DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

3 DECEMBER 1996

Tuesday, 3 December 1996

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The Assembly met at 10.30 am.

(Quorum formed)

MR SPEAKER (Mr Cornwell) took the chair and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

PETITIONS

The Clerk: The following petitions have been lodged for presentation:

By **Ms Horodny,** from 115 residents, requesting that the Assembly abolish the battery cage system of egg production in the ACT.

By **Mr Hird**, from 30 residents, requesting that the lease and development application for the community sporting facilities in McKellar be approved.

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

Egg Production - Battery Cage System

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 battery cage system of egg production involves many cruel practices towards hens, including:
>
> 1. caging for their entire lives in cages where they cannot exhibit their natural behaviour, for example spreading their wings and scratching in dirt or litter;

2. caging for their entire lives in cages with sloping wire floors, where the only possible position of comfort is to roost on the bodies of other hens.

Your petitioners therefore request the Assembly to: abolish the battery cage system of egg production in the ACT.

National Soccer Centre

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 Parliament that: the undersigned residents living in the Belconnen area can identify huge benefits to our community from the proposed project to introduce much needed community, sporting and other amenities by the Belconnen Soccer Club. This project is to be located in McKellar at Section 71, bounded by William Slim Drive and Owen Dixon Drive.

Your petitioners therefore request urgent attention by the Assembly to approve this lease and development application.

Petitions received.

DISCRIMINATION (AMENDMENT) BILL 1996

Debate resumed from 21 November 1996, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

MR WHITECROSS (Leader of the Opposition) (10.33): Mr Berry adjourned this debate on Ms Follett's behalf and I am representing Ms Follett on this occasion. The Opposition will be supporting this Bill, which is to establish a stand-alone ACT Human Rights Office in place of the cooperative arrangement we have had with the Commonwealth since 1989. It is with some regret that we find ourselves in a situation where we have to go down this path, made necessary by the fact that the Commonwealth has withdrawn from the previous joint arrangement. The regret is heightened for members on this side of the house by the fact that the previous Federal Government, the Labor Government, sought to go down this path back in 1989, and it was only by a significant effort on the part of Ms Follett and others that we persuaded them to enter into this joint arrangement in 1989. It is a matter of regret that, having done that work back then, we now find that, in a piece of cost saving, the new Federal Liberal Government is walking away from this arrangement.

It is important that we in the ACT do everything we can to ensure that there is an appropriate Human Rights Office dealing with complaints under our ACT laws, so that residents of Canberra have proper redress when they believe their rights have been infringed. There are some welcome aspects of the Bill, including the fact that the commissioner will have new powers to conciliate, which she was constrained from doing previously because of her role as the tribunal. That tribunal role will now be taken over by the Magistrates Court. I think these are welcome changes. Obviously, wherever possible, these are the kinds of disputes we would like to see resolved by mediation and conciliation, and therefore it is a good thing that the commissioner is in a position to be involved in that process. There is provision for public education, and modest budget provision has been made for staffing, as I understand it.

It would appear that the plan is workable and efficient, and it is the only real alternative we have under the circumstances. The only other way we could go is to repeal the discrimination legislation entirely, because we have no mechanism to enforce it. That would clearly not be an acceptable option, so I think this is a sensible process for us to follow. The Opposition will be supporting this legislation, and I commend it to the house.

MR MOORE (10.36): Mr Speaker, I raised in a question in the Assembly to Mr Humphries some time ago the issue of how we were going to handle human rights in the ACT. As it turned out, it was not too long before Mr Humphries introduced this legislation. It is interesting that in his presentation speech Mr Humphries said:

> A cooperative arrangement for handling Commonwealth and Territory human rights complaints has existed in the ACT for the past five years. The ACT Human Rights Office has been jointly funded by the ACT and the Commonwealth over this period, with the costs of the staff being shared equally between us. In addition the Territory has fully funded its own Discrimination Commissioner.

The Minister then went on to say that this arrangement is coming to an end on 20 December this year and that there have been negotiations. What Mr Humphries should have said was that this is a direct result of cuts by the Federal Liberal Government to this very important social justice area. We see again and again the failure of this Government to say, "The Federal Government, whether it is Liberal or Labor, needs to be taken to task for the way it is treating the ACT".

I believe that the former Federal Government, the Labor Government, was treating us badly enough in the most obvious way: They cut some $300m from the budget of the ACT on giving us self-government. But there are a series of continuing issues that the current Liberal Government is acting on that make things worse, and this is one of those issues. That we are forced now to consider this legislation because that arrangement can no longer continue with inadequate Federal funding is primarily what this is about. I believe that Mr Humphries should have been a bit more open, a bit more up front, about that issue and given an appropriate bagging to his Federal Liberal colleagues.

That having been said, and I think that is fundamental, Mr Humphries has taken the opportunity at least to try to get some improvements in the office into the legislation. The first of those, which Mr Whitecross mentioned, is allowing the commissioner to be involved in the conciliation process. I am pleased to say that I also support that. Whatever we can do to find conciliation is an important step forward. That process having been established, the establishment of the tribunal is dealt with in the Bill.

Another positive attribute of this Bill is the question of having issues dealt with within 60 days of a complaint being lodged. That sort of discipline is becoming more and more important in dealing with such issues. I think it is a great shame that we are not able to provide a coordinated approach with the Commonwealth, not just from the financial perspective, but also for the ability of people who feel they have been discriminated against to go to one commissioner and say, "I have been discriminated against". An ordinary person does not care whether it is under Federal legislation or ACT legislation. All they know is that they feel they have been wronged. I think we are still going to have an issue to deal with here in terms of flick passing from one jurisdiction to another. It was something we got around in this very important social justice issue, and now it opens again. Whilst I support this piece of legislation as a method of dealing with something that has been inflicted upon us, I think Mr Humphries should make very clear why we have been forced into this position, and then we should vote. Nevertheless, the legislation does deserve support.

MS TUCKER (10.41): Mr Speaker, the Greens will be supporting this Bill. We appreciate that there was little the Government could do because of the difficulty in coming up with a cooperative arrangement with the Commonwealth. I would like to congratulate the Government for ensuring that we do have our own Human Rights Office in the ACT. Once again, we see the Commonwealth turning their backs on social justice issues in the community.

The model that has been proposed is to have a magistrate heading the Discrimination Tribunal. We can see that this is the most efficient solution. Different States do have different models, as Mr Humphries has pointed out. Most, if not all, do separate the investigation and conciliation functions. What is different for the ACT is that, because we are a relatively small jurisdiction, we do not have the luxury of appointing a whole panel to sit on a tribunal, as many other States do. Therefore, the Government has chosen to have a magistrate as the president. The Greens were of the view that other models could be explored, taking into account, of course, the limitations of being a small jurisdiction. Potentially, these models could have been less formal.

It is clear that it is the intention that only a small number of cases will go to a hearing, as most will be conciliated by the commissioner. I also note that there is a new requirement that, where conciliation is successful, the agreed outcome of the conciliation should be reduced to writing, enabling the commissioner to confirm with the parties the details of the conciliated outcome. As this is the case, we think it is appropriate to monitor the model that is being put forward and, if there is some alternative to having a magistrate as president, this could be explored at a later date if it proves that it is not the most effective model for meeting the objectives of the Act. I have also spoken to senior bureaucrats about the amendments that have been proposed, and we will be supporting those.

MR KAINE (10.43): Mr Speaker, it seems to me that the Government has put this Bill on the table at a significant time in Australia's history, at a time when questions of discrimination have found their way onto the national stage and into the national arena, when there has been a phoney debate about questions of racism and the right of people to make a statement on any subject they like without being vilified for it. I think the Government's action in establishing its own Discrimination Commissioner is timely. We need to make a statement, in this Territory at least, that we do not agree with the proposition put forward by some that one must never raise the question of race or immigration or any such subject lest we be accused of being a racist. It seems to me to run contrary to those things that we in Australia have established as our natural characteristics and national characteristics over decades.

