DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

21 September 1994

Wednesday, 21 September 1994

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

PETITION

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

By Mrs Carnell, from 2,030 residents, requesting that the Assembly allow the establishment of a paediatric ward at Calvary Hospital.

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

Calvary Hospital - Paediatric Ward

The petition read as follows:

To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory.

The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly:

that the 20,000 children of Belconnen and North Canberra are not properly provided with hospital services.

Your petitioners therefore request the Assembly to:

allow the establishment of a Paediatric Ward at Calvary Hospital.

Petition received.

MEDICAL TREATMENT BILL 1994

Debate resumed from 14 September 1994, on motion by Mr Moore:

That this Bill be agreed to in principle.

MR STEVENSON (10.33): As I mentioned last week, the Bill could be better called the no medical treatment Bill than the Medical Treatment Bill. There is no doubt that there are many people who feel that this Bill is the thin end of the needle for the introduction of far greater laws for euthanasia. There was a quote that I saw in one of the documents sent to me. It was a statement made in 1984 by a speaker at an international euthanasia convention. It said:

If we can get people to accept the removal of all treatment and care - especially the removal of food and fluids - they will see what a painful way this is to die, and then, in the patient's best interest, they will accept the lethal injection.

There are a number of concerns that I have with the Bill. I mentioned one briefly last week. It was to do with the definition of medical treatment. It talks about the carrying out of an operation, the administration of a drug or the carrying out of any other medical procedure. This term "any other medical procedure" is one we need to look at closely.

In an evaluation of the Bill, Rita Marker says that the Bill defines medical treatment to include the carrying out of any other medical procedure yet fails to define what is meant by "medical procedure". That, of course, is correct. She says:

It may be of interest to the Legislative Assembly that the meaning of "medical procedure", or "medical intervention", has been interpreted in the United States as meaning any procedure which a physician would provide, perform or authorise. So broad is this meaning that, in one court case related to the removal of food and water from a non-terminally ill patient, an expert witness explained that, since he authorises the menus for convalescent home patients, all food consumed by the patients - even that which they eat from their dinner trays - constitutes "medical treatment".

(Extension of time granted) That was from a transcript of testimony in McConnell v. Beverly Enterprises, No. 0293888-8, Superior Court of Connecticut, 15 June 1988. Rita Marker goes on to say, in section B:

The Bill further defines "palliative care" to include the "reasonable" provision of food and water. Nowhere does it clarify what constitutes (or who would determine) what is "reasonable". The ambiguous nature of such words could give rise to a situation where a care giver would consider spoonfeeding a troublesome 90-year-old patient to be an unreasonable use of time and effort.

This may not be the intent of the Bill, but its content would permit such discriminatory decisions.

She goes on to say, in section C:

While the Bill may be assumed to have effect only when a person is gravely ill, there is, in fact, nothing in the measure which so states. Any person who may be (or may fear becoming) dependent due to age or disability would presumably be eligible for denial of such "medical treatment" as food, water, insulin, antibiotics, or even simple first aid.

Though I think we would agree that some of these things would seem unlikely in the extreme, let us look at some of the analysis of the Remmelink report. It was reported as saying:

. 2,300 people died as the result of doctors killing them upon request (active, voluntary euthanasia).

. 400 people died as a result of doctors providing them with the means to kill themselves (physician-assisted suicide).

. 1,040 people (an average of 3 per day) died from involuntary euthanasia, meaning that doctors actively killed these patients without the patient's knowledge or consent.

At small dot points below that this report says:

. 14 per cent of these patients were fully competent.

. 72 per cent had never given any indication that they would want their lives terminated.

. In 8 per cent of the cases, doctors performed involuntary euthanasia despite the fact that they believed alternative options were still possible.

Mr Moore: Whose analysis are you quoting?

MR STEVENSON: Rita Marker's. It is from *Euthanasia Practice in Holland*, page 2, provided by the International Anti-Euthanasia Task Force. When I heard Rita Marker speak in Canberra I found it to be one of the most compelling and reasonable analyses of any argument that I had ever come across. She goes on to say at another major dot point:

. In addition, 8,100 patients died as a result of doctors deliberately giving them overdoses of pain medication, not for the primary purpose of controlling pain, but to hasten the patient's death. In 61 per cent of these cases (4,941 patients), the intentional overdose was given without the patient's consent.

. According to the Remmelink Report, Dutch physicians deliberately and intentionally ended the lives of 11,840 people by lethal overdoses or injections - a figure which accounts for 9.1 per cent of the annual overall death rate of 130,000 per year. The majority of all euthanasia deaths in Holland are involuntary deaths.

That brings me back to some of the concerns I have about the Bill. Rita Marker brings up a perfectly valid point about there being no definition of "any other medical procedure". I could well understand that that could be held to be the things that she suggests. It could well be that we are simply talking about conjecture either way. As for the provision of reasonable medical and nursing procedures for the relief of pain, suffering and discomfort under "palliative care", I think there would be some cases where it could be ruled that it was unreasonable to be expected to handfeed someone all the time. As I mentioned last week, there is some contradiction between the definitions of "medical treatment" and "palliative care".

Clause 6 of the Bill refers to a person who is of sound mind. What is the definition of "sound mind", and who decides whether my mind is sound or not? I have heard every member in this Assembly at one time or another say that the other members of the Assembly are not of sound mind, or words to that effect. When it comes to oral directions, that is simply determined by health professionals who would state that the patient told them certain things. Turning to clause 21, we should understand the protection for doctors and nurses, provided that they do something in good faith. That removes the right of action for a member of the family or the person themselves. We surveyed a question on this Bill. The question was:

Should someone be able to refuse medical treatment (an operation, drug or any other medical procedure) even if it was considered vital to support their life?

We surveyed 406 people; and 69.7 per cent said "Yes", 20.44 per cent said "No", and 9.85 per cent said that they were not sure.

I want to go on to some more of the points that Rita Marker brought up. She said that one of the highlights was the lethal intent of clause 22. She said:

The wording of Clause 22 and the omission of important elements in discussing pain relief appear to contain the key to the reason for this Bill.

Certainly treatment to relieve pain and other symptoms of disease should be given so that the patient may live more comfortably. However, Clause 22 makes no attempt to clarify what is meant by "maximum relief" -

I believe that this is the vital point -

nor does it differentiate between physical and emotional pain. Furthermore, it does not state that a health professional may not directly and intentionally end the patient's life.

While it is true that, in rare cases, attempts to control pain may result in shortening the life of a patient, that is not at issue in Clause 22. It is well recognised that many legitimate medical interventions carry risks of death. However, the purpose of these interventions is not to induce death.

The wording of Clause 22 would allow a doctor or nurse to act with the intention of killing the patient as long as the health professional contended that the intent was to relieve pain or suffering. This, in fact, endorses the killing of patients as a means of ending their suffering. Current legal prohibitions against mercy killings would be rendered inoperative as is clearly evidenced by the words "Notwithstanding the provisions of any other law of the Territory".

As I said, I have some serious concerns with the Bill, as I know some other members do. She goes on to say:

In the Netherlands, as well, physicians acknowledge giving intentional overdoses of pain medication to patients. According to an official Dutch Government report, 8,100 patients die annually of intentional overdose of pain medication. Physicians have clearly admitted that the amount of medication administered has been given with the purpose of killing the patient.

MR MOORE (10.44), in reply: Madam Speaker, in starting my speech I would like to clarify something that I have said in the Assembly and publicly with reference to the position of Bishop Power on this Bill. The committee did write to Bishop Power and we did get a letter from the Australian Catholic Bishops Conference. That is whom Bishop Power was representing. Getting this letter out of archives took me some time, but I now have it and I would like to share with members the first paragraph. It says:

Dear Mr Moore,

Bishop Power, who is out of Canberra for a short time, has passed to me copies of your letter of 25 February and the confidential draft Medical Treatment Bill 1994.

It then goes on to say:

Given that the Bill is confidential, and that comment is requested within a very short time, I presume that the following comments will be treated with equal confidentiality.

That will continue to be done. It was signed by Dr Warwick Neville, who appeared on behalf of the Australian Catholic Bishops Conference with Bishop Power in front of the committee. In fact it was a delegated responsibility. It was not Bishop Power who made the comments to the committee. I apologise for the extent to which that may have been misleading or has caused the bishop some discomfort. I have spoken with him and I have sent a copy of that letter to him. I would say, though, that it still is the person he delegated it to and the response that we got, which was why I was left with the impression that it was supported by the Catholic bishop. As I say, I think that did need clarification. I thought it important to clarify that.

Mr Stevenson: And his current view?

MR MOORE: The bishop's current view was set out in the *Canberra Times* last Friday, 16 September. From my discussions with Bishop Power, he does not like the term "passive euthanasia". He has some concern. I think it was mainly an issue of semantics. The issue of allowing people to have withdrawal of life support systems is not opposed by the bishop, but he certainly does raise the question of whether this is necessary and where the driving force behind wanting to do this is. They are questions we have had from a number of members of this Assembly. Of course, we can ask exactly the same questions about any number of pieces of legislation. Where is the community call for move-on powers? Where is the community call for changes to payroll tax and so on? That is simply a non-argument. When we see a need for something to be rectified we take it on.

Madam Speaker, I find it interesting that a number of members in the Assembly have so vehemently opposed this Bill and read into it things that simply are not there, such as my view of the Right to Life approach to it and some of the issues raised by Rita Marker. If it is such a bad Bill, if it is going to do such terrible things as you suggest, then the equivalent Bills in Victoria and South Australia would already have done that sort of damage. They have not, because they have not been used that way.

This Bill is not intended in any way to provide for active euthanasia. When I look at clause 22, which is the most controversial of the clauses in this piece of legislation, it seems to me that as it stands it would not facilitate active euthanasia, especially if you take into account the amendment circulated by the Attorney-General, which I have some reservations about. I must say that I have some reservations about it, but I will accept it in order to clarify the issue. That amendment reads:

to ensure the right of patients to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances.

That is a standard legislative phrase, and that certainly should ease the mind of anybody who thinks that this might be used in a backdoor way to attain active euthanasia. It is not intended that way, it was never intended that way, and I believe that it will not be used in that way. Certainly, it will be clarified by this amendment.

I will explain why I do have reservations about this amendment, and I will speak to it in more detail later. I see it as transferring power from the patient to the doctor. One thing that I was most interested in and one thing that became more and more apparent, I think, to members of the committee was that there is an issue, not about just euthanasia but right across the spectrum, as to the extent to which the patient has the power to make decisions and the extent to which the medical practitioner should have the power to make decisions. In his speech Mr Connolly suggested that one way of handling this whole broad issue is to have it considered by the Standing Committee on Social Policy in the next Assembly. I think that is a very positive approach to the whole issue, because otherwise we are taking just a small part of the issue. That is something that I would support and it is one of the reasons why, at this stage, despite my reservations, I would be prepared to support that amendment circulated by the Minister for Health.

It was never intended that this Bill would be an active euthanasia Bill. In order to make that very clear, I made it public that I would continue to attempt to get an active euthanasia Bill before the Assembly at some time, but certainly not before the next election. I have made that very clear, and I do not resile from that; but that is not what is happening with this piece of legislation. Indeed, Mr Stevenson found from his survey that about 70 per cent of people support the concept of what I describe as passive euthanasia, and I realise that there is some semantic debate about that. That is fairly consistent with what, Australia-wide, Morgan gallup polls have found over the last few years. The Morgan gallup polls show a higher response; but the questions were slightly different and they fall in the middle of a series of questions, which could account, perhaps, for some of the difference. Nevertheless, an overwhelming number of people believe that they personally should have the right to say whether they are going to continue with medical treatment, even if it means the end of their life - or I probably should say "particularly if it means the end of their life".

Madam Speaker, I would like to take up a couple of points that Mr Stevenson raised from the letter from Rita Marker, the American woman who was brought out by Right to Life Australia when the debate was on about the Voluntary and Natural Death Bill. I also went to hear the speech that Mr Stevenson talked about, so that I could understand her perspective and where she was coming from. I would point out that the Remmelink report has been misquoted and misrepresented right across the world on innumerable occasions. That is one of the reasons why Professor Remmelink has been asked to come to Australia and to speak at a forum on euthanasia in a month or so. He will be in Sydney, and my understanding is that he will be invited to come to Canberra, where he can be asked those questions. If this was of such great concern, why was it that the Dutch Parliament overwhelmingly accepted the continuation of the system that operates in the Netherlands? That included, of course, the Social Democratic Party, which is strongly made up of people professing to be Christian - I think I am correct in saying this - and Catholic.

Some of the issues that are raised probably come from a fear of my own agenda. Certainly, in speaking to Margaret Tighe very briefly, I think, yesterday, that came through. It has certainly come through in a number of other discussions that I have had. I have made it very clear that my agenda is, eventually, active euthanasia. But this Bill

does not help to go through that process. I think I have a far better chance by not proceeding with a Bill like this and going for it all at once, rather than the contrary. What happened is that the committee decided that this was necessary and that it was appropriate that we proceed. It is necessary for a series of reasons, and some of those were reflected in a call-in on the radio this morning.

The reasons are, first of all, that people want to be able to make the decision themselves that life support systems be removed, instead of it being made, in the majority of cases now, by the family and the medical practitioner. That is the first thing. The second thing - this also is important - is that whilst this remains in the common law there is always the possibility that a medical practitioner will be taken to court and a judge will make a decision different from the way the common law has grown up. A new decision, a landmark decision, will be made. That is much more difficult when we have black letter law that shows the current community standards. That is one of the prime reasons why legislation similar to this was passed in Victoria and in South Australia.

I want to point out the difficulties that have been raised with this Bill. One of the most vehement people in presenting those difficulties - I imagine that you have seen the papers - is a Mrs Karen Clark, who has a PhD from Harvard and is somebody we would take very seriously. The committee went to Melbourne and met with her. She had put forward a whole range of criticisms about the original Bill, arguing that it simply would not work in practice. I pointed out to her that some provisions were taken directly from the South Australian legislation that has been working very effectively there for quite a number of years. Sometimes - and we all do this - when we have a particular point that we wish to make, we look at what arguments we can find to support that point and run through those arguments. I think that the work in that case suffered from that. We recognise, whenever we pass legislation, that there is always some risk - and we weigh up that risk - that it will be misused. Of course, we seek to minimise that risk, and we also seek to minimise people's fear of how it might be misused or misrepresented.

This Bill does none of those things. This Bill is simple, it is straightforward, and it is about passive euthanasia. If somebody wishes to argue in court what this Bill is about, they can go back to the *Hansard* and read that I said again and again that this is about passive euthanasia. It is not about active euthanasia. It was never intended to be. The will of the committee, clearly, was that we provide for people to be able to make their own end-of-life decisions beforehand in fear of being in the sort of circumstances in which some people wind up when, for example, having had a stroke, the only way they survive is by means of life support systems.

Madam Speaker, it was a great surprise to me that some members were so vehement in their opposition to this Bill. It was the sort of vehemence and opposition I expected to active euthanasia proposals, and I have no difficulty with that. I think that the arguments presented are really arguments that apply to an active euthanasia Bill, not a Bill which provides for people to make their own decisions about whether they are going to continue with medical treatment or not. I suggest to members that they reconsider the legislation in front of them and realise that it is a positive move, both for patients and for doctors.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 13 NOES, 4

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

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

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

Clause 3

MR CONNOLLY (Attorney-General and Minister for Health) (11.01): Madam Speaker, I move amendment No. 1 circulated in my name, which reads as follows:

Page 2, line 1, definition of "direction", omit "written or oral".

I formally present the supplementary explanatory memorandum which deals with all of the amendments.

Madam Speaker, I think I foreshadowed in the in-principle debate that the Government is bringing forward a range of amendments, 90 per cent of which are technical and really flow out of the Government's response to the committee's report. They are designed to improve the workability of the Bill. The issue of substance relates to clarifying that this is not a Bill which would allow a back door to active euthanasia. That is the next amendment to be moved, and I will refer to it in detail.

MR KAINE (11.02): Madam Speaker, I indicated in my speech in opposition to this Bill last week that are were some aspects of it that trouble me greatly. Some of those aspects flow from the definitions that appear in clause 3. The first that I have difficulty with is the definition of "direction". The Bill says:

"direction" means a written or oral direction -

I notice that there is an error here -

made in accordance with Division 1 of Part I;

I think that should be "Division 1 of Part II". Madam Speaker, I indicated that I had no difficulty in principle with the notion that a person, being of sound mind, being an adult, and being fully informed on their condition, could make a written direction that in certain circumstances certain courses of action should follow. It is the right of an adult, sane, normal person, fully aware of all of the facts, to make such a direction. I have no difficulty at all with that.

The thing that troubles me, however, is when we extend that to an oral direction, because the Bill says later on that the oral direction can be given under duress or even in periods of stress or great pain. Having spelt out in some detail when a written direction is legitimate - there is a quite significant prescription as to what makes it a legitimate direction - the Bill then says that, notwithstanding all of that, an oral direction can be made, and as long as two health professionals are there at the time it is legitimate. That is a very large step that we are taking. From a legitimate, rational, sensible, informed decision, we are making this enormous jump to a point where the person, in fact, may be in no condition to make such a judgment and it is okay if two health professionals are present at the time. So I have grave difficulty with this notion of including this oral direction. I make it plain that I have real concerns about this because I believe that it does leave the Bill open to interpretation. It leaves it open to acts that might be taken by health professionals, believing that they are doing the right thing, when, in fact, the direction itself has very large question marks about it.

I recognise that people who are in sympathy with this Bill probably reject my proposition and I think it is very unfortunate that they are not prepared to listen. What we are doing here is moving into an area which is very largely ethical and moral. We are going to set into legislation things that some people think are ethical and moral, and I am not certain that the majority of the community would agree with that. I do not believe that they would. We have heard, for example, that there has been some attempt to assert that the Catholic bishop in this diocese agrees with this Bill when, in fact, that Catholic bishop has said that he does not. So we are already seeing an attempt to distort the opinions of people. How much worse can it be when a patient is in a hospital, under stress, under duress, and makes a decision on the spur of the moment and which is then interpreted purely by the two health professionals who happen to be there at the time? I think we are making a huge jump, and it troubles me greatly.

That is not the only part of this definitional aspect of the Bill that troubles me, Madam Speaker. I know that Mr Moore and others are going to pooh-pooh the expertise of the person I am about to quote. I do not know on what basis they do it. This person is clearly a world authority in the field of euthanasia and probably is much better informed and more widely informed than any of us in this room; but because I quote this person some people will say, "Ah, but that is not important; that person's opinion is irrelevant". I am talking about the definitions of medical treatment and palliative care. The definitions of medical treatment talks about "the carrying out of an operation", "the administration of a drug", or "the carrying out of any other medical procedure". Just what does that mean? It is quite non-specific. Presumably, it means anything that the medical profession deems to be a medical procedure. Would that definition be accepted anywhere else, except in connection with a Bill such as this? I do not think so.

The definition of palliative care includes, in two cases, the word "reasonable" - "the provision of reasonable medical and nursing procedures for the relief of pain, suffering and discomfort", and "the reasonable provision of food and water". What is the definition of "reasonable"? I am quite sure that we have had many a debate in this place over the last five years where this word "reasonable" has been questioned. Reasonable in whose estimation? What are the criteria by which a health professional is to determine whether what they are doing is reasonable? In other words, they have to make up their mind on the spur of the moment and then, if there are legal ramifications that follow, justify their position. First of all, that puts the health professional in a quite precarious position, and I made this point last week; secondly, it puts a person's life in jeopardy if the health professional makes the wrong interpretation of what is reasonable.

Madam Speaker, I think that there remain grave doubts about this Bill and they are reflected in these very definitions that appear up front. I think that for us to pass this Bill and accept that those definitions are reasonable under all circumstances, irrespective of what is going on in the hospital ward at the time, is quite irrational. I cannot believe that people sitting here, who have had time to analyse this Bill and, surely, have thought at some length about the subject matter that we are dealing with, could allow something so ill defined to go through and become embedded in a law that we have endorsed. I find that very disturbing. In connection with this word "reasonable", I want to quote Rita Marker, the executive director of the International Anti-Euthanasia Task Force. She makes the point very clearly. She says this:

The Bill defines "medical treatment" to include the "carrying out of any other medical procedure" ... yet fails to define what is meant by "medical procedure".

That is the point I just made. She continues:

It may be of interest to the Legislative Assembly that the meaning of "medical procedure" or "medical intervention" has been interpreted in the United States as meaning any procedure which a physician would provide, perform or authorise. So broad is this meaning that, in one court case related to the removal of food and water from

a non-terminally ill patient, an expert witness explained that, since he authorises the menus for convalescent home patients, all food consumed by the patients - even that which they eat from their dinner trays - constitutes "medical treatment".

That is a very broad definition, but that is a definition that has been accepted in the Superior Court of Connecticut.

In connection with this word "reasonable", she says:

Nowhere does it -

the Bill -

clarify what constitutes (or who would determine) what is reasonable. The ambiguous nature of such words could give rise to a situation where a care giver would consider spoon-feeding a troublesome 90-year-old patient to be an unreasonable use of time and effort.

Is that what we want? Is that what we mean? If it is, I must say that I am exceedingly troubled. As Rita Marker says, "this may not be the intent of the Bill, but its content would permit such discretionary decisions". I am not going to vote today - I have said that I will not - for a Bill that leaves that definition so wide open and leaves people with a discretion that can put the health professional into jeopardy. If the decision is challenged, that person has to appear in court and justify himself or herself. I am not going to do it when such a discretion can put in jeopardy somebody's life which perhaps need not be in such jeopardy.

I would ask members to think very seriously, before we go any further with the Bill, about what they believe these definitions mean. Do they really believe that they are sufficiently clear and give sufficient direction for health professionals and others to know what they mean, and are they in a position to know what the ramifications of misinterpreting them might be?

MR MOORE (11.12): Madam Speaker, I would like to clarify a couple of points raised by Mr Kaine about these definitions in clause 3. First I want to quote the bishop. I think it is important, Madam Speaker, to get that entirely into perspective. I will read from the article that I had in front of me from the *Canberra Times* last Friday. It says:

Bishop Power said that although much of what was contained in the Medical Treatment Bill was acceptable, labelling it as euthanasia was misleading.

This is a no-win situation, Madam Speaker, because, on the one hand, if I call it a euthanasia Bill, people will say that I am trying to confuse people; but if I call it the Medical Treatment Bill, as was the committee's wish, they say that I am trying to cover up that we are dealing with euthanasia.

Mr Kaine: It is a withdrawal of medical treatment Bill.

MR MOORE: Mr Kaine interjects that it is a withdrawal of medical treatment Bill. I will explain to him why I use the term "passive euthanasia", and I will do so by distinguishing between active euthanasia and passive euthanasia at the area where it is most grey. The area where it is most grey is when we have somebody who is at the point of death and we remove a life support system, perhaps a needle on a drip or something. We remove that needle and they die. You do not want to call that passive euthanasia. In the case of another person in exactly the same condition, we put a needle in and they die. The result is exactly the same; the intention is exactly the same. They die. That is why it is that I think it is appropriate that the term "euthanasia" applies too; but that is a personal opinion about the term "euthanasia". This is not called a euthanasia Bill. This is called the Medical Treatment Bill. It is a no-win situation.

