a chamber such as this. One remembers, of course, his announcement as Minister that he was not going to evict anybody for non-payment of rent and the resulting explosion in debt by the predecessor of the Housing Trust. I think it is possibly arguable that, coming out of a recession, it is a little unfortunate that we still need to counter this kind of difficulty, this kind of problem that has to be dealt with by our courts. One hopes that, because the recession is apparently ending, the number of people who will be caught by these provisions will be reduced.

As I said, there are some allowances made in favour of a judgment debtor. His financial position should be sought by the court or the registrar before an enforcement process is applied, and that information has to be taken into account before orders are made. A garnishee order must leave him, that is, the judgment debtor, between 75 per cent and 100 per cent of the minimum weekly wage - 75 per cent, if the person has no dependants; 100 per cent, if he does. A person has the right to seek a variation or revocation of an order where that person would be occasioned exceptional hardship should the order remain. I think the significance is in the improved outlook for creditors. In particular, many orders can be obtained more reasonably in these proceedings by application to the registrar rather than to the court. Orders will be made, therefore, which have more bite. The high failure rate, which is a feature of the present system, might be brought down.

I want to conclude by just proposing a question, indicating a reservation I have about the legislation and making a comment. First of all, Madam Speaker, I note that proposed section 278A includes a definition of what are earnings. I hope that the Minister takes note of this question so that he might be able to respond to the question I pose. Perhaps he is examining the latest instalment of shocking poll figures for the Government - I do not know - but if he is not too busy he might, just for a moment, listen to the question I was going to pose. As I said, proposed section 278A refers to earnings and defines earnings as meaning a sum payable to the person by way of wages or salary; by way of pension; an annuity; periodical payments in respect of compensation for the loss, abolition or relinquishment of any office; periodical payments in respect of compensation for the loss of wages or salary because of illness or injury. It does not include, according to this section, payments made under the Social Security Act or the Veterans' Entitlements Act 1986 of the Commonwealth.

Madam Speaker, the question has been raised with my colleagues and me about the payment of Austudy to individuals. I understand that there is a question about whether Austudy payments count, for the purposes of calculating the amount of income a person has, when assessing the eligibility for Housing Trust accommodation or the extent of their rebate when they are in Housing Trust accommodation. I think, Madam Speaker, it would be useful if the Minister could indicate what his view about the question of Austudy is. Would that count as a payment which would be deemed to be earnings for the purposes of this legislation?

The second matter is a reservation I want to express. Proposed section 278BX in the Bill deals with the seizure by a bailiff of goods and then the sale at public auction by that bailiff of goods to satisfy a judgment debt. The provision introduced there - as far as we are aware, it is a new provision - is that there should be a reserve price for each item which is on sale at the auction. That reserve price should be 65 per cent of the market value, as determined by various processes outlined earlier in the Bill, of that particular item. If the item does not achieve the reserve price, then there is the option to negotiate a private sale. There is, in turn, the capacity of the judgment creditor to apply for some alternative order; for example, that 50 per cent of the reserve price be sufficient to effect a sale. Ultimately, as I read the legislation, the goods are to be returned to the judgment debtor if the reserve price or some other means of disposing of the goods is not satisfied.

I must say that I am a little concerned about that. I am not sure how well it will work. The Minister makes reference in his presentation speech to the regrettable fact, perhaps, that all too often goods are sold at fire sale prices. It is obviously not in the interests of a judgment debtor that that be the case. It is also in the interests of justice that, whatever the goods might bring, they ought to be in some position to bring the judgment creditor some satisfaction on his debt and on his judgment. I, therefore, express simply the reservation about the operation of that provision. If it results in a wide-scale incapacity to dispose of goods through auction, then I would certainly indicate that the legislation would need to be reconsidered.

Finally, I make a comment about the amendments to the legislation in regard to forms for obtaining, for example, some part of this enforcement process. The form is not to be part of the legislation but is to be made by the Minister and published in the *Gazette*. It is to be a disallowable instrument on the floor of this Assembly. That, of course, is a much more sensible approach than the previous situation, where this Assembly had to fuss about the terms of forms. That, I think, is not necessarily part of the work of this place and to leave that process to be one done by gazettal probably is a better way of dealing with it. I think, Madam Speaker, that the legislation has been worked through very carefully with many of the stakeholders, in particular, the courts and the magistrates and the staff of those places. It is hard to find fault with the legislation and, therefore, it has the support of the Opposition.

MR CONNOLLY (Attorney-General and Minister for Health) (3.54), in reply: Madam Speaker, I thank the Opposition for their support in principle for what is a fairly massive piece of legislation on a fairly detailed subject. I have a particular interest in this legislation, because, in fact, the first money I earned as a law student was for doing some research for the Australian Law Reform Commission back in the mid-1970s as part of the research project for the Law Reform Commission report that brought this down. The issue that Mr Humphries raised - the concern about balancing how the product is sold at fire sale prices, which is a disadvantage to the person who owes money, with the need to ensure that the person to whom the money is owed also does actually get the money, so that the thing does get sold but sold fairly - was one of the issues that we were researching.

There were some fairly appalling instances back then of very sharp practices. For example, a vehicle on which perhaps a few thousand dollars was owed but which was worth, or was assumed to be worth, a large sum of money would be sold for a few hundred dollars at an auction that complied with the then requirements of the South Australian Act in that it had been advertised in some obscure gazette; and the person was left still owing a debt, with no car; and somebody in the auto trade was picking up a cheap car and then reselling it. The attempt to balance the rights of the person to whom money is owed with the rights of the person who owes money is the exercise in this piece of law reform. The position prior to this Bill has been really a great opportunity for sharp practitioners on both sides. If you want to avoid paying a debt or avoid honouring a debt, there are lots of ways of running a merry dance through the courts. Equally, if you are a ruthless person to whom money is owed you can make life as miserable for the hapless debtor. The attempt in this exercise is to make life a little simpler.

Mr Humphries did raise one point of some substance - I am not saying that your other points were not of substance - in relation to the issue of Austudy. It was certainly not our intention to bring Austudy payments in, but it may be that we should have a specific exemption. We have excluded payments under the Social Security Act 1991 and the Veterans' Entitlements Act 1986. It may be prudent to ensure that it is not caught because we do not think an Austudy allowance, as a scholarship, fits within the definition of wages or salary or within the definition of a pension.

It may be that having said that is sufficient, because that will clearly appear in the *Hansard* record of the speech; but, if the Opposition were minded to, we could quickly knock out an amendment which would add a (iv) to the exclusions, to cover a benefit or allowance payable to a person under the Student Assistance Act - we are not sure of the year of the Act - of the Commonwealth. We could, if you feel so inclined, accept such an amendment to make it clear that Austudy payments are not intended to be caught. Our advice at the moment is that they are not, because we do not think that an Austudy scholarship fits within the definition of a pension as properly defined; rather, it is a scholarship. As I say, I am happy to say that very clearly here in the in-principle debate, and that may be satisfactory. If we have any problems in the future we can have it amended. Mr Humphries raised the question: Did we intend to catch Austudy? Our answer is no, we did not, and we think it falls outside the definitions. We are happy to say so very clearly here. Alternatively, we could quickly draft an amendment. But I sometimes worry about the quickly drafted amendments. We sometimes get things wrong. Perhaps it is just better to say it clearly.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

PUBLICATIONS CONTROL (AMENDMENT) BILL 1994

Debate resumed from 25 August 1994, on motion by Mr Connolly:

That this Bill be agreed to in principle.

MR HUMPHRIES (3.59): Madam Speaker, it will not take long to deal with this Bill. It is a piece of legislation which I think we can all agree is increasingly necessary to deal with problems of computer obscenity, if you like - of censorable material appearing on computer screens. Those who have some familiarity with computers, of which I am not one, will be aware that it is possible these days to get very high-quality images on computers and for them to be increasingly accessible to everybody in our community, including very young people. It follows that some of the developments with respect to material available on computers, which depicts graphically images which in a video form or a printed form would be considered unacceptable, become an issue here as well. It is important for us to begin to deal with the problem of how we prevent those sorts of unacceptable images becoming freely available on computer screens when we have taken some steps to restrict their availability on television screens and on the screens of cinemas.

Madam Speaker, this legislation does not actually introduce but certainly underpins an arrangement whereby there is a classification scheme for computer games. There are some exclusions. It does not include educational or business or accounting packages; it does not include bulletin board kinds of material or transactions, if you like, between computer screens. The Minister makes reference to the problems that that kind of communication gives rise to: For example, are you publishing or are you communicating when you transmit a message like that? It obviously is an area of difficulty, and I note that there is a Commonwealth task force set up to look at the problem particularly of bulletin boards. I look forward to seeing what solution comes out of that process.

Madam Speaker, it is important for us to move to impose some kinds of restrictions to reflect the decisions already made, by other jurisdictions at least, on the question of video material and censorship in movie houses. However, Madam Speaker, I find very little consistency in the Government's approach. The Government has consistently made clear in this place that it does not believe that there is any value in banning X-rated video material. This has been the decision made by other jurisdictions in this country. Mr Connolly has argued that the ban is ineffective and, therefore, there is no reason to proceed to enact it in the ACT either.

He now, however, proceeds to, in effect, impose a restriction of a very similar nature on computer material. Indeed, Madam Speaker, the provisions here go further than that. Material which is X-rated only - and I am not entirely sure how the two classification systems will stack up side by side - is available in the ACT and is not available, at least in theory, in the States; but R-rated material is available across the country. The proposal here, as I understand it, is in fact that, where material which is R-rated - or, to use the jargon here, R(18+) - is classified in this case, then that material is banned altogether.

In fact we have here, on the one hand, a system of classifying so as to exclude the availability or X- and R-rated material on computer games - and that is supported by the Labor Government. On the other hand, we have X-rated video material which is freely available and should be freely available to citizens of the Territory. I must say that the logic escapes me. I will acknowledge what I think is obvious to everybody: This decision was not arrived at through a process of the Government simply making up its mind and sticking with a consistent line of thought; rather, it was arrived at by pressure from the Commonwealth Government.

Items in the media reported a telephone call between Mr Keating and Ms Follett which produced a very rapid change of policy on the part of the ACT Government. I suppose that we should be grateful for that; but, still, Madam Speaker, I think it begs a very serious question: How is it that we can continue to say that one aspect of this kind of regime should acknowledge, to quote the Minister, the need to "protect people and children in particular from offensive or disturbing material", when another part of the same regime in fact makes no attempt to provide such protection? I think, Madam Speaker, there is an issue here. The Minister makes the point, in defence of that inconsistency, which he acknowledges, that computer games are interactive, in that one can manipulate the images on the screen by use of the keyboard or the mouse; whereas, generally speaking, videos are not interactive. That is true but, I contend, does not constitute a sufficient reason to distinguish between those two cases.

I would like to think the little scheme that the Government is talking about here to bring the measures into a national framework, so that it is part of a nationally agreed plan, might mean, in effect, that the Government would consistently oppose X-rated material in all its forms. I am not especially hopeful of that, but I think that would be an acceptable outcome - indeed, a very desirable outcome. In the meantime, Madam Speaker, we will have to put up with merely having this inconsistency on our plate and, in due course, dealing with the other issue when the occasion arises. Mr Stevenson, no doubt, will at some point wish to raise the issue again.

Madam Speaker, for the most part, this Bill complements the Publications Control Ordinance of the Commonwealth, which has been applied to the Territory by dint of the Commonwealth's power to make legislation for the Territory in this area. It has reserved to itself the exclusive right to legislate for the Territory in respect of the classification of material. We, of course, have to decide what we will do with each particular classification; but the way in which classification occurs cannot be, in fact, done by the ACT, as I understand it. So, Madam Speaker, this is the framework in which we are working.

The legislation is supported by the Opposition. Of course, it does extend the protection to young people, in particular. I think, Madam Speaker, the next logical step is for the Government to act similarly on X-rated videos, and I look forward to that step being taken at some point in the, hopefully, near future.

MS SZUTY (4.07): Madam Speaker, the Publications Control (Amendment) Bill, which establishes a classification scheme for computer games, has been anticipated by this Assembly for some time. Although the classification of computer games has been anticipated for some time, there is much happening at the moment across Australia in relation to classification issues generally.

In speaking to this Bill today, I thought it would be useful to outline, for members' information, the various processes which I understand are ongoing in relation to a number of general classification issues. It also helps place in context the particular initiatives with regard to computer games that this Publications Control (Amendment) Bill is dealing with. The first point to note is that this legislation is, at present, interim legislation. The ACT is, in fact, taking the lead at present to provide model legislation for other jurisdictions to follow. At present the classification scheme will cover material such as interactive computer or video games, games which require the player to do something in relation to the game, and static computer image-type material. This material involves the direct transfer of, for example, magazine pictures to CD-ROM format.

The Commonwealth Government has, in addition, created a task force which is in the process of examining whether classification can realistically be extended to bulletin board systems. The Commonwealth is currently preparing a final report on the matter, which could be available in the next few months. Already, my understanding is, the United States is experiencing difficulties in this area, and the FBI has established a task force to examine it. So, at present, bulletin board systems are exempt from the classification system, as also is business, accounting or educational software, unless it contains adult-type material. At present, if complaints about this type of material are received by the Chief Censor, they can be investigated, as is the case for magazines and books.

Madam Speaker, it is certainly the case that, for computer games, a void has existed for some time as regards their appropriate classification. In essence we, as legislators, are in the process of catching up with evergrowing developments with regard to various material which is available in computer game format. It is interesting to note, however, Madam Speaker, that amendments which set up the classification scheme for computer games actually came into effect on 11 April this year. This is because necessary amendments were made by the Commonwealth Parliament to the Classification of Publications Ordinance 1983 - one of the few Acts relevant to the ACT which were not passed over by the Commonwealth Government to the ACT Government at the time of self-government.

A further process which is ongoing at present is the proposed new national censorship scheme, which has been endorsed by the Standing Committee of Attorneys-General and which aims to deal with all censorship material and replace the existing cooperative scheme, which currently does not cover all States and Territories. Stage 1 of this process means debating the Commonwealth's Bill, which has recently been tabled in the Federal Parliament by the Attorney-General, entitled the Classification (Publications, Films and Computer Games) Bill 1994. Apparently, all States and

Territories will examine the Commonwealth's legislation and will be free to adopt some of the provisions of the Bill and not others. So, although the legislation is considered to be model legislation that is presented as model legislation, States and Territories will still be able to make their own decisions regarding the various provisions of the legislation.

Madam Speaker, also legislation is currently being drafted with regard to a model enforcement Bill, which, at this stage, is being proposed to come into effect in 1995. This legislation follows the tabling of the Commonwealth's Classification (Publications, Films and Computer Games) Bill 1994, which is currently before the Commonwealth Parliament. With regard to this legislation, a final draft of this Bill will be ready for the Standing Committee of Attorneys-General to examine in late October. States and Territories will also be able to adopt some provisions, and not others, of this legislation should they choose to do so, as is currently the case with regard to the Commonwealth's Classification (Publications, Films and Computer Games) Bill 1994.

Madam Speaker, I think it is reasonable, on the basis of the information I have presented to the Assembly today about the work that is currently being done in this area, to ask the Attorney-General, Mr Connolly, whether he will keep the Assembly up to date with what is happening in the area, not only with regard to computer games but with regard to the issue of the classification of materials generally.