I think the media has mauled the debate rather than continued it. The media has a great deal to answer for in terms of what has happened in recent months on the question of immigration and how we deal with people of non-English-speaking backgrounds. I think the way it has been handled is an absolute disgrace. There is no doubt that, because of that so-called debate, a lot of people are suffering discrimination today, in our schools and in the workplace.

Mr Berry: Tell them to ring John Howard's office.

MR KAINE: Mr Berry is only too happy to see that discrimination take place, obviously. I suppose he is going to tell me when I sit down that I am a racist because I object to the way the media has treated this so-called debate. I am not, and I put it on record here and now. If Mr Berry is - - -

Mr Berry: Mr Speaker, on a point of order: Mr Kaine imputed that I was a supporter of the discrimination and racism that are going on in the community. If there is such an imputation, he should withdraw it.

MR SPEAKER: No, Mr Kaine did not, and there is no point of order.

MR KAINE: I said, and I repeat, that Mr Berry is going to jump to his feet and accuse me of being a racist, and I refute that from the outset. I think we have a very unhealthy situation in Australia today where people are being discriminated against. Children are being discriminated against in the schools, people are being discriminated against in the workplace; even in public places, people who do not look the way some people think they ought to look are being abused and virtually assaulted. That debate has to be stopped, if it is a debate, and I do not think it is a debate. One way of stopping it is to have a strong anti-discrimination law, as we do in the Territory - it has been in place for a long time - and to have in place a strong discrimination administration and legal process so that people who step across the bounds of what is accepted by this community as being reasonable can be appropriately dealt with.

I totally support the establishment of our own Discrimination Commissioner. Mr Moore seems to think the object of this debate ought to be to bash the Federal Parliament. I do not see why he is taking that view. We have been fighting for self-government and the right to deal with our own situations in our own way for

many years now. Ever since 1989 we have been gradually taking over functions that previously were accepted as being the domain of the Commonwealth. For anybody to convince me that discrimination in this community is a job for somebody else to worry about, they are going to have to do a lot of talking. It is our responsibility. The circumstances are right for us to take yet another function from the Commonwealth, which perhaps we should have taken a long time ago, but prior governments have been happy with the arrangements that were in place at the time.

It is timely that the Government is moving to establish our own Discrimination Commissioner to deal with matters that need to be dealt with locally, and all I can say is: The sooner the better. I do not see it as part of the job of accepting our responsibility to somehow say, "Somebody else is at fault for all our problems. It has to be the Commonwealth, it has to be John Howard, it has to be somebody else". We are responsible for what happens in our community, and I would have thought Mr Moore would have unreservedly given his support for the action the Government is taking to establish our own Discrimination Commissioner to deal with matters that occur in our community. I assume that, when the vote comes on the motion that the Bill be supported in principle, Mr Moore and every other member of this place will support it.

MR BERRY (10.48): I was not going to speak in this debate, but something Mr Kaine said in his contribution has caused the need for a few words in relation to the racism debate that is being fuelled outside in the community. Mr Kaine blames the media for the debate that has ensued. If it had not been for the Federal member for Oxley, there would have been no debate, and Mr Kaine ought to have referred to that Federal member when he talked about the racism debate that has developed in the community. He should also have mentioned that the Prime Minister sat back and let this debate develop to the stage that it has, and it is only in most recent times that we have heard the Prime Minister use the H word, the Hanson word. The people of Australia deserve better leadership on that front than they have received, and I think the Prime Minister has let the country down severely.

I am deeply disappointed that Mr Kaine would try to distract attention from the fact that it has been the leadership of this country, not the media, that has fallen down in the debate that has ensued on discrimination. The media have merely drawn attention to it in this case. With all their faults and the need for good front-page stories, the fact of the matter is that this debate could have been put to bed at the earliest moment had the Prime Minister not decided to let it rage for the time it has. The Prime Minister has let us down in relation to this matter, and I think Mr Kaine should try to relate to the facts as they have occurred rather than try to divert attention to people who merely report the events that occur out in the community.

MR HUMPHRIES (Attorney-General) (10.51), in reply: In closing this debate, may I thank members for their various contributions and for what I think is support for passage of this Bill through the Assembly today.

Mr Berry: You are welcome.

MR HUMPHRIES: Thank you for that welcome. The legislation we have put before the Assembly is, in a sense, legislation designed to make a virtue of necessity.

The Government has been faced with a change in Commonwealth policy. I need to put on the record, as I have already done, that I do not particularly welcome that change in policy. I think, as in the area of legal aid, it has the potential not only to hurt the ACT fiscus but also, more seriously, to occasion some disadvantage to people who require the assistance of mechanisms such as discrimination and equal rights legislation.

I agree with Mr Kaine that it is important for the ACT to accept a fuller degree of responsibility for management of our discrimination function. Perhaps it is, as he suggests, a sign of growing up in the ACT that we take this function fully into our own hands and manage the process more to our own design and our own making than to that of the Commonwealth. One casualty of that process may be the individuals who approach a particular organisation, be it an ACT discrimination organisation, a discrimination commissioner, the Magistrates Court or somebody else, or the Commonwealth discrimination function, whatever it may be in the future. Such a person approaching an organisation to seek assistance or relief may be disadvantaged by the fact that there are other organisations working within the same field and potentially providing relief who may be more appropriate to meet their needs and, indeed, may be the body or organisation or authority to which they should appropriately turn to obtain relief from a particular problem. That is the risk, of course, of separating the ACT's function from the Commonwealth's function.

As I have said, we have tried to make a virtue of necessity in this case, and the ACT has taken the opportunity, occasioned by a Commonwealth withdrawal in this area from funding at the level we have enjoyed in the past, to reorganise our discrimination function and to provide a level of service to the ACT community that will remain appropriate and effective but will focus on areas that I believe are more appropriately the focus of legislation in this field. I believe, for example, that it is appropriate that we look in the present structure at separation of the conciliation function from the determination function in the work of the discrimination process and in particular in the operation of the legislation.

It is my belief, and not only in the field of discrimination legislation, that we ought to move much more strongly towards the encouragement of conciliation processes generally in the resolution of disputes in our community. The separation of these two elements of the process that previously had been one in the ACT provides us with an opportunity to put emphasis on that process of conciliation and the overviewing of the way in which discrimination issues are handled in an informal sense in the Territory. That function, I think, is one we can emphasise under the new arrangements, while leaving the access that people need to have to hearings, to the making of orders, in the hands of the Magistrates Court acting as a discrimination tribunal in order to ensure that there is appropriate relief for those people who require it. The figures record that most people who approach our present Discrimination Commissioner for relief do not proceed to formal hearings before the commissioner. The matters are dealt with in a variety of other ways, and it would be appropriate, therefore, to think about how we can maximise opportunities and benefits to people who come before the system at that more favoured end or more used end of the spectrum more than we do at the present time.

Let me take the opportunity to record the presence in the gallery of Ms Robyn Burnett, who has acted as the Territory's first full-time Discrimination Commissioner and has been very important over the last few years of her appointment in being able to effect an important refinement of the process whereby the Territory has gained benefit and experience from the application of our discrimination legislation. It has been most important that we have been able to develop these laws in an appropriate way, that we have been able to refine them, as this Assembly has done on a number of occasions to reflect in some cases new areas of discrimination that we feel ought to be outlawed, and the work of the commissioner in that process has been very important. I take the opportunity to thank Ms Burnett for her work as Discrimination Commissioner in the ACT and to note that the exercise has been a productive one in refining the ACT's position. I think we can say today, as a result of the work that both the commissioner herself and the Assembly as a whole have done, that we have perhaps the best discrimination legislation in the country, the one that most fully protects the citizens of this community.

I will be moving a minor amendment to the legislation, which I will discuss in the detail stage. I want again to thank members for their support for the legislation and express my hope that the new arrangements, although born out of the change in policy at the Commonwealth level, will produce a solid outcome for those people who are in the unfortunate position of suffering from discrimination in this community. I sincerely hope we will see a revitalisation of that process, and a chance to be able to ensure that resources are directed in the most appropriate way to benefit those people who need the protection of that legislation.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR HUMPHRIES (Attorney-General) (10.59): I ask for leave to move the two amendments, circulated in my name, together.