I would like to continue quoting from that article. The bishop went on to say:

It is morally acceptable and even commendable to attempt to control a dying person's pain through medication, even if that may also have the effect of shortening the person's life. It is misleading to refer to these measures as euthanasia.

The difficulty the bishop has is with my calling it passive euthanasia rather than with the content of the Bill. In fact, that is reflected in the letter to the committee from his colleague Mr Neville.

The second point I would like to make is that Mr Kaine suggested that there may be members here who pooh-pooh Ms Rita Marker's comments that have been provided to us by the Right to Life Association. I think I am correct in saying that Mr Stevenson and I were the only members who attended the talk given by Ms Marker when she was here. To say that I pooh-pooh those comments is entirely inappropriate.

Mr Humphries: I was there too.

MR MOORE: I will clarify that. Mr Humphries was also there. I listened to all of those arguments very carefully indeed. Having been given the same paper that you are quoting from, I also read those very carefully. I do not take them lightly. That does not mean that I am going to agree with them; but I certainly have not dismissed them out of hand, as is suggested by the term "pooh-pooh".

The other point I would like to raise, Madam Speaker, is the notion that we are now giving special power to two professionals. The reality is that at the moment, under common law, only one professional makes that decision. It is a single professional. If anything, we are tightening up the process. I would have thought that Mr Kaine would welcome that kind of tightening up, which would be consistent with the argument put by him, Mr De Domenico, Mr Cornwell and Mr Stefaniak. Here you have the opportunity to tighten up on the current system. That opportunity is available to you.

Finally, on the question of the word "reasonable", I read very carefully what Ms Marker said about one court in the United States and their interpretation of "reasonable". There is no doubt that the courts here can be influenced by decisions made in US courts; but the level of influence of those decisions is not as great as some people would imagine, unless, of course, it is the US Supreme Court, which is taken much more seriously. Even then it would be one of the factors influencing a court as to how it would judge what is reasonable. As part of our legislative system, it is appropriate for the courts to interpret these things. My final comment, Madam Speaker, relates to the issue about Division 1 of Part I. That is a typographical error and Mr Humphries's amendment will take care of that. It is appropriate that we deal with it then.

MR DE DOMENICO (11.17): Madam Speaker, I rise to indicate that, like my colleague Mr Kaine, I will not support any of the amendments. We said quite clearly last week that some of us were inclined to do that. I would like to comment, though, on some of the comments made by Mr Moore. Mr Moore talked about Professor Remmelink apparently coming to town in October or November, and he invited members to go and listen to him and to hear what is happening. Perhaps the logical thing for Mr Moore to do is to pull this Bill out today and delay it until such time as we have had the benefit of listening to Professor Remmelink and hearing whether he agrees with what we are debating this morning in the Assembly. Mr Moore also said that some people were fearful of his own agenda. I think those were his words. As I have said on many occasions, Mr Moore is quite up front in talking about certain things, and once again I commend him for that. Yes, there are some people like me who, in certain circumstances, are very fearful of Mr Moore's personal agenda.

I also am going to be talking about what Ms Rita Marker had to say. Whilst I did not attend her talk, I did spend quite a deal of time privately with her when she was here. She says this:

While the Bill may be assumed to have effect only when a person is gravely ill, there is, in fact, nothing in the measure which so states. Any person who may be (or may fear becoming) dependent due to age or disability would presumably be eligible for denial of such "medical treatment" as food, water, insulin, antibiotics or even simple first aid.

Ms Marker suggests that this appears to be the intent behind much of the ambiguity, since Mr Moore, the Bill's sponsor, has publicly expressed approval for enabling healthy elderly couples to end their lives if they fear future dependency. Ms Marker suggests that Mr Moore "has agreed that this would constitute a 'final frontier' in the area of human rights". Mr Moore supposedly said that on 2 February 1993 on the 2CN morning show. So, yes, Mr Moore, I for one am slightly fearful of your agenda.

Mr Moore mentioned three reasons in his initial speech. He was very supportive of this Bill because people would make the decision. My understanding is that people right now make that decision. There are certain people in hospital, Mr Moore, right now, who, in consultation with their families and in consultation with their doctors, make that decision anyway. That is one area where I think that argument is deficient.

The second thing Mr Moore mentioned was the common law. In the existing common law there is a possibility of something happening in the future. I suggest that that is always possible in any law that someone passes. Mr Moore then reflected on the fact that passing this law gives us an opportunity to remove that ambiguity. That may be the case if this law stands ad infinitum, but some other Assembly may amend the law that we pass today. What I am saying about that argument is that there is always a possibility for any part of that law to be changed.

Mr Moore then went on to talk about comments made by Mrs Karen Clark. Once again, I agree with Mr Moore. We all know that Mrs Clark has an LLB, a BA from Melbourne University, and an LLM from Harvard, so we can assume that she knows something about the law. We can also assume, seeing that she is passionately interested in the area of euthanasia, that euthanasia law is something about which she has some sort of expertise. Acknowledging that Mrs Clark's views may be coloured by the fact that she is passionately against euthanasia, she makes some very salient points. I will reserve some of the comments that Mrs Clark makes, because I think that the most important comments she makes are about clause 22, which we will have a debate on when it comes on. Mr Moore went on, in response to Mr Kaine, to talk about Bishop Pat Power's views on this issue.

Mr Moore: I just read them.

MR DE DOMENICO: I have spoken to Bishop Pat Power, Mr Moore. I also read the *Canberra Times*, I have to say to you, and Bishop Power's No. 1 priority would be to have no legislation.

Mr Moore: I accept that.

MR DE DOMENICO: You accept that; but no-one has mentioned that yet, so I thought I would mention it. Bishop Power quite categorically said that his preference would be no legislation whatsoever. Bishop Power also went on to say - I agree with him - that relieving pain through medication is very Christian, very admirable. I think you will find that not one member of this Assembly would disagree with that point of view. While we do not disagree with that point of view, my knowledge of the situation is that that is exactly what happens now.

Mr Moore: No.

MR DE DOMENICO: Mr Moore, in my opinion, all doctors who are doing the right thing are relieving patients' pain right now through medication. All doctors are relieving patients' pain through medication. We all know that sometimes, by alleviating that pain through the administration of a lawful medication, some patients die. That goes on, I believe, every day, and probably it will continue to go on. We cannot accept the argument that it is only by this legislation that we are going to get to a situation where pain relief through medication is going to be effective, because it is happening already.

Mr Moore talked about Rita Marker and said that he did not pooh-pooh her. Perhaps he did not pooh-pooh her, but the way Mr Moore spoke tended to make you think that he disagreed with Rita Marker because she happens to have this passionate view against euthanasia. I accept the fact that Mr Moore says that there are certain people whose viewpoints are coloured by their personal viewpoints. I am assuming that Mr Moore's viewpoints are also coloured in the same way.

Mr Moore went on to argue that this Bill is better because it is giving power to two professionals and now only one professional has been making the decision. The difference, Mr Moore, is that this has been happening all the way through, and the professional who is making the decisions now is someone who has an intimate knowledge of what is happening with the patient. So, I do not think we can use that argument now, because it tends to open, in my view, a lot of Pandora's boxes. Mr Moore said that it is in fact tightening up something that is happening now. I do not believe that it is tightening anything up, really. That is my personal view.

Mr Moore went on to talk about the definition of "reasonable". He said that it was fallacious to assume that, just because one court in the United States had made some sort of determination, that would have an effect on any determination made in a court in Australia. I do not know whether that is true or whether it is not true, whether that is going to happen or whether it is not going happen; but the mere fact that it may happen leaves me in a position of not wishing to support this Bill. There are too many ifs and buts.

I think Mr Moore said that this Bill was simple and straightforward. I think they were his words. Madam Speaker, I am suggesting that this Bill is not simple and it is not straightforward. The mere fact that it has caused so much disagreement between members of the Assembly tells me that it is not simple and it is not straightforward. It is not simple and it is not straightforward, notwithstanding the Attorney's comments initially that most of the amendments are technical amendments. There are, I believe, Mr Connolly, 30 amendments before us. This Bill has gone through committees and all sorts of things, yet we are still talking about 30 amendments - albeit some of them technical - to a piece of legislation that is supposed to be simple and straightforward and that everybody ought to be sticking up their hands and supporting. I am saying that it is not simple; it is not straightforward.

I believe that Mr Kaine is correct in this situation in saying that we are being asked to make comments in a legal way on moral issues. As I said, I will not be supporting any of the amendments, just as I did not support the Bill, because there is no burning passion out there for us to be legislating in the way we are attempting to do now, and because, in my view, it is going to open up a Pandora's box and trying to go through it will be a legal person's dream.

MR CONNOLLY (Attorney-General and Minister for Health) (11.27): Madam Speaker, having listened to the comments in the detail stage by both Mr Kaine and Mr De Domenico, I think they really disagree in principle with the Bill, as they voted against the Bill. They have pretty much indicated that they are against the Bill and against the concept. I think their comments were more to the principle than to the detail, but I do want to address some issues.

It would be nice to say that we have perfection in this legislation in dealing with the issue of death with dignity, or natural death, or medical treatment - however you want to put it. The concept of allowing a person to not have interventionist treatment is an issue that has confronted a number of parliaments in Australia, and a number of parliaments of different political persuasions have put through Bills similar to but not identical to this. We think we perhaps have got it better. Yes, Mr De Domenico, there are some 30 Government amendments to be moved, but that is not an unusual process. We have had a very long committee discussion on this, starting from a proposition that was advancing the case for active euthanasia and ending up with a unanimous committee report saying, "No; look at the issue of natural death legislation", and coming up with a recommended Bill.

The reality of life is that the resources available to the executive government are always going to be rather more extensive than the resources available to a committee. The normal process is that the committee will recommend a Bill and the executive government will then take that Bill and send it through all the various areas of expertise in the Attorney-General's Department. We have come up with a number of definitional issues, and we are linking it better with the existing power of attorney and other areas of the civil law. So, I think it is a bit political to say that there is something wrong because there are 30 amendments. It is the normal process. The executive government takes the output of a committee and puts it through the normal Cabinet process whereby things are circulated and everyone gets a look at it to come up with improvements.

I think your concern is this: Can we get the perfect definition? I would like to think that we have better definitions than the other States, and we are working towards a good outcome. Can I say that it is perfect? No, I cannot; but I can say that it is much better than the current position. There is grave uncertainty for doctors at the moment, and that is why this law, or a law like this, has been passed by a number of State parliaments. What is the current position? The AMA's code of ethics is probably as close as you could get to the current position. It simply says, "Always bear in mind the obligation of preserving life, but allow death to occur with dignity and comfort where death is deemed to be inevitable and where curative treatment appears to be futile". That leaves doctors deciding when to withdraw treatment, when to accede to a patient's wishes in an incredibly grey area. What we are seeking to do is to provide a level of protection for doctors in that very difficult area.

To suggest that this is opening the door to active euthanasia is, I think, misleading. I am concerned about some letters that have been circulated, probably to all members, suggesting that we are going far too rapidly on this; that wanting to move so quickly is legislative bushranging. This has been a very long and studied process, with extensive public hearings. It has been very well publicised. There would be hardly anybody in Canberra who would not have known that there was an Assembly committee looking at euthanasia; that the issue of active euthanasia as opposed to natural death or death with dignity legislation was before that committee. There were extensive submissions. This is the end of a very long and very considered process.

I think most of your comments were directed to the principle rather than the detail. We are seeking to provide better guidance and protection to practitioners who are working in this field every day. The latest edition of *Australian Medicine*, reporting on a major AMA euthanasia conference, said that the collective view of that conference - I do not know whether it was a substantive resolution - was that doctors have concern. Perhaps they do not want active euthanasia laws; but a lot of doctors are saying in this other area, "We are doing it every day. We are doing it constantly in the hospitals, constantly in nursing homes, and some guidance or some protection would be of great assistance".

MR STEVENSON (11.31): A fair bit has been said about Rita Marker. As I mentioned earlier and as Mr Moore mentioned, we went along to the presentation that she gave in Canberra.

Mr Moore: It was at the National Library, was it not?

MR STEVENSON: Yes, I believe so. I found it compelling. I had previously heard Spencer Gear debate with Mr Moore. Most people who were present believe that Spencer won that debate. I felt that Rita Marker went into a whole new field when it came to presenting details, facts and figures. She certainly did not do it in an aggressive manner. She did it in a most reasonable manner. For that reason, when Mr Moore was given the opportunity to comment on some of the points that she had made and with which he obviously disagreed at the time, he did not take the opportunity.

Mr Moore: Do you remember what I said when I explained it?

MR STEVENSON: I remember.

MADAM SPEAKER: Mr Stevenson, please focus your remarks on the amendment. This is the detail stage. You should be focusing on the amendment, not carrying on a personal debate about what Mr Moore did or did not say.

MR STEVENSON: That is a good point; but he did say that he was there to listen, not to make comments. When someone brings up points that you feel are not correct, you do not always get an opportunity to have a say in public. Some people would prefer you not to have a say. There was a perfect opportunity for Mr Moore then to show how his arguments weighed up against some of Rita Marker's. It was a perfectly reasonable environment, and he could have had all the time in the world. I think it was unfortunate that he did not take that opportunity.

MADAM SPEAKER: Mr Stevenson, you have just repeated what I asked you not to do. Would you please talk about the amendment that is before us.

MR STEVENSON: I am sorry, Madam Speaker. I did not mean to cause any concerns.

MADAM SPEAKER: Please continue.

MR STEVENSON: It was mentioned before that there are some 30 amendments. I agree that, when a committee has suggested certain legislation, the Government should go through the process of looking at its suggestions and making comments or amendments. I think that it would be a good idea if, as a principle, amendments were tabled in this Assembly at least seven days before they were to be debated. This is a standard situation. It is something that we should do.

Mr Connolly: We circulated them last week.

MR STEVENSON: I mean tabled, so that they are on the table. Anybody can understand that.

Mr Moore: They were tabled last week.

MR STEVENSON: All of them? We know full well that some amendments are only minor, but others can have a major effect on the legislation that is before the house. If that process were followed, we would not have people saying that there are too many amendments or that they have not had time to look at them.

Let me turn to the definitions. Mr Kaine brought up the point about "direction" meaning a written or oral direction. I also have concerns about an oral direction. While there are safeguards with a written direction, and they appear to be adequate, I do not believe that there are the same safeguards with an oral direction. Members have the opportunity to amend these definitions and the clauses in the Bill that allow for an oral direction. When I first looked at the definition, I thought that two doctors or a doctor and a nurse could say that they heard the person give an oral direction. But there would be no proof that that had happened. I see that as a difficulty.

I referred earlier to the definition of medical treatment. I would be interested to hear Mr Connolly's statements on the meaning of "any other medical procedure". He made a number of general points about the amendments; but that one is undoubtedly a wide statement. "Any other medical procedure" could be held to be just about anything that goes on in a hospital that has to do with the treatment of a patient. I have some concerns that "health professional" could be limited to a doctor and a nurse. Mr Connolly said that they looked for the perfect definition but such things cannot be found. It is not a matter of finding the perfect definition; it is a matter of finding something that would encompass what we want to do. The point that I make about medical treatment is one that we could look at.

I have a number of concerns about the Bill. I am concerned about how it could be used. We would do well to tighten some of the definitions. As members know, I vote according to what I perceive is the expressed will of the majority of people in this community. There is no doubt that the majority of people support the withdrawal of medical treatment even if it is considered vital to support life. I was most concerned about writing the survey question, as I always am. It did not just ask whether people should be able to

refuse medical treatment; we added the words "even if it was considered vital to support their life". What we were talking about in that question is fairly obvious. On a ratio of seven to two, with 10 per cent unsure, people said that they support it. I will vote accordingly. I have some real concerns about some of the details of it. If members want to present amendments, I will look at those, and I may vote against them.

Amendment agreed to.

MR HUMPHRIES (11.38): Madam Speaker, I move:

Page 2, line 2, definition of "direction", omit "Part I", substitute "Part II".

The amendment is a very simple one. It corrects an obvious error in the original drafting of the Bill. I might make one observation in moving this amendment. The error was drawn to my attention by the ACT Right to Life Association. The submission that they prepared and circulated, I think, went to every member in this place. It is interesting that apparently neither Mr Moore nor any of the other proponents of the legislation actually read the submission. If they had, they would have seen the error. So, I suspect that some were of the view that it was not worth reading. However, I did read it and I picked up what is an obvious error when one looks at it.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 4

MR CONNOLLY (Attorney-General and Minister for Health) (11.39): I move:

Page 3, lines 1 and 2, paragraph (b), omit the paragraph, substitute the following paragraph:

"(b) to ensure the right of patients to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances.".

This is probably the most substantive of the amendments. The courts say that in seeking to interpret this legislation and looking at the outcome of the Bill - assuming that it is passed and becomes law - you are entitled to look at the Assembly debates and any committee reports that preceded the Assembly debates. It should be abundantly clear to anyone doing that that this is not a law that authorises active euthanasia. However, given the sensitive nature of the subject and the concerns in the community, the Government did feel that it was appropriate to make it even clearer and, with an abundance of caution, to provide a clear provision to ensure that the requirement for pain relief is qualified.

I suppose that it could be argued that maximum pain relief is death and that this law would justify a lethal injection or an injection of material that would kill a person or perhaps the unborn child that the person was carrying. That is not the intention of this legislation. I do not think that would be a reasonable interpretation anyway, given the legislative background to this Bill, given what is in the committee report and given the general comments that have been made in the in-principle stage. But, in order to make it abundantly clear that this is not a Bill that authorises active euthanasia, the Government seeks to include this provision.

No doubt opponents will say, "But what is reasonable?". The current law is totally vague. Here we have a provision which qualifies it, with the explanations that have been offered both now and in the in-principle stage. I would remind members of what I said in the in-principle stage, which was that we know and we expect that this will cover pain relief which will ease the suffering of a person with an extreme incurable condition and we know that that may be pain relief that incidentally has the effect of hastening the inevitable point of death. That is one thing. Accepting the litre of morphine, which will have instant consequences, is another. What we are saying is reasonable is pain relief which may have an incidental effect. If a person is receiving massive doses of oral morphine and is receiving very little by way of ingested food, the taking of high doses of ingested morphine, which will slow down their bodily functions, may mean that they are going to die earlier than if they were in great pain and less heavily dosed. But I think that everybody accepts that that is a reasonable thing for a treating physician to provide.

What is not reasonable for a treating physician to provide is a dose that is known and intended to be lethal. That is what this amendment seeks to clarify. I think that any community groups who believe that this law could be used as a back door to active euthanasia should be satisfied that this definition or clarification where it appears later at clause 22 puts it beyond doubt. I know that Mr Moore had some reservations about this. He did not think it was necessary. But I would say that what we are doing here is seeking to put beyond doubt that the intention of this Assembly at this stage is not to be debating an active euthanasia Bill.

MR KAINE (11.43): Madam Speaker, I think that the Attorney-General's explanation of why he wishes to change this clause comes to the crux of the problem. I do not believe that his amendment to this clause makes it any clearer. In fact, if anything, it makes it less clear. At least Mr Moore made clear what he intended - that this is to ensure the right of patients to receive maximum relief from pain and suffering. How do you know when a patient has received maximum relief from pain and suffering? I presume that there is some objective measure. If there is, I do not know what it is. I am not a medical practitioner. From where I stand, I would assume that, when somebody became unconscious or went into a coma, that would be an indication that they were at the maximum point of pain and suffering; but I do not know that. Neither does the Attorney-General and neither, I suggest, does Mr Moore.

Mr Moore's intention was quite clear - that a patient would be entitled to receive any quantity of whatever was required to relieve pain and suffering, even if there were some risk that that may lead directly to the death of the patient. That is what he meant. There is no doubt in my mind about that. It was one of the clauses of this Bill that terrified me. Mr Connolly says that this is not about active euthanasia; but, when you

start exploring what is meant by that particular definition and where it is repeated in clause 22, you have to ask, "Where is the line, and how does Mr Connolly know where the line is?". He does not know; but he was clearly concerned about it, so he has come up with his own amendment. Now he says "to ensure the right of patients to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances".

I think that Mr Moore's intention was quite clear; but who is now to judge what is reasonable in the circumstances? Is it the patient? If the patient is unconscious, it cannot be the patient. Is it the nurse that happens to be on duty in the ward? How does she determine what is reasonable in the circumstances? We have heard quite recently of circumstances in hospitals where nurses are run off their feet and some patients do not receive even the most basic of care over short periods of time while the nurses are tied up with more urgent cases. We had evidence presented on this quite recently. So what is reasonable? If the nurse in the ward is busy taking care of a patient somewhere else in the ward who is having difficulty and this particular patient is unconscious, is she safe in saying, "Well, at the time I thought it was reasonable to focus my attention on other patients", even though this patient may have needed treatment?

I do not know how you determine what is reasonable and I do not know how the health professionals that are dealing with these people are going to know. There may be a relative sitting by the bedside. If the nurse is too busy to pay any attention to the patient and the relative says, "We need more treatment for my aunt", is the nurse going to say, "You are wrong. I do not have time to worry about that."? This measure of what is reasonable is totally unreasonable when you are dealing with the life or death of a patient. So, in my view, Mr Connolly's amendment to the clause makes even less clear what is the duty of the medical practitioners and the health professionals that are taking care of these patients. Where does their duty lie and how do they know whether their action might be judged by somebody else, at a later time, to be reasonable?

To come back to Mr Moore's intention, if being reasonable is to inject morphine or some other drug into a patient to the point where they die, is that reasonable? I submit that, as in many other things, individuals have different reactions to specific doses of treatment. Some of us could probably take greater amounts of drugs than others because of our bodily bulk or because of our state of health at the time. So who is to judge what is reasonable? This is the very thing that troubles me. It is the reason why I raised the question when we were dealing with the definitional clause of the Bill. It leaves open the question of what is reasonable. There are no objective criteria set down in this Bill to determine what is reasonable. That means that it is entirely subjective. It does not even say who is to make that subjective judgment. If it cannot be the patient, who is going to make it?

If there is a written direction, perhaps there is some clear understanding on the part of health professionals of what they should or should not do; but, if there is not one, where are the criteria and where does the responsibility lie for saying, "We will or we will not provide additional treatment", and on the other hand, "We are all too busy taking care of a heart attack victim up the other end of the ward and we do not at the moment have

time to look after this patient."? Is that reasonable? I suspect that there are times in a hospital when that is considered to be reasonable. So the terms "maximum extent", "maximum pain" and "reasonable in the circumstances" leave this Bill wide open to interpretation in any particular case at any particular time.