I would now like to comment specifically on several provisions in relation to this Bill. The first one concerns the classification categories identified for the classification of computer games. I am particularly interested in the G(8+) classification, which means material that is recommended for children older than eight years of age. The obvious question to ask is: Why have a newly created category of classification for computer games which is different from that for films and videos? Apparently, evidence was presented to the select committee of the Federal Parliament which examined this issue which indicates that at eight years of age children can differentiate fantasy from reality; hence, the reason for this classification.

I note, however, Madam Speaker, that according to a survey of several months ago many members of the community took little or no notice of existing classifications with regard to films and videos. It does seem unfortunate that, with feedback indicating that we have much to do to promote the existing classification system, we are creating an inconsistency, specifically in relation to computer games.

The second provision I would like to comment on specifically concerns the banning of R(18+) and X(18+) material, which I understand the ACT Government has supported but about which the Attorney-General has reservations. I share those reservations. The implication is that it is only children who play computer games and not adults. Further, inconsistencies exist between the treatment of X- and R-rated movies and videos and computer games. The Attorney-General has stated in his presentation speech that he will monitor the situation to try to ensure that X- and R-rated computer games are not available illegally. This will mean ongoing discussions with the Eros Foundation about the issue and responding to members of the community who contact the Attorney-General about anecdotal experiences of such material being available, which will then require specific investigation.

I would also like to ask the Attorney-General, Madam Speaker, whether he could keep the Assembly informed about any incidents which do arise. The Commonwealth has asked the Chief Censor - and my understanding is that all States and Territories have agreed - to interpret the guidelines with relation to computer games more vigorously than would be the case with films and videos. The fundamental reason for this is believed to be that, because computer games are more interactive with the people playing them, more potential harm or damage can occur to children in particular than would be the case with films and videos. There is, of course, no specific evidence as yet which supports this position. Indeed, the opportunity exists, Madam Speaker, for considerable research work to be done in this area to ascertain as far as possible whether this is the case. I have been unable thus far to obtain a copy of the final guidelines as they will be applied by the Office of Film and Literature Classification; only draft guidelines are available at the moment. These guidelines will, I understand, be incorporated into the Commonwealth agreement with the Standing Committee of Attorneys-General at some stage.

The final issue I wish to raise, Madam Speaker, concerns the penalty provisions which apply to some sections of the Bill. I would like to comment on them with regard to their apparent inconsistency with each other. I will quote two examples. Section 27 of the current Publications Control Act, which relates to advertising matter, contains three penalty provisions where the penalty is a $500 fine or imprisonment for three months or both. The relevant amending section of the Bill, which is clause 32, proposes penalty provisions of $3,000, $1,000 and $2,000 respectively.

Similarly, section 28 of the current Act, which refers to restricted publications areas, contains three penalty provisions where the fine is $500 or imprisonment for three months or both. The relevant amending section of the Bill, clause 33, proposes penalty provisions of $1,000, $500 and $3,000 respectively. Madam Speaker, these decisions appear to have been based on whether the provisions are seen to be technical, in accordance with the penalty principles regime established by the Statute Law Revision (Penalties) Bill, or are seen to be in the public interest. However, an explanation of the rationale for these decisions would have been useful to members, to assist in the understanding of the penalty provisions and how they have been applied.

Madam Speaker, in conclusion, I believe that this matter which we are considering today will be the first of a number in relation to the classification of computer games. I certainly hope that the Attorney-General will report regularly to the Assembly on general classification issues, because it seems to be an area in which the Attorneys-General from the various States and Territories and the Commonwealth Government have a very keen interest.

MR STEVENSON (4.17): Mr Connolly and those involved in proposing this legislation deserve commendation. It is an excellent job to handle something that is worth while when it comes to government setting standards. There has been, as Mr Connolly mentioned in his introductory speech, some concern by the industry about the compulsory nature of the scheme; but there are situations where government must set standards and people look at those standards to determine, in many cases, how they should operate.

There is no doubt that this legislation largely targets the effects on young people and children, and that is why it is all the more valuable in preventing adults exploiting children. There is no doubt whatsoever that this type of material that is categorised under various areas has an educative effect on children, particularly on young minds. This legislation will carry a strong message to those people involved in the potential manufacture, carrying, hire, display et cetera, of this form of material. Once again, I commend the Minister and those people responsible for it.

MR CONNOLLY (Attorney-General and Minister for Health) (4.19), in reply: I thank members for their general support for this legislation. This is an area, as Ms Szuty says, where there is an awful lot happening, and that is perhaps inevitable. In the days when publication of material was either in printed form or an image on celluloid - it took a long time to produce and was slow to distribute - one certain regime of censorship law was possible. In the age of videotape, rapid distribution and now computers, and interlinked computers - we read about the information superhighway in the United States - there are enormous challenges for governments that are concerned to not prevent the rapid dissemination of worthwhile information but, on the other hand, to impose and protect certain community standards.

The issue of video games was one that emerged fairly quickly in Australia. It is one that I have been interested in for some time - in fact, since I had the opportunity to go to the United States last year on the parliamentary exchange program - because while I was in America in April of last year there was enormous debate raging about one particular computer game which had just been released there and which involved aliens who invade a house; scantily clad young women are in the house; and the aliens variously disembowel or otherwise violently deal with the young women in the house. The aim of the game is to protect the young women. One could well imagine that the sort of imagery was quite disturbing. What was disturbing about this game was that it was the first commercial release of the realistic true image. It was as good an image as you would see on a good video screen. It was not the sort of stick figures that we are used to seeing on computer games. The debate was raging in America.

When I came back to Australia and went to a SCAG meeting, and there was some discussion about this, it was an issue that I could see was very important. It is one on which the ACT has worked very closely, I must say, with John Hannaford from New South Wales and with Michael Lavarch. We have been working very closely here to get this package through and to get the new model package coming through. There have been some difficulties. Everyone immediately agreed that we should ban certain images on computer games. We had some reservations about R- and X-rated. There is going to be an inconsistency whatever happens, Mr Humphries, because everybody else has said, "We are banning R-rated for computer games as well". But everybody accepts R-rated movies. There will be an inconsistency whatever you do. A majority of this house and the Northern Territory take a certain view on X-rated movies. Other people in the house might take a different view; but, at the end of the day, the ACT went along with the national view that we ban both R- and X-rated. But then there were some problems.

What is going to happen when VCRs disappear? Video cassettes are probably going to be around for only a few more years. The new medium for film is highly likely to be CD-ROM. We need to ensure that in banning R-rated computer games, which everybody agrees we should do, we do not ban certain movies. Nobody would say that *The Godfather* should no longer be able to be seen in 10 years' time unless you happen to have an antique VCR, because the format for home entertainment will be a computer disc, a computer format. If you want to see a classic movie you may not be able to - unless we are very careful in our definitions. We may have banned those classic movies. When an R-rated movie is in a computer format and where you can stop the computer, make it go backwards and have some limited interaction, we need to be careful that we are not banning those.

There are a lot of very difficult issues to be dealt with over the coming months. I can assure Ms Szuty that this issue was really quite high on the agenda at SCAG. We tend to open our meetings with a censorship process, and I am happy to report back to this Assembly on future developments.

There is some research being done on the potential harm of interactive computer games. We really do not know very much about it. The general view is: Perhaps it has not been so serious with what are clearly the stick figure-type animation games. But, as these games get more realistic, the potential for adverse effects on young people is much greater, and what do we do then about the virtual reality-type game? It has not yet emerged as a commercial game medium but is certainly available at very high cost for certain training processes. You can put the helmet on and strap on gloves, and it simulates the feel of a real event and simulates being in a real situation.

The obvious potential of that, for purposes that perhaps we may not support, is very clear. You can imagine what the pornography industry could do with that sort of technology. So, governments around Australia and around the world are going to have to be very careful to keep on top of this. It is an area where technology is moving at just an incredibly rapid rate. It is staggering when you go into a commercial video store, a commercial computer store, now and see the sorts of products that are available in the game format. There are some great benefits there. Complete encyclopaedias of art are available for $50. The potential to bring information into the home is massive, breathtaking and to be applauded. But the potential for damage is also there.

While I am grateful for the Assembly's support on this Bill, I certainly acknowledge Ms Szuty's point that it is an area where there is a lot of work occurring. The ACT is quite active in this, principally with New South Wales and the Commonwealth and principally because John Hannaford was in the United States at about the time I was and saw the same controversy. We both came back, about six months before the product arrived in Australia, aware of the potential for controversy that that type of material would cause.

I can assure the Assembly that we will continue to be monitoring this area very closely. There is some research being commissioned on the subjects that Ms Szuty mentioned, and as that becomes available I will be happy to bring it to the Assembly. I will be happy to report back in future on further moves. This is law that, I think, will be in place probably for only 12 months, as I suspect that next year we will be further refining this. I suspect that the whole issue of censorship and computer materials is one that will be vexing us for some years to come.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Sitting suspended from 4.25 to 8.00 pm

DISTINGUISHED VISITOR

MADAM SPEAKER: I draw members' attention to the presence in the gallery of Judith Tizard, the member for Panmure in the New Zealand Parliament. On behalf of all the Assembly members, I welcome you, Judith.

SMOKE-FREE AREAS (ENCLOSED PUBLIC PLACES) BILL 1993

Debate resumed from 23 February 1994.

Detail Stage

Clause 1 agreed to.

Clause 2

MR CONNOLLY (Attorney-General and Minister for Health) (8.02): Madam Speaker, I present a supplementary explanatory memorandum and I move:

Page 1, line 10, after subclause (2) insert the following subclause:

"(2A) A day shall not be fixed under subsection (2) in relation to the commencement of section 4A that is earlier than 60 days after the day on which this Act is notified in the *Gazette*.".

The Government has proposed a series of amendments to the Bill which essentially give legislative form to the Government's response to the committee. They can perhaps be described as technical aspects of the machinery of the Bill. The principal issue that we will be debating here tonight is whether the Government's preferred position of the ban in restaurants and progressive moves either to ban or not to ban in other places should be adopted by the Assembly or whether the committee's view should be adopted, which was that there should be what may be described as a safe air standard. I think that that will be the subject of considerable debate this evening. The amendments that I am moving now are rather more general. The first amendment is a commencement provision. It provides that a general prohibition on smoking in enclosed public places shall not come into commencement earlier than 60 days after the Act is notified in the *Gazette.* That again is consistent with the committee's recommendations.

MR MOORE (8.03): Madam Speaker, I do not have any difficulty with this, but I do have a little bit of difficulty with the way in which Mr Connolly has presented the committee's majority position. The committee's majority position was not one of just establishing a safe air standard. However, we will get into that debate in a little while. Rather than what can be heard from the cacophony in the background over there, what we have done is to ensure that we adopt a very sensible position. Indeed, the Government's amendment in this case is also very sensible. Without the amendment, businesses could well find that, immediately the Act is gazetted, there is an impact on them. I think it is quite appropriate for the Government to allow time for businesses to ensure that they can comply with the Act. I think that 60 days is a quite sensible period.

MS SZUTY (8.04): Madam Speaker, I indicate to the Assembly that I will be supporting the amendment moved by Mr Connolly. It is a sensible provision. It means that the changes will not come in overnight and that businesses will have 60 days to adjust to them.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 3

MR CONNOLLY (Attorney-General and Minister for Health) (8.05): I move:

Page 2, lines 7 and 8, definition of "enclosed", omit "a floor and".

Madam Speaker, this is the second of the Government's responses to the committee's report. It omits the requirement for an enclosed public place, within the meaning of the Act, to have a floor.

Mr Moore: Are you going to explain why you do not need a floor?

MR CONNOLLY: The committee, in its infinite wisdom, no doubt thought that we should not have floors, and the Government, being a conciliatory and consensual government, agrees.

Amendment agreed to.

MR MOORE (8.06): Madam Speaker, I move:

Page 2, line 10, after the definition of "enclosed" insert the following definition:

"'licensed premises' means -

(a) premises licensed under the *Liquor Act 1975*, being premises where liquor is served; or

(b) premises licensed under the *Casino Control Act 1988*;

other than any part of those premises that is a restaurant;'.".

The amendment is to ensure a new definition of "licensed premises". It is based on the committee's report. It sets up a system whereby we are dealing not only, in the limited way that the Government had done, with restaurants but with the real issue, which is that passive smoking is likely to be a greater problem in pubs, clubs and so forth. The definition of "licensed premises" in my amendment includes premises licensed under the Liquor Act 1975 and also premises licensed under the Casino Control Act 1988; but it is limited to premises where liquor is served, to avoid any difficulty where, for example, shops have a liquor licence.

Madam Speaker, this is a quite important clause, because it does demonstrate clearly the inadequacy of what the Government had originally proposed. The former Minister for Health - the one who has done so well that he has been recognised by the community for his great contribution to the health of the ACT - has made such a great contribution that he decided that he would try to make a mark by just cutting out restaurants and leaving the most important areas. The reason why pubs and clubs ought not to be ignored is that they are the areas where you will find the most smokers. They are the areas to which we should be sending a clear message that says, "Smoking is not good for you. If you are not a smoker, you ought not to be subjected to passive smoking". There is a way of doing that, Madam Speaker. The Government was not prepared to do it. The majority of the committee were prepared to extend it that far. Even the minority report of the committee recognised that we ought to be targeting that group, as I recall.

Ms Ellis: I think that might be a very bad recollection, Mr Moore.

MR MOORE: I see from the look on Ms Ellis's face that I may be misrepresenting her, Madam Speaker; so I withdraw any misrepresentation on my part. Clearly, the will of the majority of the committee - I hope that it will be the will of the Assembly - was that we take this a step further than the Government was prepared to take it, to take it into the

most difficult areas that they had to deal with. One cannot help wondering why the Government, under Mr Berry, was not prepared to take it into the pubs and clubs. Could it have had anything to do with the influence of the Labor Club, for example? That is a good question for us to ask. How many people smoke at the Labor Club? Do we want restrictions on smoking at the Labor Club, or any other club? What was the influence of the clubs? What donations are made by the clubs?

These are all questions that we have to ask ourselves in the same spirit as that in which Mr Berry interjected before, when he talked about people being run or influenced by the tobacco companies and so forth. Madam Speaker, if the debate is to be run in this sort of way, I am certainly prepared to turn it back on the Government. I would prefer to recognise that what we had from the Government, in the initial instance, was an approach that said, "We are interested in improving the lot of our society as far as smoke goes. We are interested in dealing with the issue of passive smoking. We are interested in being leaders in Australia in these areas, and we are interested, from the population's health perspective, in showing active smokers that they are participating in something that is very bad for their health. In doing that, we hope to reduce the problems with health".

Madam Speaker, that is an appropriate approach, and it is an approach in which all members of the Assembly are interested. That is why all members of the Assembly agreed to pass the Bill at the in-principle stage. Even after having done that, we have heard Mr Berry mislead the public on this matter time and again. The latest occasion was this morning on ABC radio. We are all interested in attempting to improve the population's health as far as smoking goes. We have a slight difference of opinion on how we should go about it. The Government feels that it should simply make a major statement in relation to restaurants. The rest of us believe that we ought to take it further than restaurants and include pubs, clubs and the casino. The Government feels that it should be a blanket ban. The rest of us feel that we ought to take a more rational and sensible approach.