Leave granted.

MR HUMPHRIES: I move:

New clause

Page 26, line 16, insert the following clause:

"Expenses

20A. (1) Notwithstanding the amendments of the Principal Act effected by this Act but subject to subsection (2), section 93 of the Principal Act as in force immediately before the

commencement date continues to apply in relation to a complaint dismissed (whether before or after the commencement date) under the Principal Act as in force immediately before the commencement date.

(2) Any direction given by the Commissioner by virtue of the operation of subsection (1) is enforceable as if it were an order made by the Tribunal under the Principal Act as amended by this Act.

(3) In this section -

'Commissioner' means the person who holds office as Commissioner on 30 December 1996.".

Page 27, line 22, clause 24, omit "order is enforceable by the Tribunal as if it had made the order", substitute "direction is enforceable as if it were an order made by the Tribunal".

One amendment is a fairly minor, almost typographical, amendment, and the other is somewhat more substantive. The effect of the major amendment is to insert a new transitional provision, clause 20A, relating to the directions given pursuant to section 93 of the Discrimination Act. Clause 20A is a transitional provision which ensures that, where the Discrimination Commissioner dismisses a complaint pursuant to the Act as in force immediately before the commencement of the new provisions in the Bill, the commissioner will have the capacity to give a direction pursuant to section 93 of the Act in relation to that complaint. Section 93 enables the commissioner to direct a complainant to pay to the respondent an amount in respect of the expenses incurred by the respondent in defending an action.

The provision will apply only in relation to a complaint dismissed by the person who holds office as the commissioner on 30 December 1996, irrespective of whether the complaint is dismissed before or after the commissioner ceases to hold that office. Members may recall that clause 20 of the Bill makes provision for the incumbent commissioner to continue to deal with matters that are part heard when her term expires. Should the commissioner dismiss such a matter after 30 December, this amendment will enable her to give a direction pursuant to section 93 of the Act in relation to that matter. So it is a saving provision, which I think is important to ensure that there is no lacuna in the operation of the legislation and the enforcement provisions under it.

The second amendment is a very minor one which corrects an error in clause 24. That clause refers presently to an order when it should refer to a direction given by the commissioner. I commend those amendments. I might just record that Mr De Domenico has chosen not to take part in this debate or to vote on this legislation because of the perception that there may be a conflict of interest in his case. Mr De Domenico has a matter presently before the Discrimination Commissioner and he has taken, I think, the appropriate course of action and has chosen not to participate in this debate or to cast a vote on this matter today.

MR MOORE (11.01): In rising to speak to these amendments, I will also comment on Mr Kaine's lack of understanding of the legislation in his in-principle stage speech, when he talked about finally getting a Discrimination Commissioner of our own. The Discrimination Commissioner has been ours all the way along and has been part of the self-governing Discrimination Act, so I think that was very much a furphy, like most of Mr Kaine's speech.

The notion of trying to take on extra responsibility from the Commonwealth is not what we are talking about at all. What has happened is that we had a shared responsibility with the Commonwealth where ordinary citizens, when they felt they were being discriminated against, could go to one particular organisation and have determined whether or not there was an issue. That organisation could look at both pieces of legislation. That was clearly a very positive thing. The reason we are in the position of doing this, and Mr Humphries has said as much, is that the Commonwealth have pulled the rug from under human rights organisations and commissioners all over Australia. In fact, I gave an example from the Federal Parliament where questions were being asked about the Queensland human rights commissioners and what was going on there.

The reality is that cuts in the Federal Government's budget in this area are having an effect on ordinary people, and at a time when, as Mr Berry puts it, John Howard refuses to take on the outlandish statements of Pauline Hanson. Perhaps he finally did. I lost interest in the debate some time ago.

Mrs Carnell: He did.

MR MOORE: Mrs Carnell says yes. He did finally, after the rest of the community put so much pressure on him that he had no choice, but my guess is that in the initial instance he was delighted to hear that expression of what really are his own underlying philosophies. If ever we have seen a Prime Minister who is on the hard right of politics on these ultraconservative issues, it is Mr Howard, and that is what we are seeing here with this piece of legislation. It does not matter about people who are being discriminated against. What we are seeing is an issue where they simply do not care, and that is what it is troubling Mr Humphries to say. This is a situation where his Federal Liberal colleagues just do not care. The irony is that this is the same group that went to the last election saying that they were for all the people. Yes, for all the people except those who are discriminated against.

Mr Berry: For all of us.

MR MOORE: For all of us, that is right; and what they actually meant was, "For all of us who get elected". They are the ones who are going to be looked after. The amendment does raise a few issues. To define "Commissioner" even more carefully as meaning the person who holds office as commissioner on 30 December 1996 is fine as an interim measure, and I do not have any problem with the amendment.

I did think it was worth making those couple of points about discrimination and whether this is just a matter of taking on our own responsibilities in the ACT. It is not just about that. We had already taken on our own responsibilities. It is much broader than that. It is about ensuring that ordinary people are not discriminated against,

and it is a great shame that people like Mr Kaine do not use the opportunity to draw attention to the failure of the Federal Liberal Government to keep their election promise of including everybody in what they are doing. This is a clear-cut example of how they are failing to live up to it.

Amendments agreed to.

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

Bill, as amended, agreed to.

FIREARMS BILL 1996

Debate resumed from 29 August 1996, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

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

PROHIBITED WEAPONS BILL 1996

Debate resumed from 29 August 1996, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

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

CRIMINAL INJURIES COMPENSATION (AMENDMENT) BILL 1996

Debate resumed from 21 November 1996, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

MR WHITECROSS (Leader of the Opposition) (11.07): Mr Speaker, the Opposition will be supporting this legislation. The Bill implements a budget proposal to impose a $30 levy on convicted offenders, to be put towards the costs of the criminal injuries compensation scheme, via Consolidated Revenue, I think. It is essentially a revenue measure, and I think it is justified by the fact that the criminal injuries compensation scheme is an increasing drain on the finances of the Territory, costing about $4.5m in 1995-96, which is an increase of $1m over the previous year. It is clearly a scheme with expanding costs, and it seems reasonable to expect that offenders would make some contribution towards compensating the victims of crime. This model the Government has proposed is the model that is operating in other States, including New South Wales, which is immediately adjacent to us.

The Government has proposed that the levy will apply to all convictions, whether in the Supreme Court, the Magistrates Court or the Children's Court, except for prosecutions relating to infringement notices. The Bill also provides for a discretion to vary or disregard the levy in certain circumstances, particularly relating to child offenders and multiple offenders. The Estimates Committee recommended that the Government undertake some consultation on this Bill, and the Government indicates that it has done so and incorporated suggested changes as a result of that consultation. That being the case, we will be supporting the Bill.

Having said that, I have to say that I support it not without some reservations. For example, the proposed Bill would levy $30 on a convicted offender, whether they are convicted of a violent crime which is likely to have given rise to a claim under criminal injuries compensation or a non-violent crime, whether a serious crime or a less serious crime. In that sense, the levy falls somewhat arbitrarily on convicted offenders. Someone who is convicted of an offence such as shoplifting, which is a serious offence but not an offence that in the normal course of events is liable to give rise to a claim under the criminal injuries compensation scheme, will be paying $30, as will someone who is convicted of a much more serious offence, such as grievous bodily harm, which is highly likely to lead to a claim under the criminal injuries compensation scheme.

I think there is some measure of injustice in the way the levy is spread; but, having regard to the quantum of the levy and the fact that this scheme operates in other States, and having regard to the need to seek to defray some of the costs of the criminal injuries compensation scheme, the Opposition will be supporting this measure. We will be taking an interest in how it goes. As I understand it, the levy will meet only a quite small proportion of the costs of the criminal injuries compensation scheme, and there may indeed be pressure in the future for additional measures. I hope that, in looking at additional measures, some account is taken of the nature of offences and how those offences relate to the possibility of the victims of those offences being able to make claims under the scheme.