Madam Speaker, I repeat that these are the things about this Bill that trouble me. These are the reasons why I will not support it. I do not believe that it is specific enough to make clear the duty of the health professionals who are involved in the care of these people. As I said last week, it may even put those health professionals themselves in jeopardy of litigation after a patient dies. Is that what we want to do? Do we want to put in place a law that does that? I do not believe so. I do not believe that it is reasonable. I believe that any sane person in this community would say that whether the two results were reasonable - firstly, that a patient dies when perhaps it was unnecessary; and, secondly, that the health professionals concerned can find themselves in a position of litigation because someone somewhere asserts that what they did was not reasonable - required a very subjective judgment. I am very uncomfortable with that, and that is the reason why I will vote against the amendment.

MR CORNWELL (11.51): Madam Speaker, I rise to join this debate briefly and to support the remarks of my colleague Mr Kaine. It is rather interesting that, a little earlier today, Mr Humphries rose to correct an error that had been pointed out to him by the Right to Life Association. It was accepted by the Assembly. I think that this is indicative of the fact that this Bill is far from perfect. Mr Kaine has raised some very reasonable arguments. I do not use the word "reasonable" in any attempt to pun, because this is a serious matter.

Mr Berry: And who is going to decide what is reasonable?

MR CORNWELL: Mr Berry, the problem is that so-called small-l liberals like you opposite have this itch to legislate and to codify every possible human endeavour, and in doing so - - -

Mr Kaine: Living and dying.

MR CORNWELL: Yes, living and dying. In doing so, all that you create is more money for the lawyers and further confusion out there in the community as to a person's legal status. I do not know why you people have this itch, but you do. I personally do not believe that a piece of legislation of this nature should be debated at what is, effectively, a State level, or in this case a Territory level. I think that this is a matter of national importance. You may laugh, Mr Berry; but that happens to be my view. Despite the influence of the Federal Labor Government, this is still a democracy, and I have every right to express that view. I do not think that we should necessarily be debating this matter; but we are. Therefore, I am very happy to oppose the entire legislation, largely on the basis of what Mr Kaine has outlined.

I do not believe that it ties the matter up. In fact, I am very nervous, firstly, when I see that this piece of "perfect" legislation can be amended and improved upon by advice from the Right to Life Association and, secondly, when I find that I have here something like seven pages of amendments presented by the Attorney-General. These amendments give

me no confidence whatsoever that what we have before us is a good piece of legislation, leaving aside the morality of the question. I would urge members to consider very seriously how they will vote on it. It may be progressive and trendy to support something like this. I do not happen to believe that. I think that you create more problems than you help to solve.

We know that forms of mercy killing - if that is what you want to call it - go on in hospitals. I do not know that you have to codify it. Frankly, with the situation in our hospitals at the moment, I would be concerned, as Mr Kaine said, about whether we could ensure that patients had the right to receive relief from pain and suffering to the maximum extent that is reasonable in the circumstances. I am not having a shot at the situation in the hospitals; I am simply stating what is a fact at the moment. I have no confidence that we could necessarily enforce that. So I would urge members to consider very seriously what they are doing in supporting this legislation and the amendments to it.

MR STEVENSON (11.56): Madam Speaker, none of us could accuse Mr Moore of having a hidden agenda on this issue. There is no doubt about that. He has come out very strongly indeed. I think that he would go all the way with euthanasia. Bishop Power certainly needs to have his viewpoint put. He would have preferred to have no legislation at all. I think that many of us would prefer the same thing. There is one point that I have not spoken on yet that I think is relevant. That is the general right to refuse medical treatment. Not all medical treatment is beneficial to us. I have not been to a doctor for 28 years, and then it was only because I was in the Army and had to go along for what they called a medical check-up. Obviously, a lot of health problems are self-induced and can be sorted out if we remove the causes. We place far too great a reliance on medical treatment.

Most medical treatment involves drugs and surgery and the suppressing of symptoms of illness, rather than paying attention to the natural responses of the body and allowing the body to heal itself. I do not believe that you can heal a body. Only the body can heal itself. Certainly, you can provide the optimum conditions; but the amount of surgery that goes on is a problem. This Bill will allow someone to remove medical treatment or allow someone to reject medical treatment. In my own situation, I would refuse a great deal of standard medical treatment. That is why I had a concern with it. People have that right; but it depends on what you are talking about. It is equally true that some medical treatment can benefit a patient and that the removal of that treatment would cause the patient to die - not so much let the patient die as cause the patient to die. If a person is on life maintenance procedures and you take them away, they are dead. That is a concern that I had.

We know that there are some people who believe that blood transfusions should not be given. Should people have the right to refuse blood transfusions? Yes, they should. Some people would say, "That could be life threatening"; but I have spoken to people in the medical field and they have suggested that, in the majority of cases, a saline solution does the job handsomely. There can be all sorts of difficulties with taking blood from someone else's body and putting it into the patient's, because of the general reactions and responses of the body. So there would be many cases where what someone sees as beneficial medical treatment may not be beneficial. That depends on your education.

If you have had a medical and establishment-type education, you will see most medical treatment as being beneficial. If you have studied the medical reform areas, as I have, and if you have spoken to a great number of health practitioners, you will find a great deal to suggest that much medical treatment is interventionist and does not do the patient any good whatsoever. Research that I have seen shows that around the world where doctors go on strike the death rate drops. It is a very interesting point. There were two occasions when I pulled people out of hospital the night before an operation and got them health care - - -

Mr Connolly: Dennis, we might have a job for you, clearing up the waiting lists.

MR STEVENSON: The Health Minister says that he might have a job for me, reducing the waiting lists. I do not doubt that you could reduce the waiting lists of people wanting medical treatment if you explained what a lot of it does. We have spoken in this debate about people's right to be informed. That was one of the points that I brought up last week. In this Bill it says that the person must be informed of the side effects, or the ramifications, of removing medical treatment; but, as I suggested last week, the only information that they are going to get is that which the medical people agree with. They are not going to get the full information.

I pulled two people out of hospital. They were in a different State from me at the time. It may seem funny; but one of them would be dead now if I had not done it.

Mr Humphries: How do you know?

MR STEVENSON: Because when I got there the person had given up the will to live. I was in Victoria. I went up to Sydney. It was an elderly person, who had given up the will to live. They had been hooked up to everything that you could imagine. It was the usual critical treatment that someone gets in order to monitor their various life functions. I will make a very interesting point in a moment as to what should be done and why it should be done. There are many cases where someone goes to hospital and, because of the impersonal nature of the treatment, quite often they feel more like an object. This person had given up the will to live. They were actually going to have their gall bladder removed because they had gallstone problems. While it may seem unusual to a number of members, I do not believe that someone will remain alive if they do not want to be alive. If someone has given up the will to live, I do not believe for a second that you can keep that person's body alive. If you believe that man is an animal, or just a body, you might think that you can keep a person alive; but not if you acknowledge that there is something of spiritual importance in the person. I see that this is quite humorous to some of the members here, and I think that is of concern.

Mr Lamont: Not at all, Dennis.

MR STEVENSON: It was about seven years ago that I pulled this person out of hospital in Sydney. They did not have the operation. Allowing for the fact that they are quite elderly, their health now, compared to that of most people of their age, is very good indeed. Actually, I did it again. Someone else was going to have their gall bladder removed. They were actually yellow - a very interesting colour. I was told that, if they

did not have the operation, they would be dead. Fortunately, I had some very good medical advice from other practitioners, and I pulled them out of hospital. After three weeks of care, the problem was handled without the operation. In both cases, these people did not have this unwanted, unnecessary part of the body removed. They were able to keep their gall bladders and the problem was handled. So, that was my quandary with a number of areas of this Bill. There can be times when one should be able to refuse medical treatment.

MR DE DOMENICO (12.06): Madam Speaker, I wish to respond very briefly to the comments made by the Attorney-General. He commented on the fact that the Government has more resources than the committee and that was why there were 30 amendments, albeit most of them technical. He said that it was a bit political for anyone to suggest that the fact that there were 30 amendments was in some way an argument against the Bill. I dispute that comment, because I do not think that it is political at all. I think that it is a quite reasonable assessment for anyone to make when one is told to vote on a piece of legislation. When you are exercising a conscience vote on a piece of legislation - I imagine that members opposite are not on this occasion - you have to be very careful to make sure that what you are doing is the right thing.

There is another thing that I would like to say about some of the comments made by the Attorney-General. I will not be supporting any amendments to this Bill. I voted in principle against the Bill because in the current situation a doctor is allowed to make the decision, and quite rightly so. It might not be a codified law, and it might not be the perfect thing; but, in my view, it has stood the test of time thus far. It has allowed the doctor to make the decision. A lot of people might say that we should remove the right from the doctor and give it to the patient or somebody else; but it has stood the test of time. We have allowed the doctor to make the decision. I believe that what we are doing now is allowing 17 politicians to attempt to make a decision based on what those 17 politicians think people want. I think that we are getting onto dangerous ground if we do that. Let us look at the definitions, and let us take the situation where someone asks for an overdose and says, "Please give me maximum relief from my suffering, Doctor".

Mr Moore: As is reasonable.

MR DE DOMENICO: No; the words are, "Please give me maximum relief from my suffering, Doctor". That request sounds quite reasonable. The patient says, "I am in enormous pain. Give me maximum relief for my suffering, Doctor". In this case, I believe that the word "reasonable" is not a test. It is no test at all, because "maximum relief from pain" may mean killing people. I would like the Attorney-General to clarify this. If I am not terminally ill but I am in enormous pain and if I say, "Please give me maximum relief for my suffering", does that open up the possibility for that maximum relief to be a lethal dose of morphine or whatever it is? If it does, or if it may - I do not think that the amendment clarifies it - we have to think very carefully before we start voting for anything.

Mr Connolly used the words "a bit political". In this debate, many of us have tried not to be too political. I suggest to Mr Connolly that the best-case scenario is that at least 15 members of this Assembly would agree with Bishop Power. I believe that even members of the Labor Party would prefer this legislation not to go ahead. I cannot speak for members of the Labor Party; but I think that I know enough about members of the Labor Party to believe that the best-case scenario would be that this legislation did not go ahead.

As Mr Stevenson and Mr Connolly quite rightly said, Mr Moore has been up-front about this issue all the way through. As I mentioned last week, he has been very cunning. Mr Moore had a look at various party platforms, including his own, and drafted legislation based upon those platforms. So, when Mr Connolly talks about being a bit political - - -

Mr Lamont: No, he did not.

MR DE DOMENICO: I am not going to take any interjections from Mr Lamont. In order to get people to vote for this amendment, Mr Connolly also said that anyone who had been dissatisfied before Mr Connolly's amendment should now be satisfied. That shows to me that, all things being equal, Mr Connolly himself would have preferred this legislation not to go ahead. I know that Mr Connolly is not usually a "wet" - in some circumstances he is - but, in his "dry" moments, he would have preferred this legislation not to go ahead. That is why he used the words "anyone should be satisfied". I suggest to Mr Connolly that everybody is not satisfied. I am certainly not satisfied. Quite obviously, Mr Kaine is not satisfied. Some of my colleagues and some of the people in the community are not satisfied either.

Mr Connolly also talked about the fact that the process has been a long one. He is right there. He said that everyone has had adequate opportunity to have an input. That again is not correct. Mr Connolly may be aware of a letter from the Knights of the Southern Cross, dated 19 September, written to the Chief Minister. I think that a copy was sent to Mrs Carnell. It said:

I am writing on behalf of the members of the Knights of the Southern Cross to object in the strongest possible terms to the Assembly's and your Government's handling of the Medical Treatment Bill.

This Bill arose from the report of the Select Committee on Euthanasia to the Assembly after extensive public consultation on the Voluntary and Natural Death Bill. By contrast, this Bill has had no such public consultation.

Mr Connolly and Mr Moore might laugh, but - - -

Mr Connolly: You might spin around 90 degrees and see who is laughing at you.

MR DE DOMENICO: Mrs Carnell is quite entitled to laugh because, unlike members of the Labor Party, Mr Connolly, we on this side of the house at least have the wonderful opportunity of voting according to our conscience, not according to party dictates. So, if you want to make comments about Mrs Carnell laughing, you can go right ahead; but the reality is that, unlike members opposite, we have the right and the responsibility - and we take them very seriously - to vote in the way our conscience dictates, which is more than I can say for you, Mr Connolly.

Let me continue to quote from the letter. These are not my words; they are words of the Knights of the Southern Cross. So, if you want to laugh at them, go right ahead. The letter said:

In agreeing to rushing this Bill to a vote, your Government is showing disdain for the community which has already demonstrated its deep concern with legislation in this area.

We object to this Bill on two fundamental grounds:

. The Select Committee on Euthanasia acknowledged (clause 4.2) the common law protection of the rights targeted in the draft Bill (clause 4). Therefore, the draft Bill is unnecessary legislation and can only change the present situation by promoting litigation on the many ill-defined clauses in it.

. The draft Bill does not mention or allude to the only legitimate intent in refusing or withdrawing medical treatment: avoiding or discontinuing burdensome or futile treatment.

Further, I understand that some twenty amendments -

there are 30 -

are being proposed for the draft Bill tabled in the Select Committee's report. This emphasises the unsatisfactory nature of the draft Bill and further denies the community the right to express its concerns on the actual Bill to be considered by the Assembly.

If you are firm in your resolve to proceed with this legislation, I urge you to at least show the community the decency of referring this Bill to a Select Committee for adequate public consultation.

Yours faithfully,

Michael Cassidy

for State Chairman.

Mr Lamont: Who are the Knights of the Southern Cross?

MR DE DOMENICO: Madam Speaker, I will take the interjection from Mr Lamont and say that I do not care who the Knights of the Southern Cross are. As long as they are citizens of the ACT, they have just as much right as Mr Lamont and I do to express an opinion. If Mr Lamont wants to know who they are, I will give him a copy of their submission, which has their phone number on it, and he can ring them up and ask them. I am sure that they will tell him who they are.

Mr Lamont: That is a lovely response.

MR DE DOMENICO: Go and ask the Chief Minister, whom they wrote to, and she will tell you. Madam Speaker, we are standing here, debating this Bill, because we are seriously and conscientiously asking Mr Connolly to explain it. If he can answer the question, I would appreciate it. When someone says, "Please give me maximum relief from my suffering, Doctor", that request sounds quite reasonable. If "maximum relief from suffering" means a lethal dose of some pain relieving drug even though I am not terminally ill, does that mean that that can be done under this Bill? That is why I think that this clause and other clauses and amendments open up a Pandora's box about definitions, and that is why I will not be supporting the amendment.

MR CONNOLLY (Attorney-General and Minister for Health) (12.16): Madam Speaker, the answer to Mr De Domenico's question, which I answered about half an hour ago, on my interpretation of the Bill in its original form, is no. That is how I believe that the Bill in its original form would be interpreted if a court were faced with reading the history of the legislation - the presentation speech and the extensive work of the committee over nearly 12 months. So, I do not think that the wording in the original form would cover the lethal dose; but, to make that abundantly clear and to deal expressly with that circumstance, and because we do listen to community concerns, we have put in this provision to make something that we think is safe even safer.

I want to say two other things. Firstly, I object to Mr De Domenico speculating about what my view on this is and what my conscience on this would be. If he bothered to go and consult media clippings, files and such things, he would find statements of mine in support of the concept of natural death legislation that go back to the days when I first came to this Assembly. They go back to the period when I was in opposition, and I have consistently made such statements during the period that I have been in government. So, to try to suggest that I have some other personal view is just to play politics. I would thank him not to speculate on what my views on a subject may be. If he wants to know what my views are, I think that I am better at expressing them than he is.

A theme has emerged from a number of speakers opposite, who seem to want to speak at great length on this Bill as we get close to 12.30 pm. There have been repeated suggestions that the Government has somehow treated community input with contempt. That was demonstrated by Mr Humphries's amendment to change "I" to "II". It is true that what was clearly a typographical error was pointed out to us by the Right to Life Association. We took the view that that type of error would be fixed in the normal way, which is to go through the process of what is known as a Clerk's amendment.

Anyone who has been in government would know that. In fact, anyone who has been in the Assembly should know that. Mr Humphries thought it appropriate to move an amendment. It was a very proper thing for Mr Humphries to do, and the Government said, "Yes, you are right, and we support it".

Certain members opposite have seen fit to play a little bit of grubby politics with that and say, "This indicates that the Government has treated the views of the community with contempt". Quite the contrary; we were aware of the point, and we thought it was better to speed up the process of the house and deal with it as a Clerk's amendment. But, instead, we have dealt with it through Mr Humphries's amendment. It is quite inappropriate to suggest, as a number of members suggested, that that indicates a failure to take into account community views. In fact, I can say that views from people in that organisation, saying that they were very worried about this being a back door to active euthanasia, were on the scales as we considered what to do. They were not the reason, but were one of the factors, that led us to come in with the amendment that we are now debating, to make it abundantly clear that the community should not feel that this is a backdoor to active euthanasia, even though we felt that the Bill was safe in its original form and even though it was clear what Mr Moore's and the committee's intention was. That was clear from Mr Moore's presentation speech.

There were community concerns expressed by groups, including the Right to Life Association and others. Mr De Domenico referred to the letter from the Knights of the Southern Cross. Because we were aware of those concerns, we sought to make the position even safer. So, to try to play a bit of politics and suggest that, because we were not going to deal with what was clearly a typo, the Government has not listened to people or does not read letters is just fatuous politicking. Indeed, far from ignoring letters from the community, the fact that we were aware of some disquiet on whether this could be a backdoor way of achieving active euthanasia was one of the factors that led us to come up with this sensible amendment, to make absolutely certain of something that I felt was certain in any event.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (12.20): Madam Speaker, I have some concern over comments that have been made by Mr De Domenico in particular but also by a number of others from the Opposition benches who have spoken this morning. I was a member of the committee, and I reject out of hand and in absolute terms the criticism levelled, that this Bill that we are considering today has not had an appropriate airing. These were the essential issues that were tested by the Assembly's committee that inquired into this matter when the original legislation was tabled by Mr Moore. We did so in a very public, very open and, at times, very bitter way amongst the members of the committee; but we all believed that we had an obligation to ensure that these issues were aired publicly so that organisations or individuals - whether they be church based or non-church based, based on one particular philosophy or on another - had the opportunity to address the issues that are encapsulated in this Bill.

Mr De Domenico, if you have actually taken the time to read the transcript of evidence of the witnesses that appeared before our committee, you will find, as an example, that Mr Moore pursued, I think, with Bishop Browning the specific issue that is covered at length in this Bill. They did not pursue the active euthanasia issue proposed in the first part of Mr Moore's Bill, but they addressed this specific issue in some detail and at length. Indeed, it was recognised by our committee, and accepted by the Assembly, I might add, that it would be appropriate not to proceed with Mr Moore's Bill. The majority of the committee believed - - -

Mr Moore: All the committee, in the end.

MR LAMONT: You are right, Mr Moore; it was a total committee decision. They believed that it was appropriate that we return to the Assembly and attempt to put into legislation the views that were quite clearly expressed by us and by the organisations that appeared before us, as far as we could concur with those views. Mr De Domenico says that I have no right to do that. He says that 17 members of this Assembly do not have the right to determine this matter - - -

Mr Moore: Or even nine.

MR LAMONT: Or even nine, or eight, or seven, or six, or however many. That is a preposterous position for him to adopt. That is what this Assembly is charged with doing. It is one of the specific and basic tenets of any democracy that, following due process, going through the procedures that we have gone through, an Assembly such as this has an obligation to consider these matters. I think that it is reasonable that we have done so. So I reject, as, I think, any reasonable member of the Assembly will also reject, those accusations.

It behoves me to pick up Mr De Domenico on one other matter. It is a matter of some concern to me. He has said, and Mr Kaine interjected, that the Bill is flawed because there have been amendments made to it. That is the process of the Assembly. That is what this Assembly is here for. It is not here to accept, in its entirety, a Bill that comes in and just say, "Well, that is all that can happen. There can be no amendments. There can be no further discussions. There can be no additions, alterations or improvements". That is what you are suggesting. That is a preposterous position; but I have heard both of you express the same sentiment on other matters. You have to understand that this is a private members Bill.

Mr Kaine: Why are you defending it so vigorously if it is a private members Bill?

MR LAMONT: It is appropriate, Mr Kaine, that, if a single member introduces a Bill, notwithstanding the basis upon which it has been introduced, there may be parties or individuals - as you are so fond of pointing out in relation to your own party's policy - that have a specific amendment that they wish to have considered to improve the Bill, to promote their issue as they see it, or just to have an issue aired. So, for you to stand in this Assembly and say, on the one hand, that we have not gone through a proper process and, on the other hand, that this Assembly does not have the authority or should not have

the authority or the right to consider this matter, and then, when an individual member introduces a Bill, to say that we do not have the right to consider alterations makes a mockery of the process. We are not making a mockery of it; nor are the people who will support this Bill, nor are the people who have introduced it and nor is the Assembly's committee that inquired into this matter. I suggest that you need to look in the mirror if you are making those allegations.

MRS CARNELL (Leader of the Opposition) (12.27): Madam Speaker, I would like to reinforce the comments made by Mr Lamont. The committee did ask all of those questions. The most important questions that the committee asked of every single person who appeared, apart from the active euthanasia questions, were: Do you believe that people have a right to make a living will? Do people have a right to a comfortable death? Do people have a right to adequate pain relief? Fascinatingly, every single group who appeared, including the people who appeared for the Right to Life group, said yes. They were asked:

... our mutual position on this was that people did have a right to die with as much dignity as possible; that people did have a right to knock back treatment; that there was a right to allow natural death to occur when the patient determined that that was what they wanted. We also established that there was a right for people to die - wherever possible, and hopefully always - without pain. Is that a fair position?

The gentleman who appeared for the Right to Life Association said yes. A little later, Bishop Power appeared. He was asked:

Regardless of the drafting - we will just talk philosophically, morally - you are saying that you do not have a problem with people having a right to a natural death and saying at some stage, "Look, enough is enough. Thank you very much. No more antibiotics ...".

Bishop Power said:

There is no doubt about that at all.

Further on he was asked:

So the Victorian and South Australian style of legislation, whether we like the way it was drafted or not - the intent of a natural death, a Bill to ensure that both the patient and the medical fraternity are adequately protected, and the patient's rights to the things that we have spoken about are protected - is acceptable, as long as the drafting is right. Is that a fair statement?

Bishop Power said:

Yes, we will accept that.

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We could go on and talk about the Knights of the Southern Cross, who were also asked the same questions and gave exactly the same answers. They were asked:

Do people have a right to adequate pain relief - adequate in the mind of the patient?

Dr Fleming, who appeared for them, said:

Let me say that there is a duty and an obligation on the part of the doctor to relieve pain. The level of pain is clearly a subjective question.

MADAM SPEAKER: Order! It is 12.30 pm; so the debate is interrupted in accordance with standing order 77, as amended by temporary order.