Behind all of that, after going beyond the sort of debating that Mr Berry has wanted to engage in on this, we get a genuine public health concern that all members of this Assembly share. I would like to see the debate tonight carried on in that tone. We have a difference of opinion on how we go about it; but that should be recognised as a sensible difference of opinion. Assembly members share an important goal, and that was identified by the fact that all members of the Assembly passed this Bill in principle.

MS ELLIS (8.12): Madam Speaker, I feel compelled to say just a few words at this point in the debate, particularly considering some of the comments made by Mr Moore just a moment ago. As a member of the committee that looked at this legislation and, as well, being the one dissenting voice in the committee's report, I want to make it perfectly clear - I think that I did at the time of the tabling of the report, but it is essential that I unequivocally make that point again tonight - that there was absolutely no consideration in my mind, in respect of whether or not clubs and pubs should be considered in this legislation, of the number of smokers and drinkers at the Labor Club, the "Tradies" club, as Mr De Domenico interjected, or anywhere else. It was not part of my consideration at all. What I said at the time of the tabling of the report of that committee was that we

need to consider very carefully the immensity of the social change that we are attempting to bring about by this sort of legislation. I do not say that lightly. I also say that, mindful of the fact that I am in favour of that type of social change. That is why I joined with every other member here in voting in favour of this Bill in principle.

What we are really talking about here is two different grounds altogether. The community out there, by its very actions, is asking us to do something in relation to restaurants. Some restaurants are already doing it. That is what I call "fertile ground". I do not see, in any newspaper or in any advertisement for a tavern, pub or club, that it has a smoke-free bar. There may be one around. The difference in this fertile ground for social change between restaurants and eating places and drinking establishments is quite marked. What I said at the time of the tabling of the report was that you bring social change ahead of the community as far as you perceive they want, but not so far ahead that it may not work.

I refer again to what I said at the time of the tabling of the report. I want to contest very strongly Mr Moore's imputation that maybe the Government - I interpret that to mean me in this instance because of my dissenting report - had some other consideration. There was no other consideration on my part. I was attempting to make a very constructive and positive contribution to the debate. I still believe very strongly, as I did on the day that we tabled the report, that the comments that I was making in regard to this sort of social change are very legitimate comments. They are worthy of serious consideration. When people in this place consider these points, they should think along those lines as well.

MRS CARNELL (Leader of the Opposition) (8.16): We will be supporting Mr Moore's amendment, because the approach that the Opposition has taken has been one of harm minimisation, not of social change. We on this side of the house believe very strongly that the role of the Assembly is not to bring about legislation to achieve social change but more to minimise the harm to the community of passive smoking. We believe strongly that the harm associated with smoking is very real. We believe that the harm is not necessarily caused in restaurants. We know, from all the information that we have, that the committee had, that this Assembly has and that society has, that the harm associated with passive smoking, to start with, is somewhat open to debate; but one thing that we know about it is that it is based upon the quantity of smoke. We know that definitely. Therefore, the amount of harm done is directly proportional to the level of smoke and the length of time that people are actually exposed to smoke.

In restaurants, what happens? People eat. They occasionally smoke between courses - something that I personally do not like - which is the reason why we totally support having smoke-free areas within restaurants. People who smoke can go into their own areas, as long as there are proper extraction systems. So the level and the length of exposure in restaurants to which people who do not smoke are subjected are actually very low, even for people who work in restaurants. For waitresses, people who work behind the bars and food service people generally, the level of exposure and the length of that exposure are actually quite low. Therefore, in restaurants, the harm caused to those who do not smoke is actually quite low.

But that is not necessarily the case in bars or clubs or in the poker machine rooms of the various clubs around town. It is in those circumstances that people tend to chain-smoke, to smoke all the time, and there is no capacity for people to avoid that passive smoke. So, if we are looking at harm minimisation, the areas that we should be aiming at are the areas where there is a capacity to have high levels of exposure over a long period of time. That is what all the scientific evidence shows us. So, from this side of the Assembly, we are approaching the Bill and this important issue as a harm minimisation issue. We should be passing legislation to ensure that those people who do not smoke have the harm to them that is associated with passive smoking minimised. That is the approach that Michael Moore is taking with this amendment and the approach that the committee took when recommending it.

MR MOORE (8.19): Madam Speaker, I would like to clarify something. Ms Ellis's comments were about being positive and constructive. In fact, the reason why I raised that argument before was to demonstrate that we could run a negative and destructive style of debate, which is what Mr Berry has been doing the whole time. I raised that issue purely to demonstrate that we could run a negative and destructive kind of debate if we so wished. It is not my wish to do that. It is my wish to run a sensible and constructive debate, as, I would like to point out to the Assembly, Ms Ellis did within the committee and as always happens on every committee on which I serve with Ms Ellis. I would like to assure members that I made no implication about anything else in the way that Ms Ellis operates. It was simply a matter of raising the way in which the debate could operate.

I would like to add something else. Ms Ellis raised the issue that we have an opportunity to do something about smoking when we have fertile ground. This evening I will be presenting amendments on behalf of the committee. I predict that something like 90 per cent of restaurants will become smoke free because they will not be able to reach the high standards set in a couple of years. So, not only will it mean that 90 per cent of restaurants will become smoke free; but it will also mean that we will begin to enter the areas which need targeting most. That is what the original Bill failed to do. It failed to get into those areas that we need to target most, the areas that were most fertile for change - not because the change had already occurred, and we are already doing that, but because that was where the need was greatest. That is why the committee came up with these ideas and that is why these amendments are so much more effective and will improve the Bill significantly. That is what they are intended to do, and I believe that that is what they will do.

MR BERRY (Manager of Government Business) (8.22): Certainly Mr Moore and Ms Szuty, it appears, and the Leader of the Opposition deserve the Sir Walter Raleigh award for promoting the consumption of tobacco. What Mr Moore, with his typical arrogance, failed to recognise was the Government's approach to this very important issue. At the outset, it was made clear to the community that the Government intended to take the community with it; that is to say that, after a period of consultation with the community, there would be a full understanding of the issues which affected business in the ACT. It is very clear that the restaurant industry was the most appropriate place to start with a prohibition of tobacco consumption, because that was something that the

industry itself would have been reasonably relaxed about - save for the Australian Hotels Association, which echoes the views of the tobacco companies. What we had to understand at the same time was that, in our culture, we had a couple of hundred years of tobacco consumption behind us, particularly in licensed premises.

It is very interesting that in the course of the debate we have just heard from Mr Moore and the Leader of the Opposition, and not once did they mention workers in the industry. They chose to ignore the significant steps that have been taken by the Government, with its code of practice, to make sure that workplaces are safer. In their speeches here tonight they also chose to ignore the fact that that code of practice in the workplace has started to have effect. It is designed to affect not only hotels and clubs but all workplaces throughout the ACT. So it embraces all workplaces, not just a selected few.

That was a very definite step by the Government to look after the interests of workers. We have fought about occupational health and safety in this place before. We have had our Liberal conservative opponents opposite opposing moves to strengthen workplace safety arrangements. But it is notable that neither Mr Moore nor the Leader of the Opposition has chosen to recognise that most important step that has been taken by the Government out there in the workplace. That is ongoing. As far as this particular amendment is concerned, it will be of little consequence, because the occupational health and safety legislation will be ongoing in its effect in the workplace, and so it ought to be; but it ought to be in an environment where workers have some control over their future.

It also ought to be a gradual process because of the long-term impact of tobacco consumption in places like pubs and clubs. It is something that has to be worked out gradually with the industry. That is how the package was developed to make sure that the entertainment industry was with us in relation to workplace safety and that we would be able to implement a level playing field for the restaurant industry. There was no doubt that that was going to occur. But politics entered into it. Mrs Carnell, the most prominent health worker here in the ACT, could not stand the fact that the Labor Party was on the front foot, making an impact on this issue. So she had to manipulate it a bit to try to take a little bit of the gloss off it. Mr Moore, similarly, went along with the Liberals. Who knows why? You could ask all those sorts of questions. In this place the issue of whether Mr Moore was being looked after by the tobacco companies was raised. I do not think that the tobacco companies were looking after Mr Moore. I think that Mr Moore was just looking after his politics and trying to create a new place that was different from that of the Australian Labor Party.

Mr Moore: On a point of order, Madam Speaker: We have constant carping from this member, who is imputing improper motives. He is constantly saying that I am acting on behalf of the tobacco companies, and I think that he should be asked to withdraw that.

MR BERRY: I say again that the only people who are going to be happy out of this are the tobacco companies.

Mrs Carnell: And the restaurateurs and the clubs.

Mr De Domenico: And the majority of the members of this Assembly.

MR BERRY: I cannot help their happiness. You are the problem.

Mr Moore: Madam Speaker, he has implied that people have improper motives. He is now trying to clarify it and change it around. But he has implied improper motives up until now, and I think that he should withdraw that and lift his game.

MADAM SPEAKER: Order! Mr Berry, I am sure that you know the difference between imputing improper motives and making general statements. Please proceed.

MR BERRY: Of course, Madam Speaker. I understand why Mr Moore - - -

Mr Moore: On a point of order, Madam Speaker: I seek to have him withdraw.

MR BERRY: Withdraw what?

Mr Moore: Or at least to clarify it.

MR BERRY: I will clarify it. I am happy to clarify it. Madam Speaker, in this place, before, the issue of whether the tobacco companies were looking after Mr Moore was raised. I made it clear that I did not think that the tobacco companies were looking after Mr Moore. But I say to you that they are the ones out of all of this that are laughing because they will be grabbing with both hands this issue of mechanical ventilation as an excuse to allow tobacco consumption in licensed premises across this country. They will be seizing upon it. The approach that you are taking makes sure that we miss a golden opportunity to set a real standard for the rest of the country. If you want to be guilty of that, that is your problem, not mine. It is your problem, Mrs Carnell. If you can still stand proud amongst your pharmacist mates on this score, that is your problem, not mine.

Mr De Domenico: Have a look at the popularity of pharmacists in comparison to yours.

MR BERRY: I am not in a popularity contest. I am about selling policies. Mine has not changed. Look at the numbers. This is about selling policies. We promised the people of the ACT that we would deliver clean air to them, and we have moved down that path. What we have said to the workers of the ACT is, "We will make sure that you have a safe workplace and that your unions will be involved". There is no commitment from the Liberals or Mr Moore to the involvement of unions in workplace safety. They do not seem to have an understanding of that issue. But the position adopted by Mr Moore has brought upon him a great deal of shame, and so it ought to.

Madam Speaker, I am very proud to be associated with the Government's moves on this score. I know that they are aimed at maintaining workplace safety, not just in the club and pub industry, but right across the Territory in all workplaces and - - -

Mr Moore: You did not touch the pub and club industry. You shafted them.

MR BERRY: I just heard Mr Moore say, "You did not touch the pub and club industry". What a dope! Had he not noticed the code of practice which was introduced by the Minister for Industrial Relations, or was he asleep again, under the cloak of Sir Walter Raleigh? I am telling you, Mr Moore, that action is under way, and it is all happening out there, in all workplaces, where all workers will be looked after. You were probably too busy touring around the country.

Madam Speaker, I think that what we are about to see is a very healthy debate about the failures on this score of the Liberals and their cohorts amongst the Independents. We will be able to demonstrate to Mr Stevenson over there - I think it is a charge that could be laid - that this Assembly has been misled by some of the information that was put before it by the committee. I think that that needs to be undone. We will have the opportunity in the course of this debate to uncover that.

MADAM SPEAKER: Mr Berry, your time has expired.

MR DE Domenico (8.32): Madam Speaker, I think that the debate needs to be brought back to where sensible people meet. On this occasion, the Liberal Party has to agree with Mr Moore that, on the ground where sensible people meet, the simplistic issues tend to be thrown away. Mr Berry would be aware, or he should have been aware, that the occupational health and safety provisions mention all workers, whether they work in restaurants, clubs, pubs or taverns. What those occupational health and safety provisions say is that by 1997, over a phased-in period of three years, there will be certain areas in those workplaces - not necessarily all areas, but certain areas in those workplaces - where all workers, whether they work in pubs, taverns, clubs or restaurants, who do not wish to be affected by tobacco smoke will be able to work. That is a fact, Mr Berry. As a former Industrial Relations Minister, you should know that. Perhaps you do know that and are trying to mislead the Assembly, as you have tried to mislead the people of Canberra at the same time. That is point No. 1.

MADAM SPEAKER: Mr De Domenico, that is not acceptable, and I ask you to withdraw it.

Mr Moore: On a point of order, Madam Speaker: It is exactly the same thing that Mr Berry said just a very short while ago. If it is good for the goose, it is good for the gander.

MADAM SPEAKER: Mr Moore, please be seated. Next time, if you take a point of order specifically when the statement is made, I will ask for it to be withdrawn. You took it 10 minutes later, and I had no idea what you were talking about. You will come to order. Mr De Domenico, you will withdraw.

MR DE Domenico: What am I withdrawing, Madam Speaker?

MADAM SPEAKER: You accused Mr Berry of misleading. Withdraw.

MR DE Domenico: If it pleases you, Madam Speaker, I will withdraw.

MADAM SPEAKER: Thank you. Please proceed.

MR DE Domenico: Mr Berry should not come into this place and attempt not to say the way things are. Mr Berry also said, "Why did Mr Moore go with the Liberals?". As far as I am concerned, that is not happening. It is the Liberals that are going with Mr Moore on this occasion, because it is Mr Moore's amendments that we are debating. The Liberals are going with Mr Moore because what Mr Moore is proposing to the Assembly makes a lot of commonsense. Not only will the Liberals go with him, but the committee has recommended certain things to the Assembly.

Mr Berry: And the tobacco companies want it.

MR DE Domenico: Mr Berry once again refers to the tobacco companies. Let me tell Mr Berry one thing: As the vice-president of a very prominent club in this community, I get concerned when I go to my own club and have tobacco smoke blown all over me. For Mr Berry to stand up in this place and say that it is harmful when someone in a restaurant blows tobacco smoke over you but it is not as harmful when someone in a club blows smoke at you is complete and utter nonsense. It is simplistic, as most of Mr Berry's arguments are.

Mr Kaine: It is total hypocrisy.

MR DE Domenico: It is total hypocrisy, as Mr Kaine says. Mr Berry also talked about Mr Moore deserving an award. I do not know what award Mr Moore deserves; but I can suggest what sort of awards Mr Berry deserves because Mr Berry time and again has gone to the public and has said, "I am the man who, more than anybody else in this country, is against tobacco smoking". We say, "Well done, Mr Berry".

Mr Connolly: The AMA says that.

MR DE Domenico: Mr Motormouth intervenes and says, "And so does the AMA". Yes, Mr Connolly; so does the AMA. If Mr Berry and this Labor Government were fair dinkum about protecting their supposed workers, why not have an across-the-board, sensible approach to tobacco smoke? Do not ban it just in restaurants. Let us have a look at the whole ambit - clubs, taverns and everywhere else. If it is harmful to have smoke blown at you in restaurants, it is just as harmful, if not more harmful, to have smoke blown at you in taverns, hotels, clubs and the casino. Mr Moore made a good point. One sometimes sits back and wonders whether there is anything else involved in this sort of simplistic attitude. Has any pressure been put on by certain groups? Do we assume that it is only coincidental that the very people that seem to form the basis of this Government's support, both financially and in other ways, happen to be those people that are in charge of places like the Labor Club, the Workers Club and various other clubs and societies? The names have come up time and again.