MR MOORE (11.12): Mr Speaker, there are times when it gives me some anguish to have made a commitment to support Government budgets, and this is one of those times. This was certainly introduced as a budget measure and, as such, I know I have a commitment to support it; but I do so with several objections. The amendment, first of all, is no more than a revenue measure, and I have to ask the question: Is it acceptable for justice policy to be merely budget driven? That appears to be what is happening here, and Mr Whitecross has touched on a number of the issues I want to deal with. To me, there is an interference in this legislation with judicial independence. In principle, I do not believe that the legislature should be setting a fee in this way. What we should be doing is setting a capacity for sentences to be imposed rather than what in this case is, effectively, a mandatory sentence. I think it is an inappropriate way to operate.

I am conscious that in other States there has been the introduction in a broad sense of mandatory sentencing. It is something I have always objected to. I think it undermines the judiciary. I think it undermines the relationship between the legislature and the judiciary, and the same applies in a minor way in this case. I am also conscious that in the

Northern Territory, South Australia and, I think, New South Wales there are similar systems. However, it is still, as far as I am concerned, an objectionable way of raising revenue. The tax is flat in its nature, and, whenever we have a tax that is flat in its nature, we should look at it very carefully because, by its nature, it is regressive; whereas I believe that there should be at least some progressiveness in recognising capacity to pay. That becomes particularly interesting when you look at the socioeconomic status of the majority of people who appear before our courts and wind up paying fines - and will wind up paying this fine. Invariably, this tax will be paid by those of lower socioeconomic status in our community, and we have to ask ourselves: Is this fair? I think the answer of any reasonable person looking at it is no, it is not fair.

I think it behoves Mr Humphries in particular to justify this. It is a surprise to me that somebody of Mr Humphries's capacity, who usually brings forth very thoughtful legislation, has been prepared to bring this particular piece of legislation before us. I think it would have been far better, if you were determined to go down this path because of the rising costs of criminal injuries compensation, to have a more transparent system that would allow the judiciary to take into account the issues you have raised and to give a range of fines. If you are going to use this system, at least have a range of fines, as opposed to the $30 flat fine, which is simple to administer and has that convenience. However, we are not here to serve administrators. We are here to deliver what is in the best interests of the people of the ACT, and that is all the people of the ACT. So I have real difficulties with this.

There is one further difficulty I want to draw to the attention of members of the Assembly, and that is that the fee, once introduced, is ripe for increase by future assemblies in an effort to balance budgets. We have another new fee and, once introduced, these issues of principle are no longer really able to be debated. It will be said, "We already have a $30 fee, and criminal injuries are costing us $10m now, instead of $5m, and we are getting only $300,000." - I think the projection is $330,000 per year from this fee - "These are out of balance; we should balance it up, so let us change it to $100 or $150".

What we are dealing with here is a significant issue of principle. It is a piece of legislation that was introduced on only 21 November, yet we are dealing with it now. To be fair to Mr Humphries, although it was introduced on only 21 November, the concept this is implementing was introduced through the budget, so most of us have been thinking about it for some time, and it was considered by the Estimates Committee. Indeed, the Estimates Committee suggested that there should be much wider consultation on it. Yet, when I read through Mr Humphries's speech, I do not see evidence of widespread consultation on these fundamental issues. I should draw to Mr Humphries's attention that, when we work within the Estimates Committee, members are working as hard as they can to get a coordinated consensus approach to the way we report; therefore sometimes our recommendations are softer than some of us would have made them, because they are a compromise. I would have thought he could have seen through that and realised that there are fundamental issues about the way we tax, about the socioeconomic status, about social justice, that come before us with this legislation. Indeed, Ms Follett on a number of occasions raised some of these issues publicly, yet I see that you are still proceeding with it.

If I have ever been tempted, and I have been tempted on a number of occasions, to vote against budget issues, this is certainly one of them - not because there is a specific person who is obviously going to be affected, but because, fundamentally, I think this type of legislation is flawed. I hope Mr Humphries will look at this issue and say, "Is it really worth, for the $330,000 we are going to raise, testing each of these areas of fundamental principle about the way we legislate and about the way the courts operate? Is it really worth proceeding down this path?".

MR HUMPHRIES (Attorney-General) (11.19), in reply: Mr Speaker, I thank members for their support for the legislation, although some, obviously, were not fulsome in that support. Let me address some of the concerns that have been raised. I do not particularly enjoy having to introduce revenue-raising measures in the Assembly. Like any government, I would prefer to be able to introduce only revenue-spending measures and to be able to abolish as many revenue-raising measures as possible. I would be a very popular politician if I were able to do that all the time. But the reality is that there is a problem which we have to address.

In this case, the very real problem to which Mr Whitecross referred was the increase in the cost of administering a CIC - a criminal injuries compensation - scheme, given that in recent years there has been an explosion in applications before the courts for criminal injuries compensation and there have not been ready sources of revenue that are directly attributable to that growth in expenditure from which to offset that expenditure. The expenditure in the last financial year was something like $4½m. This measure will raise a tiny proportion - less than 10 per cent - of that amount. I make no apologies for wanting to create some balance in the system and to emphasise, if you like, the user-pays element of this.

Criminal injuries compensation is not exactly the consequence of acts of God, movements in fiscal activity around the country or anything of that kind; it is the consequence of criminal behaviour in our community. People are able to obtain compensation for damage they have suffered because of a criminal act. It is entirely reasonable, entirely appropriate, to say that those who commit criminal acts ought to be contributing to a fund from which payments to other people, victims, are drawn. It would, of course, be even more appropriate to have individuals who were injured in an attack - an assault, for example - receive their compensation wholly from the individuals who actually attacked them. That would be a much more direct application, if you like, of the user-pays system. That is not, of course, possible.

There are, first of all, problems in obtaining damages from some people because of their financial position. There are problems in that very often people are not identified or convicted of particular offences, even though clearly criminal injury has been sustained by a particular individual. It is a matter of some regret, I have to say, that the system very rarely sheets home the cost of meeting a criminal injuries compensation payment to the individual who has given rise to it in the first place. I would like to think that we could somehow tighten that or change that lack of performance, if you like, by the system;

but that is not, unfortunately, in my view, readily possible. Yes, this is a revenue-raising measure, but it is raising revenue from that class of people who are directly contributing to the problem that needs to be addressed. I make no apologies for looking to them to help address this increasing financial responsibility imposed on the taxpayers of the Territory.

It is true that a number of other issues that were raised by the Estimates Committee - and indeed by members of the Assembly during debate on this matter - have been addressed. Particularly, I want to address the point made - not today but previously - by Ms Follett in respect of this legislation. She said that it had the potential, as a penalty for people who appeared before the courts, to punish people twice for the same offence. Mr Moore raised the question of consultation on these measures. Let me say, in the first instance, that in my experience it is extremely rare for governments to consult about new taxes or new revenue-raising measures before they are actually implemented. If we have not consulted about that before implementation we are not by any means the first government or, I am sure, the last to fail to do so. Revenue-raising measures, by their nature, tend to be the sort of thing that you need to announce without notice in order to obviate the opportunities for avoidance or - - -

Mr Moore: There is not much opportunity for avoidance on this one, Gary.

MR HUMPHRIES: There is not much opportunity on this occasion, but the pattern is usually not to announce revenue-raising measures in advance.

Mr Speaker, we have taken seriously the recommendation of the Estimates Committee. The Government consulted particularly with the legal community about the provisions in this legislation before it was brought back to the house today. Let me record that I do not think the Criminal Law Consultative Committee was happy about the idea of imposing extra costs on what are ultimately the clients of those members of that committee in many cases; but they were, I am advised, not concerned in the least about the concept of punishing people twice for the same offence. I believe it is true to say that they acknowledge that imposing a $30 penalty is merely the equivalent of an increase, if you like, in the orders for court costs or other party costs or in the fine imposed by the court. It is a charge that the convicted person needs to meet, and there is no question of punishing a person twice for the same offence.

Mr Berry: But it is a penalty for somebody else's offence.