Sitting suspended from 12.30 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Government Service - Staff Numbers

MRS CARNELL: My question without notice is to the Chief Minister. I refer the Chief Minister to her statement in the Assembly on 15 June this year that there had been an enormous take-up of voluntary redundancies under the Government's restructuring program. Indeed, she claimed that the demand for voluntary redundancies in 1993-94 exceeded the available funds of $17m. In fact, we understand that 453 such redundancies occurred. I ask the Chief Minister: Since the voluntary redundancy program was so successful, why have both the numbers of permanent staff and total government staff actually increased? In fact, at the end of 1992-93 we had a total staff of 22,805; the number is now 23,023.

MS FOLLETT: I thank Mrs Carnell for the question, Madam Speaker. The first thing I want to say is that, as members will be aware, we have spent a large amount of money on updating the computer system to ensure that information on staffing is evermore accurate. I have made no secret in the past of the fact that there have been some anomalies from time to time in reporting on staffing statistics across the ACT Government Service; there is no doubt about that. Madam Speaker, the fact that we have been prepared to make that investment in getting good statistics, I think, is to the credit not just of the Government but also of the people who are responsible for maintaining these figures.

As far as voluntary redundancies go, members will be aware that in just about each budget we have made provision for voluntary redundancies. The important thing about those redundancies is that they are just that - they are voluntary. The majority of people whose positions become redundant in fact opt for redeployment in the first instance. So, the voluntary nature of those redundancies is respected, as, indeed, is the RRR award in all matters to do with any redundancies.

Madam Speaker, I think it is also important to note that in fact the cost of government in the Territory has reduced, and that is an important point. Overall, the value that the community gets for its dollar spent on ACT government administration has increased. Whilst I respect the point that Mrs Carnell is making - and I do not have the figures before me at the moment - I believe that what we have done as a government is to go about reducing our own outlays in a very responsible manner, in a manner that has ensured that our community services are maintained, that those services that we know the community needs are maintained. At the same time we have enabled a number of staff who wish to take advantage of voluntary redundancies to do so.

I have never advocated the approach which I know the Liberals have put forward; that is, massive reductions in the public sector. That has not been my approach at all. Madam Speaker, I at no time have said that I wish to have fewer people working for the ACT administration, which the Liberals have said. Mr Kaine, I think, started off with a figure of about 3,000. Where there is a more efficient method of conducting the Government's business, where that can be assisted by voluntary redundancies, that has been our approach.

MRS CARNELL: I have a supplementary question, Madam Speaker. Madam Speaker, will the Chief Minister then admit that the $17m worth of taxpayers' money spent on voluntary redundancies has been less than successful, taking into account that not only do we have more total staff in the ACT this year than we had at the end of last year but we have more permanent staff as well?

MS FOLLETT: Madam Speaker, I think the real question here is what has been the cost of government. There is no doubt that there has been a real reduction in our outlays. I know that Mrs Carnell does not want to accept that, but it is indeed the case.

Per Capita Debt

MRS GRASSBY: Madam Speaker, my question is also to the Chief Minister. Can the Chief Minister confirm that the ACT's net level of per capita debt declined again in 1993-94?

MS FOLLETT: Madam Speaker, yes, I can certainly confirm that. Of course, it is more good management news that the Liberals do not want to know about. We have in fact reduced our net debt per capita during the past financial year. After question time I will be tabling figures which show that ACT government activities have in fact accumulated net reserves - reserves of $630 per capita at 30 June 1994. That is actually an improvement of $583 per capita since 1990-91, when Mr Kaine was Treasurer. So, for the total ACT public sector, when you include our public trading enterprises, the net debt in real per capita terms has been reduced from $1,009 per person in June 1991 to $180 per person in June 1994.

Madam Speaker, that compares very favourably with the average for the States and the Northern Territory, which has in fact increased from $5,240 to $5,460 per person over the same period. I think this is a remarkable result, one which I am certainly very proud of. It is a sign of responsible financial management, and it is all the more remarkable when you consider the massive reductions in Commonwealth funding that the Territory has had to manage over that period. In fact, the general purpose recurrent funding - that is, the general budget support which we have discretion to spend - has been reduced by almost half, in real per capita terms, since self-government. So, that really is a dramatic reduction. Despite those reductions, we have managed, as a government, to expand and to introduce new community services, new employment programs, new environmental protection programs and so on.

I think that stands in stark contrast to the approach that is taken by conservative governments - and I include the Government which was headed by Mr Kaine - where they do make at times irresponsible but always quite contradictory claims about their budget management and at the same time have a slash and burn approach to the public sector, which we have just had demonstrated. Madam Speaker, I particularly want to say that the ACT's budgetary outcome position is infinitely preferable to that which we have recently seen New South Wales buy into by virtue of an election budget which has in fact added enormously to the debt of the people of New South Wales. That has not been the approach of this Government. Our approach has been to reduce debt and, as I have just shown, we have been extremely successful in doing that.

Corporatisation and Privatisation

MR DE DOMENICO: Madam Speaker, my question is also to the Chief Minister. I refer the Chief Minister to today's demonstration outside the Canberra Theatre where 100 or so left wing unionists and John Langmore - - -

Mr Berry: And Wayne Berry.

MR DE DOMENICO: And Wayne Berry - protested against the Federal Labor Government's plans to corporatise and/or privatise certain government areas. Chief Minister, as a delegate to the forthcoming ALP National Conference, will you be agreeing with the left wing unionists and John Langmore and voting against privatisation and/or corporatisation?

Mr Connolly: Madam Speaker, on a point of order: I would have to say that the Chief Minister's responsibilities are vast. It is in order to ask her about her ministerial responsibilities, but it is not appropriate to ask a member of the ministry about their role as a delegate to a party conference.

MADAM SPEAKER: That is quite correct. The question is out of order.

MR DE DOMENICO: I will rephrase it, Madam Speaker. Is it your Government's policy, therefore, to agree with the sentiments expressed by the left wing unions and John Langmore, or will you be honouring your commitment made at a recent COAG meeting which discussed the Hilmer review and therefore be voting in favour of the benefits of competition that flow from corporatisation and privatisation?

MS FOLLETT: That is one of the very oddest questions I have ever been asked in this place, Madam Speaker. I think I can see what Mr De Domenico is getting at; but, unfortunately, he never really got to it. I want to say, first of all, that I was not at the demonstration. I am unable to vouch for the credentials of the people who were there. If there were 100 left wing unionists, I would have been only too pleased to go out and talk to them. They have their right to demonstrate against any matter on which they feel strongly, and I am only too pleased that in this day and age and in our democracy they are able to take up that right and demonstrate peacefully.

Madam Speaker, I have made no secret of the fact that this Government is opposed to privatisation. It is not a secret. It has been our policy. It was our policy in relation to, for instance, ACTEW, which the Liberals would have privatised. It is our policy in relation to ACTTAB, which you would have privatised. It is our policy in relation to the ACTION bus service, which the Liberals want to contract out. It is our policy in relation to health services, which, again, the Liberals want to pass over to the private sector. We are opposed to privatisation. We respect the public sector. We consider that the public sector can and does perform functions efficiently and effectively and we wish to support it in that role.

Mr De Domenico has touched on the Hilmer report. I want to say to Mr De Domenico that at the COAG meeting I made the point that the road to competition is not only through privatisation. You are quite wrong if you believe that. The thrust of the Hilmer report is to introduce competition, the kind of competition that we have seen Mr Connolly introduce into our petrol market, which you have not been big supporters of. You have not been big supporters of that kind of competition policy. So, Madam Speaker, I can assure the people of the Territory that we certainly will not be embarking on a wholesale sell-off of public assets. We have not done it at any stage in government and I am not about to start.

Driver Education Program

MS SZUTY: Madam Speaker, my question without notice is to the Minister for Urban Services, Mr Lamont. I am looking for a detailed answer to this question, so earlier today I gave the Minister notice that I would be asking this question. Can the Minister inform the Assembly as to what new provisions are, or will be, included for educating drivers to have proper regard for cyclists in his department's new program for the training of young drivers?

Mrs Carnell: He does not know what the program is yet. They have not written it.

MR LAMONT: Not only does Mrs Carnell want to answer her own questions; she also apparently wants to answer everybody else's.

MADAM SPEAKER: Order!

MR LAMONT: Madam Speaker, I thank the member for her question. There are, I think, acknowledged two main reasons for road fatalities and road trauma in the whole of the country, not just here in the ACT. That includes the effect upon pedestrian and other road user traffic. Those two major issues are alcohol and attitude, and it is the second of those that I think Ms Szuty's question goes to.

The essential part of the reform process in driver licensing in the ACT that is being proposed will be to ensure that, through a competency based driver training program, we affect the attitude of new and learner drivers, and in particular that that attitude be changed within our young drivers. It is simply not good enough to suggest that the fact that a person is able to pass a written test or a verbal test about when to turn left, when to put your foot on the brake, when to indicate, when to give way and so on, is a sufficiently comprehensive requirement, given that one of the major road trauma causes is the attitude of the driver, rather than their technical knowledge of a 14-page handbook. It is proposed that, in the learn to drive program that has been developed, the attitude of that driver is the major issue that is concentrated on - attitude, not only for their own protection and the protection of persons travelling in a vehicle with them but also for the protection of other road users, whether those road users are other motor vehicle drivers, motorcycle drivers, cycle riders or pedestrians. I believe that, in concentrating on that issue, we can contribute significantly to the reduction in road accidents and road trauma in this country.

It was very interesting yesterday - I think a number of members of the Assembly will have heard - that a representative of the New South Wales Roads and Traffic Authority, at a function held here in the Assembly, addressed this question in micro-economic reform terms. What we are talking about in road trauma and road accident costs to us as a community is that, if we are able to have a 20 per cent effect nationally on that issue, this country saves $2 billion. I think that is the context within which this whole reform agenda needs to be placed. In particular, Ms Szuty, the question of the attitude of drivers to other road users, pedestrians and cyclists needs also to be borne in mind in that context. Not only is there personal trauma, not only is there great suffering by the individual who may be involved in that accident, but there is indeed a great cost imposed upon our community.

So, the basis of this new system will be to change the attitude of our drivers. I am certainly hopeful that, in cooperation with the industry, the transport industry in its wider context, the learn to drive industry, the professional drivers and my department, we also will be able to look at systems that will continually apprise drivers - not just as they get their licence but in the longer term, and as they are each continually apprised - about their competence as drivers. So, it is not something that happens just in the lead-up to achieving your licence; it is something that we consider reviewing over time.

It would, obviously, need a great deal of public debate about that part of that particular issue; I believe that something that we also need to bear in mind is that quite often, as a person ages, their reflex times and their conditioning change, and that affects the way in which they drive.

Traffic Control Measures - McKellar

MR STEFANIAK: My question is also directed to the Minister for Urban Services, and it has to do with a road. Minister, residents of McKellar have complained to me about a dangerous intersection at Dumas Street and William Slim Drive, McKellar. I understand that one fatality has occurred there already, and residents indicate to me that during busy traffic periods it is almost impossible to turn right into William Slim Drive from Dumas Street. With the continued development of Gungahlin, William Slim Drive is only going to get busier, and there is no form of traffic control at that particular intersection. Will you indicate whether you intend to install an appropriate form of traffic control, perhaps even a roundabout? If not, why not?

MR LAMONT: I thank the member for his question. Yes, I am aware of the issues associated with the intersection that you refer to, and so is my department. The traffic control measures that are being investigated for that area will, I believe, satisfactorily answer that particular concern. However, there is a wider concern that you have outlined, which is the traffic volume increase as a result of the development and expansion of Gungahlin. There are planned works, which have been outlined, for the entire corridor leading into and out of Gungahlin, particularly on that north-south axis, through and across the highway.

I will undertake, Mr Stefaniak, to give you the detailed implementation dates, and make arrangements to provide you with a personal briefing from the department, should you so choose, and indeed make the same offer available to any of the constituents that may have raised the matter with you. If you are able to contact my office to indicate a time that is convenient, I will attempt to ensure that we have those officers there for you.

Sporting Facilities - South Tuggeranong

MS ELLIS: Madam Speaker, my question is directed to the Deputy Chief Minister in his capacity as Minister for Sport. I preface this by reminding the Minister that again Tuggeranong has made the rating as the fastest urban growth area in Australia in terms of population in the most recent report I read in the press this morning or yesterday, I think it was. The need for facilities, and specifically sporting facilities, in an area like that is very important. I would be very pleased if the Minister could explain to us what sorts of sporting facilities the Government is providing, particularly in the Tuggeranong suburbs of Conder and Gordon.

MR LAMONT: I thank the member for her question. It is timely to respond to this general inquiry, as most residents of Tuggeranong will have seen, as I am sure some of the members of this Assembly who live in Tuggeranong will have seen, extensive works being undertaken in the area known as the Conder district playing fields. Those fields, Madam Speaker, are currently under construction and are due for completion in November this year. Following the establishment of the grass, they are expected to be ready for use by April 1995. As you would appreciate, there is a need to ensure that the grass takes and that it is robust enough to allow for fairly wide sporting use of that facility.

These fields, consisting of about eight hectares of irrigated grass, will provide a valuable addition to the sporting facilities in the Tuggeranong area. Following extensive consultation with sporting groups, these fields will serve as the training headquarters for the Tuggeranong Australian Rules Football Club. They will incorporate two senior Australian rules fields, one of which will be equipped with quality training lights. Also included in the complex will be a pavilion providing change rooms, public toilets and a kiosk. This building will also house a mini depot to serve as a base for the City Parks field staff maintaining the southern Tuggeranong suburbs.

Madam Speaker, in summer the complex will accommodate a little athletics centre and junior cricket. Plans are being prepared to construct a turf wicket on the Conder section of the complex next spring, to enable the Tuggeranong Valley Cricket Club to program all senior grades within the Tuggeranong area. An important innovation in the operation of this complex will be the fact that it will be irrigated using second-class water from the nearby Point Hut pond, assisting in water conservation and reducing long-term maintenance costs.

Madam Speaker, a licensed club site has been identified alongside the Conder section and plans are under way for the development of this club in the near future, providing an opportunity for close links to be established between the local community and the sporting groups using the fields. The essential issue associated with the establishment of the club facilities on that site, Madam Speaker, I understand, is that the Australian rules senior team within Tuggeranong is attempting to establish a club facility within the region and obviously it would be appropriate if it were able to establish it at this location. I also understand that discussions are under way between the Tuggeranong Valley Rugby Union Club and other sporting bodies, including Australian rules, to see whether or not co-location of facilities would be undertaken.

In relation to the cricket pitch, Madam Speaker, I am informed by my officers that it would delay use of the Conder playing fields were we to introduce the turf cricket pitch this year. So, it is proposed that the irrigation system be put in now as part of this part of the process; but the actual development of the turf, which will take some time, would not be implemented until the end of this summer playing season. Madam Speaker, I think that demonstrates the high priority that this Government places on the provision of such facilities, and I am extremely pleased to be able to make this report to the Assembly.

Housing Trust Personnel - Alleged Assaults

MR CORNWELL: Madam Speaker, my question is to the Minister for Housing and Community Services, and I trust that I shall have as comprehensive a response as he just delivered to the last two questioners. I am advised that recently there were two assaults upon Housing Trust personnel in the vicinity of the Allawah, Bega and Currong flats. I ask the Minister: What were the circumstances of the attacks? Were the personnel obliged to take leave? If so, have they returned to their positions, which I understand involve dealing with the Allawah, Bega and Currong flats? Thirdly, does this type of action occur regularly? If so, what protection do residents of the flats have if visiting Housing Trust officers can suffer such assaults?

MR LAMONT: I thank the member for his question. I am aware of difficulties that could be construed as meeting the general thrust of the member's question. I will investigate this. I simply do not have with me the information about the source of the attack and the detail of it; but I will provide you with an appropriate answer on that specific part of your question.

In relation to points 2 and 3, as you would be aware from announcements made in this Assembly since I have become the Minister, I have been extremely concerned about the total issue not only of safety but amenity and service at the ABC flats. I am pleased to be able to say, and I think it should be quite obvious, that the previous Minister was also extremely concerned about that issue and during his stewardship of this portfolio he instigated the community involvement in looking at those issues at the flats. The clients of the trust that are resident in the ABC flats are involved in that process. Also involved in that process are representatives of the police and other community based organisations, including my own Housing and Community Services Bureau personnel. They are involved in promoting and improving the quality of life issues associated with living in such a complex.

I think it needs to be understood that, while I do take responsibility for those matters within my portfolio - the buck does stop at my desk in relation to these issues - I cannot always be held accountable if somebody throws a whammy and attacks another person. I do take the responsibility of providing for support mechanisms in those circumstances and mechanisms that are designed to minimise that occurrence and to avoid it where possible. But I think you would appreciate, Mr Cornwell, that I am not personally responsible for the actions of every single individual in the ACT, and I think it would be inappropriate for you to suggest that I am in this case.

MR CORNWELL: I ask a supplementary question, Madam Speaker. The Minister might like to take this on notice because it is relevant, I think, to the first part of the question. Could you perhaps also take on notice the role of the Guardians, which I think is an organisation that you have set up in this matter, and could you advise of any steps that can be taken to try to minimise this sort of thing in the future?

MR LAMONT: I thank you for your supplementary question and the opportunity it affords me, Mr Cornwell, because, as you pointed out, the Guardians are a group of residents of the ABC flats area who not only have, in cooperation with the organised community structure within the ABC flats, taken it upon themselves to provide assistance and support to promote the feeling of safety within complexes of this size but have been extremely successful in doing so. Notwithstanding that evidence, Mr Cornwell, I still think they have been extremely successful in providing support and assistance, and your question gives me the opportunity to accord recognition to that. I will take the specific terms of your question on notice.

Produce Markets - Kingston

MR MOORE: Madam Speaker, my question is directed to Rosemary Follett as Chief Minister. I believe that the Rural Producers Cooperative in the ACT requested support from your Government for the use of the unused bus depot at Kingston for a cooperative rural producers market. Your response was to give no support to this endeavour. Given that every other capital city and many large towns in Australia have producers markets, can the Chief Minister give the Assembly her reasons for not supporting such an endeavour, which would not only benefit our local producers but also reduce the costs of fruit and veg, particularly in this drought?

MS FOLLETT: I thank Mr Moore for the question, Madam Speaker. Madam Speaker, I take it that Mr Moore is referring to an approach that was made some time ago?

Mr Moore: Yes.

MS FOLLETT: Yes, indeed. I know that there was an approach some little while ago, Madam Speaker - in fact, over a year ago - for the old bus depot to be turned into a rural produce market. This proposition was very carefully assessed by the Economic Development Division officers within my own department and the view was that it was not really an economically feasible proposition. Since that time, as members may be aware, there has been a further proposal for a market in the old ACTION bus depot, and that in fact has proceeded. I had the pleasure of opening that market a couple of weeks ago. It seems to me that it will be a very successful venture. The market itself accommodates a vast array of stalls. The produce on display and for sale appeared to be marked by the quality and the variety of offerings.

I am also aware that at that market in the ACTION bus depot there are some, what you could call, rural producers represented and, to the best of my knowledge, Mr Moore, they have taken that role quite happily and appear to be quite pleased to be taking part in a much broader market setting. So, I think the situation, as far as those rural producers who had the initial idea of setting up there are concerned - as far as I am aware - is that they have been satisfactorily accommodated. I can certainly say that I have not heard

from them for quite some time; so, if there are still issues that they wish to get assistance on or they wish to take up with the Government, then I am only too happy to listen to those issues. But they certainly have not come to me for quite a while. If the people Mr Moore is referring to are amongst those who are doing business in the market in the old bus depot at Kingston, I wish them all the very best with their endeavours.

MR MOORE: I have a supplementary question, Madam Speaker. Chief Minister, my understanding of the current market in the bus depot is that it has been okayed, basically, for craft only. Are you saying that, as far as your Government is concerned, it is okay for rural producers as well, because, of course, that would resolve the problem?

MS FOLLETT: My understanding, Madam Speaker, is that, so long as those people are growing and selling their produce, they may well be accepted for that market. My own experience of being at that market was that I did purchase some rural produce, as did Mr De Domenico and indeed most members who were present, from probably the gentleman that Mr Moore is referring to, and there were no issues that I am aware of.

Cemeteries Trust

MR HUMPHRIES: My question is to the Minister for Urban Services. I understand that in June this year an investigation into the operations of the Cemeteries Trust of the ACT was conducted by Mr Rod Peters of the Department of Health and was considered by the board of management of the Cemeteries Trust subsequently. I understand that the investigation showed some major deficiencies in some of the trust's operations. Has the Minister been briefed on those investigations? On the fair assumption that he has, can he summarise the findings of that investigation to the Assembly?

MR LAMONT: I was aware that there had been some issues raised in relation to the operations of that area. I have not received a recent briefing on the implementation of recommendations that may have come out of that review; but again, in order to provide you with an up-to-date briefing on that particular issue, I will undertake to do so as a matter of urgency and to respond in writing to the specific aspects of your question in the Assembly when we next meet. In fact, I might even be able to do it by tomorrow.

MR HUMPHRIES: I have a supplementary question, Madam Speaker. If it is possible, could I ask the Minister whether you would consider also tabling in the Assembly that report by Mr Peters.

MR LAMONT: Yes, I will consider that.

Children with Learning Difficulties

MR BERRY: I was struggling to rise to my feet after Mr Cornwell because, when I was asking a question of the Minister for Education and Training, I wanted to point to the fact that Mr Cornwell identified 17 schools he thought ought to close; but I did not get the opportunity. I thought I would raise it anyway. Madam Speaker, my question to the Minister for Education is in relation to children in the ACT who are experiencing learning difficulties. I would ask the Minister to point out to the Assembly and to the people of the ACT what the Department of Education is doing in relation to these children.

MR WOOD: Madam Speaker, as always, given the spread of abilities in society and in our schools, there is a need for some students to have additional treatment and sometimes very specific additional treatment. Consequently, the department monitors each program, has a look and sees what is working and how well they are working, and from time to time changes direction to ensure that we are delivering the best services to those students.

At the present moment the department is introducing on a trial basis a needs based learning assistance program to support students with learning difficulties in literacy and numeracy from kindergarten through to Year 10. The program will focus on student learning needs and learning outcomes. In the past, funding had been provided to both primary and high schools to support students for separate reading recovery, learning advancement and learning assistance programs. The new model of learning assistance will encourage a more integrated approach for students and will provide primary schools, in particular, with more flexibility to meet the students' needs. Sometimes the programs in the past were rather isolated, perhaps just too specific, and did not cover the whole context of the student's learning. In the 1994-95 budget, the Government is providing additional funding of $300,000 for early intervention support in primary schools. This funding will enable schools more adequately to support their students who may be experiencing some learning difficulties.