If people want to stand on the ground where sensible meet, they will realise that Mr Moore's amendment is the result of recommendations by the majority of the committee and also the result of the occupational health and safety provisions of this Government. That is why the Liberal Party is quite delighted to support Mr Moore's amendment. It makes a lot of good sense, and, when it is good sense, it is also good politics.

MR CONNOLLY (Attorney-General and Minister for Health) (8.38): Madam Speaker, Mr Stevenson has been watching this debate with a lot of interest. I am pleased to tell Mr Stevenson that the Government is supporting this particular amendment. So, if he thinks that the debate has been vehement so far, on something that we all agree on, he is in for a pretty robust night when we get to the point. Mr Berry said, at the end of his remarks, "We do not object to this particular provision"; but he was making more general remarks, addressing the fairly provocative general remarks that had been addressed to him. Madam Speaker, this is an amendment that the Government is not opposing. At a couple of points down the script we will be drawing a line in the sand and having a debate about the substance of Mr Moore's package. But, if this is any indication of the level of that debate, we are in for a ripper.

MR STEVENSON (8.39): Madam Speaker, I thank the Attorney-General. I did not know that. To go back to the original Bill, we could say that there were not many choices offered. There was a ban on smoking in places determined by the Minister or, the legislation not being passed, the maintenance of the status quo. But there are other ideas. The initial McNair Anderson poll, organised by the Federal Health Department, suggested that most people would ban smoking outright. It was an important question that they asked about banning; but that was the only one that they asked. The Hotels Association asked another important question. They asked, "Should there be a choice?". The majority of people said that there should be a choice. There was also a third question, which was reasonable. It related to maintenance of the status quo, whereby the owners decide for themselves.

We asked all three questions. That gave people a fair opportunity to have a say, so that we could find out what the community wanted. What we want is important; what the Health Department wants is important; and what the Hotels Association wants is important; but what the people want is very important. This is what the people said about the requirement to have separate smoking and non-smoking areas in restaurants. Forty-five per cent favour that; 37 per cent favour an outright ban in restaurants; and 14 per cent favour the restaurant management determining whether their establishment becomes smoking or non-smoking. A couple of per cent were not sure. That is why I support some of the amendments that Mr Moore has presented and that are more contentious from the Labor Party's viewpoint. In certain circumstances they will allow those restaurant establishments and others that wish to have smoking areas and also non-smoking areas to have that. No doubt, the people that require a choice want to have a valid choice. They do not want to sit on one side of the plane, in the non-smoking section, and have, on the other side of the plane, an arm's reach away, the smoking section. That is not really a choice. So the idea that there should be some sort of a standard would, no doubt, be accepted by the majority of people, without having a survey. That is the suggestion that has been made in Mr Moore's amendments, and they are the ones to which I agree.

Mr Connolly said that the particular amendment that we are talking about at the moment seems to be generating some heat, but that it could get a lot worse. I do not believe that. We have some differences of opinion. We feel that the community's interests will be best served by going in slightly different directions, at a slightly different pace. I am sure that we have the good of the community in mind and that a lot of people in the community will feel that there is a benefit in what we are going to do tonight.

MS SZUTY (8.43): I will speak very briefly on the amendment proposed by Mr Moore. I am pleased to hear that the Government will support this amendment. The way Mr Berry was arguing earlier, it was difficult to know whether that was the Government's position. It was interesting to note Mr Stevenson's position. When we took the vote in principle on this Bill, Mr Stevenson was the only person who actually voted against the legislation. I would like to refer to a few of the comments that Mr De Domenico made, because I think that his comments with regard to this matter were very sensible. I perceived from the Government's position that it was inconsistent. The Government wanted to ban smoking totally in restaurants; but it did not really address pubs, clubs and taverns at all, and no target timeframe was identified for that process. Mr Moore's Conservation, Heritage and Environment Committee actually put a timeframe on smoke-free areas being introduced into pubs, clubs and taverns. That timeframe is about 30 months, which, I think, is a reasonable timeframe within which those licensed premises can come to terms with this issue.

Ms Ellis mentioned the need for the Assembly to consider the immensity of social change. That is an issue to which we have all given close attention over the months that this debate has been going on. The committee certainly allowed for that process of social change in its consideration of the 30 months timeframe that it has allowed for pubs, clubs and taverns to come to terms with this issue. Indeed, the Government's approach to the whole issue of smoke-free enclosed public places seemed to be based on community attitudes and what the community will tolerate in terms of a total ban at particular times. I am afraid that I cannot quite marry that with the question of the health issue as it pertains to people who are exposed to those who smoke. Mrs Carnell mentioned, appropriately, that a harm minimisation approach is being taken to this issue. I totally agree with that. Harm is not restricted to restaurants; it is based on the quantity of smoke and the particular circumstances in which people are exposed to it.

Mr Moore, in his subsequent remarks, suggested that the legislation needed to address the areas most in need of being targeted. I do not think there is any question that those areas include pubs, clubs and taverns. As Mr Moore said earlier in his remarks, most smokers are to be found in that environment. They are not to be found chain-smoking in restaurants, as Mrs Carnell alluded to earlier. I have found it physically impossible to smoke and eat at the same time, and I am sure that that goes for a number of other people. Mr Berry talked about the significant issues for workers with regard to this legislation. I agree with him; there are significant issues for workers. But there are significant issues for all workers - not only workers in restaurants but workers in other places as well.

MR STEVENSON (8.46): I rise briefly, just to pick up the point that Ms Szuty quite rightly made, namely, that I was the only member that voted against the legislation in principle. As I mentioned at the time, that was because Mr Berry was going to ban smoking in restaurants totally. As that went against the survey results, I voted against the legislation, knowing full well that it was going to be put to a committee of inquiry. The committee looked at the same things as the majority of people in Canberra look at, to see what is a sensible situation. That is what the amendments before us tonight show.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (8.47): Madam Speaker, during the course of the debate there were a number of issues raised that I believe need addressing; but at this point I will concentrate on only one of them. There was the question raised about the industrial relations implications of banning smoking in workplaces. I think that Mr Cornwell interjected to say, "The Government is being contradictory in what it is saying, because ACTION bus drivers still smoke while they are in buses". That is not the case. In fact, since 8 August this year there has been a prohibition on bus drivers smoking in a bus either with passengers or without passengers.

Amendment agreed to.

Amendment (by Mr Connolly) agreed to:

Page 2, line 15, definition of "public place", insert "is being" before "used".

MR MOORE (8.48): Madam Speaker, I seek leave to move together amendments Nos 2 and 3 circulated in my name.

Leave granted.

MR MOORE: I move:

Page 2, line 17, after the definition of "public place" insert the following definition:

'"register" means the register established and maintained under section 4B;'.

Page 2, line 17, before the definition of "smoke" insert the following definition:

'"restaurant" means an enclosed public place where the primary business is the sale of food for consumption on the premises;'.

Madam Speaker, this is the nub of the debate. This is where the committee had a difference of opinion with the Government. The Government's response to the committee report did not accept the stance that the committee had taken. I think it is important to go back to some of the basic principles. The most important of those basic principles is that we need to target the areas where there is the greatest problem. That is what the Government's initial Bill failed to do. That is what the committee recommended we ought to do. This clause, setting up the register, and the following amendments provide for a way of doing that. The structure recommended by the committee is that we will say, "The prohibition on smoking will occur in a range of places

and, at the end of the 12 months phase-in period, all restaurants will be non-smoking unless they apply for an exemption which will allow for a minimum of 75 per cent to be non-smoking". So the most area for smoking that restaurants will be able to apply for is 25 per cent.

In order to apply for that, they are going to have to reach ventilation standard AS1668.2 - a ventilation standard that is not, by any stretch of the imagination, easily reached. There will be some restaurants in Canberra where the air-conditioning is of such a high standard that they already meet that. I cite, as an example of hotels that have such restaurants, the Hyatt and the Parkroyal. I suspect, although I do not know, that they will reach those standards and will be able to provide for smoking patrons up to 25 per cent - and no more - of their restaurant. But, Madam Speaker, 90 per cent of restaurants will be smoke free because, owing to the financial imperatives under which they operate, they will say, "Will we spend, as evidence before the committee suggests, $10,000 or more to reach this ventilation standard?". Will they spend $10,000 or more in order to provide for 25 per cent of their tables to be smoke free? I argue that very few restaurants will take that option.

But for those people who insist on smoking at dinner there will be some choices. Madam Speaker, when I seek to provide a circumstance in which people who want to smoke at dinner should be able to, I should point out to members that it was in the early 1970s that I first asked people not to smoke in my car and it was in 1973 that I asked people not to smoke in my house. So that has been my attitude for a long time, for over 20 years, at a time when Mr Berry himself was a heavy smoker, as I think he will agree. I have never been in that circumstance myself, so I do not know how hard it is to give it up; but I admire people who have smoked and have given it up, because I understand that it is very difficult to do so. I object to having smoke around me; but I seek to find a way to recognise people's right to choose what they can do, as long as it is not interfering with somebody else.

Madam Speaker, if you are in a restaurant which is 25 per cent smoke free and you believe that the ventilation is not good enough - I suggest to you that, from the evidence presented to the committee, it will be - because people at a table near you are smoking and there is some impact on you of the smoke, you have the choice of seats in 75 per cent of the restaurant and, clearly, you would ask whether you can change your seating. That is the first point.

The second point is that there is a dose related impact. All of the conclusive evidence, in epidemiological terms, on the danger of passive smoking has been constructed - - -

Mr Berry: Rubbish!

MR MOORE: I hear an interjection of "Rubbish!", Madam Speaker, and I have not even got to the point I am making. Clearly, Mr Berry's neurones are not firing, because he displays such tunnel vision here. Let me finish, Mr Berry, and then see whether you still want to say, "Rubbish!".

The only epidemiological studies that have come to any conclusive evidence about passive smoking have been conducted on spouses of smokers. It is the only conclusive epidemiological evidence that we have of the dangers of passive smoking. No epidemiological study has been conducted that provides strong enough evidence of the dangers. In fact, there is none that I am aware of that has even been conducted that provides any such evidence. If you can provide it to us, that will be great.

Mr Berry: Oh, yes; the big cop-out!

MR MOORE: Madam Speaker, Mr Berry is saying, "That is a big cop-out". When, on a health issue, I rely on epidemiological evidence - the only evidence we could possibly rely on to make this sort of decision - Mr Berry says, "It is a cop-out", and then he probably wonders why he is not going to be voted the world's best Minister for Health. The only epidemiological evidence that has provided any conclusive evidence of harm from passive smoking and of its impact has been carried out on spouses or people living with somebody who smokes. That is, indeed, a concern; but what it indicates to us is that there is a dose related response, and that is of particular significance to the issues that we are dealing with. If we are dealing with a population health issue and we are dealing with a dose related response, then we ought to be looking not at restaurants but at where the public is exposed to the greatest amount of cigarette smoke. That is in the casino, the pubs and the clubs.

Madam Speaker, there is a third issue, and that is the issue of getting a message across to the general public. Here is the strongest argument of those who advocate no smoking in restaurants, as the Government advocates. This is the strongest part of their stance. If they can say, "We have a blanket ban on smoking in restaurants", it sends a very loud message to the community that smoking is bad for you. But it misses the most important part of the community that we are trying to reach. That part of the community that smokes quite heavily is found not so much in restaurants as in pubs, clubs, taverns and the casino.

Madam Speaker, those are the real issues that we are dealing with and that is why I would urge the Government to change its mind. It needs to realise that a very loud message has to go out to the public, targeted at where it ought to be targeted. It will be a loud message in restaurants anyway, because smokers are going to have to search out a restaurant in which they can smoke. That is the reverse to the current situation. At the moment, those of us who are non-smokers who enjoy non-smoking restaurants have to search out the non-smoking restaurants. There are a hundred or so of them in Canberra, according to the evidence presented to the committee by ASH. Madam Speaker, that is the wrong way around. When smokers are saying, "We have to go and find a restaurant where we can smoke", then clearly the message is getting through to them that this community does not condone smoking, that we see it as a dangerous pastime and that we need to send a stronger message than that on cigarette packets.

Madam Speaker, there is something else that ties in with that, and that is the amount of time that people spend in restaurants or in pubs, clubs, taverns and so forth. We had evidence presented to us by the department that, if my memory serves correctly, the minimum amount of time that people spend in restaurants is about 1.5 or 2 per cent

of their time. The time that people spend in pubs and clubs is much higher. Therefore, to go back to my previous argument about dose related effect, that needs to be taken into account. Madam Speaker, they are the sorts of issues that influenced my decision to take the stance that I have taken.

I would like to raise another issue, and that is the issue that I am sure will be raised, of Australian Standard 1668.2. *(Extension of time granted)* Australian Standard 1668.2 has been the subject of a great deal of debate. Let me say to those who argue that it is not a health standard that there was evidence presented to the committee by one of the people who put the standard together, that they set out to make this a health standard. We were warned by quite prominent bodies, including the AMA, that we may well have a de facto health standard if we adopt AS1668.2.

At this juncture I would digress to say that, in the original set of amendments that I had circulated and in the committee's report, we referred to it as AS1668.2 of 1991. The amendments that I have moved refer to it just as AS1668.2. The reason for that, Madam Speaker, is that it is a living standard. The standard will change constantly to improve the ventilation ability and the requirements as our technology improves. I think that, as that does improve, we should demand the highest possible standards. Therefore, it is appropriate that we do not set the standard as it was in 1991, but that we allow it to improve. Attached to that, of course, is the risk that the standard may lower. Should the standard lower, I will be happy to come back into this house and seek a harsher approach. But I do not see that happening. It has not been the practice that standards such as that diminish. It is, rather, the practice that we get higher standards.

As I see it, AS1668.2 is not necessarily a health standard; nor does it have to be a health standard. It is a standard of ventilation that will be equivalent to outside air. That is how it was set up. The question is: Are we prepared to say that this standard is not good enough? Are we prepared to say that the prohibition on tobacco should take place outside as well, as has happened in one American town? Just after Mr Berry introduced this Bill, a letter to the editor indicated that in one American town, where they have gone much further than we have, the only way you are allowed to smoke is if you are on the move. You cannot stand still to have a cigarette with somebody; you actually have to be walking. I think that is a ridiculous infringement of people's civil liberties, although I disagree with the way they are endangering their health.

Madam Speaker, AS1668.2 does not have to form a de facto health standard. It is a great argument; but it is just that. It is simply an argument that is baseless. It is an important issue that needs to be dealt with in this debate, and I may well come back to it if I speak a second time. The standard does provide for air to be the equivalent of that outside. That is what it was set up to do. The evidence presented to the committee by Mr West, as the committee's report indicated quite clearly, was that, when it started out, it was intended to recognise health implications.

Mr Berry: That is where the committee has misled us.

MR MOORE: Mr Berry now says that that is where the committee has misled the Assembly. Madam Speaker, the committee has presented its report to the Assembly. To suggest that we have misled the Assembly is entirely inappropriate. I will ask you, when I finish speaking, to get Mr Berry to withdraw that.

MADAM SPEAKER: Mr Moore, let me stop you right now. As you know, the standing orders do not allow imputations against a member. I do not see how you can say that a generalised statement like that is actually an imputation against a member. That is why I have allowed it, Mr Moore. Please proceed.