MR HUMPHRIES: No; it is a penalty for having committed the offence and relates to the cost that the community has to bear for having to deal with that offence. There is no relationship between what damage a person has caused in the broader community and what they have to pay. Therefore, in that sense, it is not a second penalty or a charge related to a particular person's misdemeanour. It is a flat fee, as Mr Moore points out; and it goes directly to the overall cost to the community of administering the scheme. There has been wider consultation on this issue. I do not make apologies for having introduced this measure or announced this measure without consultation because it is, by its nature, the kind of thing which governments traditionally need to announce in that fashion.

Mr Speaker, I want to reject the suggestion by Mr Moore that there ought to be a range of fines provided for in the legislation. Mr Moore did not exactly elaborate on that; he said "a range of fines". I think he assumed a range of charges as outlined in this proposal. The great danger in requiring the court to address itself to a range of possible charges is that it, in fact, does what Mr Moore suggested ought not to have been done in the first place, which is to make the courts revenue collectors for the Government. If the court, having convicted a person and having imposed court costs and fines on the person, does not have the benefit of the criminal injuries compensation levy but, instead, has to look at the question of what damage to the fiscus might be done by this person's actions, work out what the revenue damage might be and thereby calculate some kind of charge basically according to the Government's needs rather than the court's needs, then you do have a serious problem of the erosion of the position of the court. That, Mr Speaker, I think, is not what we should be doing. The flat fee does not create any discretion; nor should it create a discretion, because it means that a simple extra charge is imposed on an individual for passing through the court; and the court's job is done by simply imposing that penalty, although, of course, we have provided that they should be able to not do so if there is a belief that that would be inequitable in the circumstances.

Mr Moore suggested that this measure would be ripe for balancing budgets in the future. I would suggest that, given that this measure presently accounts for less than one-tenth of the cost of administering the scheme overall and meeting payments, there would have to be a very significant increase in the amount collected under this levy for it to have any hope at all of addressing the wider budget problems that the Government has. It would have to be increased very substantially even to cover a large proportion of the payments the Government is making at the moment for criminal injuries compensation.

Mr Whitecross did suggest that we might be looking at - and I think he was even saying that we should be looking at - other measures to contain CIC costs. If that was his suggestion, I agree with it. Indeed, I picked up the work of my predecessor as Attorney-General, Mr Connolly, to try to find ways of limiting the nature of payouts made under this legislation. The fact is, Mr Speaker, that there are payments being made in a large number of cases which, in my view, are inappropriate and ought to be wound back; for example, people who are receiving payments for injuries which are essentially caused by their own foolishness, their own recklessness or, indeed, their own deliberate act. I think the community should not be asked to make payments in these circumstances. I hope to be able to bring to the Assembly next year legislation to contain those payments to those who are truly deserving of them and who are genuinely innocent victims of criminal activity which has occasioned damage. That said, I do thank members for their support and hope we can proceed to apply this system and recover some, but only a small part, of the cost of administering what is an increasingly expensive system.

MR MOORE (11.30): I seek leave to speak again to the in-principle stage of this Bill.

Leave granted.

MR MOORE: I thank members. I sought leave because I felt that there was a fairly facile response from Mr Humphries on the issues that were raised in this debate. Indeed, Mr Humphries started by saying that there is a need to raise money, and that is the reason behind this legislation. Of course, there is a need to raise money.

The question is how and where it should be focused. Half of the principle upon which I was driving was that this actually makes for a situation where people who are least able to afford to pay are the ones who are paying.

Further, Mr Humphries suggested that it is a user-pays system. It is those who commit crimes and are convicted - not the people who go through the court, which was the term Mr Humphries used for the people who are convicted - who wind up paying under this legislation. They are convicted of criminal acts. Of course, on many occasions those criminal acts of which they are convicted have nothing to do with a requirement for paying compensation. In that sense, it will often be misdirected; and that is why I raised the issue before, Mr Humphries, about interfering with judicial independence and how the method should be seen to be done. What Mr Humphries ought to be doing is withdrawing this legislation now, going back and working out a system in consultation with the broader community, particularly the legal community, if he wants to go down this path, to have a separate structure from the penalty so that the magistrate or the judge has the opportunity, first, to impose a penalty; and, secondly, to impose a level of compensation.

When I talked about a range of levels of compensation, I was not suggesting that we somehow make it that you have to pay $20 if you have committed an offence under section 27 of the Crimes Act, or whatever that is, and $30 for another one; rather, we should give an overall view, the same as we allow the judiciary to establish an overall penalty. We should say, "The maximum penalty" - we always fix maximum penalties - "is $2,000, so many penalty points, or whatever". Similarly, a magistrate or a judge could say, "Yes, there is a compensation level necessary here." - they would know what the maximum compensation level is in any particular instance - "Therefore I impose, firstly, the penalty; and, secondly, the compensation penalty".

There is a range of different systems which are much more socially just but which meet the criteria that you answered with. I think what we have here is an inadequate system that undermines the judiciary and the magistracy and undermines social justice, in that it is specifically focused on people who have the least ability to pay. It is simply a revenue measure. There is no question about that, and Mr Humphries has identified that it is a revenue measure. The only thing that Mr Humphries pretended to justify in terms of the revenue measure is this idea that at least it is user pays. If you feel that it is appropriate to use the user-pays system - and I can see there is some argument for that - then let us genuinely have a user-pays system. This is not a user-pays system because it focuses on some of the people - - -

Mr Humphries: I did not say it was user pays; I said it had elements of user pays.

MR MOORE: Mr Humphries interjects and says that it has elements of user pays. Okay. Well, use the elements of user pays and let us come up with some better legislation instead of this half-baked idea, because that is what it is. It is a half-baked idea. The half-baked idea is illustrated by Mr Humphries saying to us, as an aside, "The reason we could not consult in advance - we never do on revenue measures - was avoidance". Yes, that is true; that is normally the reason you do not consult on revenue measures.

How somebody could manage avoidance in this situation is beyond me, and I would be delighted if Mr Humphries could explain how it is that somebody is going to say, "Well, no; I will get around this", other than perhaps by making sure they do not go to court by not committing a crime. The penalties are not there.

Mr Speaker, I think this is a very poorly thought out, half-baked idea, and the logical thing for Mr Humphries to do is to allow this debate to be adjourned now and perhaps let this Bill die. If he is not prepared to do that, then what he should do is go back. If he is not prepared to do that, because he has a budget - and, after all, the economic rationalists will be saying that much more important than having social justice is to make sure that we have the money coming in and to make sure that we can balance the budget - if that is the highest priority for him, then when this legislation goes through, Mr Humphries, take the ideas away; do it properly; and when we have a better system in place come back, put the better system in place, and use this purely as a temporary measure to let us get a better system in place. If it goes through, use it as a temporary measure. It is time now to start thinking about the real issues that are involved here.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR HUMPHRIES (Attorney-General) (11.37): I want to use a legitimate means to respond to Mr Moore without having to suspend standing orders or seek leave. Mr Speaker, I just want to make a few comments.

Mr Moore: On a point of order, Mr Speaker: I think that suggesting that seeking leave was not legitimate is hardly appropriate from Mr Humphries. Surely seeking leave, and being granted it by the Assembly, is legitimate.

MR HUMPHRIES: If Mr Moore thought I was suggesting he was a bastard, then of course I withdraw that suggestion. It had no connection whatsoever with illegitimacy, Mr Speaker.

Mr Moore: I am happy to live with that, Mr Speaker.

MR HUMPHRIES: I am sure you have to live with that, Mr Moore. You have heard it said of you plenty of times. Mr Speaker, I want to make a few comments about this. Mr Moore says we should use this as an interim measure, find some better ways of doing it properly in the future and come back. I still have not heard from Mr Moore how we would do it better in the future. I still do not believe that anything he suggested today is an improvement on the present situation. I certainly reject the suggestion that you can get better social justice by having a more flexible system that somehow apportions the size of the penalty according to some other criteria, because the question has to be asked:

What would the criteria be? If you say that the criterion should be the capacity to pay, then you are intervening into what is already the discretion of the court when it imposes a fine on people for breaking the law in the first place. The court does take into account the means that a person has before they impose the fine. If we are also plugging this into the same equation, we are simply duplicating the discretion which the court already has in this respect. If we somehow link it to the seriousness of the crime that has been committed and the likelihood of the system having to make a payment for compensation to an individual who has been a victim of a crime, that would not be, I suggest, more socially just in itself.