Cannabis Hemp Plant

MR STEVENSON: My question is to the Minister for the Environment, Land and Planning, Bill Wood, and concerns the environmental benefits of the cannabis hemp plant. Here, of course, I do not refer to the illegal plant that has a very high drug content but to the legal varieties that are legalised throughout the EEC countries. Because that requires less chemical insecticides and fertilisers than conventional crops, yet returns a pulp yield per hectare four times higher than that of native forests, can the Minister see the benefits of the use of the plant and its production within the ACT, notwithstanding the fact that you can make clothing out of it, including jackets like this one that I have on?

MR WOOD: Madam Speaker, I have to say that I am not fully informed on all aspects of the issue that Mr Stevenson raises, but in anticipation of a debate shortly I have gathered some information. I believe that it has been fairly long known and well used in the past that the material Mr Stevenson mentions does make a good fabric and has been used for paper. Mr Stevenson has given me some information to suggest that it has been long used in history. Certainly, environmentally, if we could reduce our reliance on

woodchips, if we could reduce the number of trees that might be pulped for paper manufacture, that would be advantageous to our environment; there is no question about that. I am not sure that the question is quite as simple as that, and maybe we will elaborate on some of those issues in a forthcoming debate.

Ms Follett: I ask that further questions be placed on the notice paper, Madam Speaker - or asked now, if you want.

PAPER

MADAM SPEAKER: Members, I present, for your information, the 1993-94 annual report, including the financial statements and the Auditor-General's report, for the ACT Legislative Assembly Secretariat.

AUDITOR-GENERAL - REPORT NO. 7 OF 1994
Various Agencies - Overseas Travel and Implementation of Major Information Technology Projects

MADAM SPEAKER: Members, I also present, for your information, the Auditor-General's report No. 7 of 1994, Various Agencies - Overseas Travel Executives and Others, and Implementation of Major IT Projects.

Motion (by Mr Berry), by leave, agreed to:

That the Assembly authorises the publication of the Auditor-General's report No. 7 of 1994.

PAPERS

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

Aboriginal Deaths in Custody - Royal Commission - Implementation of the Commonwealth Government responses to the recommendations of the Royal Commission, First Annual Report 1992-93, Volumes 1 and 2.

Chief Minister's Department - Annual Report 1993-94 including financial statements and Auditor-General's report together with annual management reports of the Agents Board and the Casino Surveillance Authority.

BUDGET OUTCOME 1993-94
Paper

MS FOLLETT (Chief Minister and Treasurer) (3.11): Madam Speaker, for the information of members, I present the report on the 1993-94 budget outcome, and move:

That the Assembly takes note of the paper.

Madam Speaker, on 24 August I tabled the outcome of the 1993-94 budget. At the same time I indicated that further information relating to the outcome would be provided by 20 September. I also indicated on 24 August that the audited aggregate and unitary financial statements would be available. I wish to advise members that the reconciliation of the aggregate financial statement and therefore Treasury's unitary financial statement has not been completed within that timeframe. These statements will be provided to members directly when they have been completed and will be tabled on the next sitting day.

I now table the report on the 1993-94 budget outcome, in government finance statistics format, together with details of the financial assets and liabilities of the ACT. The report shows that the general government sector of the ACT achieved a surplus of $14m in 1993-94 - a $26m improvement on budget estimates. The ACT has now achieved a general government surplus each year since 1990-91.

The ACT has managed the difficult transition since self-government without increasing debt. In fact, the level of debt has been reduced over this period. At the same time, outlays on general government activities have continued to reduce as a share of the ACT economy, falling from 14.6 per cent of gross state product in 1990-91 to 12.6 per cent in 1993-94. In relation to the ACT's Loan Council allocation, the anticipated net call on financial markets in 1993-94 has been turned to a net contribution to national savings. During 1993-94 the financial reserves of the general government sector increased from $161m to $189m. At the same time the total public sector net debt fell from $93m to $54m, which represents a fall of 41 per cent in real per capita terms. This reflects the Government's budget strategy to limit borrowings and provide for future superannuation liabilities and the repayment of debt.

Question resolved in the affirmative.

PAPER

MR WOOD (Minister for Education and Training, Minister for the Arts and Heritage and Minister for the Environment, Land and Planning: Mr Deputy Speaker, for the information of members and pursuant to section 20 of the Commissioner for the Environment Act 1993, I present the Commissioner for the Environment annual report for 1993-94.

STATE OF THE ENVIRONMENT
Paper

MR WOOD (Minister for Education and Training, Minister for the Arts and Heritage and Minister for the Environment, Land and Planning (3.12): For the information of members, I present the Australian Capital Territory State of the Environment Report prepared by the Office of the Commissioner for the Environment and move:

That the Assembly takes note of the paper.

Mr Deputy Speaker, it is with considerable pleasure that, under section 22 of the Commissioner for the Environment Act 1993, I table the ACT State of the Environment Report. This report and the annual report I just tabled are the first to be produced by the ACT's first Commissioner for the Environment, Dr Joe Baker. Dr Baker and his staff are to be commended for their enormous efforts in putting together the *State of the Environment Report*, which is a very comprehensive assessment of the ACT's environment and of environmental management in the ACT. This is the first such report. It is ground-breaking stuff and it has required an enormous amount of effort to find the means of presenting this report. Dr Baker and his staff have done a magnificent job. I want to commend also the large number of people who have been involved in the reference groups and have provided considerable assistance to Dr Baker in presenting the report.

The Government established the Office of the Commissioner for the Environment in the interests of increasing its accountability to the ACT community on its environment management record. It is important in this context to note that, in accordance with the Commissioner for the Environment Act, the report has been prepared independently of direction or constraint by me or government departments or agencies. The Act does, however, provide for the report to include "such matters as may be specified by instrument by the Minister". For the 1994 report, I exercised this right by directing the commissioner to report on ACT government agency compliance with the ACT greenhouse strategy and to recommend ways to increase the effectiveness of agency actions.

The report represents the contributions and efforts, as I said, of many people and organisations, government and non-government, who have worked collaboratively in addressing both its format and its content. The commissioner undertook extensive consultation with government agencies and with members of the public, through public meetings, to determine and explain the format of the report. The report is based on the framework used for OECD state of the environment reporting, using the interactions between environmental conditions, pressures and responses to comment on the state of the environment. In its simplest form, this means that the report is designed to comment on the environment and on environmental management, by reporting on the condition of the five key resources of land, water, atmosphere, plants and animals and the urban environment.

The report analyses the pressures which are affecting or causing those resources to be in that condition - usually human impact - and then considers the responses being made by government, business, community groups and the public to those pressures; that is, what those groups are doing about the pressures which affect the condition of the environment and what effect those actions are having. In order to comment on the "condition, pressures and responses", a set of environmental indicators were developed, again with wide consultation. These indicators have provided a framework against which the report has been written. They have provided a guideline of what people consider to be important aspects of the environment and important effects on the environment. These indicators are expected to change over time, as better information becomes available and as environmental circumstances change. Dr Baker convened expert reference groups to develop each of the resource chapters, each of which used equally valid but different ways of approaching the task at hand. Members should note, therefore, that the report's chapter format varies. The challenge for future reports is to decide on a consistent approach and achieve a uniform document which maximises its usefulness.

Mr Deputy Speaker, the Government will be providing a comprehensive response to the commissioner's report in due course. However, I would like to inform the Assembly of the broader scope of the report, noting areas of particular significance. The commissioner's overview of the report provides a summary of the main deliberations of the expert reference groups and the commissioner's assessment of those deliberations. It points out areas where the ACT is at the forefront of international developments, as well as highlighting areas for further work, both of which are important aspects in fully understanding the real state of the ACT's environment.

It is pleasing to note the commissioner's recognition of the outstanding performance now achieved by ACTEW at the Lower Molonglo Water Quality Control Centre. The Government is delighted that our water utility is recognised for its sewage treatment process, which is at the very cutting edge of development in international terms. Also, the ACT's management and development of urban stormwater systems, including the use of lakes, water pollution control ponds, temporary sediment control ponds, gross pollutant traps and floodways, is providing international leadership in terms of protecting downstream water quality.

In addition, the ACT public transport system, ACTION, is currently using new Renault buses which comply with the new European Community vehicle emission standards. These standards are a significant improvement on the current Australian standard. Small scale trials of alternative fuels such as diesohol and compressed natural gas are also being carried out by ACTION, and ACTEW is testing an electric car. Ethanol and liquefied natural gas initiatives are being monitored by ACTION.

Some important issues raised by the commissioner in this section of the report are that there are no legally binding national standards for measuring air quality, that there are no national standards for other environmental management practices and that Australia as a whole has yet to see ecological considerations assume appropriate priority with economic considerations in major development proposals. The question of appropriate standards will continue to be addressed by the ACT Government within the relevant national forums such as in the soon to be established National Environment Protection Council.

In relation to environment management practices, the commissioner notes that the introduction of integrated environment protection legislation, which aims to bring together in one piece of legislation the various Acts and prescribed environmental standards relating to pollution control in the ACT, will greatly assist in achieving suitable ecosystem based management strategies throughout the ACT and region. The Department of the Environment, Land and Planning is progressing the development of the integrated legislation as a priority, and I expect later this year to have a document to release for a second round of public consultation.

This report also provides useful historical perspectives which will enable people to visualise how the ACT has changed since its gazettal as the national capital in 1911. In short, the first ACT State of the Environment Report provides a broad overview of the state of the environment in so far as available information has allowed. Again, I thank the commissioner and his staff and all those on the reference groups for their efforts and commitment in producing this document, and I commend it to the Assembly.

Motion (by Ms Szuty) proposed:

That the debate be now adjourned.

MR DEPUTY SPEAKER: Did you wish to make a comment, Mr Lamont?

Mr Lamont: I was proposing to speak to the report, if I could, momentarily, Mr Deputy Speaker.

MR DEPUTY SPEAKER: Would you seek leave to withdraw the motion, Ms Szuty?

Ms Szuty: I seek leave to withdraw my motion, Mr Deputy Speaker.

Motion, by leave, withdrawn.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (3.24): Mr Deputy Speaker, because of my responsibilities for the ACT Electricity and Water Authority in particular but also as the Minister responsible for the Department of Urban Services, I wish to rise to congratulate the commissioner, his staff and the Minister for the presentation of the State of the Environment Report. In doing so, I want to reiterate some words that I used in launching the future water supply strategy document on behalf of ACTEW just recently. I said about that document that as far as water quality was concerned that document would ultimately be assessed as the test by which we - and that is all of us in this Assembly as well as all of us living today in this community - will ultimately be measured. It will be the test, as I believe that this document will be.

I think this document is so important because, for the first time, we have a comprehensive document which will allow us to assess the effectiveness of measures we put in place to protect, preserve and promote environmental consciousness within our community and also within government. This document will be the test, and I am confident that as the years go by this will be, as will each annual report from the commissioner's office, the test by which we will be judged and measured. So, I look forward to working cooperatively through my own agencies with the Minister, Bill Wood, and the Commissioner for the Environment to ensure that as a community we pass the test.

Debate (on motion by Ms Szuty) adjourned.

COMMERCIAL AND RETAIL LEASES - PROPOSED CODE OF PRACTICE
Paper

MR CONNOLLY (Attorney-General and Minister for Health) (3.26): For the information of members, I present the proposed code of practice relating to commercial and retail leases, including an explanatory booklet, and move:

That the Assembly takes note of the paper.

I table the proposed code of practice relating to commercial and retail tenancies, which I believe will assist members in their consideration of the Commercial and Tenancy Tribunal Bill 1994. I also table a draft explanatory booklet which explains the provisions of the proposed code. Mr Deputy Speaker, I circulated an advance copy of this under a covering letter to all members last week, but this amounts to a formal tabling. It has also been distributed quite widely in the community.

On 16 June this year I tabled a draft code of practice for commercial and retail tenancies as a basis for discussion with interested parties. Since then, my officers and I have been involved in comprehensive discussions with property owners, tenants and other interested groups in the development of the proposed code of practice that I have just tabled. The Government has sought, wherever possible, to obtain consent from both tenants and property owners to the policies contained in the proposed code.

In most areas I think we have been able to achieve a result that is generally agreeable to both owners and tenants. In some cases, most noticeably the question of renewals, this has not been possible. Where there has been sharp disagreement between owners and tenants, the Government has tried to accommodate the concerns of all parties, while still remaining focused on the need to provide a code that is fair and equitable and in the best interests of commercial leasing in the ACT.

Before discussing some of the provisions of the proposed code, I would like to point out that when the code is accepted it will not be the end of the story; it will be just the start. It is the Government's intention to monitor the ongoing operation of the code. We will invite various groups - such as CARTA, BOMA and the Canberra Property Owners - to join in an ongoing dialogue so that when the code comes into operation, hopefully on 1 January next year, we can get a feel for how it is working and where there might be a need for changes. In addition, I think it would be worth while to conduct a complete review of the code after it has been in operation for, say, 12 months.

A number of amendments have been made to the draft code of practice that was circulated for public comment in June this year. Most of these amendments have been made in response to submissions received, and some have been made to remove unnecessary duplication in the code or to tighten up drafting. I do not have the time here to go through a thorough explanation of the proposed code. The draft explanatory booklet for the proposed code gives a detailed explanation of its provisions, and I would commend it to Assembly members, who have been able to examine it over the last week. However, I would like to draw your attention to the major amendments that have been made since the draft code was released.

First of all, I will deal with the most difficult issue, namely, the question of what rights a tenant will have in relation to the renewal of leases. There is agreement that a minimum lease term of five years is necessary to ensure that business investments can be recouped by tenants within the period of a lease; so the code will provide for that. However, a number of tenants consider that a five-year lease alone is not sufficient. Many tenants want to be assured of automatic renewals and, where a renewal is not granted, want compensation to be payable. Alternatively, CARTA has proposed that an owner should not be able to unreasonably refuse to renew a lease, with the proposed tenancy tribunal having the power to determine the reasonableness or otherwise of any claim for renewal. Tenants have pointed out the particular difficulties in Canberra, where, unlike in other cities, owners face limited competition in the supply of premises. It is very difficult in many parts of Canberra for a tenant to simply pick up and move a block away, thus retaining goodwill in that area, when the relationship between owner and tenant is unsatisfactory. In other words, in Canberra, especially when it comes to renewals, tenants believe that they are in a very vulnerable position.

In addition to some guarantee of tenure, tenants have argued that once they have set up a business in a particular position it costs a fair amount of money to move somewhere else and re-establish the business. In these circumstances, an owner knows that an existing tenant will be willing to pay a premium over and above the market value for those premises because extra rent will not be as burdensome as moving. Accordingly, tenants have argued that there should be a cap on the rent charged for renewals. The rent should not exceed the market rent for those premises.

Owners, in contrast, have pointed out that there are important reasons why there should not be automatic renewals. In particular, owners have an investment from which they seek to maximise their return. They argue that a more profitable shopping centre, with an attractive tenant mix, is better for all concerned, not just the owner. The tenants benefit from having more customers, and consumers benefit from having more choice.

The tenancy mix in a shopping centre may need to be changed for a number of reasons, including responding to changes in shoppers' preferences. Owners argue that automatic renewals would take away the right of the owner to control their investment and would mean that a tenant would effectively get freehold title without the need to pay a purchase premium. Tenants would have the option of leaving at the end of any lease period, but owners would not have a similar right to choose whether to continue dealing with a particular tenant.

The Government has sought to find a middle ground on the question of renewals. Accordingly, the proposed code provides for all leases to be for a minimum period of five years, inclusive of options. In addition, a tenant will have a right to request an owner, within 12 months before the tenancy is set to expire, to indicate whether the owner intends to renew the lease. The owner will then have one month in which to respond as to whether the lease will be renewed. If the lease is to be renewed, the Government is keen to ensure that the parties themselves are given maximum opportunity to strike their own bargain as to the amount of initial rent to be offered on renewal. If the parties cannot agree by themselves, there will be mediation to try to effect an agreement. If, ultimately, the parties cannot agree, the rent to be offered will be determined by a valuer having regard to the reasonable amount of rent those premises would be likely to fetch if they were offered for renting for the use to which they could be put in accordance with the lease. If at any time an owner withdraws from the negotiation process, the tenant retains the original period of notice he or she requested.

These provisions have been designed to balance the concerns of tenants and owners in relation to the important issue of tenure. It leaves the power to renew a lease to an owner; but it gives the tenant a guaranteed and reasonable period of time in which to recoup costs, plan ahead for the benefit of the business and be assured that there is a maximum ceiling on rent if the lease is renewed. The Government trusts that all parties will accept these provisions in the spirit in which they are intended.

Amendments have been made to provisions of the draft code released for public comment in relation to outgoings. The provisions have been simplified, and unnecessary duplication has been removed. An important change to the definition of outgoings which has been made in response to tenant concerns is that outgoings may be recovered only if they represent the reasonable expenses of the owner for repairs, maintenance and direct operating costs of the premises. This will allow a tenant to question, for instance, excessive management fees for which the tenant may see little benefit. The owner may also recover government rates, taxes, levies and other statutory charges relating to the building. The other change that has been made in relation to outgoings is that expenses and charges other than advertising or promotion costs must relate to expenditure incurred during the term of the lease, and the nature of the outgoings must have been disclosed in the disclosure statement provided to the tenant prior to entering the lease.

Owners have expressed concerns about a tenant's right to a sublease or mortgage. I am advised that the requirement that an owner may not unreasonably withhold consent to a sublease is stipulated in Victoria and South Australia and there is a limited right to a mortgage in Queensland. I can see no reason why these rights should not be available to tenants in the ACT. Accordingly, the proposed code will allow for an owner

to withhold consent on certain grounds if the owner can show that this is reasonable. In my opinion, this provides adequate protection for the owner. The right to sublet and mortgage a lease is an important tool in the management of a tenant's business.

Owners have made representations about compensation under demolition clauses. A demolition clause is a clause in a lease that allows an owner to terminate the lease early for the purposes of demolishing the building. An owner may wish to demolish a building for a number of reasons, including redevelopment. Under the draft code released in June, reasonable compensation would have been payable for any loss suffered by the tenant as a result of the early termination of a lease under the demolition clause. This has been strongly opposed by BOMA. Their concern is that a lease that contains a demolition clause will, by its very nature, diminish the rent that can be charged for those premises. They suggest that the owner will have to give a rental concession if the owner wants a tenant to agree to the existence of a demolition clause in the lease. Obviously, if a tenant has been able to obtain some concession such as reduced rent because of the existence of a demolition clause in the lease, then it would be double dipping to allow the tenant to obtain additional compensation.

The proposed code, therefore, now provides that, in calculating compensation, the tribunal will have regard to any concessions given to the tenant, such as reduced rent, because of the existence in the lease of a demolition clause. This will mean that, if the owner can show that the tenant has in fact already received some concession, such a concession should lead to a reduction in the amount of compensation payable. This qualification that the tribunal should take account of any concessions given to the tenant in determining compensation has also been extended to the clauses in the code dealing with compensation for relocation and compensation for disturbance.

Changes to the draft code released for public discussion have been made in relation to damaged premises. It has been pointed out that tenants should obtain insurance to cover any loss arising from damage to premises and the owner should not, therefore, have to compensate the tenant where premises are damaged and are not useable. This seems a fair point as the damage to the premises occurs through no fault of the owner. Accordingly, under the proposed code, no compensation will be payable as a result of an early termination because of damaged premises. Tenants should seek insurance to cover any losses in these circumstances. However, where the owner does not intend to rebuild the building or fails to give notice of an intention not to rebuild, the tenant will be able to claim compensation for any loss or damage suffered as a result of the owner's failure to rebuild the premises or to give the requisite notice.

I look forward to hearing members' views on the proposed code during the course of the debate on the Commercial and Tenancy Tribunal Bill. These views will be carefully considered by the Government in formulating the final version of the code, which I anticipate presenting to the Assembly within a fairly short time after passage and commencement of the Bill. That will then provide an opportunity for Opposition members of the Assembly, under the power to move amendments to regulations, to move and debate amendments to the code. But we want to be very up front and show you what we think the final version looks like before the Bill is debated.

Question resolved in the affirmative.

CANNABIS HEMP - COMMERCIAL USES
Discussion of Matter of Public Importance

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

The economic and environmental benefits that can result from the many commercial uses of the non-drug strains of cannabis hemp if they are removed from the current marijuana prohibition in the ACT.

MR STEVENSON (3.36): From more than a thousand years before Jesus walked the earth until 1883 cannabis hemp was our planet's major agricultural crop, the largest agricultural crop on the planet. It was the most important industry for thousands of products and enterprises. It produced the overall majority of the earth's fibre, fabric, lighting oil, paper, incense and medicines. It was also a primary source of essential food oil and protein for both humans and animals. I have read data indicating that it has 50,000 commercial uses. I must admit that over a period of time I had stopped referring to the 50,000 commercial uses. It just seems too many, but since doing more research for this matter of public importance I think it might be too few. I wonder what there is on this planet that we want or need that cannot be made from hemp. It is truly remarkable. Nearly all the facts I give on hemp today can be verified in the *Encyclopaedia Britannica*, which of course was printed primarily on hemp paper for 150 years. Ninety per cent of all books before 1875 were printed on hemp paper. If you go to the library and get some old books, you will be picking up hemp paper.

My goal today is to do two things - firstly, to encourage people to create a hemp industry in Australia which will become known throughout the world; and, secondly, to remove the low drug or practically non-existent drug strains of hemp - cannabis or marijuana, if you like - from the illegal list in the ACT. Today I will not comment on the illegal use of cannabis hemp with a high THC content. I will talk about the product that is legalised throughout every country in the EEC. It is legal there to cultivate it, to grow it and to use it for thousands upon thousands of products.

Recently, on 7 August at 8.30 pm on ABC TV, there was a program called *Marijuana: The Billion Dollar Crop*. I know that when we use the word "marijuana" all sorts of things go through our minds, which is why I normally refer to it as cannabis hemp. It is the identical plant, though. I ask you, for a moment - and I know that it is difficult because we have these visions and these ideas - to concentrate on the product that is cultivated on 60,000 hectares in the USSR for commercial use cannabis hemp. Take yourself back to 1,000 years ago, 2,000 years ago, even 3,000 years ago, when no-one thought of hemp as an illegal product, when any suggestion that you would not use hemp in your daily life would have been laughed at as being astonishing. How on earth could a community - indeed, the world - have survived without the use of this most amazing of all plants? Let me read to you from the ABC media release about the program *The Billion Dollar Crop*, which incidentally was narrated by Jack Thompson:

The program looks at the development of non-drug varieties which have the potential to reinstate cannabis in mainstream agriculture. In the process, it will reveal the true story of hemp, one of the most highly-valued plants in history.

Cannabis is one of the world's richest sources of food, fibre, fuel and medicine. A plant whose grain is second only to soybean in nutritional value, its oil once provided most of the world's lighting needs; whose fibre was used in 80% of the world's woven fabrics (including jeans and the American flag) and which provided 90% of all paper made before 1875. Even The Old Testament pages hailed its harvest as a boom from God.