MR MOORE: Finally, to take up a point that was raised earlier, I would refer members to a full chapter in the committee's report on occupational health and safety, which refutes the ridiculous suggestion that Mr Berry made, that we did not consider it to be an issue at all.

Mr Berry: You did not raise it in the speech, Michael.

MR MOORE: Madam Speaker, we get a further interjection from Mr Berry, saying, "You did not raise it in the speech". That is right. There are a number of things being raised in a series of speeches throughout this debate, and Mr Berry suggests that I did not raise it in the speech. Did he go back and see whether I raised it in my speech in the in-principle stage? I must say that I do not remember whether I did or not. But, clearly, it is an important issue. It is one that the committee has dealt with and it is one that we will continue to deal with.

Mr Berry himself provided an answer. Occupational health and safety is a matter that is being taken care of under occupational health and safety legislation. Even so, it was something that we cared about. We cared about it so much that we got the new Minister to provide it. Mr Berry would not provide the occupational health and safety code to the committee while he was Minister, and we had to get the new Minister to provide it. That shows his sense of cooperation with a committee and how genuine is his concern for this issue.

MR CONNOLLY (Attorney-General and Minister for Health) (9.05): Madam Speaker, we have come to the crux of the debate and the fundamental flaw in what Mr Moore is proposing. The whole edifice of his argument is built on the rock of Australian Standard 1668.2 - - -

Mr Moore: I raise a point of order, Madam Speaker. That misrepresents what I have just said.

MR CONNOLLY: Madam Speaker, Mr Moore and I may disagree; but, if he is going to take foolish points of order every time I make a point, we will be here until 3 o'clock in the morning. Let us be serious about this. His whole argument is premised on there being a safe way of having an air standard; that you can have 25 per cent of people in a restaurant smoking, as long as a certain air-conditioning standard is met. The reality is that that air-conditioning standard was designed for comfort, not for health.

There is a danger in what you are doing here tonight, and you have been told this. Do not believe me, as the Labor Health Minister; do not believe Wayne Berry, as the former Labor Health Minister; but what you are being told by the Australian Medical Association, the Cancer Society of New South Wales and the National Heart Foundation is, "Do not do it. Think again". Unless you are scientifically convinced that Australian Standard 1668.2 provides a safe level of exposure to tobacco smoke, do not do it. That is what you are being told by the experts.

Take the politics out of the debate. You do not have to accept what I say; but, for heaven's sake, listen to what the experts are saying. The use of that Australian standard as a basis for exempting places from a general prohibition on smoking in enclosed public places has been deemed to be wrong by Standards Australia, the people who write the standards. They say that they suspect that the risk that environmental tobacco smoke presents may not be limited by adherence to AS1668.2. You are premising all of this on a safe level of exposure to tobacco smoke. Nobody, apart from the tobacco companies, will tell you that AS1668.2 gives you that safe level. Standards Australia says that it does not. The New South Wales Workcover Authority says:

It should be noted that because of the large number of chemicals in tobacco smoke, there is no internationally accepted standard which provides specific guidance on passive smoking.

So there is no safe standard. The National Occupational Health and Safety Commission says:

The extent to which these requirements -

referring to Australian Standard 1668.2 -

alleviate the risk resulting from environmental tobacco smoke does not appear to have been quantified.

Dr Brendan Nelson of the AMA - he is not somebody who has been a noted supporter of Labor administrations over the years - says:

The AMA does not support the granting of any exemptions based on the inappropriate use of the air quality standard AS1668.2-1992. This is not an appropriate standard and would be difficult to monitor.

The New South Wales Cancer Society, writing on behalf of themselves and the National Heart Foundation, says:

The NSW Cancer Society and the National Heart Foundation are very concerned that amendments will allow exemptions based on AS1668.2 ... ACT law may set a standard for similar legislation in other States ...

Again, we are being told by a range of independent and highly reputable bodies, who are not normally involved in the political process, "Do not do it, because you will be taking a flawed standard that is not designed to provide a level of safe exposure to environmental tobacco smoke and, de facto, establishing it as a safe level".

Mrs Carnell: But we simply do not know.

MR CONNOLLY: "We simply do not know", says Mrs Carnell. A safe approach to scientific method, if you are premising it on public safety, would seem to be that, unless you know of a safe level, you do not allow it. Again, you are being told by medical experts and bodies such as the Cancer Society and the Heart Foundation, "Do not do it"; but you persist. Let me remind members - again, without imputing improper motive - that Philip Morris, that well-known guardian of public health, has been urging authorities in the United States, through citizen-initiated referendums that Philip Morris have been paying for, to put on the ballot paper in California precisely this law. Philip Morris uses this standard, or the American equivalent, as the basis for safe tobacco exposure.

Here are Mr Moore and Mrs Carnell coming along and saying, "We are all about public health, and we are deeply committed to the fight against tobacco". I will be charitable and say that you have been duped. What you are doing is backing a standard that is being pushed by the tobacco lobby in the United States. They are pushing it in order to get a State based referendum in California to stop local authority areas imposing exactly the sort of law that Wayne Berry proposed some 12 months ago. The tobacco lobby in the United States is seeking to establish a so-called air-conditioning safe standard of exposure to tobacco smoke and to entrench it, through a referendum, in Californian State law in order to defeat anti-smoking moves by counties and municipalities in the United States. So you are backing the proposal that the tobacco lobby backs and we are backing the proposal that the AMA, the Cancer Society, the National Heart Foundation and other impartial, independent, very non-political and certainly non-Labor Party political bodies are urging you to adopt. Let us not muck around with this. The crux of the matter is that you are proposing a standard that - - -

Mr Moore: The trouble is that they do not understand it fully.

MR CONNOLLY: No doubt Dr Nelson does not understand this issue, the Cancer Society does not understand this issue, and the National Heart Foundation does not understand this issue; but Mr Moore understands the issue! This is a dangerous policy that you are adopting here. This Assembly has had the opportunity to endorse the legislation that Mr Berry put forward last year - legislation that was endorsed by many health authorities as leading the field in Australia. The AMA - it is no secret that Mr Berry and the AMA were not the best of friends for an extended period last year - in the heat of that dispute, when all the harsh words were being spoken, said, "We are suspending hostilities and we are saying that, on this issue, Wayne Berry is dead right and deserves support. He deserves to be commended for taking a courageous step

forward for public health and leading the way in Australia". When your friends praise you, it may not mean something; but, when your opponents praise you, it suggests that you are on to something significant. That has been the view of the AMA on this. They have, with great concern for the public welfare, been urging members to think long and hard before they endorse what will become a de facto standard for safe exposure to environmental tobacco smoke. They have been saying, "Do not do it".

Madam Speaker, that is the issue of principle and that is why, in principle, we say that this is wrong - and, more than wrong, dangerous. We say that this is dangerous because, as the Cancer Society says, it may set a standard for similar legislation in other States and we may be creating a de facto standard for safe environmental tobacco smoke standard, which we know is not designed for safe exposure to tobacco smoke.

Mr Moore: No; you think that you know.

MR CONNOLLY: Every expert says that. But Mr Moore knows better! Madam Speaker, that is the issue of principle. There are some substantial practical aspects that I wanted to - - -

Mr Moore: Get back to your primary sources.

MR CONNOLLY: We have shown you the letters from the Standards Association, the Cancer Society and all the rest of them.

Mr Moore: Did you read them?

MR CONNOLLY: Of course we read them. We showed them to you people. Mr Moore, once you get an idea, you chisel it in stone. You have gone down the wrong path on this. We have tried to urge you to come back to the sensible course of action. You have had plenty of opportunities, but you have declined to do so. That is an issue that, no doubt, we will all have to account for; but the fact is that the people who should know - the people who are not part of the Australian Labor Party and who are not general supporters of this Government - have said very publicly, "You are going down a dangerous path here, Assembly members. Please do not do it". But, in your wisdom, you believe that they are wrong and you are right. So be it.

Madam Speaker, let me turn to the practical issues. By adopting this Australian standard as the trigger for getting an exemption, the Government will have to employ very substantial resources to monitor and assess. It will require inspection of the air-conditioning equipment and it will require air monitoring. This will have to occur after hours and on weekends, when most people are at restaurants, clubs and hotels. We will have to invest in quite considerable and expensive analytical equipment. The rough calculations that the department has done, based on two inspectors working shift work, plus transport and equipment, work out at about $150,000 per year. Mr Moore proposes that we set a fee for exemptions to cover the costs. That could well work out to a fee approaching $1,000. It is a very expensive imposition on business. I can imagine what business people will say about that.

The air-conditioning equipment itself will be very expensive. It will cost tens of thousands of dollars at a minimum. There will be a hefty application fee and there will be the inconvenience of having inspectors. Mr Moore says, "We are making it so difficult that 90 per cent of restaurants will not do it". That may be the case; but, if that is the case, why are we going through this farce of a backdoor ban on smoking in restaurants? Why do we not just take the straightforward approach, the "look the community in the eye" approach and set a lead for Australia? Let us ban smoking in restaurants, let us establish the legal regime that allows us to ban it in other places, and let us engage in a community debate and progressively go down the path of banning it in other places, just as 10 years ago it was banned on international aeroplane flights, then it was banned in aeroplanes domestically, then it was banned in terminals, then it was banned in buses, then it was banned in trains, then it was banned in public service offices, and then it was banned in shopping centres.

The process there has been a progressive one, and the process that Mr Berry was proposing was a progressive one. We should put forward the legislation that allows for the total ban. Do it straightaway, honestly and up-front with restaurants, instead of going through this farce where we have, basically, two classes of restaurants. The expensive places will be able to invest in the equipment and pay the licence fees, and you will be able to smoke there. If you have sufficient funds to go to the expensive restaurant, you will be able to smoke; but there is no way that restaurants in the local shopping centres are going to be able to invest tens of thousands of dollars in additional air-conditioning and all the rest of it; so they will be on a different standard. It is a circuitous way of getting to a ban on smoking in restaurants. If Mr Moore is saying, "I am going to ban smoking in restaurants with these amendments, because we will make it so difficult and so impracticable to get exemptions", would it not be better to look people in the eye and say, "We are going to ban smoking in restaurants."? So there are major practical problems with this.

Madam Speaker, we come back to the fact that the whole edifice of Mr Moore's amendments, where he is allowing certain parts of restaurants or other public areas to have smoking if they can meet certain standards, is premised on the view that you can have a safe standard for passive smoking. It is premised on the view that Australian Standard 1668 makes this a safe course of action. The overwhelming weight of independent advice is that that is just not so. Reputable leading authorities like Brendan Nelson, the Cancer Society and the National Heart Foundation are saying to the Assembly - there was a statement only the other week in which they were specifically addressing themselves to the Independent members - "Do not do it. Think again. Do not set a trend around Australia for this so-called clean air standard to be the basis for anti-smoking legislation". The Government can do no more than point out the folly of your ways, to point out the dangers of this course of action and to point out the overwhelming weight of reputable advice which is, "For heaven's sake, do not do it". It is in the hands of the Assembly.

MRS CARNELL (Leader of the Opposition) (9.19): Madam Speaker, what Mr Connolly said is simply not correct. There is no way that certainly this side of the house - and, I know, the committee - believes that the Australian standard was somehow set at a safe level of tobacco. It was by no means the total answer, and that is the reason that the amendments that will follow allow for smoke-free areas. That does not mean that you can smoke anywhere in a pub, club, tavern or restaurant; you just put in an extraction system, and the extraction system takes it away; you can sit right next to someone and blow smoke on them. That simply is not how it works.

What happens is that we have areas of restaurants, clubs, pubs and taverns that are smoke free; so, you cannot smoke in them at all. Of course it is not the total answer. What it does present, though, is part of the answer. By the way, that is not my view; that is not my comment. I will quote from a letter from Geraldine Spencer, the editor of the ASH magazine, in which she says:

The Code recognises that current technology does not provide a complete solution to the problem of environmental tobacco smoke exposure in workplaces but that the application of accepted standards of ventilation, air conditioning and exposure to airborne contaminants may form part of an overall approach to reducing workplace contaminants and to phasing in a no-smoking policy.

That is exactly what we are saying. This is a letter from probably the most vehement advocates of a smoke-free environment. What she is actually saying, and what they are actually saying, is exactly what we are saying: This is not a complete answer, but it is part of an approach which allows people some form of individual freedom and harm minimisation.

Again, that is the problem that Mr Connolly and Mr Berry have failed to recognise. Mr Connolly continued to talk about there being no safe level of tobacco smoke. The fact is that we simply do not know, and that is the real problem.

Mr Berry: So we err on the side of safety.

MRS CARNELL: That is a silly approach, because if we were going to do that we would not take $30m a year into government coffers on the basis of selling cigarettes in the ACT - or anywhere, for that matter. We would say, "Let us just get rid of it totally". That is the purist approach and, Mr Berry, you are really keen on purist approaches on these things. If we were really keen on this, if we actually meant what we said here, we would just ban it totally.

This approach which suggests that there is a safe level and an unsafe level, or we know what those are, for passive tobacco smoke, environmental tobacco smoke, is simply untrue. Both Mr Moore and I, over a period of time, have asked the Government to come forward with some form of scientific proof or any scientific evidence to show that environmental tobacco smoke - where there are smoke-free areas, where there are ventilation systems - is a significant danger or a danger at all. In fact, one of the

interesting issues is when you actually try to find scientific evidence. Certainly, we have attempted to do that at length. We simply will not legislate because the Government says so; or the AMA believe that we should ban tobacco; end of deal. They certainly believe that the approach to limiting the places people can smoke is an appropriate way to go; but only as a means to an end, only to get rid of tobacco totally out of the community.

To go down the track that we are going down here would indicate that we have scientific proof to show that environmental tobacco smoke, under the conditions that we have spoken about in the committee, is somehow dangerous. We know that probably the best known scientific data in this area is from the Environmental Protection Agency in the United States, which did, I admit, 30 epidemiological studies that looked at the link between environmental tobacco smoke and lung cancer. They looked at it, as Mr Moore said earlier, in terms of non-smoking women, predominantly, living with smokers. Of the 30 studies, only six showed any statistically significant link. That significant link was that women living with a smoker in six out of the 30 cases had a 1.19 times greater risk of tobacco related illness. I am not underestimating that in the least - I think that is a real risk - but the fact is that what we are talking about here is something totally different. We are talking about environmental tobacco smoke, not in a situation where you are likely to be part of that environment for potentially 24 hours a day or for at least 12 hours a day, seven days a week, for years and years. We are talking about it in a situation where you come and go, where you might be part of it for a couple of hours a day at the most, but potentially for a couple of hours a week. That is what we have in front of us.

We have asked and asked again for the Government to come forward with epidemiological studies to show that there really is a risk here, rather than just the sorts of weasel words we hear regularly from the Government on this issue. In fact, even when you look at the American studies that have been quoted in regard to restaurants, I think the words that I really liked most were in the only bit of American literature I could find, which said that the epidemiological evidence suggested that there may be a 50 per cent increase in cancer risk among food services workers that may be in part attributable to tobacco smoke exposure in the workplace. Quite seriously, nobody worth anything in the scientific community would accept that in the way that the Government seems to accept it. It might be the case; but, before we legislate in an area like this, particularly to ban something, we would need some evidence in front of this Assembly to do so.