What Mr Moore overlooks is the fact that the court already has that power; the court already has the power to say, "You, Mr Defendant X, have committed this crime. We have convicted you of that crime. You have occasioned X thousands of dollars of damage to Mr Y. Therefore, we intend to impose an order on you, X, to pay Y those damages". That capacity already exists as a direct transfer from defendant to victim. But it does not work very effectively at the moment, because there are very rarely circumstances, apparently, where the court can feel it is appropriate to determine that direct payments should be made by X to Y. Linking the payment to the size of the damage occasioned or the problem caused by a particular criminal act does not work, Mr Speaker. Similarly, I would say that linking it to the seriousness of the offence is, unfortunately, fairly inflexible. Someone might commit a quite serious offence, such as a serious traffic offence, where there is not actually any victim. On the other hand, they may commit a quite minor offence but cause huge damage to a particular individual. Therefore, it is also inappropriate, it seems to me, to link it to the seriousness of the particular offence. In any case, again, in the first place, the court imposes a fine according to the seriousness of the offence; and that should be the basis on which the decision is made.

Mr Speaker, we have had consultation with the community. In fact, I can say to the Assembly that the legal community advanced no particular better calculation for the charge; that is, no better basis on which to impose the charge. They made some suggestions about improvement of the charge's application; namely - and this was an issue raised by Ms Follett in the Estimates Committee - whether a person who has a multiplicity of convictions should be fined a number of times. The suggestion was made, very sensibly, that a court should have an obligation to impose the $30 charge on the first conviction but, for subsequent convictions arising out of the same set of circumstances, the court should have a discretion to waive any charges. That is a sensible suggestion that came out of consultation with the community. But I would say to Mr Moore that, if he believes that there is some better system, he should tell us about it, because I do not believe he has yet persuaded anybody that there is a better way of applying a system of this kind.

Bill, as a whole, agreed to.

Bill agreed to.

OZONE PROTECTION (AMENDMENT) BILL 1996

Debate resumed from 21 November 1996, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

MR WHITECROSS (Leader of the Opposition) (11.42): Mr Speaker, this legislation is apparently to fix up a mistake that was made in 1995, when the Government accidentally and apparently overenthusiastically banned after 31 December this year the servicing of refrigeration units and air-conditioners which use CFCs. Members will be aware that one of the protocols to which Australia is a signatory is the Montreal Protocol on substances that deplete the ozone layer, which addresses the question of how to reduce the amount of chlorofluorocarbons and other ozone depleting chemicals in circulation in the atmosphere.

As I understand it, the policy position that has been arrived at in relation to chlorofluorocarbons, and part of the strategy developed under the auspices of the Australian and New Zealand Environment and Conservation Council, is that no new chlorofluorocarbons be manufactured in or imported into Australia; that equipment using chlorofluorocarbons no longer be sold; but that existing units using this refrigerant still be able to be serviced in Australia, so that people with these existing units can continue to use them. As I understand it, there are other rules about the management of the disposal of refrigeration units and air-conditioners with chlorofluorocarbons, to ensure that the CFCs are recovered and do not end up polluting the atmosphere. Mr Speaker, the effect of this legislation is to allow for these units to continue to be serviced after 31 December this year. In that sense, it is a watering-down of the legislation, but the advice I have received is that it is a watering-down of the legislation which brings it into line with the original intent of the revised strategy for ozone protection in Australia and into line with how these issues have been managed in other States. On that basis we will be supporting this legislation.

We support the legislation without any sense of complacency about the importance of eliminating CFCs from Australia as quickly as possible. The fact that we have a national strategy which phases out ozone depleting chemicals like CFCs, I do not believe, should put us in a situation where we seek to take the longest possible time to eliminate them from circulation. I think we should, both in the ACT and elsewhere in Australia, be making every effort to eliminate them as rapidly as possible. One issue which I have raised, and I would be interested to see it explored further, is the question of whether there are substitute chemicals which could be used in recharging air-conditioning units, rather than CFCs, in certain circumstances. I agree that that may not be possible in all circumstances, but I think some education of owners of old refrigeration and air-conditioning units about alternatives, where they exist, would be in everybody's interests if it meant fewer CFCs being put into existing units.

I support this legislation. I would urge the Minister to be as proactive as possible in ensuring that every opportunity is taken to reduce the amount of CFCs in circulation in the Territory as our contribution to a national strategy to phase out CFCs in Australia as one of the ozone depleting chemicals which we have had in circulation. Mr Speaker, with those remarks, I would commend the Bill.

MS HORODNY (11.47): Mr Speaker, the Greens understand that the purpose of this Bill is to correct an error in the Ozone Protection (Amendment) Act 1995. The Act had the intention of implementing a nationally agreed phase-out of the use of halon gas by 31 December 1995 and of CFCs by 31 December 1996. We understand that the phase-out of CFCs related only to stopping the production and import of CFCs from 31 December 1996, rather than stopping their use altogether. The 1995 Ozone Protection (Amendment) Act made it an offence to service equipment containing CFCs, and the present Bill reverses this provision so that equipment containing CFCs can still be serviced by a person in accordance with a licence. On the surface, this is a reasonable correction; otherwise, next year there could have been a situation where a person could not get their old fridge or car air-conditioner fixed because it contained CFCs.

However, I would like to use this opportunity to draw the Assembly's attention to the longer-term need to remove CFC completely from the environment so that the environmental damage caused by ozone depletion can be minimised. The approach that appears to have been adopted by governments nationally is that from 31 December 1996 there will be no new products containing CFCs sold in Australia and that over time there will be less and less CFC available in stock to service existing equipment. The CFC used in the old equipment will thus need to be replaced with a more ozone friendly gas or, if this is not possible, the equipment will need to be replaced. My concern is: What happens to the CFC in all the old fridges and air-conditioners that end up being dumped at landfills? Unless that gas is extracted from this old equipment before it is dumped, eventually the CFC will end up leaking into the atmosphere. I think an extra effort needs to be made by all governments to ensure that old equipment containing CFCs is recycled and that the gasses are extracted rather than just allowed to be dumped. This not only is good for the ozone layer but also contributes to waste minimisation.

We are glad that there is a national strategy for ozone protection and that the ACT has ozone protection legislation. However, the community should not be lulled into believing that the ozone issue is under control. Continuing vigilance of the environmental impacts of atmospheric ozone depletion is required, and governments may need to take stronger action to accelerate the phase-out of all ozone depleting substances.

MR MOORE (11.50): Mr Speaker, on my first reading of the legislation I was concerned, like other members; but I think most of the issues that I was concerned about have been dealt with by Mr Whitecross and Ms Horodny. In the end, I think this is an on-balance situation and does correct a problem that would have been an unintended consequence of basically a total prohibition on fixing any refrigerator or air-conditioning system in Canberra. Whilst most of us are very keen to phase out CFCs or are very keen to ensure protection of the ozone layer, we want to do it in a very sensible way that takes the community with us. I am quite comfortable in supporting this legislation.

MR HUMPHRIES (Attorney-General and Minister for the Environment, Land and Planning) (11.52), in reply: Mr Speaker, I thank members for their support. I do not believe this legislation makes any significant difference to the march that the ACT is engaged in towards the elimination of ozone depleting substances. The maintenance of a capacity to service articles such as refrigeration units and so on after 31 December is neither here nor there in respect of the overall stand towards the elimination of

ozone depleting substances. I hope we will continue to educate the community about the need for this action and ultimately provide for the worldwide effective elimination of those substances so that the important issue of the depletion of the ozone layer can be addressed internationally and comprehensively.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

PLANNING AND ENVIRONMENT - STANDING COMMITTEE
Report on Draft Variation to the Territory Plan - Residential Land Use Policies

MR MOORE (11.53): Mr Speaker, I present Report No. 21 of the Standing Committee on Planning and Environment entitled "Draft Variation to the Territory Plan (No. 55) - Residential land use policies - Provisions for temporary care accommodation", together with extracts of the minutes of proceedings. Pursuant to the resolution of the Assembly of 26 September 1996, the report was circulated when the Assembly was not sitting, on 29 November 1996. I move:

> That the report be noted.