I refer to it as God's gift to mankind. The media release goes on:

It is a plant that was, for more than a century, legal tender in the U.S.A.

Not only was it legal tender; it was also used to print bank notes. The document states:

A crop whose strategic importance lured Napoleon into his ill-fated Russian campaign.

Hemp grows readily, requires less chemical insecticides and fertiliser than conventional crops, yet returns a wood yield per hectare four times higher than native forests. Paper made from hemp is regarded as the world's finest and does not need the environmentally-damaging bleaching process which wood-pulp paper requires. Paper, textiles, plastics, oil, grain, even fuel for motor vehicles and construction materials can all be derived from cannabis.

Australia is well-placed to lead the world in hemp production. We have enough suitable farmland to supply the world's entire pulp and paper needs. The crop could inject new life into a struggling economy and become a billion dollar export earner.

The Billion Dollar Crop was produced and directed by Barbara Chobocky, who is an award winning film producer. Last year I organised a conference in the ACT called Hemp Futurama, and Dr Katelaris came from Sydney to Canberra to present some of the benefits of growing hemp. We organised people from Federal and local government departments, agriculture, environmental areas, rural industries research and development, the Department of Industry, Technology and Regional Development, land and water research and development corporations, the Federal environment department, the Northern Territory department and others. After a very short time into that conference, all attendees realised that there are no problems of illegality with commercial hemp. The majority of the conference attendees spoke about whether it would be commercially viable.

I suggest that that is an important thing to look at, although not necessarily so important from a government's point of view. Why do we mind if private industries want to invest millions of dollars or tens of millions of dollars in a business? That is their business. Our job is, first of all, to make sure that we give them the opportunity to cultivate, develop and use this incredible plant. I know that some people have concerns about how you would license the cultivation of hemp. Could it not be that, after getting an official licence, someone might say, "Boy, in the middle of this lot we are going to grow illegal cannabis right under the eyes of the authorities who granted this licence."? When you start to research hemp, you find out that it is not any problem at all to investigate and to inspect crops, and it would be very difficult to grow illegal cannabis as part of a commercial crop.

There are a couple of major differences between the legal strains of cannabis hemp and the illegal strains in physical appearance and how they are grown. First of all, the illegal hemp - we have all seen on television police taking bundles of it away from the various farms they have raided - is a very leafy product. The legalised strains do not have much leafage at all. The illegal stuff is usually grown with plants about 18 inches apart; the legal stuff is grown with the plants about four inches apart. It has just one short growing season. It grows to between 12 and 20 feet. It is not like waiting around for a tree to come on. Cannabis hemp can benefit the ground in which it is grown, unlike some crops which tend to denature the surrounding environment.

We know that at present it is illegal to grow and possess cannabis in the ACT. I quote from a letter from our Attorney-General, Terry Connolly:

The use of cannabis is regulated by the Drugs of Dependence Act 1989 which is the responsibility of ... the Minister for Health ... I am advised that the Act provides that certain people may apply to the Minister for authorisation to conduct a research program in relation to a prohibited substance.

I suggest that we need to go a little bit further than allowing someone to apply to conduct a research program. We simply need to remove the specific strains of legal hemp from the illegal list. As I said, I am not suggesting that hemp should be legalised within the ACT, but just the strains that are legalised within - - -

Mr Berry: How do you test it? Who wants to be a tester?

MR STEVENSON: It is very easy to test. You would collect, say, 500 of the plants before harvesting and assay them. If they had anywhere near the higher drug content - - -

Mr Berry: I can think of another way of testing them.

MR STEVENSON: No, Wayne, you do not smoke them to test them. You just get a headache if you smoke this legal stuff. Indeed, if you were able to take some hemp, you would find it of some benefit. It was used for thousands of years to help head pain. Before you cultivated this, it would be checked. You would remove the licence of anyone who grew a product that had an appreciable drug content, and they would be out of it.

As we know, illegal plants are grown in Australia. The poppyseed plant is one. It is simply a matter of inspectors doing their job. Growing hemp is not seen as a problem throughout the entire EEC or in the USSR. Holland, to solve a major problem with pesticides, started researching hemp. You might ask, "Why would you research hemp to solve a pesticide problem?". It was because of the lack of chemical pollution in making paper from hemp. So, for some years Holland has been researching the making of paper from hemp. Overall, cannabis hemp is the strongest, most durable, longest lasting natural soft fibre on the planet. Look at this jacket.

Mr De Domenico: Does it iron out all right?

MR STEVENSON: It irons out quite well. Depending on the society or culture, hemp's leaves and flower tops were the first, second or third most important and most used medicines for two-thirds of the world's population for at least 3,000 years until the turn of the century. It has been only in recent decades that the standing of hemp has changed in the minds of people in the world. It is about time we changed it back again. Botanically, hemp is a member of the most advanced plant family on earth. It is a woody herbaceous annual that uses the sun more efficiently than virtually any other plant on the planet - - -

Mr Berry: Is that jacket illegal?

MR STEVENSON: Mr Berry asks, "Is that jacket illegal?". Let me see what I have in the pockets. No, Mr Berry, the jacket is not illegal, not even in the ACT. I have here a catalogue from a cannabis clothing company. It can supply any type of clothing you wish. We all know that hemp is grown quite successfully in the Canberra region. I am not suggesting that anybody knows that intimately, but we do know that. Such are the value and potential of the hemp plant that even if you are in a non-ideal climate - and Canberra's is not ideal - you can still get a great benefit from the product.

Hemp is by far the earth's premium renewable natural resource. It is one that has thousands of critical uses, especially in replacing the majority of uses of fossil fuels, timber and petrochemicals. *The Billion Dollar Crop* explored why it is that the knowledge of the uses of such a product could have become almost non-existent. Some of the petrochemical companies had a hand in that, but that is history. It is not really relevant to what happens today or to what happens in Canberra. Let us make sure that we do our job to help solve the unemployment problem in the ACT. The commercial cultivation of hemp would do many things for the economic situation in the ACT, and we could create a thriving export industry.

MR MOORE (3.52): Mr Deputy Speaker, there was recently a television program on a community in Uganda. That program described the resourcefulness of the people and the way they utilised every part of the palm tree in their daily lives. The leaves were used to weave baskets, to make pots, to make hammocks and to act as plates for food. The bark was used for medicinal purposes. The roots were pulped, made into a flour and incorporated into bread. The sap was also used for medicinal and cooking purposes. The sap, however, when left for a number of days, fermented and became a euphoric substance which was highly prized for its relaxant effects at social gatherings.

Apart from being impressed with the way these people did not know the concept of waste, it occurs to me that if these palm trees were banned, simply because they also provided a euphoric substance, it would be a travesty. Our culture, like theirs and every other culture around the world, has its opiates and its relaxants. That was recognised and valued in that society, along with many uses of the rest of the plant.

Instead of recognising the full range of uses of the cannabis plant, we have a prohibition on it. Mr Stevenson outlined some of the economic and environmental benefits that can result from commercial use of cannabis, but they are not more aptly described and more effectively portrayed than in the film *Hemp for Victory*. For those of us who have seen that United States World War II propaganda movie, it is quite extraordinary that the Americans could talk in that movie about the wonderful uses of hemp as a war support system and then, only a few short years later, as stated in a recent newsletter by the person Mr Stevenson referred to, sentence people to serve over 50 million person years in gaol as a result of prosecutions associated with cannabis. Just imagine what that would cost.

Mr Deputy Speaker, the movie *Hemp for Victory* talked about the full range of uses of hemp in war - as rope, twining, fabrics, tarpaulins and so forth - but one of the most interesting things in the American propaganda - there is a lot of propaganda about anything associated with cannabis - is an article that I have in front of me entitled "When Hemp Saved George Bush's Life". It states:

One more example of the importance of hemp: Five years after cannabis hemp was outlawed in 1937, it was promptly re-introduced for the World War II effort in 1942.

So, when the young pilot George Bush bailed out of his burning airplane after a battle over the Pacific, little did he know:

. Parts of his aircraft engine were lubricated with cannabis hemp seed oil;

. 100% of his life-saving parachute webbing was made from U.S. grown cannabis hemp;

. Virtually all the rigging and ropes of the ship that pulled him in were made of cannabis hemp;

. The firehoses on the ship (as were those in the schools he had attended) were woven from cannabis hemp; and,

. Finally, as young George Bush stood safely on the deck, his shoes' durable stitching was of cannabis hemp, as it is in all good leather and military shoes to this day.

Yet Bush has spent a good deal of his career eradicating the cannabis plant and enforcing laws to make certain that no one will learn this information - possibly including himself ...

Mr Deputy Speaker, we must then ask the question: Why did this prohibition occur? For those of us who are interested in this subject, there is a quite significant piece of writing on how it occurred in Australia and how it occurred in other parts of the world; but primarily the most convincing arguments for the prohibition of cannabis are the arguments that apply to the prohibition of things like heroin, the opiates and cocaine, and that is that they are based largely - although it is not the entire story - on racism.

Dr Desmond Manderson explains it very clearly in his book *From Mr Sin to Mr Big*. Similarly, there is a chapter on it in *Drugs Policy: Facts, Fiction and the Future* by Ian Mathews, a former editor of the *Canberra Times*, and Russell Fox, the former Supreme Court and Federal Court judge in the ACT. In their book they talk about prohibition being associated with workers coming from Mexico to take over the jobs of people in the United States and those people being associated with cannabis use. You must wonder whether that would apply to a series of other things as well. Indeed, one can look at the prohibition of alcohol being associated with the Irish taking the jobs of WASPs - white Anglo-Saxon Protestants - in the United States and that being the foundation part of it. That does not account for the whole reason behind prohibition, but it certainly is one of the major influencing factors. More important, and what Mr Stevenson is dealing with today, is what prohibition actually means for the positive uses of a plant like cannabis. The position would be similar with the palm tree. If you applied prohibition to one small use, you would suddenly lose a huge number of benefits.

When I look at our international treaties on cannabis, I believe that it is correct to say that we are restricted in what we would be able to do in the cultivation of cannabis in the way that Mr Stevenson mentions. I know that Mr Stevenson does not put much faith in our international treaties and has often criticised our international treaties with respect to other things; but we do have international treaties in this area, which is why you would be restricted to research rather than being able to cultivate such a crop for the sorts of uses that Mr Stevenson mentioned.

There is an example in Tasmania which we should apply to cannabis. There is a thriving agricultural industry in Tasmania that grows the same poppies that are used for heroin. In fact, the biggest legal poppy industry in the world is in Tasmania. Of course, the poppy plant is used for the production of morphine. We are able to continue with that sort of production in spite of the fact that they are the same poppies that are used for heroin, which is after all only diethylmorphine.

We could apply the same sort of strategy in the ACT and say, "Ought we to be looking at removing restrictions in the ACT in order to allow for the growing of cannabis?". There are some concerns about how cannabis will be used as a drug and whether the growing of it in the ACT would mean a wider distribution of it. One has to wonder how wide a distribution we would get with cannabis. In submissions and evidence given to the Assembly Committee on Drugs young people told us that in any of our colleges they could get cannabis in 20 minutes if they wanted some. It is readily available now, and one has to wonder just how more widely available it would be.

One of the other disadvantages - and I am going to use the word "environment" in the broad sense today - of the environment in which people deal with each other is that cannabis is particularly useful as a medicine. There are a number of areas where other medicines simply do not deliver what cannabis does. One of the most interesting writers on this is Lester Grinspoon. Dr Grinspoon is quoted in the latest briefing notes published by the Australian Parliamentary Group for Drug Law Reform, which would have been distributed to all members. Professor Grinspoon and Dr James Bakalar from Harvard have given anecdotal evidence about what happens when people use cannabis as a medicine. I am going to quote just a small part of the briefing notes:

Grinspoon describes in his book how he first became interested in the potential benefits of cannabis when his ten year old son developed leukaemia in the early 1970s. Chemotherapy for his son's leukaemia inevitably resulted in a wretched state of profound nausea and projectile vomiting. Soon, just the thought of the next day's session of chemotherapy was enough to start the process.

People who undergo chemotherapy in our hospitals will tell you that, even when they walk into hospital, they get an overwhelming feeling of nausea simply from the smell. The people who are working there do not recognise that smell. It is only those people who have been through chemotherapy who recognise that distinctive smell. It has that impact on them.

The briefing notes go on to state:

All conventional treatments were tried and failed. A colleague suggested that Grinspoon and his wife try giving their son some cannabis.

He resisted at first; but, seeing the wretched state of his son, he decided to try it. Parents will, of course, try anything when they think it is going to be of benefit to their children. The document continues:

The results were dramatic. Of course the Grinspoons did not dare tell their son's oncologist that they were going to give their son an illegal substance to control his suffering. However, at the next chemotherapy session, the oncologist noticed that their son was unusually cheerful. On the way home, the Grinspoons were delighted that their son was ravenously hungry and happily demolished large quantities of food.

As I remember, in the original telling of the story it was at McDonald's or one of those outlets. The question remains: Should the Grinspoons have been made to feel like criminals for trying as hard as they could to relieve their dying son's distress?

Mr Deputy Speaker, I had a grandmother approach me not so long ago with a problem with glaucoma. She had been trying a series of other medicines. The pressure behind the eyes caused by glaucoma, we know, can be relieved by the use of cannabis. Other drugs will work in a majority of cases, but in some cases other drugs simply do not do so or their side effects are very significant. With minimal side effects, cannabis, in

the drug version rather than the non-drug version - cannabis in the version with the Delta 9 THC - will relieve pressure on the ocular nerve. We have to ask ourselves, "Can we really stand by and not allow people who are going to be sent blind to use cannabis?". I think this is a question that we need to deal with here and, particularly, we need to give the power to our Minister for Health to provide exemptions in this issue. Even the United States, the bastion of prohibition, does provide exemptions. I have met the first person in the United States who was given an exemption to use cannabis because of glaucoma.

It does also assist people in terms of serving as the anti-emetic that I described for the Grinspoon child, as far as reducing and alleviating nausea from those treatments. Certainly, we know that AIDS patients who use cannabis and who smoke cannabis do not waste as much and have a reasonable appetite. It is an issue that we should also deal with. There is, also, a series of other medical benefits of the use of cannabis - not just the version of industrial cannabis that Mr Stevenson is talking about but, indeed, cannabis in this form.

It is quite clear, Mr Deputy Speaker, that there is a changing attitude in Australia to the prohibition of cannabis - in fact, to prohibition generally, but particularly to the prohibition of cannabis. I am sure that, when the Ministerial Council on Drugs Strategy meets in Canberra next week and considers the report on cannabis that has been prepared by the Australian task force, they will realise that some of the evidence presented on the ill effects of cannabis has been wildly exaggerated. Many of them can be traced back to Dr Gabriel Nahas, a professor from the United States whom the Americans describe as a warrior on the war on drugs. But just published in *Drug and Alcohol Review* is a critique of an article that he had published in the *Australian Medical Journal*, where he is cited as misrepresenting 28 of the 30-odd references that he used in that paper. That kind of misrepresentation, that kind of dishonesty, is what leads to driving prohibition.

MR STEFANIAK (4.07): When Mr Stevenson started speaking in this debate, some members probably thought that he had been off with the fairies. When Leonardo da Vinci, in the sixteenth century, was talking about flying machines, everyone thought that he was off with the fairies. But he was ahead of his time. Perhaps Mr Stevenson is just getting us to look at reinventing the wheel. As far as the Liberal Party is concerned, we looked at Mr Stevenson's matter of public importance and thought, "This is not necessarily as silly as some people might think it is". Mr Stevenson and, I think, Mr Moore quoted from a paper entitled *A Brief Summary of the Uses of Hemp.* I have had a look at it. I could not completely agree with some of it; but much of it appears to be quite factual and to make a lot of sense. As Mr Stevenson has done, it goes through the historical use of hemp. It states that, up until the 1880s, hemp was used effectively in rope, sails and clothing. That continued to be the case, with various strains and various synthetics added, well into the twentieth century. Mr Stevenson has a cannabis jacket, which he flashed to show us that it carries a "cannabis" label. I think that Mr Lamont tried to see whether you could smoke it. Page 6 of a handout on the uses of hemp reads, in part:

In case you're wondering, there is no THC or "high" in hemp fiber. That's right, you can't smoke your shirt! In fact, attempting to smoke hemp fabric - or any fabric, for that matter - could be fatal!

So, I do not think that anyone should try to smoke Mr Stevenson's coat or set it on fire, because that could be fatal.

Mr Humphries: To him or to us?

MR STEFANIAK: Perhaps to Mr Stevenson. I am not too sure how it burns, but that could be a bit of a problem too. I also have a document from Biological Products Pty Ltd, which my colleague the Leader of the Opposition received on 12 September. It pushes the use of hemp, indicating that 160,000 hectares of hemp is currently cultivated annually in Europe and in England. That particular company, which operates out of Potts Point, is trying to set up in Australia and get people in various departments interested - - -

Mr De Domenico: Potts Point?

MR STEFANIAK: Potts Point, not Pot Point, Mr De Domenico. It is trying to set up in Australia and interest, among other departments, the New South Wales departments of health and agriculture. I have some idea, having smelt cannabis and marijuana before - - -

Mr Humphries: You did not inhale, did you?

MR STEFANIAK: It is none of your business. This paper smells no different from any sort of recycled paper. I am reliably informed by the document itself that it is made in Europe with 100 per cent hemp. So, there might well be some merit in Mr Stevenson's idea, and it should certainly not be dismissed out of hand. It is worth investigating.

Mr Moore made a number of points with which I certainly would not agree, but he made a number of other points which are worth while. In Tasmania, poppies that are exactly the same as the opium poppy are cultivated for morphine. It is a big industry down there. It is interesting to look at what occurs in Tasmania when one is considering the use of illegal drugs and opiates. Marijuana, which is hemp or cannabis with a high THC factor, is not a legal drug in Canberra or in any other part of the Commonwealth of Australia. I do not know whether this is still the case. It certainly was up until about two years ago. I recall from my days as a prosecutor and even back in my days as a defence counsel that, although poppies from which you can make opium are produced in Tasmania, the only drug that is actually produced and sold within Australia is cannabis. Even cannabis resin is imported. Heroin and the hard opiates are all imported - illegally, of course. It would seem that, through effective controls, whatever is produced in Tasmania from the poppies there has not been siphoned off or used in an internal Australian drug market. Our drug problem in Australia is bad enough already, without anything like that happening. There might well be some scope within Australia, including within the ACT, for Mr Stevenson's idea of reintroducing hemp as an actual plant. That is something that should not be pooh-poohed out of hand. It does bear investigation, certainly when one looks at what has occurred in Tasmania.

Mr Moore talked a lot about prohibition and about the availability of cannabis, or marijuana, as it is more commonly referred to in Canberra. I am aware of the case studies in the United States that he referred to in relation to its medicinal use. I am aware of the exemptions given there for cannabis use as a medicinal soother for health purposes. The exemption is certainly something that could be looked at not only in Australia but in Canberra as well. In fact, I am surprised that you cannot get exemptions for that type of thing within Australia if it is prescribed by a doctor. In that case, there would be a medical reason for someone having that prescribed, just as there would be medical reasons for people being prescribed certain drugs which you can get only at a chemist, on prescription, some of which are of value to drug addicts. Members would be aware of a number of instances of chemist shops in Canberra being burgled and various drugs being taken by addicts who use drugs that would normally be available to patients on prescription. So, perhaps there is room for cannabis to be used for those types of medicinal purposes.

However, cannabis, used as a drug, does have some very bad side effects. It is far more dangerous to your lungs and it causes lung cancer to a much greater degree than cigarette smoking does. This Assembly, certainly since its inception, has been gradually whittling away at the smoking lobby and at people being able to smoke, willy-nilly, wherever they like. There have been very good reasons for that. To legalise marijuana would be merely to introduce another very dangerous drug, in terms of what it can do to people's metabolism and in terms of lung cancer. Marijuana, taken as a recreational drug, is quite dangerous to people as well. I had the opportunity on a couple of occasions, as a prosecutor, to prosecute people who had been driving under the influence of marijuana - not alcohol, but marijuana. Those instances involved driving in an incredibly erratic and highly dangerous manner. Luckily, it was in the early hours of the morning, when there was no-one else on the road; and, luckily, it did not cause any accidents involving injury to innocent victims or to the drivers themselves who were affected by marijuana. The ability of those people to drive a motor vehicle would have been akin to that of someone driving with a blood alcohol level of about 0.3 or 0.32, based on similar cases that I saw where people had that amount of alcohol in their system.

Certainly, marijuana is a drug that is well and truly abused. It is something that is potentially, and actually, far more harmful to people in all respects than perhaps even cigarettes. However, I certainly agree with Mr Moore that for some people, in the cases he cited, it does have some medicinal benefits. That is something that can be looked at. Whilst I am not endorsing any calls by anyone in any way to relax the laws in relation to the prohibition of marijuana smoking, I do not think that Mr Stevenson's idea about the commercial production of hemp should be dismissed out of hand. They are two very separate issues. His idea has some merit and is deserving of further investigation.

MR WOOD (Minister for Education and Training, Minister for the Arts and Heritage and Minister for the Environment, Land and Planning) (4.16): Mr Deputy Speaker, the value of cannabis as a source of fibre for cloth, paper production and cordage has, as others have pointed out, been demonstrated over a long period of time. There is no question about that. Certainly, Mr Stevenson has given a good demonstration of that today in his attire. I am informed that the use of hemp fibre is increasing in Europe, including Britain, where low-drug forms of cannabis have been legalised. I am also informed that research has been undertaken in Holland into the potential of cannabis fibre

to replace imported paper. Theoretically, at least - certainly, in practical terms in getting it up and running - cannabis fibre may serve to replace wood pulp for paper production in Australia. It could be used for paper products that are currently imported. To refer to the question that Mr Stevenson asked me at question time, that would certainly have quite significant environmental benefits.

Alternative fibre crops for paper production have been investigated in Australia by CSIRO in Queensland - notably, kenaf, a relation of cotton. It has been suggested that cannabis could achieve a better result if impediments to its use were removed. But we should not imagine that those impediments are not significant. As Mr Stevenson said, cannabis for fibre production is sown at very close spacing, which is designed to produce tall, straight stems suitable for mechanical harvest. Little leaf and inflorescence material is produced in the fibre crops. It appears that cannabis has a wide tolerance of soil types and requires no pesticide treatment, as the crop itself tends to smother weeds and deter insects. These things have further encouraged the use of the crop in Holland. There have been trial fibre crops in Tasmania, and research is being conducted at the Hobart university into commercialisation of cannabis fibre production. I know that that process has aroused quite a degree of interest from a wide variety of community people. For example, there have been inquiries from Europe for the purchase of cannabis fibre, based on news of those Tasmanian trials. It could be that the crop is better suited to semitropical conditions, where a number of crops could be produced each year. In the Canberra region, only a single annual crop would be possible.