So, what the committee did - and these amendments have attempted to do - was go down a track which does take into account that environmental tobacco smoke may be a real health risk.

Mr Berry: The medical profession will be laughing at you.

MRS CARNELL: Look, it may be a problem. What we are accepting at this stage is that there may be a problem. Certainly, tobacco smoking is a problem; we all accept that. What we have done is go down the track of amendments which give smoke-free areas right across the board - not just in restaurants, but in bistros, clubs, casinos, the whole kit and caboodle - if you put in ventilation systems to ensure that the air is as good as external air, as outdoor air. That is the evidence that we have in front of us at the moment, no matter how much you shake your head, Mr Connolly. Put the evidence in front of the committee.

Mr Connolly: You are premising on that standard again.

MRS CARNELL: No, we are not. What I read from ASH is not an answer; it is not a complete solution; it is part of a solution. The major part of the solution is simply not to have people who smoke in the same areas of the establishment as people who do not smoke. That is the obvious approach. Add to that the ventilation standards and, potentially, we have a solution, at least at this stage of scientific evidence, that will achieve the harm minimisation standards that we hope we can achieve in any legislative way. People have rights, and that is something that this Government seems to totally overlook. People have rights; smokers have rights, and non-smokers have rights. It is simply wrong to suggest, for some sort of politically correct reason, that smokers all of a sudden, doing something that is totally legal, have absolutely no rights.

MR BERRY (9.29): Here is the evidence. The US Environmental Protection Agency in a study by Repace and Lowry measured 226 times the accepted level of carcinogens in places ventilated to the equivalent of Australian Standard 1668. Is that enough evidence for you? No, it is not enough for Mrs Carnell.

Mrs Carnell: Where is the cancer risk?

MR BERRY: For cancer it is only 226 times. What a joke! Amongst your health worker peers, Mrs Carnell, you will be laughed at.

Madam Speaker, earlier I made the accusation that the committee attempted to mislead this Assembly in its assessment of ventilation standards. I am going to demonstrate where that, in fact, has occurred. There is the much-vaunted full chapter - a whole chapter, according to Mr Moore - on occupational health and safety. I have to say that that whole chapter consists of two pages in a 45-page report. So, there was a great deal of emphasis on it! The committee relied upon some evidence submitted by the FLAIEU which stated:

In order to reduce the exposure to environmental tobacco smoke in enclosed spaces, it is necessary to provide effective ventilation and filtration systems in the occupied area.

Debate interrupted.

ADJOURNMENT

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

That the Assembly do now adjourn.

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

Question resolved in the negative.

SMOKE-FREE AREAS (ENCLOSED PUBLIC PLACES) BILL 1993

Debate resumed.

MR BERRY: The FLAIEU went on to say:

The increased ventilation and filtration requirements of the 1991 issue of AS1668, part 2, must be considered for existing buildings in order to aid in effectively controlling ETS.

What sort of scientific evidence is that? Without the backing of any scientific input, the committee then went on to adopt that particular approach. The approach is not good enough because, as I said to you a moment ago, there have been measurements of 226 times the accepted level of carcinogens in places ventilated at the equivalent of Australian Standard 1668.

Mr Kaine: Where and how often?

MR BERRY: The United States Environmental Protection Agency, I think, is renowned for its accuracy on these sorts of matters. So, Madam Speaker, we have a situation where the committee has adopted a quality standard related to health which is not applicable. That is clearly the case because Standards Australia said, "We suspect that the risk that environmental tobacco smoke presents may not be eliminated by adherence to 1668 of 1991". That is not mentioned anywhere in the committee's report; yet they immediately seize upon that which was dealt with in Australian Standard 1668. The New South Wales Workcover Authority said that it should be noted that, because of the large number of chemicals in tobacco smoke, there is no internationally acceptable standard which provides specific guidance on passive smoking. But there is one that says that if you ventilate to this standard there will be 226 times the accepted level of carcinogens. I think that is pretty clear.

Mr Stevenson conducted a poll out there in the community. That poll was aimed at those people who might be interested in this matter. He showed me some results of that poll, which I do not recall accurately, but there was a certain percentage of people who wanted a choice. They wanted some smoke-free and smoking areas. From the evidence that I have just put to you, those people who went into a so-called smoke-free area ventilated to Australian Standard 1668 would not be guaranteed to be safe from the effects of those carcinogens which are carried in environmental tobacco smoke.

Mr Moore has made a grave mistake in this area and is leading Australia down the wrong path on this issue. This is a grave mistake. I am sure that the people who responded to Mr Stevenson's poll would mean "no risk" and "some risk"; that is what they would mean. What Mr Moore is guaranteeing by his amendments is that there will be risk locked into some restaurants. In fact, for 90 per cent of them it would be banned. But, for the well-off ones, it would not be banned. There would be a ban in some cases. But those restaurants, et cetera, which could afford ventilation equipment could provide it. The playing field is not level, which is something that business does not want. Of course, the Government's position has always been to provide a level playing field.

Mrs Carnell scuttled her little paddleboat at the outset, when she talked about ASH, because she talked about a letter which referred to the provision of ventilation systems which lead to a smoke-free environment. But what Mr Moore is proposing, of course, is a ventilated area that means that there will be smoking there forever, up 50 per cent in the public area of premises; except in the case of restaurants, which will be up 75 per cent. I can tell you that ASH do not support that approach.

In the proposal that is being supported by Mr Moore before this Assembly we have the likelihood of, according to Mr Moore, a ban in 90 per cent of premises. In the case of non-restaurants, that will mean that 50 per cent of the public area in say 10 per cent of those premises will be covered by Australian Standard 1668, which, I think I have proven, does not provide a safe environment for non-smokers. Certainly, the people that supported that approach in Mr Stevenson's poll would not accept Australian Standard 1668, on the evidence that is provided. In the rest of those premises there will be a ban. In the case of restaurants, 75 per cent of the public area shall remain smoke free. What a joke! This would have to be one of the biggest jokes that I have ever heard - 75 per cent of the public area of a restaurant shall remain smoke free. We have an Australian standard that, as has been measured by other people, leaves dangerous carcinogens in the air. We have this very clear definition, I say tongue in cheek, about what is to occur:

The Minister shall not grant a certificate under paragraph (1)(b) unless -

(a) satisfied that the part of the premises to which the application relates -

(i) is not greater than 50 per cent of the public area of the premises;

(ii) is a clearly defined area ...

We will walk around with chalk and put the mark on the floor. This is the clearly defined area in this premises which has 50 per cent of it covered by Australian Standard 1668. There is no commitment to where the return air ducts, supply air ducts and so on will be - none at all.

Mr Moore: You do not even understand what the standard is about.

MR BERRY: I do understand what the standard is about, but what I have pointed out to you - - -

Mr Moore: You do not. You do not understand how it works. That is what a standard does; it sets out all those things.

MR BERRY: The Australian standard, Mr Moore, does not point out where the 50 per cent of the area will be marked out on the floor with a piece of chalk. That is your definition, and you have not defined it.

Mr Moore: It sets out how the whole area will be ventilated.

MR BERRY: The whole area will be ventilated and, of course, the whole area will be impinged upon by the carcinogen-laden recycled air, according to the US Environmental Protection Agency. So, the people that Mr Stevenson polls will not get their choice. They will think that they get their choice in 10 per cent of premises, but when it is measured by people like the Environmental Protection Agency they will find out that there is 226 times the level of carcinogens allowed. In the case of those premises where the people that Mr Stevenson has polled reckon that there ought to be a choice, there will be a total ban.

My view is that there should be a ban on smoking in restaurants. I think that is supported out there in the community. It ought to be done in accordance with the plans by the Government. The occupational health and safety code which has been issued by the Minister for Industrial Relations will, of course, deal with workplace safety in a far better way than two pages in a 45-page report will. *(Extension of time granted)* I am confident that that approach will work. I am absolutely confident that the approach taken by Mr Moore will not work, because it guarantees locking in smoking in the workplace of employees under this legislation. In 25 per cent of restaurants there can be smoking. The effects of the occupational health and safety legislation in clubs will be 50 per cent.

Mr Moore: Address what you would do about clubs.

MR BERRY: The club industry, of course, will, in accordance with the occupational health and safety requirements, end up being smoke free - not 50 per cent of the clubs; all of them. What you are doing is making sure that you lock in tobacco consumption, not only in the ACT but across the country, because the likes of Philip Morris and all of the other tobacco companies will grab this with both hands and will be selling it not only around Australia but around the world, where efforts are being made to cut out the consumption of tobacco in the interests of public health.

Health workers like Mrs Carnell normally, one would expect, would support the sensible approach that is being taken by the Government: Take the community with us; consult with the community and take them with us. Of course, what Mr Moore has come up with is something that will not please the industry, because it will not be a level playing field. It will not please the patrons; it will not satisfy the people that Mr Stevenson has polled; it will not please - - -

Mr Moore: Will it please ASH?

MR BERRY: No, it will not please ASH, because this locks in the consumption of tobacco, by your admission, in 10 per cent of all premises. There we have it. It is a situation where, if Mr Moore has his way, this Assembly will set a standard which will be adopted by the whole of the country and which will lock in tobacco consumption in a percentage of premises across the country and will be marketed around the world. I would say that they have already grabbed it and would be waving this report around and saying, as I said earlier, "Our Sir Walter Raleigh award goes to Michael Moore and Mrs Carnell. They get the cloak; they get the belt and all the awards for doing this for us. This guarantees us a market for the future". That is all they are interested in.

For my part, I am interested in making a move towards something that means something in terms of public health. Of course, it means taking the community with you. You take the workplaces, in clubs and pubs and restaurants, with you as well, in accordance with the code of practice which has been introduced by my colleague. You do not end up locking in that area where tobacco can be consumed; you do not end up with a situation where the culture of tobacco consumption is endorsed. What the Government has set out to do is assist in reducing the effect of that culture on the public health of our community. I am confident that those experts around the country who believe in this issue think this is the way forward. It is about establishing a culture. You have to involve workers in the workplace; you have to involve clubs which are owned by their members; you have to involve the hotel industry in the process.

The occupational health and safety course was the way to go. The Occupational Health and Safety Council was, of course, widely consulted, and that might explain to you, Mr Moore, why you did not get the code. It had to be dealt with by the council first. The council, of course, is a tripartite body.

Mr Moore: Rubbish! You held onto it. The draft was available, and you would not give it to us.

MR BERRY: It was given to my colleague Mr Lamont. It was a tripartite body involving government, industry and the unions, and I was not going to short-circuit that process. You had already made up your mind that you were going to lock in tobacco consumption in these places, before the committee started. Stop trying to kid us. And so did Mrs Carnell.

Mr Moore: On a point of order, Madam Speaker: That is definitely an imputation of improper motives. If I had done that, I would not have gone through the process of the committee. I think Mr Berry should withdraw that.

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

MR BERRY: Mr Moore had said, prior to the committee's report, that he believed in this approach, and it was ironic that the committee came out and endorsed it.

Mrs Carnell: The majority.

MR BERRY: The majority. My apologies.

Mr Moore: On a point of order, Madam Speaker: I had said nothing of the kind, and I consider that Mr Berry is misleading this Assembly.

MR BERRY: You had expressed sympathy for Mrs Carnell's point of view, and publicly.

Mr Moore: I certainly had not. I think he is misleading the Assembly.

MADAM SPEAKER: Mr Berry, I asked you to withdraw.

MR BERRY: I withdraw any imputation against Mr Moore on this particular subject.

MADAM SPEAKER: Thank you. That is what I understood from your explanation.

MR STEVENSON (9.46): I will just cover some of the results of the survey that we did. Of a total of 879 people surveyed, 627 were non-smokers, 249 were smokers and three did not say.

Mr Connolly: How many did you poll?

MR STEVENSON: We polled 879.

Mr Connolly: That is more than the *Canberra Times* polls.

MR STEVENSON: That is not surprising. Apart from restaurants, we asked about clubs. Forty-seven per cent said that there should be separate smoking areas in clubs, 24 per cent said that smoking in clubs should be banned outright by law, another 24 per cent said that it should be determined by the people running the club, and 3 per cent were informal. There was a fairly dramatic difference between the number of people who felt that smoking in a restaurant should be banned by law - 37 per cent - and the number of people who felt that in a club it should be banned by law - 24 per cent.

MR DE Domenico (9.47): Madam Speaker, I listened very carefully to what Mr Berry had to say. I was trying to find some fibre of logic or commonsense in his argument. Mr Berry said things like this: An individual - - -

Mr Berry: They measured 226 times the accepted level of carcinogens - things like that.

MR DE Domenico: By the way, I note, Madam Speaker, that Mr Berry was heard in silence, because we were listening carefully for the logic in his argument. Listening to Mr Berry in silence, we heard him say, for example, that someone had a right to blow smoke in someone else's face in a bar at the Labor Club. If you blow smoke in someone's face in a bar at the Labor Club, that is fine; but, if you blow the same smoke in the same person's face at Fringe Benefits, it is not all right. That was one point that came out loud and clear from Mr Berry.

Mr Berry also said that Mr Moore and members of the Opposition were trying to enhance the culture of tobacco consumption where the culture of tobacco consumption is endorsed. I am suggesting, Madam Speaker, that what we are trying to do here is the exact opposite of that. The commonsense and logical argument is that it is dangerous to have tobacco smoke blown in your face everywhere - not just in restaurants but in clubs, taverns and casinos. Mr Berry also used the expression "level playing field". For there to be a level playing field, it must be recognised that it is dangerous to have tobacco smoke blown in your face everywhere. What these amendments say is that all places, every single place that we can think of - restaurants, clubs, taverns, casinos - will have certain areas where there will be no tobacco smoke at all. There will also be extraction equipment to Australian Standard 1668 to make sure that, as much as possible, the air quality is just as good as the air quality outside. That will be across the board - restaurants, the casino, clubs, bars, taverns. On the one hand, the Government is suggesting that the only places where it is prepared to act are restaurants. It has adopted this position without consulting the restaurant industry, by the way. The Government has that in mind. One wonders why.

On the other hand, the Opposition and the Independents are saying that the code of practice of Mr Lamont, the new Minister for Industrial Relations, says that by the year 1997, in order to protect the occupational health and safety of workers, all places - restaurants, clubs, hotels, taverns and even the casino - will have certain areas which are totally smoke free. Had Mr Berry dared to consult with the workers, he would have known that that is what the workers want as well. Mr Berry should realise that certain workers happen to enjoy a smoke. In fact, I am aware that Mr Lamont and the Chief Minister happen to enjoy a smoke as well, but what Mr Berry should have done - - -

Mrs Carnell: In their offices.

MR DE Domenico: In their offices, Mrs Carnell says. I do not know, because I would not dare go into the Chief Minister's office, just in case she was smoking.

Mr Kaine: Just sniff the air-conditioning from time to time.

MR DE Domenico: That is right. So, we have the two sides of the argument. Mr Berry is saying that the only place where it appears that the Government is prepared to say that smoking is dangerous is in restaurants. It is all right to puff smoke in a club such as the Canberra Club. I use the Canberra Club as an example because Ms Ellis takes umbrage when I mention the Labor Club. The Government is saying that it is all right to smoke in any club, even the Southern Cross Club, Mr Kaine, or the Italo-Australian Club. It is okay to blow smoke in someone's face at the Italo-Australian Club but not at Fringe Benefits, because then it is dangerous.