This report is part of the statutory obligation of the Planning and Environment Committee to comment on variations to the Territory Plan. It is unusual in this case for the committee to add a postscript explaining that we believe that the issue is not yet ready. We have met our statutory obligation. That has been served. The Executive must refer such matters to the committee, although the outcome of the committee's deliberations does not necessarily have to be taken into account because the final decision is in the hands of the Assembly. Point 27 in this report says:

> The Committee notes that the presentation of this report satisfies the statutory obligation for 'an appropriate committee' of the Legislative Assembly to report on each draft Variation. It is open to the Minister for the Environment, Land and Planning - when responding to this report - to provide answers to the matters raised by the Committee. The Legislative Assembly will then be in a position to determine whether the draft Variation should be endorsed or not.

The committee was concerned and conscious that Government officials have experienced problems in enforcing lease conditions in various parts of Canberra. In fact, we were told by officials there would be no problem; they could write an appropriate lease and then would be in a position to enforce the lease conditions. But I will say that we were told

exactly the same thing with reference to the old drive-in site in North Watson about the issue of what is a serviced apartment and what is residential. Having been told that, we were told at a later time, with reference to Kingston, that, unfortunately, they were not able to distinguish between the two.

The committee is concerned, Mr Speaker, that the habitable suites and the relocatable units, as such, will not be used for the purpose for which they are intended; and that once they have been used they will then be used for something else. We suggested that the Government needs to bring back more information to the Assembly before this matter is concluded. The report continues:

> The Committee is not prepared to endorse the draft Variation to the Territory Plan ... until the Government provides greater detail on the following matters:
>
> > the detailed arrangements by which Lease Conditions will be enforced in the future;

I think lease enforcement is an absolutely critical issue in the whole management of leasehold and such issues in this Territory. The report continues:

> > some examples of how terms like 'care', 'family' and 'dependent' will be interpreted;
> >
> > how the Government intends to deal with situations of extended absences of the 'dependent' person(s);
> >
> > how the Government intends to deal with the situation where a property with 'temporary care accommodation' is sold;
> >
> > whether a maximum floor area should be specified for 'temporary care accommodation';
> >
> > whether the proposed car parking arrangements for a "Habitable suite" are appropriate; and
> >
> > other issues set out in the body of this report.

I want to particularly use as an example of our concern how the Government intends to deal with situations where a property with temporary care accommodation is sold. These are the sorts of issues that highlight the concern of the committee that, on the one hand, habitable suites or relocatable units seem to have their place in Canberra; they seem to serve a particular purpose which most of us see as a genuine purpose, for a genuine reason, and we should attempt to find a way to deal with them. On the other hand,

our experience has taught us that, when one thing is intended, it is not too long before that intention is taken and misused. It is that ability to stop a good intention being misused that is the concern of the committee. That is why at this stage the committee is not prepared to endorse the draft variation. We understand the good intention in introducing this variation; but, at the same time, we cannot be sure that this good intention will not take off in a different direction and create a series of new problems.

MS McRAE (11.59): Mr Speaker, I just wanted to point out that, although Mr Moore has accurately reported the committee's requirements, I sincerely hope that the Minister will be able to respond to the concerns. There is a need out there for this sort of accommodation. There are many members of the committee who would sincerely like to know that this accommodation process could actually work in the way that Mr Moore did outline, with proper guidelines and proper policing of it, because it came from a real need within the community. I just want to put a plea to the Minister that, when the review of this report is done, he quite seriously quiz his bureaucrats; he ensure that we do come up with a process that can actually work; and he assure the Assembly and the committee that this type of very real need in the community can be met in a way that we are all comfortable will not ruin the amenity of other people, nor ruin the intent or the idea of this accommodation. It is temporary. It is a very much needed facility, but it is not there to try to undermine in any way the living facilities of other people within a street or within a suburb.

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

PUBLIC ACCOUNTS - STANDING COMMITTEE
Report on Review of Auditor-General's Report No. 8 of 1996

MR KAINE (12.01): Mr Speaker, I present Report No. 23 of the Standing Committee on Public Accounts entitled "Review of Auditor-General's Report No. 8, 1996 - Australian International Hotel School". I move:

> That the report be noted.

Members will recall that the Auditor-General's Report No. 8 of 1996, which was presented to the Assembly on 26 September, raised some very important issues about the operations and management of the hotel school. The Public Accounts Committee, as is the case with all such reports, was required to examine that report. I want to make it clear from the outset that the Auditor-General's report had a specific purpose. The committee's report states:

> The audit objectives were to provide opinion on whether -

I will read out these matters -

> the establishment of the AIHS was implemented in accordance with Government decisions

design and construction processes for the AIHS building and site works were effectively managed

the early operations of the School conformed with projections and other data provided to the Government during the establishment decision-making process

financial arrangements for establishment costs and operating losses are appropriate

AIHS fees are comparable with other similar service providers

AIHS management is delivering services efficiently

the latest independent assessment on the viability of AIHS operations used appropriate methodology and was based on relevant, accurate and complete information, and whether current AIHS operations are consistent with the independent viability assessment.

Mr Speaker, this was not an audit on the quality or delivery of AIHS educational programs, and the audit stressed that nothing in its findings could be construed as a criticism of the quality of the AIHS program or its delivery; it had to do with the establishment of the school rather than its ongoing management. Members should be aware that the performance audit was conducted against the background of significant losses by the AIHS in 1994-95 and again in 1996.

The audit's findings, I think, can be summarised as being not very complimentary. They found that cost control of the Kurrajong Hotel refurbishment was generally poor; that assumptions about the operations of the AIHS were badly estimated and, in fact, in most cases conservatively estimated; that the financial structure was not appropriate; that the cost per student is very high and, consequently, enrolments have been low; that the AIHS will not be commercially viable, in the audit's opinion, in the foreseeable future; and that a statutory authority would, in the opinion of the audit, provide effective and accountable management. There is obviously much that needs to be done, on the basis of the Auditor-General's review, to get that school into long-term economic viability.

The committee has noted the Government's intentions to rectify the situation. Those intentions fit with the committee's recommendation. The Government has responded to the Auditor-General's report and that response has been tabled in the house already. The committee also notes that legislation to be dealt with, perhaps later today but certainly this week, will address the issues identified by the audit. I think the committee wants to make it clear that, in their view, the AIHS was, in principle,

an imaginative and far-sighted initiative. Somehow it seems to have fallen down somewhat in the implementation. The bottom line is that the problems seem to have been identified; the Government has indicated its intention to address those problems; and, hopefully, the school will have a brighter future. Mr Speaker, I commend the report to the Assembly.

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

Sitting suspended from 12.05 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Aquatics Inquiry

MR WHITECROSS: Mr Speaker, my question without notice is to the Minister for Sport, Mr Stefaniak. Minister, on 20 November, in answer to a question I asked about the connection between Leisure Australia, who operate the Civic and Tuggeranong pools, I believe, and LRM Australia, whom you have appointed as a consultant to investigate the aquatic needs of the ACT, you said:

> ... if you are trying to connect anything untoward between the two, I do not think you will have much luck there.

Minister, given that you subsequently revealed in a tabled answer that the majority, and therefore controlling, shareholder of LRM Australia is in fact Leisure Australia, why did you engage LRM Australia as a consultant to investigate the aquatic needs of the ACT? Why did you not find another consultant who was not controlled by an existing pool operator? Why were you and your department apparently unaware of this important fact when I asked my original question?

MR STEFANIAK: In terms of my answer on 20 November, I think the key word there is "untoward". They are two separate legal entities. Yes, LRM Australia Pty Ltd and Leisure Australia do have some connection. One has ownership of the other. I would refer Mr Whitecross to the answer I gave him in that - - -

Mr De Domenico: Mr who?