I mentioned the impediments to developing full-scale production. They must be considered. One of those impediments is that our legislation currently does not differentiate between the low-drug cannabis form and cannabis for illegal use. Certainly, that is a matter that is capable of legislative change, and it has been well debated today. There is also the impediment that public opinion often - in fact, almost always - associates the crop, regardless of drug content, with illegal use. In this region, a further impediment would be the climatic conditions, which may limit the productivity of broad-scale crops. As I understand it, on mainland Australia there is also a lack of suitable infrastructure to process cannabis fibre. Again, I suppose, that is a chicken-and-egg situation. You would not get that unless there was the crop to process. Obviously, the two factors would go together. On my advice, a very significant impediment is that we cannot produce a totally non-drug crop. There is always some residual drug content. As evidenced today, I believe, a further problem is that the plant naturally, inevitably, will revert to type; so there would need to be a constant process of ensuring that the crop that is growing is of the very low-drug type. The tendency of plants to go back to their natural or original status would present a very serious problem. Mr Stevenson has raised this issue before in the Assembly. He ran a seminar last year, which I was interested in; but I was not able to be there. Obviously, Mr Stevenson will continue the debate. Over a period, as it becomes aired in the public and as more and more data becomes available, there may be processes to go through and public education to be undertaken. While, obviously, we would not be in a position to see crops in the ACT by any established date - we could not predict what might happen - certainly, it is appropriate that the debate should continue and that all aspects of the matter should be thoroughly examined.

MR DEPUTY SPEAKER: The discussion is concluded.
21 September 1994

21 September 1994

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COMMERCIAL AND TENANCY TRIBUNAL BILL 1994

[COGNATE PAPERS AND BILL:

RETAIL AND COMMERCIAL TENANCIES - DRAFT CODE OF PRACTICE
AND DISCUSSION PAPER
MAGISTRATES COURT (CIVIL JURISDICTION)
(AMENDMENT) BILL (NO. 2) 1994]

Debate resumed from 24 August 1994.

MR DEPUTY SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Retail and Commercial Tenancies Draft Code of Practice and Discussion Paper and the Magistrates Court (Civil Jurisdiction) (Amendment) Bill (No. 2) 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.

Detail Stage

Bill, by leave, taken as a whole

MR CONNOLLY (Attorney-General and Minister for Health) (4.25): This is, of course, a Bill of great significance and one that has been occupying the minds of many members of the Assembly over many months. We have a series of amendments before the Assembly, and I have discussed with the Opposition and with Mr Moore and Ms Szuty a process that might speed its passage. I have circulated a series of amendments on white paper which, together with a supplementary amendment on pink paper, may be referred to as the detailed technical amendments, and I would seek leave to move those as a block. I then circulated a supplementary set of amendments on green paper, which is a matter of some moment that I perhaps should refer to later for the record.

I present a supplementary memorandum to the Bill. I seek leave to move the detailed technical amendments together.

Leave granted.

MR CONNOLLY: I move:

Page 2, lines 33 and 34, clause 3, definition of "key money", omit "a landlord" (wherever occurring), substitute "an owner".

Page 3, line 1, clause 3, definition of "key money", after paragraph (a), insert the following paragraph:

"(aa) a payment for the goodwill of a business;".

Page 3, line 1, clause 3, definition of "key money", after paragraph (a), insert the following paragraph:

"(aa) a payment for the goodwill of a business sold or to be sold by the owner to a tenant;".

Page 3, line 2, clause 3, definition of "key money", paragraph (b), add "or security deposit, or a guarantee by way of security".

Page 3, lines 4 to 6, clause 3, definition of "key money", paragraph (d), omit the paragraph, substitute the following paragraph:

"(d) money payable to a person for attendances on a tenant in connection with the preparation of documents that are relevant to a lease;".

Page 3, line 7, clause 3, definition of "key money", paragraph (e), omit "a landlord", substitute "an owner".

Page 3, line 10, clause 3, definition of "key money", paragraph (f), omit the paragraph, substitute the following paragraph:

"(f) any money permitted to be paid under the Code;".

Page 3, lines 11 to 13, clause 3, definition of "landlord", omit the definition.

Page 3, line 15, clause 3, definition of "lease", after "premises", insert "exclusively or otherwise".

Page 3, line 17, clause 3, definition of "lease", paragraph (a), omit "a licence or other", substitute "an".

Page 3, line 25, clause 3, after the definition of "mediation report", insert the following definition:

"'multiple rent review clause' means a provision in a lease that -

(a) has the effect of reserving to a party a discretion as to which of 2 or more methods of calculating a change to rent is to apply; or

(b) provides for rent to change in accordance with whichever of 2 or more methods of calculating the change would result in the higher or highest rent;

whether generally or on a particular occasion;".

Page 3, line 28, clause 3, after the definition of "option", insert the following definition:

"'owner' means a person who grants, or proposes to grant, a right to occupy premises under a lease, and includes any heir, executor, administrator or assign of that person;".

Page 3, line 31, clause 3, definition of "party", subparagraph (a)(i), omit "landlord", substitute "owner".

Page 4, lines 5 to 12, clause 3, definition of "ratchet clause", omit the definition, substitute the following definition:

"'ratchet clause', in relation to a provision in a lease for determining rent variations in such a way that rent might decrease, means a provision in that lease that has the effect of preventing, or giving a person the power to prevent, that decrease;".

Page 4, lines 15 and 16, clause 3, definition of "Registrar", omit the definition, substitute the following definition:

"'Registrar' means the public servant for the time being performing the functions of the Registrar of the Tribunal by virtue of section 65;".

Page 4, lines 29 and 30, clause 3, definition of "shopping centre", subparagraph (b)(i), omit "landlord" (wherever occurring), substitute "owner".

Page 5, line 2, clause 3, definition of "shopping centre", subparagraph (c)(ii), omit "common".

Page 6, lines 14 and 15, clause 6, paragraph (c), omit the paragraph, substitute the following paragraph:

"(c) a dispute about key money, a multiple rent review clause or a ratchet clause, in relation to a lease or to negotiations for the entering into of a lease;".

Page 6, line 18, clause 6, paragraph (d), after "key money", insert ", a multiple rent review clause".

Page 6, line 21, clause 6, paragraph (f), add "or negotiations for the entering into of a lease".

Page 6, line 21, clause 6, add the following subclause:

"(2) Nothing in this Act is to be taken to prevent a dispute from being dealt with under this Act by reason only that the lease to which the dispute relates has ceased to be in force if the Registrar takes action in relation to the dispute, or a person refers the dispute to the Registrar, within 3 months after the lease has so ceased to be in force.".

Page 6, lines 30 to 32, clause 8, subclause (2), omit the subclause, substitute the following subclause:

"(2) This Act applies to a dispute referred to in paragraph 6(d) or (e) if -

(a) the relevant lease is entered into, renewed or extended under an option on or after the substantive commencement date; or

(b) the dispute relates to a provision of a lease, being a provision varied on or after the substantive commencement date.".

Page 9, line 28, clause 16, paragraph (b), omit "sufficient", substitute "direct".

Page 10, lines 15 to 17, clause 20, omit all the words after "19", substitute "is inadmissible in any other proceedings except in accordance with section 47 or 57A".

Page 11, line 12, clause 25, subclause (1), omit "sufficient", substitute "direct".

Page 11, line 2, clause 28, subclause (1), before "record", insert "formal".

Page 12, lines 12 and 13, clause 28, subclause (4), omit the subclause.

Page 12, lines 15 to 19, clause 29, omit all the words after "Registrar is", substitute "inadmissible in any proceedings other than in a further hearing by the Registrar or in accordance with sections 47 or 57A".

Page 15, line 15, clause 42, omit "A party to a hearing", substitute "A person who may appear at a hearing".

Page 16, line 24 to page 17, line 3, clause 47, omit the clause, substitute the following clause:

Admissibility of evidence given during mediation

"47. Evidence of any words spoken or act done during mediation under Part IV or at a hearing of the dispute by the Registrar shall only be admitted if -

(a) it relates to the making of a mediated agreement; and

(b) a party to the agreement alleges, in good faith, that the agreement was induced or affected by fraud or duress, other than fraud of the party or duress applied by the party.".

Page 17, lines 6 and 7, clause 48, omit "sections 80 and 81", substitute "section 80".

Page 17, line 25, after clause 51, insert the following new clause in Division 2 of Part VI:

Costs

"51A. The parties to a hearing shall bear their own costs unless the Tribunal orders otherwise.".

Page 19, line 28, after clause 57, insert the following new clause in Part VII:

Admissibility of evidence given during mediation

"57A. On an appeal under subsection 57(1), evidence of any words spoken or act done during mediation under Part IV or at a hearing of the dispute by the Registrar shall only be admitted if -

(a) it relates to the making of a mediated agreement; and

(b) the appeal relates to an allegation, in good faith, by a party to the agreement, that the agreement was induced or affected by fraud or duress, other than fraud of the party or duress applied by the party.".

Page 20, line 23, clause 60, subclause (5), omit "landlords", substitute "owners".

Page 21, lines 19 and 20, clause 65, subclause (1), omit the subclause, substitute the following subclause:

"(1) There shall be a Registrar of the Tribunal.".

Page 21, line 25, clause 65, after subclause (2), insert the following subclauses:

"(3) The Chief Executive shall create and maintain an office in the Government Service the duties of which include performing the functions of the Registrar.

"(4) The Registrar shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (3).".

Page 21, line 29 to page 22, line 7, clause 67, omit the clause, substitute the following clause:

Deputy Registrars

"67. (1) There may be 1 or more Deputy Registrars of the Tribunal.

"(2) A Deputy Registrar may perform any function of the Registrar, subject to any direction of the Registrar.

"(3) The Chief Executive may create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of a Deputy Registrar of the Tribunal.

"(4) A Deputy Registrar shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (3).".

Page 26, line 20, clause 79, paragraph (1)(a), omit "remission or refund of", substitute "refusal to remit or refund".

Page 26, line 22, clause 79, paragraph (1)(b), omit "deferral of", substitute "refusal to defer".

Page 26, line 24, clause 79, paragraph (1)(c), omit "waiver of", substitute "refusal to waive".

Page 27, lines 20 to 24, clause 81, omit the clause.

MR HUMPHRIES (4.27): Mr Deputy Speaker, the Liberal Party supports the amendments that have been put forward today by the Government. In particular, I am pleased to see that the Government is prepared to make some movement on the question of retrospectivity. That was an issue of some concern to the Liberal Party. It was an element that greatly concerned us. It is, of course, a fact that any retrospectivity introduced in legislation in this place will attract criticism from this party, and almost invariably has. We remain concerned that these provisions should be dealt with in this fashion to affect the relationship entered into freely between parties prior to the date on which this legislation comes into force. I am pleased to see that the amendments to be moved later are such that the effect of the retrospectivity is reduced such that the Act applies only to leases entered into, renewed or extended on or after 1 January 1994 or in relation to a provision which was varied on or after 1 January 1994. That leaves, as I have made clear, some element of retrospectivity, but it is certainly an improvement on the present position.

I made it clear on the previous occasion that this Bill was being debated that the Liberal Party philosophically would be opposed to legislation which so significantly wanted to alter the freely entered into contractual relationship between individuals in the marketplace - between landlord and tenant. Philosophically, we are opposed to that kind of interference by government. We acknowledge the special case which exists here in the highly regulated Canberra marketplace, where it is simply not true to say that there is such a thing as a free market. At least in this key respect the marketplace is a severely limited one, and there is justification for providing for certain protections because those protections are not provided by the marketplace itself. Competition, for example, for places where businesses might be carried out is not as intense as it might be in a community like Sydney or Melbourne. If I am not satisfied with the landlord's treatment of me in a small shopping centre where I sell fish, I cannot go elsewhere with great ease. It is very difficult for me to serve that same marketplace without treating with that particular landlord. So, there are all sorts of reasons why this kind of approach is appropriate in these circumstances.

It is not, however, true to say that the Liberal Party would necessarily go down this path if it were left to its own devices. We have made it quite clear that we have seen the very considerable success, at least from our perspective, of the New South Wales legislation, which echoes this legislation before us today - legislation which was the result of agreement between the Building Owners and Managers Association in New South Wales and the Retail Tenants Association in New South Wales. The legislation resulting from that was passed through both houses of the New South Wales Parliament without dissent from any member of that parliament. Neither the Labor Party nor the Independent members of that Parliament expressed any opposition to that legislation. I must say that it would have been appropriate for us to have picked that up and used that as the basis for our own actions here rather than to have reinvented the wheel. I must say that the Liberal Party would very much prefer to see the New South Wales legislation used as a model here, and we indicate at this stage that we would be prepared to amend the ACT legislation to reflect the New South Wales position if we were to form a government after next year's election. That, I think, is a reflection of the fact that there is much value in the - - -

Debate interrupted.

ADJOURNMENT

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

That the Assembly do now adjourn.

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

Question resolved in the negative.

COMMERCIAL AND TENANCY TRIBUNAL BILL 1994

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MAGISTRATES COURT (CIVIL JURISDICTION)
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Detail Stage

Debate resumed.

MR HUMPHRIES: I have not much more to say, except that I commend the Government for having gone through the process of talking to the parties - and still talking at this very moment - to these negotiations, attempting over a long period of time to find an acceptable compromise. It would be, I think, an exaggeration to pretend that this document does not bear the marks of being a compromise to some extent; but it is, nonetheless, an acceptable compromise, at least for the time being. My party, in particular, will be scrupulously monitoring the effect of these changes to see how they impact on the marketplace itself.

While it is true to say that there are a number of ways in which one might see disadvantage to tenants in the marketplace here being alleviated - disadvantage to which we have referred in the past and which we believe must be remedied by legislation such as this - we will also be looking to ensure that legislation like this does not have an adverse impact on the ACT as a place in which to invest. It goes without saying, I think, to all of us in this place, that we must continue to protect the reputation of the ACT as a good place to do business and a good place to invest in. We hope that both sides of the chamber will work towards ensuring that that goal is not jeopardised by any legislation in this area. Mr Deputy Speaker, the amendments that are being considered now, as I have indicated, are all supported by the Liberal Party.

MS SZUTY (4.34): I will speak, briefly, to these amendments which have been tabled today by the Attorney-General. I, too, would like to commend the process which, I understand, a number of landlord groups and tenant groups have been proceeding with in recent times. In fact, when I attempted to speak to this Bill in principle, which I could not do at that time, one of the major points of my address was that I commended the process. I commend the enormous work that has been done to try to bring about a consensus on this very important issue to the community.

What we have before us from the Attorney-General is a number of amendments which address a number of particular issues. I will go through them briefly, Mr Deputy Speaker. One of the issues is the terminology - the word "landlord". It has certainly been put to me by a number of people that the term "landlord" is feudalistic in tone and sexist in tone. A great effort was made to come up with a replacement name which was more acceptable than the word "landlord". On that basis, the word "owner" came up as an appropriate substitute for the word "landlord". Certainly, several of the Government's amendments do substitute the word "owner" for "landlord". That also occurs in the definition section of the Bill.

There are also a number of amendments to the "key money" definition in the Bill. While I support these amendments as proposed by the Attorney-General, I understand that my colleague Mr Moore is going to move a series of amendments which actually go further than that position as outlined by the Government at this stage. Nevertheless, I believe that it is Mr Moore's position - and it is my position at the moment - that we would support these amendments as they stand, as proposed by the Attorney-General. But we will probably go further in our arguments once Mr Moore tables his amendments. Certainly, there have been other changes also to the definition of "lease", which is another integral part of the Bill.

Amendment No. 10 talks about the proposed definition of "multiple rent review clause". This is a definition which has been added to the Bill to clearly delineate what a multiple rent review clause is. What a ratchet clause is is redefined in amendment No. 13. It is certainly the purpose of both of these amendments to make it abundantly clear which provisions of the Bill involve a multiple rent review clause and which provisions involve ratchet clauses.

Other amendments have been made on the basis of the passage of the Public Sector Management Bill, which this Assembly dealt with earlier this year. An amendment which addresses that particular issue is amendment No. 14, which defines the registrar of the tenancy tribunal. The amendment defines the registrar as meaning:

... the public servant for the time being performing the functions of the Registrar of the Tribunal by virtue of section 65.

Other amendments which have been proposed by the Attorney-General relate to consultations which have occurred with the Conflict Resolution Service, which was concerned about the mediation process as originally outlined in the Government's Bill.

There are certainly a number of amendments which deal with the mediation process and the way it will occur in relation to the tenancy tribunal. There are also amendments which reflect the representation of various parties before the tribunal. The Government has moved to tighten those in some instances, so that people who are directly affected by particular decisions are able to come before the tribunal - and not people with just sufficient interest.

So, Mr Deputy Speaker, there are a range of very good reasons for the amendments proposed by the Attorney-General. I think there are others which address particular errors which were originally contained in the Bill, but I am happy at this stage to support the amendments as proposed by the Attorney-General.

MR MOORE (4.38): Madam Speaker, in speaking to the detail stage of this Bill, I find it interesting, to start off with, that, with 51, I think it is - or certainly over 50 - amendments to this Bill, we have not heard members stand up and say, "Well, we should reject this Bill outright because it has over 50 amendments", which would be consistent with the approach that we had this morning to a previous Bill, when that was the argument. Of course, the reason, Madam Speaker, is that it is a silly argument, and I do note that the Liberal spokesman on this Bill, Mr Humphries, is not one of the people who made that accusation about the Bill that we dealt with this morning. Mr Humphries would not be so silly as to say that just because there is an amendment to a Bill it is, therefore, a bad Bill.

On the contrary, what the amendments are designed to do is to improve the Bill and to have the role of the Assembly recognised, rather than just saying, "This is a Government Bill". Indeed, Mr Humphries is the person who said that this is a compromise Bill. It is a compromise between landlords and tenants and, Madam Speaker, I must say that I believe that the compromise goes too far the landlords' way. It is my view, Madam Speaker, that the protection that is needed for tenants is indeed what this Bill is about. It does not go far enough, and we will get onto that matter further, Madam Speaker, when we deal with my own amendments.

Mr Connolly's amendments to this Bill that he has presented at this stage, Madam Speaker, are all commendable. They certainly ensure that mediation is done more effectively. That is part of these amendments and is an important part of the process. Indeed, they also deal more effectively with a number of issues that have been raised in terms of the multiple rent review clause within the mediation process, as well as dealing with a change of terms from "landlord" - a sexist term - to the word "owner". My hope is that the word "owner" does not cause confusion when people read this Bill, because certainly some people perceive themselves as owners of a business rather than the way we use the word "landlord". But it is carefully defined within the Bill. I must admit that we explored a whole series of other possibilities. Mr Connolly indicates by nodding that he also explored some other possibilities. Really, the word "owner" seemed to be the one that came out most clearly.

It is important to remember that the role of the Bill is to establish the tribunal and to say that there is a process by which disputes can be resolved. The process goes through mediation first, then to a tribunal that has the teeth to ensure that the sorts of processes that are followed in a code of practice are part of the normal process of the relationship between the landlord and the tenant - a relationship that until now has strongly favoured the landlord. Certainly, even should the amendments that have been foreshadowed - Mr Connolly's supplementary B amendments - not get through and even if the amendments that I am putting up do not get through, as I suspect will be the case, then, Madam Speaker, this still does provide a far better balance between the powers of the owner and the powers of the tenant.

Madam Speaker, let me say that I will be looking forward to a time when we can ensure that leases that are currently part and parcel of agreements fit into what is the new community standard, and I will speak about that a little later. I would like to indicate now, Madam Speaker, that these amendments that have been put up by the Attorney-General are in order, and I am quite happy to support them.

MR CONNOLLY (Attorney-General and Minister for Health) (4.43): Madam Speaker, could I seek leave to not move amendment No. 2 on the white sheet? That is the one that is replaced by the amendment on the pink sheet. So, I seek leave not to move that.

Leave granted.

MR CONNOLLY: Thank you, members.

Amendment No. 2, by leave, withdrawn.

Amendments agreed to.

MR CONNOLLY (Attorney-General and Minister for Health) (4.44): Madam Speaker, I seek leave to move together the supplementary B amendments circulated in my name.

Leave granted.

MR CONNOLLY: I move:

Page 6, lines 14 and 15, clause 6, paragraph (c), omit the paragraph, substitute the following paragraphs:

"(c) a dispute about key money in relation to a lease or to negotiations for the entering into of a lease;

(ca) a dispute about a multiple rent review clause or a ratchet clause in relation to a lease;".

Page 6, line 29, clause 8, after subclause (1), insert the following subclause:

"(1A) This Act applies to a dispute referred to in paragraph 6(ca) if -

(a) the relevant lease is entered into, renewed or extended under an option on or after 1 January 1994; or

(b) the dispute relates to a provision of a lease, being a provision varied on or after that date.".

Page 6, line 34, clause 8, subclause (3), omit "or (c)", substitute ",(c) or (ca)".

This is a matter of more substance which does require some minutes of explanation. This does represent some last minute negotiations that have occurred between the Government and landlord interests or, I should say, owner interests, given the use of non-sexist language, where the vexed issue of retrospectivity was once again raised. Mr Humphries indicated that it is an issue that has caused the Opposition some concern and could have got to the point of limiting their support for the legislation. Our Bill does take retrospective operation of the code further than the equivalent provisions in the States of Australia.

One area that we had applied generally retrospectively was the issue of multiple rent review clauses or ratchet clauses. A very strong argument has been put to the Government in recent days, which we have agreed has some merit, that particularly some of the smaller interests - persons who may own only one or two shops in a small suburban centre - may well have entered into financing commitments that are premised on the cash flow projections of these ratchet clauses and that to apply a ban totally retrospectively would cause undue hardship.

At the same time, we pointed out that the Government's intention to ban ratchet clauses has been around for quite some time. The amendment that we move amounts again to an attempt to balance the interests. While we think there should be an element of retrospectivity here, we are prepared to limit it to relevant leases entered into, renewed or extended after 1 January 1994; that is, from January 1994 onwards anybody who entered into a lease containing a ratchet clause should have known that it was going to be the intention of this place to ban them and they should be caught by the ban. For leases entered into before that, we accept that to retrospectively apply an absolute ban on ratchet clauses could be harsh. This amendment removes that, although the general dispute settling process which does include a general overriding issue of harshness and unconscionability does still apply. So, there does remain some protection. I could anticipate that Mr Moore may not be supportive of this amendment.

Again, it represents, right at the final knock, perhaps the process of compromise and negotiation that this package represents. In my last substantive comment in the debate I would like to thank the officers of the ACT Government Service who worked on this project for a very long period. The need for this type of legislation goes back a very long time. I think 13 years ago there was a first move for this in the old Assembly. There have been committees look at this; there was a committee - - -

Mr Moore: No, 20 years ago.