What these amendments quite rightly say is that it is dangerous to blow smoke anywhere. They also say that workers have a right to work in areas that are totally smoke free. To make sure that that happens, as a secondary measure we also insist on Australian Standard 1668 air-conditioning. That is to add to the protection of workers in the workplace. That is what this is all about. There is no logic in Mr Berry's argument.

That is not new. There is no commonsense in Mr Berry's argument. That is not new. That is the very reason that Mr Berry is against these amendments, for heaven's sake. We have to learn time and time again that, if Mr Berry is against something because he believes that it is not commonsense, it must be spot on.

MRS CARNELL (Leader of the Opposition) (9.52): Madam Speaker, I would just like to correct something that I said before. I quoted from a letter which I inadvertently said was from ASH to the Minister, but unfortunately it was actually from the Minister to ASH. In it the Minister said that certain standards of ventilation, air-conditioning and exposure to airborne contaminants may form part of an overall approach to reducing workplace contaminants. It was the Minister who said that these ventilation systems may do that, not ASH.

MS SZUTY (9.53): I will speak very briefly, because I think other speakers have basically covered the major points of the debate. I think this issue is actually the major point of the debate, as several speakers, including Mr Moore, have already said. I believe that the structure which the committee which looked at this issue ultimately recommended was not one that Mr Moore would have foreseen in the initial stages. In fact, I do not believe that this issue has been an easy one for Mr Moore to come to terms with at all. I believe that Mr Moore is not in favour of cigarette smoke around his person. He has indicated to this Assembly that he has informed people who visit his home and who travel in his car that he would prefer it if they did not smoke. He has done that for something like 20 years now. That is a long period of time.

Most of the debate has centred on Australian Standard 1668.2 - the ventilation standard which has been talked about by a number of speakers in this Assembly today. My review of the evidence indicates that that standard is disputed. That is the way that I would prefer to refer to it. A number of bodies have commented that they do not believe that the ventilation standard is adequate. A number of other very eminent people believe that it is. The ventilation standard is a standard. It may not be the best standard, but it is a standard which I believe can be referred to on this issue.

Mr Moore: It is one that will change.

MS SZUTY: Mr Moore has just interjected that he believes that it is a standard that will change. That was the very point that I was going to make next. Australian standards, I believe, are there to be reviewed. This standard will be reviewed, if not in the long term then certainly in the short term. I believe that this debate has, in fact, brought forward a review of that Australian standard on ventilation.

I support Mr Moore's amendments at this stage of the debate. However, I indicate to the Assembly that, if it can be shown categorically to me at some stage in the future that that Australian ventilation standard is not satisfactory as a measure with regard to environmental tobacco smoke, then I will reconsider my position. I take on board the comment that Mr Moore made earlier that no sound epidemiological study to date provides categorical evidence in relation to the damage of environmental tobacco smoke. I think that is an important point.

Mr Connolly, in his remarks, indicated that we do not know what a safe level of exposure to environmental tobacco smoke is. That is really the nub of the debate. We do not know. It is an area that I think we are going to revisit many times in the future. I think the committee's recommendations as regards the way to go in the near future are appropriate.

Mr Berry made some fairly curious remarks towards the end of his statement, asking whether we, as the ACT Legislative Assembly, are going to permit smoking forever. I thought that that was a very intriguing comment. This Assembly obviously reviews issues from time to time. When we pass legislation, I do not think any of us have the view that it is set in concrete forever. Certainly, I do not believe that we are endorsing the culture of tobacco consumption. If we were doing that, we would be looking forward to an eventual total ban on cigarette smoking in our community.

The Assembly has already indicated, by 16 votes to one, that we support this Bill in principle. We have disagreed with the methods by which the Government has gone about bringing the Bill into effect. I think the situation with regard to licensed premises bears that point out conclusively. Smoking in licensed premises is an issue that the Government was not prepared to tackle.

MR CORNWELL (9.57): Madam Speaker, I rise briefly to thank Mr Lamont for correcting an error that I made earlier this evening with reference to ACTION bus drivers. I am delighted to hear from Mr Lamont that the bus drivers have been pulled into line after years of getting away with transgressions of the anti-smoking law. I understand that Mr Lamont's edict came into force in August, last month. I welcome it, if only upon the basis of consistency. I trust, Mr Lamont, that this can be enforced either by you as Minister for Industrial Relations - - -

Ms Ellis: What are you suggesting?

MR CORNWELL: These are government employees, Ms Ellis, and I trust that the agreement can be and will be enforced and will be adhered to. If Mr Lamont does not seek to enforce it, I am sure that his colleague Mr Berry will, because I have not heard from any member such enthusiasm as I heard from Mr Berry since listening to some rather scratchy records of the Nuremburg rallies.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (9.58): Madam Speaker, I rise predominantly to address one issue - the question raised by Ms Szuty in relation to the technical implications of the clean air standard. If I misquote you, Ms Szuty, please correct me; but I understood you to say that, if you can be shown that that standard does not provide for adequate protection of employees and/or patrons, you will reconsider your vote. Does that mean that you will change your vote, or does that just mean that you will reconsider it? That is the question which I suggest that you should consider before you vote on this matter tonight.

If what you are saying is that you are convinced at this stage that the technical specifications of the clean air standard will provide an adequate level of safety and that as a result you will vote for these amendments, I would take the natural corollary of that to be that if it were demonstrated conclusively and beyond refutation that it will not - and that is the suggestion put forward by my colleague Mr Berry in relation to the dispersion and circulation of carcinogens within an enclosed environment through air-conditioning that would meet this standard - you would change your vote if this matter were again brought before the Assembly for determination.

I think that really is where this debate begins and ends. We can talk about the political point scoring - you said this; I said that - but that, after all, is the basis upon which the Assembly committee made its recommendation. The majority of the members of the Assembly committee believed that this standard was sufficient to afford a proper level of protection.

Mr Moore: Where does it say that?

MR LAMONT: I am not disputing that, Mr Moore. I am quite confident that the majority of the members of the committee reasonably believed that. That is the basis upon which, most certainly, one member of this Assembly has determined to judge their vote and cast their vote. I think it needs to be accepted also, Mr Moore, that, if that can be satisfactorily refuted, then this Assembly must again visit this issue. If that is the determinant for votes in support of tonight's amendments, then it must also be the determinant for changing tonight's vote. That really is the test that as an Assembly we have now set ourselves.

I personally do not believe that that is satisfactory to the industry. We are basing these amendments on something that is the subject of varying interpretation, something that has not been accepted by any occupational health and safety organisation in this country. We are basically basing our views on that. So, on the one hand - - -

Mr Moore: That is not true.

MR LAMONT: Mr Moore, I heard you in reasonable silence.

Mr Moore: Yes, but I said things that were true.

MADAM SPEAKER: Order, Mr Moore!

Mr Moore: I withdraw, Madam Speaker.

MR LAMONT: Mr Moore, I am not trying either to provoke you or to belittle your argument, but I am trying to understand it. This is a substantial sensitive matter within our community. I think everybody in this chamber acknowledges that. I am expected to vote tonight on amendments to the Government's Bill when the rationale for those amendments, I believe, will mean that this matter will be revisited by the Assembly in a very short period of time. I do not believe that that can give any comfort at all to the

hospitality industry. After tonight, it will be able to say, "We have got the piece of legislation through. We have got the amendments through. Level or not, this is the playing field. This is the known outcome". But, quite clearly, they have to understand that, with the change of one vote in this Assembly, that could all be turned on its head.

I remember the club industry in particular and the Hotels Association mounting a quite successful vigorous campaign publicly and within its membership, as it had a legitimate right to do, about this issue, saying that they wanted to have certainty; that they wanted a result that applied equally across the industry, that did not commercially disadvantage anybody within the industry or that did not disadvantage one part of the industry as against another part of the industry. That is not what they are getting with this range of amendments, because Ms Szuty has quite clearly said that the fundamental position that she has adopted is based on a conviction that the information is the be-all and end-all; that it represents an accurate assessment of this standard. I quite deliberately wrote down Ms Szuty's words. She said, "I will reconsider my vote, my position, if it can be demonstrated that this standard does not achieve what it is alleged that it will". We have heard all ready - - -

Mr Kaine: In that case we will have to get the standard replaced, will we not?

MR LAMONT: Is that not interesting? I heard from Mr Kaine - and I need to get this on the record - "Then we will change the standard".

Mr Kaine: If the standard does not achieve what you are claiming for it, you change the standard. You change it if it is not good enough.

MR LAMONT: Mr Kaine is saying, "We recognise now that we are not going to achieve what we have set out to achieve here tonight; so in five years' time, when the standard changes, we will change too". That is the reality of it. The logic of it, Mr De Domenico, is quite clear.

In listening to the debate, I understood Ms Szuty to say - I repeat it - that, if this standard does not achieve the clean air quality necessary or deemed acceptable, then she will change her vote. I believe that it is technically feasible to demonstrate that it is not acceptable.

Mr Kaine: Why have you not demonstrated it?

MR LAMONT: Because I had not realised that Ms Szuty was prepared, in those circumstances, to change her vote. But I also say that it has been acknowledged by me in this chamber, as the Minister responsible for occupational health and safety in the ACT and as the Minister who introduced into this Assembly the code that I provided to the committee at the first opportunity, that my council has strong concerns about the ability of this standard to deliver the outcome that people are attesting to.

Ms Szuty, as a member of the Government, I look forward to assisting you to bring this matter on for further debate and/or rescission, because it is obvious that there are enough votes on the floor of the chamber tonight to pass the amendments as proposed. I look forward to assisting you to revoke these amendments in a very short space of time.

MS SZUTY (10.08): Madam Speaker, I will respond very briefly to the issues that Mr Lamont has raised. I listened to Mr Berry when he quoted the study on exposure to carcinogens that people experience when they are exposed to environmental tobacco smoke, but ultimately we do not know what the effects are. I do not think any epidemiological studies have been done which come to any sort of conclusive position on that particular matter.

As regards reconsidering my vote, if I were going to change my vote on any particular issue I would reconsider the issue as it was presented to me at the time. As far as I am concerned, those two things go together. If I am going to change my vote, then I am obviously going to reconsider the issue at the time. That, to me, is self-evident. I made my decision on Mr Moore's amendments on the basis of the recommendations that the Committee on Conservation, Heritage and Environment made on the evidence which was presented to the members of that committee. I have no difficulty with relying on that evidence.

Obviously, if the Assembly revisits the issue, it will be the Assembly which will be voting again on the issue and not only I. It would be up to every member of this Assembly to reconsider the issue. As far as the timeframe for any reconsideration of the issue goes, I take the point that Mr Kaine made in an interjection in response to Mr Lamont's remarks. Already Australian Standard 1668.2 could be under reconsideration in the light of the decisions that this Assembly is making. As far as the industry's needs and the industry's wish for certainty in the future are concerned, obviously any decisions that this Assembly makes are certain for a period of time until they are retested. There have been many occasions when issues have come before this Assembly to be reconsidered by the Assembly. In fact, the move-on powers are one such instance which comes to mind.

MR MOORE (10.10): Madam Speaker, a number of speakers, in particular the Minister and Mr Berry, have said that the crux of this matter is Australian Standard 1668.2. Madam Speaker, that is not how I presented my arguments, nor is it how the committee presented its argument. The crux of this matter is harm minimisation. It is developing a policy which encourages people not to smoke. It is developing a policy which protects some people from the harmful impact of cigarette smoke from others.

In attempting to knock off the argument about Australian Standard 1668.2, Mr Berry quoted a James Repace study which found that under Australian Standard 1668.2 there could be 226 times the safe level of carcinogens. This is an American study. An Australian standard is an Australian standard. Madam Speaker, the two are different. I presume that what Mr Berry was talking about was 226 times the level set down in the American Society of Heating, Refrigeration and Air-Conditioning Engineers Standard 62 - ASHRAE Standard 62. I presume that that is what the James Repace study was based on. Some extrapolation could be drawn from that standard because the Australian standard, as was identified in our committee report, took as its starting point ASHRAE Standard 62. But to say that you can just draw directly from that is ridiculous.

Madam Speaker, in fact I spoke on the phone to James Repace when he was in Washington. He is part of the US Environmental Protection Agency. I asked him what he based his concept of a safe level on. I am almost positive that I referred to that in my in-principle speech. Madam Speaker, the safe level was one that he chose himself. He picked it out of the blue. So, to actually talk about something being 226 times the safe level is to talk about what he considers is a safe level. This is at the centre of the whole range of evidence that was presented to us.

Mr Berry: But Michael Moore knows better.

MR MOORE: I hear an interjection, so I will give you the chance. What about all these carcinogens and so forth that are part of the tobacco smoke? Madam Speaker, I have never attempted to debate whether or not there are a whole series of carcinogens associated with tobacco smoke, any more than I would argue about the number of carcinogens associated with exhaust emissions from a motor vehicle. They are quite numerous; there is no doubt about that. But we also know that some people who are exposed to passive smoking over some time do not wind up with normal smoking associated diseases. So we know that somewhere in between there is a dose level response. I went through that earlier - if you were listening.

Madam Speaker, we also know that people who looked very carefully at this committee report did not have the response of the National Executive of the AMA - a different response, I might say, from that of the local AMA, which did look at the report carefully. They did not have the response of the Heart Foundation or that of the Cancer Society which Mr Connolly quoted. Those people, I believe, did not read carefully what we were proposing and did not understand what we were proposing. Madam Speaker, ASH did. ASH's view is contrary to what Mr Berry said earlier tonight. I said to him, "What do you think ASH would say about it?". Mr Berry confidently said, "ASH would object". Let me read from a letter from ASH to me headed "Smokefree Public Places":

My personal compliments to you on *Clearing the Air* and the eminently workable proposals - with which I am in substantial agreement - for implementation of the Act. I enjoyed your presentation speech and indeed the whole debate.

Madam Speaker, that letter is on ASH letterhead. It is signed by Geraldine Spencer, the editor of "Ashes to Dust". Indeed, Madam Speaker, it has not been contradicted since. So, where people actually understand what we are doing - - -

Mr Berry: It will be soon when ASH get hold of it.

MR MOORE: I hear the Labor Party attempting now to influence ASH. It makes you wonder how the letters got there.

Madam Speaker, let me also point out that last week I had a phone call from one of the societies in New South Wales - I will not nominate the particular society - that Mr Connolly referred to. They were intending to put out a press release along the same lines as we saw, saying that what we are doing is terrible and that we should support the original Bill. When I explained exactly what was in the Bill and also read from that letter, we then had an entirely different view and there was no press release.

Mr Connolly: It was not the Cancer Council, because they put out the press release.

MR MOORE: Mr Connolly says it, so it may well be the case. I would be delighted to have a look.

Madam Speaker, let me go back through a couple of things. This whole notion of 226 times the safe level is simply nonsense. Mr Connolly quoted a whole series of secondary sources. If he went back into a bit of his academic experience, he would realise the inadequacy of that, Madam Speaker. Those sources have a role, but go back to your primary sources and check your information. We put our effort into doing that in the committee report and came up with our result. Mr Connolly constantly talks about a comfort level. I refer him back to the committee report, where the person who developed Australian Standard 1668.2, Mr West, is quoted as saying:

This Standard would not address comfort but confine itself to health.

That was indeed an influencing factor, but it was not the most critical factor. The Government turned this debate to Australian Standard 1668.2 because that is where they finally think they have a grasp and because they do not want to deal with the real population health issues that we are dealing with. They want to support the failed Minister who sits now on the back bench, where he belongs.

Question put:

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

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.

Clause, as amended, agreed to.

Clause 4 agreed to.

Proposed new clause 4A

Amendment (by Mr Connolly) proposed:

That the following new clause be inserted in the Bill:

Smoke-free areas

"4A. (1) Smoking is prohibited in an enclosed public place.

(2) Without limiting the generality of subsection (1), smoking is prohibited in any part of premises or a place of a kind described in Part I of the Schedule that is an enclosed public place (irrespective of the name by which the particular premises or place is known).

(3) Subsections (1) and (2) do not apply in relation to -

(a) a part of premises of a kind specified in Part II of the Schedule at the times or in the circumstances so specified in relation to that part; or

(b) a prescribed enclosed public place at the times or in the circumstances prescribed in relation to that place.

(4) Regulations made for the purposes of paragraph (3)(b) take effect -

(a) at the expiration of 90 days after the day on which they are notified in the *Gazette*; or

(b) as provided in the regulations;

whichever is later.".

Amendment (by Mr Moore) agreed to:

That the following new sub-section be inserted in the proposed new clause:

"(2A) Sub-sections (1) and (2) do not apply to a restaurant or part of a licensed premises in respect of which a certificate of exemption has been granted under section 4D to the extent that the certificate exempts the restaurant or part from the operation of those subsections.".

Amendment (Mr Connolly's), as amended, agreed to.

Proposed new clauses 4B, 4C, 4D, 4E and 4F

Amendment (by Mr Moore) agreed to:

That the following new clauses be inserted in the Bill:

Register

"4B. The Minister shall establish and maintain a register to be known as the Register of Exempted Premises.".

Applications for certificate of exemption

"4C. (1) The occupier of a restaurant or licensed premises may apply for a certificate of exemption in respect of the restaurant or a specified part of the licensed premises.

(2) An application under subsection (1) shall be -

(a) in a form approved by the Minister; and

(b) accompanied by the fee determined by the Minister by notice in writing.".

Grant of certificate

"4D. (1) On receiving an application in accordance with section 4C and subject to this section, the Minister shall -

(a) if the application relates to a restaurant - grant a certificate for the restaurant; or

(b) if the application relates to part of licensed premises - grant a certificate of exemption for that part.

(2) The Minister shall not grant a certificate under paragraph (1)(a) unless -

(a) satisfied that the restaurant to which the application relates is fitted with air cleaning equipment capable of maintaining air quality in accordance with Australian Standard 1668.2; and

(b) the occupier agrees to allow inspectors to -

(i) regularly inspect the air cleaning equipment; and

(ii) monitor air quality within the premises.

(3) The Minister shall not grant a certificate under paragraph (1)(b) unless -

(a) satisfied that the part of the premises to which the application relates -

(i) is not greater than 50% of the public area of the premises;

(ii) is a clearly defined area; and

(iii) is fitted with air cleaning equipment capable of maintaining air quality in accordance with Australian Standard 1668.2; and

(b) the occupier agrees to allow inspectors to -

(i) regularly check the air cleaning equipment; and

(ii) monitor air quality within the premises.

(4) Where the Minister grants a certificate of exemption under this section he or she shall enter the details of the exemption in the register.".

Conditions of certificate of exemption

"4E. The conditions of a certificate of exemption are as follows:

(a) the premises exempted under the certificate shall at all times be fitted with air cleaning equipment capable of maintaining air quality in accordance with Australian Standard 1668.2;

(b) air quality in the premises shall comply with Australian Standard 1668.2;

(c) inspectors are allowed to -

(i) regularly inspect air cleaning equipment on the premises; and

(ii) monitor the air quality within the premises;

(d) if the certificate relates to a restaurant - not less than 75% of the public area of the restaurant shall remain smoke-free.".

Revocation of certificate of exemption

"4F. (1) The Minister may revoke a certificate of exemption if satisfied on reasonable grounds that -

(a) the occupier to whom the certificate was granted has not complied, or is not complying, with a condition of the certificate; or

(b) the premises to which the certificate relates do not comply with a condition of the certificate.

(2) Where a certificate is revoked under subsection (1), that revocation takes effect on the day on which the occupier granted the certificate is given notice of the revocation in accordance with paragraph 11A(b).

(3) Where a certificate of exemption is revoked, the Minister shall amend the register accordingly.".

Clause 5 negatived.

Clauses 6 and 7, by leave, taken together, and agreed to.

Clause 8

Amendment (by Mr Moore) proposed:

Page 3, line 30 to page 4, line 2, subclause (1), omit the subclause, substitute the following subclause:

"(1) A person shall not smoke in an enclosed public place if smoking in that place is prohibited by subsection 4A(1).".

Amendment (by Mr Connolly) agreed to:

After "4A(1)" add "or (2)".

Amendment (Mr Moore's), as amended, agreed to.

Clause, as amended, agreed to.

Clause 9

Amendment (by Mr Connolly) agreed to:

Page 4, subclause (2), lines 18 to 32, omit the subclause, substitute the following subclause:

"(2) It is a defence to a prosecution under subsection (1) if the defendant establishes that he or she did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention of subsection 8(1) occurred and that -

(a) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

(b) he or she -

(i) requested the person contravening to stop smoking; and

(ii) informed the person that the person was committing an offence.".

Amendment (by Mr Connolly) agreed to:

Page 4, subclause (3), lines 24 and 25, omit "in respect of which a declaration under subsection 5(1) is in force".

Amendment (by Mr Connolly) agreed to:

Page 4, line 30, add the following subclause:

"(4) Where -

(a) smoking is prohibited in a part of an enclosed public place; and

(b) smoking is not prohibited in another part of that place;

the occupier of that place shall not, without reasonable excuse, fail to take reasonable steps to prevent smoke from the first-mentioned part from penetrating the other part.

Penalty:

(a) if the offender is a natural person - $1,000;

(b) if the offender is a body corporate - $5,000.".

Clause, as amended, agreed to.

Clauses 10 and 11, by leave, taken together, and agreed to.

Proposed new clauses 11A, 11B and 11C

Amendment (by Mr Moore) agreed to:

That the following new clauses be inserted in the Bill:

Notice of decision

"11A. Where the Minister makes a decision -

(a) under subsection 4D(1) to refuse to grant a certificate of exemption applied for; or

(b) under subsection 4F(1) to revoke a certificate;

he or she shall give notice in writing of the decision to the applicant or the occupier who was granted the certificate (as the case may be).".

Contents of notice

"11B. (1) Before the prescribed date, a notice under section 11A shall -

(a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and

(b) except where subsection 26(11) of that Act applies - include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

(2) The validity of a decision referred to in section 11A shall not be taken to have been affected by a failure to comply with subsection (1).

(3) On or after the prescribed date, a notice under section 11A shall be in accordance with the requirements of the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.

(4) In this section -

'prescribed date' means the day on which section 9 of the *Administrative Appeals Tribunal (Amendment) Act (No. 2) 1994* commences.".

Review by Tribunal

"11C. Application may be made to the Tribunal for a review of a decision referred to in section 11A.".

Clause 12 agreed to.

Proposed new clause 13

Amendment (by Mr Moore) agreed to:

That the following new clause be added to the Bill:

Transitional

"13. (1) Section 4A does not apply to a restaurant or licensed premises during the prescribed period.

(2) The occupier of a restaurant or licensed premises shall ensure that, during the prescribed period, smoking is not permitted in at least 50% of the public area of the restaurant or premises.

Penalty:

(a) if the offender is a natural person - $1,000;

(b) if the offender is a body corporate - $5,000.

(3) In this section -

"prescribed period" means -

(a) in relation to a restaurant - 12 months commencing on the day on which section 4A commences; or

(b) in relation to licensed premises - 2 years and 6 months commencing on the day on which section 4A commences.".

Proposed new Schedule

Amendment (by Mr Connolly) agreed to:

That the following schedule be added to the Bill:

"SCHEDULE Section 4A

Part I - EXAMPLES OF PREMISES OR PLACES IN **THE PUBLIC** PARTS OF WHICH SMOKING IS PROHIBITED

1. shopping centres, malls and plazas

2. restaurants, cafeterias and other eating places

3. clubs

4. schools, colleges and universities

5. professional, trade, commercial and other business premises

6. community centres or halls and places of worship

7. theatres, cinemas, libraries and galleries

8. omnibuses, taxis and boats

9. hostels, nursing homes and other multi-unit residential premises

10. hotels and motels

11. sporting and recreational facilities

Part II - PLACES EXEMPTED AT CERTAIN TIMES OR IN CERTAIN CIRCUMSTANCES

PlaceTime or circumstance 1.A part of premises licensed under the Liquor Act 1975if it is being primarily used for serving or consuming alcoholic beverages2.A part of premises licensed under the Gaming Machine Act 1987if it is primarily used for playing gaming machines 3.A part of premises licensed under the Casino Control Act 1988if it is primarily used for gaming4.A stage or performance area (other than an area that includes members of the public)if the smoking is by a performer during a performance5.A common area of a hotel, motel, hostel, nursing home or other multiple-unit residential premises (other than a lobby, hall, stairway, elevator or dining area)if a similar area of a comparable standard in which smoking is not permitted is providedTitle agreed to.Bill, as amended, agreed to.

ADJOURNMENT

Motion (by Ms Follett) agreed to:That the Assembly do now adjourn.

Assembly adjourned at 10.29 pm

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ANSWERS TO QUESTIONS

MINISTER FOR THE ENVIRONMENT, LAND AND PLUG
LEGISLATIVE ASSEMBLY QUESTION
QUESTION NO 1335

Better Cities Program

Mr Cornwell - asked the Minister for the Environment, Land and Planning -

(1) In the last three financial years, by year, how much has been spent in the ACT on Better Cities funding.

(2) In the last three years, by year, what have been the projects and the amount of Better Cities funds spent on each project.

(3) How much (a) is expected will be spent in this financial year on Better Cities projects and (b) is anticipated to be allocated to each project by name.

Mr Wood - the answer to the Member's question is as follows:

(1), (2) and (3) - The information sought is provided in the following table which provides details as at the most recent (July 1994) evaluation of the ACT program. The ACT did not commence the Better Cities Program until December 1992.

Electronic copy of this page is not available but it is included in the printed Hansard.

MINISTER FOR THE ENVIRONMENT, LAND AND PLANNING
LEGISLATIVE ASSEMBLY QUESTION
QUESTION No 1375

Non-Residential Leases

Mr Cornwell - Asked the Minister for the Environment, Land and Planning - In relation to non-residential leases in the ACT -

(1) From 1 January 1993 to 13 August 1994 (a) how many applications to split leases, but retain original land usage, have been received by your Department and (b) how many applications to split leases, and also change the purpose clause to at least one of the smaller leases, have been received by your Department.
(2) How many such applications at 1 (a) and (b) have been approved.
(3) What process is involved in gaining approval to split a lease.
(4) What criteria are used in assessing such an application.
(5 What costs are borne by the original lessee of the full block.
(6) What costs are borne by the eventual lessees of the smaller blocks if they gain title to the lease (a) before re-development or (b) after redevelopment.

(7) What is the gain to the Government in the event of a block being divided; is betterment paid in such circumstances, and if so, by whom or if not, why not.

(8) How does this compare to the possible gain to Government if such land "surplus to requirement of the original lessee" were required to be passed back to Government for sale on the open market.

Mr Wood - the answers to the Member's questions are as follows:

(1) A total of eight applications to subdivide leases, other than residential leases, were lodged between 1 January 1993 and 13 August 1994. Four of those required a purpose clause variation, two retained the existing use and two apportioned it within the resulting blocks.

(2) Of the eight applications received only four have been approved - one for subdivision only and three for subdivision and purpose clause variation. Three are still under consideration and one was withdrawn.

(3) The process is as for other lease variations and is set out in Part VI of the Land (Planning and Environment) Act 1991.

(4) The criteria are set out in the Land (Planning and Environment) Act 1991 and the Territory Plan.

(5) All costs are borne by the lessee of the block.

(6) As I mentioned earlier all costs are borne by the lessee of the block. These costs may be passed onto transferees, but this is not a matter within the control of the Department.

(7) Yes, betterment is payable by the lessee.

(8) It is not possible to compel a lessee to pass back or surrender his or her lease or part of it. It is not possible to draw a general conclusion as to the value of any "surplus" land as it would depend on individual factors. The Land (Planning and Environment) Act grants entitlements to lessees to make application to vary leases and to subdivide and consolidate leases. This assumes that the Government will not seek to acquire the land unless it has a particular use for it. This principle is supported in the recently promulgated Land Acquisition Act. This Act was passed with the full support of the Assembly. The Land (Planning and Environment) Act, the Land Acquisition Act and the leasing policies are directed to providing certainty and security for leaseholders and to protect lessees from inequitable expropriation of land by Government.

MINISTER FOR THE ENVIRONMENT, LAND AND PLANNING

LEGISLATIVE ASSEMBLY QUESTION

QUESTION NO 1381

Territory Plan - Variations

Mr Cornwell - asked the Minister for the Environment, Land and Planning in relation to variations to the Territory Plan

(1) How many variations have been approved and what are the details of these variations.

(2) How many variations were at the behest of (a) developers and (b) local residents.

Mr Wood - the answer to the Member's question is as follows:

(1) Nineteen variations to the Territory Plan have been approved. These are:

Variation Number	Description of area	Date of commencement
1 (C)	Correction of formal errors	18 October 1993
2 (D)	Defined land - Nicholls	18 October 1993
3 (D)	Defined land - Ngunnawal	18 October 1993
4 (T)	Richardson S450 B1 Tuggeranong Homestead	14 March 1994
5 (T)	North Watson	14 March 1994
6 (L)	Kingston S25 B4, 5 and 6 Residential development of carpark	14 March 1994
7 (L)	Kambah S7 B11 (Part) Gleneagles Estate	25 February 1994
9 (L)	Fyshwick S30 B15 Market Cellars	20 May 1994
10 (D)	Defined Land - Ngunnawal	8 February 1994
11 (L)	Kaleen S117 B20 (Part) Bocce Club	11 May 1994
12 (T)	Lyons S41 B1 (Part) Part Lyons Primary School	14 March 1994
15 (T)	Mulligans Flat	20 May 1994
16 (L)	Griffith S18 B4 Easts Rugby Union Club	20 May 1994
17 (L)	Kambah U-Stow-It	29 August 1994
18 (D)	Defined Land Ngunnawal	22 April 1994

20 (D)	Defined Land Ngunnawal	13 July 1994
21 (D)	Dunlop - Defined Land	29 July 1994
22 (D)	Amaroo - Defined Land	22 August 1994
25 (D)	Nicholls - Defined Land	29 August 1994

(2) All of these variations were initiated by the ACT Planning Authority. Six of them involved leased
land and required the support of the lessee before processing by ACTPA, eight involved Defined Land, four involved Territory Land, and one was the correction of formal errors. The variations listed are identified as follows:

(L) - Leased Land
(D) - Defined Land
(T) - Territory Land
(C) - Correction of Formal Errors