MR CONNOLLY: "Twenty years", Mr Moore says; and he is probably right. Mr Donohue probably would agree with that. It may go back even beyond that. There has been a long, long need in the community for this type of legislation. The Government has been working solidly on this for pretty much the life of this Assembly. We promised at the last election that we would deliver on this project; we have been working very hard on it; negotiations have ebbed and flowed; we have thought we had agreement; there has been retreat from those agreements; we have not been able to get agreement; we were not able to get a compromise document; so, we came to the Assembly seeking the power to make a document, but at the same time we kept those negotiations going.

I would like to thank particularly Mr Len Sorbello, the branch head of the Constitutional and Law Reform Branch of the Attorney-General's Department, who is a very hardworking officer who engages his considerable legal talents across a diverse range of areas. Officers who have supported him strongly during this period have included the Director of Consumer Affairs, Tony Charge, who reports to Mr Sorbello. He really had a lot of the carriage of the early policy development work on this. The legal refinement has been conducted by Mr Sorbello in recent months, when the pace of negotiations between the relevant landlord and tenant interests was really quite fast and furious. We were having meetings, certainly on a weekly basis, and there were lawyers representing various interests coming down from Sydney. Ms Greenland and Mr Baron have provided great support to Mr Sorbello in that project. While it is unusual in this process to name individual officers of the service, because no piece of legislation is the work of even a small named group of officers, this project has required an enormous amount of work over some years and I think it is appropriate that at the final stages I do place on record my thanks to those officers. This is a project that has been much needed in this Territory and it gives me great pride to be part of the Labor Government that has finally delivered on a much-needed reform.

MR MOORE (4.49): Madam Speaker, before going to the substantive part of my speech I would also like to thank, through Mr Connolly, those officers who spent a great deal of time briefing Ms Szuty and me and were there to answer questions for me and for my staff members in a short amount of time and, particularly, Parliamentary Counsel officers who I know this last week have done an extraordinary amount of work in getting amendments ready for me, for Ms Szuty and for others.

I guess that it is very disappointing to see these last minute amendments put down by the Labor Government, and I would like to see just that - to see them put down. When I say "them put down", I do not necessarily mean the Labor Government put down; in this case I was talking about the amendments, but I can understand. The euthanasia Bill is about voluntary put-down.

Mr De Domenico: No, that was this morning. The euthanasia Bill was this morning's Bill.

MR MOORE: Mr De Domenico, I am surprised that you have not realised that yet, after all these months. The question of retrospectivity, I think, is an interesting one because what we are doing by passing this Bill is setting in place - you may refer to them as such - new community standards. Certainly, we are recognising standards that the community would expect of us. That applies to the whole Bill. A time when we recognise standards is a time when we ought to be able to have disputes resolved by a dispute mechanism. We are not suddenly saying, "No, you cannot do this", or, "You cannot do that"; we are saying that, if there is an agreement that is inappropriate, then you have a mechanism upon which to operate. Mr Connolly, a short while ago said yes, but we still have the possibility of going through the harsh and unconscionable. I think this legislation is now harsh and oppressive. The general legal term is "unconscionable", but we now have the opportunity to go through that. The basis for putting up this particular amendment was really that there would be undue hardship. That was the general argument - the undue hardship because of the ratchet clauses - and, if we cut out the ratchet clauses, it would cause undue hardship to some of the owners because of their relationship with their financiers.

Of course, by using these amendments we just transfer the undue hardship back to where it has always been - back to the tenants - and that is the difficulty, because a ratchet clause is one of those clauses that continue to increase the level of rent. It is an agreement that increases the level of rent and it never goes down. It increases by either 5 per cent - the norm would be something like that - or the CPI increase, whichever is the greater. So, when we get a huge drop in interest rates, as we have seen over the last few years, the landlord has a huge advantage. Was any of that passed on to the tenants? Of course not. But, as this ratchet clause applies, they continue to increase the amount of rent that tenants have to pay. That probably does not fit into "harsh" or "oppressive" as a definition, but it certainly seems to me to be entirely inappropriate.

What we are trying to do by this legislation is balance the relationship between landlords and tenants, and we had come some of the way in doing this. One has to argue that, if this was going to cause undue hardship for these owners - and Mr Connolly is presenting that argument - there should be consistency. I find it curious, indeed, that he can stand here and talk about that kind of undue hardship when he knows about the undue hardship that he has caused a small group of business people in the ACT, namely, service station owners. What is good for the goose ought to be good for the gander. It seems to me that he can have it either one way or the other. But if he is going to be consistent he ought not be doing this kind of backdown. He should be prepared to stand up here and say, "Small business in this town is suffering, yes" and "Yes, we recognise that many of the owners are small businessmen. We recognise that they are tied to financiers".

If we wanted to be really concerned about undue hardship we would be looking at legislation that carries that through to the financiers, rather than saying, "Okay, it is undue hardship, so we are going to leave the tenants and the undue hardship grounds again". They are the ones that lose every single time and they are the ones that are going to lose by this Labor backdown - by this Labor letting down once again of small business people in the ACT.

It has clearly been the case that the landlords have had the power in most of the agreements that have been made till now. That is why there is the need for the legislation and that is why it is such a disappointing thing to see these amendments about ratchet clauses and key money not being available to be considered as part of a dispute. We are not saying that you cannot have them; we are not interfering with the piece of legislation. But what we are doing is saying to both the landlord and the tenant, "Under these circumstances, if you have a dispute it can go through the process".

I would think it would be an ideal opportunity for the Liberals to say to Labor, "No, we are not going to allow you a backdown". That would show that in fact Labor is out of touch with small business and the Liberals are more in tune with small business. I would hope that Mr Stevenson would also support me in voting against these amendments that are presented in supplementary B.

MS SZUTY (4.56): I was just wondering whether Mr Humphries also wanted to speak to these particular amendments. I, too, like Mr Moore, am disappointed that we have had some last minute negotiations occur between the Government and owners. I think it is regrettable that tenant groups have obviously not had the opportunity to respond to this most recent change. That, for me, is a very disappointing part of the whole consultation and negotiation process. At the end of the day, there has been one major issue which has been presented to this Assembly that tenant groups obviously have not had the opportunity to respond to. The Attorney-General talked about an attempt to balance the interests, and I really wonder what balancing the interests with regard to this particular matter is indeed all about. On the one hand, we have negotiations with owners; but, on the other hand, we have not had negotiations with tenants. I do see that situation as entirely regrettable.

Mr Moore talked about the question of retrospectivity and talked about this Bill setting a new standard and putting in place a new dispute mechanism. Indeed, again from my speech during the in-principle stage, I believe very strongly in what this Bill is trying to do. It is creating a very new and different regime in the ACT, which is new and different from every other jurisdiction in Australia. I think we will actually be the envy of every State and Territory in Australia in terms of the dispute mechanisms that we are going to put in place in the Territory. I do find it unfortunate that at the last stage we have had negotiations which have occurred with one particular group and not the other in relation to such an important issue.

Mr Moore talked about Mr Connolly's arguments in terms of the hardship for owners in relation to ratchet clauses in particular, and said that it would just be too difficult for small owners to come to any other arrangement in the short term. I agree with Mr Moore that the hardship again falls back on tenants. I had some experience with the operation of ratchet clauses in my time as director of the Weston Creek Community Service when

I was relocated a couple of times. One of the buildings that the community service moved into was owned by a private landlord and there was a ratchet clause in our lease. Fortunately, it was not my community group which was finding the money to support the operation of that ratchet clause; it was the Government. So, I think it is rather ironic that at the eleventh hour the Government has agreed to sustain the operation of ratchet clauses to the point where they have not had discussions with tenants. I find that entirely regrettable.

MR MOORE (4.58): Madam Speaker, it was at the eleventh hour and fifty-ninth minute, I think, that we received these amendments. One of the things that I think is most flabbergasting is that the Liberals are not even going to speak to them. They hold themselves up as the bastion of small business. Mrs Carnell was a member of CARTA, and I am amazed that the Liberals will not at least identify their position on this and put on record why it is that they would support such an incredible backdown on this.

Mr Humphries: Do you want it over quickly or not?

MR MOORE: Mr Humphries interjects. We now have the reason. He wants the debate over by 5 o'clock. Too bad!

Mr Humphries: No, no; you do.

Mr Kaine: You said that you wanted it over by 5 o'clock.

MR MOORE: Not at all. The interjection is that I wanted it over by 5 o'clock. There has been a clear misunderstanding. I have never said that at all, and I am quite happy for it to go on. So, please, Mr Humphries, put your position and indicate to small business why you are supporting this last minute backdown and why you are supporting a few landlords over their tenants.

Question put:

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

The Assembly voted -

AYES, 15		NOES, 2
Mr Berry	Mr Humphries	Mr Moore
Mrs Carnell	Mr Kaine	Ms Szuty
Mr Connolly	Mr Lamont	
Mr Cornwell	Ms McRae	
Mr De Domenico	Mr Stefaniak	
Ms Ellis	Mr Stevenson	
Ms Follett	Mr Wood	
Mrs Grassby		

Question so resolved in the affirmative.

MR MOORE (5.02): I seek leave to move the amendments circulated in my name together.

Leave granted.

MR MOORE: I move:

Page 3, line 1, clause 3, definition of "key money", paragraph (a), omit the paragraph, substitute the following paragraph:

"(a) rent, other than rent that is, in the circumstances, excessive;".

Page 3, lines 15 and 16, clause 3, definition of "lease", omit "of premises, whether for a fixed term, periodically or at will, and includes a sublease", substitute "or use of premises, exclusively or otherwise, whether for a fixed term, periodically or at will, and includes a sublease and a licence".

Page 5, lines 7 and 8, clause 3, definition of "small commercial premises", omit the definition.

Page 5, lines 26 to 29, clause 5, paragraph (1)(a), omit the paragraph, substitute the following paragraph:

"(a) retail premises;".

Page 5, lines 30 and 31, clause 5, paragraph (1)(b), omit the paragraph, substitute the following paragraph:

"(b) commercial premises;".

Page 6, lines 14 and 15, clause 6, paragraph (c), omit the paragraph, substitute the following paragraph:

"(c) a dispute about key money, compensation, renewal, costs, outgoings, a rent rebate for damaged premises, assignment, relocation, valuation, or a multiple rent review, ratchet or other rent setting clause, in relation to a lease or to negotiations for the entering into of a lease;".

Madam Speaker, I note that the Government has indicated that they will not be supporting these amendments. In fact, it continues my argument from the previous part of the debate, Madam Speaker, and that is: At what point should we intervene in agreements that are already made? Where those agreements are inappropriate, then they ought to be able to go through a dispute mechanism. If, indeed, we were saying that we were going to remove them, then there might be an argument about retrospectivity.

But all this Bill does is provide for a dispute mechanism that, first of all, starts with mediation. Certainly, from our experience, according to my briefings in Queensland where a mediation process has been used, over 90 per cent of cases are resolved at that point - at mediation. So, when we have small businesses, small tenants, out there suffering as we do at the moment, then we ought to be able to ensure that the leases that are entirely inappropriate are dealt with by that tribunal.

So, we get a situation, Madam Speaker, where, when it is a ratchet clause like we have spoken of before, the situation gets worse and worse every year for the tenant, and the Government backs down because the landlords claim that they are being ripped off in turn by the banks or financiers. Madam Speaker, there is a whole range of impacts that have effect because of leases, and that is why it is that we need such a complicated and extensive code of practice. The final version has been tabled today, although even in this case we note that it is subject to change. It is subject to change in two ways - by the Government itself, with the lobbying; and by the ability of the Assembly to move disallowance in order to be able to amend any part of that, should we so wish.

Madam Speaker, in my first amendment - to the definition of "key money" - the change is to ensure that we include not only rent but anything other than rent that is, in the circumstances, excessive, because there is a whole range of ways in which the owners have been able to take advantage of the tenants. In fact, the same applies right across the six amendments. In each case we are talking about a situation where, I believe, the balance of power between the owners and the tenants ought be moved a little closer to the tenant. That is the import of those amendments.

MR CONNOLLY (Attorney-General and Minister for Health) (5.06): Madam Speaker, the Government will not be supporting these. It does, as Mr Moore says, shift the balance somewhat. We respect Mr Moore's very genuine commitment to do that, but the package has been negotiated over these many years. We are not prepared to change it at the moment.

MR HUMPHRIES (5.06): Madam Speaker, I should put on the record, in case Mr Moore has another fit, that we do believe that, despite the misgivings we have had about the way in which some aspects of this legislation have come out, it is important to understand that this is the result of a process of negotiation, albeit that it might not satisfy both sides entirely. We think there is some argument for letting this agreed arrangement apply at least for a period of time - perhaps only a short period, but at least for a period of time - to see how it impacts on the dealings between landlords and tenants. It seems to me that Mr Moore does have an agenda which he wants to follow, and it is not the agenda that has been agreed between parties in other places. I think the fact that we have agreement already achieved, which is reflected, broadly speaking, in what is in this package, should be respected and honoured, and we should work within that framework at least for the time being.

MS SZUTY (5.07): I support Mr Moore's amendments. Mr Moore's amendments do a number of things. Two of the amendments certainly go further than the Government's stated position. They are amendment No. 1, in terms of the definition of "key money", and amendment No. 6, which includes a wider range of matters under clause 6 of the Bill, particularly paragraph 6(c) about disputes. Certainly, amendment No. 2 includes a very clearly defined set of circumstances which are included under the definition of "lease". I think that is a sensible improvement to the Bill. It also takes account of current leases, as Mr Moore has indicated. I will come back to that point shortly.

One of the key things that Mr Moore's amendments do is that they take in a wider scope for the application of this particular Bill. Certainly, it is something that I have paid very close and keen attention to in the time that I have followed the negotiations and the process of debate with regard to this particular issue. We have a situation where owners and tenants are coming ever closer to agreement about how disputes between them can be resolved. It certainly seems to me that, while we are reaching that agreement and both groups are working cohesively together, it makes sense to then widen the scope of the coverage of the Bill. Certainly, Mr Moore's amendments - amendments Nos 4 and 5 - which talk about the coverage of the Bill being applied to both retail and commercial premises are very clear cut. So, we are seeking a very wide coverage with regard to this particular Bill. I think that is appropriate, given the very lengthy negotiations which have occurred with the Government and with key groups in relation to this issue over a very long period of time. I am disappointed that neither the Government nor the Opposition see their way clear to support these amendments, but I will certainly be doing so.

MR MOORE (5.10): Another part of the amendments I put forward removes what I perceive to be the rather arbitrary 300 square metres and 1,000 square metres inclusion in this Bill. I would be very interested to have the Minister explain to us just where the 300 square metres came from and just where the 1,000 square metres came from, because, so far as I am concerned, they are arbitrary figures. They really do not appear to be tied to anything.

It seems to me quite appropriate - and this is the import of amendment No. 4 and amendment No. 5 - that we talk about just retail premises and we talk about just commercial premises. If we are talking about just those premises, surely landlords and tenants ought to be able to resolve their dispute through an appropriate mechanism, as we are setting out in this Commercial and Tenancy Tribunal, no matter what the size of their premises. It really does seem quite strange to me that we should include the size of a premises. I must say that, in the briefings that I have had, I have not heard a satisfactory explanation that covers that. So, I will be very interested to hear what the Minister's explanation is in that circumstance.

Madam Speaker, I would just like to also respond to an interjection that was made much earlier - I think it was from Mr Kaine, but it certainly came from the Liberal benches - that this is a newfound interest for Ms Szuty and me. In fact, Mr Humphries, on my behalf, moved to remove from the notice paper a Bill on this very matter. I think it was just last week. I appreciate his doing that for me. It was an easy way to do it. But the reality is,

Madam Speaker, that I had been dealing with CARTA prior to the last election and certainly when this issue came to a head with the very irresponsible conduct by the owner at the Campbell shops, which had left tenants in a rather awkward and inappropriate situation.

I do not for one minute suggest that all Canberra owners act as inappropriately as that, and I would hope that even under our new legislation that conduct would be considered harsh and oppressive. So, I urge members to support these amendments. If you are inclined to support some and not others, I am sure that the Speaker would use her power to split them up. In the meantime I would ask the Minister to explain why it is that he has chosen this arbitrary 300 square metres and 1,000 square metres.

MR CONNOLLY (Attorney-General and Minister for Health) (5.13): I will just respond to that. I think you have had numerous briefings on this; explanations have been given. You say that it is arbitrary. To some extent, I suppose they will not be. We tried, again, through compromise to balance the views of tenant groups and the views of landlord groups. We have come up with something that does provide the touchstone. It may well be something that we revisit. As I have said, there will be a process of review of this legislation as it is in operation. We will set up a committee involving the owner groups and the tenant groups and the department, and I would expect the tribunal to take advantage of such expertise as develops there. We will keep a watch on proceedings.

Question put:

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

The Assembly voted -

AYES, 2 NOES, 13

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

Question so resolved in the negative.

MS SZUTY (5.16): I seek leave to move the amendments circulated in my name together.

Leave granted.

MS SZUTY: I move:

Page 1, line 5, clause 1, omit "*Commercial and*".

Page 5, line 17, clause 3, definition of "Tribunal", omit "Commercial and".

Page 19, line 29, heading to Part VII, omit "**COMMERCIAL AND**".

Page 19, line 31, clause 58, omit "Commercial and".

Page 1, Title, omit "**Commercial and**".

These amendments refer to the title of the Bill and consequently where it appears throughout the Bill. I have always believed that the title of the Commercial and Tenancy Tribunal Bill 1994 is a very cumbersome one. In fact, in the early stages of the various discussions I have had with people, I would have preferred it to be called the Commercial and Retail Tenancy Tribunal Bill, because that was what fundamentally I thought the Bill was about, being relevant to both commercial and retail premises. There are some difficulties with that. Therefore, the amendments reflect an approach where I would prefer to see the Bill known as the Tenancy Tribunal Bill 1994. If the Bill is known by this name, commercial leases, retail leases and specified premises leases come under the scope of the Bill. There are also a number of other commercial matters, I believe, which may come before this tenancy tribunal also. I believe, Madam Speaker, that my amendments, if passed by the Assembly, would actually better reflect what the tenancy tribunal Bill 1994 is established for.

MR CONNOLLY (Attorney-General and Minister for Health) (5.18): Madam Speaker, in the spirit of compromise - in a sense, the hallmark of this Government - we are prepared to accept these amendments of Ms Szuty's. Could I also just say, Madam Speaker, that I neglected to thank - as I should have, of course - Parliamentary Counsel for the extensive amount of work that has been done, particularly lately, on this exercise. I apologise to the secretariat because the process of negotiation was going on right through to the very end. Indeed, our final amendment was drafted only late this afternoon. It was not immediately apparent, until really the debate was about to begin, that there would be essentially agreement for all the Government's amendments, with one exception. The additional amendment that the Government had moved made the Opposition rather more comfortable. So, we could move those as a block. Then we could deal with Mr Moore's as a block and then with Ms Szuty's as a block. I do apologise for the work the secretariat did over the lunch period in preparing the rather complex script which we did not need to use.

Amendments agreed to.

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

Bill, as amended, agreed to.

RETAIL AND COMMERCIAL TENANCIES
Draft Code of Practice and Discussion Paper

Debate resumed from 20 October 1993, on motion by Mr Connolly:

That the Assembly takes note of the papers.

Question resolved in the affirmative.

MAGISTRATES COURT (CIVIL JURISDICTION)
(AMENDMENT) BILL (NO. 2) 1994]

Debate resumed from 23 August 1994, on motion by Mr Connolly:

That this Bill be agreed to in principle.

MR HUMPHRIES (5.20): I have just a short comment, Madam Speaker. I, of course, support the Bill; but I wonder why it is necessary, given that section 7 of the new Commercial and Tenancy Tribunal Bill actually says exactly the same thing. As I said, there is a slight question mark about that; but obviously, since they are essentially the same, we support both.

MR CONNOLLY (Attorney-General and Minister for Health) (5.20), in reply: It was just to make it abundantly clear, so that we did not create a conflict, that we put it in both Bills.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

ADJOURNMENT

Motion (by Mr Berry) proposed:

That the Assembly do now adjourn.

Tuggeranong Under 19 Australian Rules Football Team

MS ELLIS (5.21): Just very briefly, I want to prove my allegiance to sporting teams, no matter what code they play. As I drew attention to a rugby union success in Tuggeranong recently, I thought I would take the opportunity of drawing another Tuggeranong success to the attention of the members of this place. The Tuggeranong Cannons Cowboys Aussie rules club had a great success on Sunday morning when their under 19s, Colts, won the premiership in the ACTAFL competition.

Ten members of this squad, it is worthy to note, were representative players in the ACT squad which played in the Teal Cup competition earlier this year. One of those 10 players from the Tuggeranong club, a young man called Aaron Hamill, was the only ACT squad member who went away to the Teal Cup competition to be named an all Australian team player in that competition. Of course, he also played a very important role on Sunday in the under 19s premiership win.

The Lions and the Bulldogs clubs in Tuggeranong have 25 junior teams playing, as well as two girls teams. The club itself has three senior teams in the ACTAFL competition, and next year that will be expanding to four. Given the numbers of young people in the valley who enjoy playing and participating in Aussie rules, we should all join in congratulating this club - a club, I might add, that, through financial and other pressures, nearly had to leave the ACTAFL three years ago. Because of community support, we can now see this sort of success occurring. I think it is incumbent on this place to congratulate them.

Housing Trust Personnel - Alleged Assaults

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (5.23): In question time today I undertook to respond before close of business on a particular matter that was raised by Mr Cornwell. I do apologise that I am using the adjournment debate to do so. It referred to a number of alleged assaults at the ABC flats. Madam Speaker, I respond, by way of information to the Assembly, that an officer of the ACT Housing Trust alleges that on 31 August 1994 she approached a resident who was attacking a fire hydrant at the ABC flats. The resident is known to the officer. It is understood that he has a history of psychiatric disturbance. In persuading the resident to stop misbehaving, he became agitated, waving his arms about and brandishing a sharp object. He followed our officer to her office. Our officer summoned the police, who removed the resident. The resident has denied the allegations. At no time was our officer assaulted. Our officer took a few days' sick leave some time afterwards, but this was not related to the incident with the resident.

The second incident, Madam Speaker, relates to a tenant at Currong Flats who claims that she was assaulted last weekend. The Community Guardians appear to be involved in this issue. The alleged assault is denied and is denied by a third party, another resident, who was present at the time. Signed statements to this effect are being obtained from both parties. No Housing Trust staff or employees were injured in this incident. No sick leave has been taken by any Housing Trust staff or employee as a result of this incident.

Madam Speaker, I have taken the unusual step of responding in fairly specific terms on this issue. I, too, am becoming somewhat concerned about the level of specificity, if you like, in some of the questions that are being asked about individual circumstances. I wish to place on record my preparedness to provide to any member of the Assembly an expeditious response to constituent concerns about any matter of public safety, public health, or other concerns that I may have responsibility for within my portfolio. I will make that offer again during question time tomorrow and would ask that, if any member of the Assembly does have a specific issue in relation to personal and specific circumstances of this nature, we deal with it in those forms.

Question resolved in the affirmative.

Assembly adjourned at 5.25 pm