MR STEFANIAK: Mr who?

Mrs Carnell: Mr who? What is his name?

Mr De Domenico: Mr Whitecross.

MR STEFANIAK: That is right. That reminds me. I think someone rang your office, did they not, Chief Minister, and asked who was the Leader of the Opposition?

As you will see, Mr Whitecross, from the answer I tabled at the end of that sitting, LRM Australia Pty Ltd, the consultants used in relation to this pool survey and the needs of the ACT in that regard for the next 20 years or so, have in fact been used twice by previous ACT governments. In 1990 they did a management review of the Erindale Leisure Centre, and in 1992-93 - guess who the Government was then - they were part of a project team who carried out a feasibility study for the Follett Government on a possible Tuggeranong sports centre. If Mr Whitecross wants to look a bit further - - -

Mr De Domenico: Who?

MR STEFANIAK: Mr who, yes. He will find that this consultancy was going well before the results of the contracting out of the pools were announced, which I think was in about September. I think he will find that these consultants were well and truly beavering away in terms of community consultation by then. The feedback I have had in relation to that, Mr Speaker, has been very good. I happened to be at a Belconnen Community Council meeting the other night and they were spoken to, along with other groups, by these consultants. They were very impressed with the expertise and the professionalism of this bunch of consultants. Really, Mr Speaker, I think Mr Whitecross is drawing a longbow. This group has been around for a long time. It is a specialised industry and this group has been used by the previous Government.

MR WHITECROSS: I have a supplementary question. Minister, can you assure the Assembly that Leisure Australia will not be placed in an advantageous position for any future pool development as a result of a consultancy undertaken by their subsidiary? Will you provide an independent evaluation to satisfy yourself, the Assembly and the community that any future development is in the interests of the ACT community rather than of a particular company? Will you table the relevant documents indicating the process by which Leisure Australia was appointed to control the pools and the process that led to LRM Australia being appointed to undertake this consultancy?

MR SPEAKER: Mr Stefaniak, I am not sure that you can answer the first part of that question. It is hypothetical. The rest of it is up to you.

MR STEFANIAK: It is certainly hypothetical. Quite obviously, this Government, and certainly I, Mr Whitecross, would want to make sure that the best possible group or person is awarded a contract and that no-one is improperly placed in an advantageous position. It is called merit selection, Mr Whitecross. Quite clearly, in terms of anything this Government does, certainly in terms of picking the best person or group for any particular job, the paramount interest would be what is in the interests of the ACT and that the process was above board, proper and open. As for tabling documents in this Assembly, within the realms of what is appropriate, I will make inquiries in relation to that and act accordingly.

Commonwealth Buildings - Management Contracts

MR HIRD: Mr Speaker, my question is to the Minister for Business and Minister for Urban Services, Mr Tony De Domenico. Can the Minister comment on recent criticisms levelled at our Government by the Opposition spokesperson on economic development, Mr Wood, relating to a decision by the Commonwealth Government to award the right to manage 30 Commonwealth buildings to a local company known as P&O? Minister, is it the case, as Mr Wood would have us believe, that the ACT Government has failed to support regional business by allowing a non-local firm, as he put it, a foot in the door? Is that a fact?

MR DE DOMENICO: I thank Mr Hird for his question. Mr Speaker, members would be aware of the recent announcement by the Federal Government, in fact Mr Jull, that P&O had won the right to manage some 30 Commonwealth office buildings here in the ACT. I think that is what Mr Hird is referring to. The services P&O will be providing, I am advised, include tenancy management and leasing, building maintenance, energy management and performance reporting. The announcement, I am advised, came after an extensive tender process and represents an important element of the Federal Government's diversification away from its property management role. Despite reassurances that public servants currently involved in property management here in Canberra would be amongst those employed by P&O, Mr Wood, I am told, somehow managed to brand this move as one which will be detrimental to the Canberra region.

Had Mr Wood bothered to do a bit of investigation before shooting from the hip, had he contacted my office for a briefing, for example, or had he even bothered to read Mr Jull's media statement on this matter, which was a public document and I am sure was issued to all and sundry, he may have saved himself some unnecessary embarrassment. Mr Wood has criticised this Government for "failing to support Canberra's businesses by reacting too slowly to Commonwealth outsourcing". He went on to say that the decision to award a contract to a firm outside of the ACT is a concern.

Mr Wood's criticism, Mr Speaker, seems to be based solely on the premise that P&O - a company that has been operating in Canberra for the past 20 or so years, a company that has from time to time employed such notable Canberrans as yourself, Mr Speaker, and a company that currently employs over 850 people in the Canberra region - is not a local company.

Mrs Carnell: It is one of the biggest employers.

MR DE DOMENICO: It is even bigger than some of our departments, Mrs Carnell. He has criticised them, saying they are not a local company. Mr Speaker, one can only wonder at the simplicity of an opposition that would come to such a conclusion. Perhaps Mr Wood was thrown by the unlikely nexus between a company best known for its shipping lines and a city with the geographic location of Canberra. That is an honest mistake, I suppose, Mr Speaker; but the fact of the matter is that Mr Wood has totally missed the boat on this one. Mr Speaker, pardon the pun.

If we were to use Mr Wood's form of logic, the ACT Government would not use Qantas as its preferred airline, given that Qantas is a small firm operating out of Longreach, Queensland, not a company likely to employ locals. By Mr Wood's reasoning, BHP is a small mining firm from Broken Hill. Perhaps it is fortunate for P&O that Mr Wood was the Minister for the Environment, Land and Planning and in the former Follett Government and not the Minister for Sport, because otherwise P&O's successful contract to provide catering services for Bruce Stadium, made under the Follett Government, by the way, may well have been overturned on the ground that it was not a local company.

Mr Wood sticks his head up only once or twice a year, we know. Is it any wonder, Mr Speaker? A few weeks ago it was the dynamic duo, Mr Wood and Mr McMullan, who finally came to the conclusion - most of us had reached it six months ago, by the way - that there are potentially some problems facing Canberra as a result of Commonwealth Government downsizing. Mrs Carnell and I and others have been saying that for months and months. They called on the ACT Government to do something about it. Ironically, this was on the same day that the Carnell Government announced the establishment of the Supplier Development Committee - a joint government and industry initiative designed specifically to assist regional firms to position themselves to benefit from outsourcing opportunities.

My advice to Mr Wood and to his colleagues is to abandon that empty vessel known as the "SS Whitecross" - some people do not know who it is; it is going down faster than the *Titanic*, I might say - and spend Christmas taking a long cruise on the *Fairstar*. While you do that, this Government will continue to find jobs for Canberrans. We will continue to identify opportunities such as the Unisys millenium project, the Kingston foreshore development project and the upgrading of the FAI Canberra Rally to international status, and we will continue to work in close cooperation with the business community in ensuring the future viability of this region. Finally, Mr Speaker, I hope that thousands and thousands of P&Os come into this town. If they are all going to employ 850 people, I do not care whether they are owned here in Australia, in Mogadishu or anywhere else. As long as they are employing, as P&O does, 850 people in this region, welcome. Canberra is open for business.

Truck Parking Areas

MS HORODNY: My question is directed to the Minister for Urban Services. I was interested to see the Government ad in the *Canberra Times* last Saturday calling for expressions of interest from potential operators of heavy vehicle parking areas for the purchase of sites in Hume and Mitchell. I congratulate the Government on this initiative. Could you tell me whether you can guarantee that these truck parking areas will be up and running before your legislation to restrict truck parking in residential areas comes into effect, assuming that it is passed by the Assembly; otherwise we could face the situation of some trucks being banned but having nowhere to park?

MR DE DOMENICO: I thank Ms Horodny for her question. Mr Speaker, I do not know whether I can assume anything in terms of what the Assembly is likely to do to legislation that is coming before us, I think, next Thursday or some other day. If the Assembly passes the legislation this week or next week, the answer to your question is no. The truck parks will not be ready before the legislation is passed if we pass the legislation next week. If we do not pass the legislation next week, what guarantee I can give as to when those things will be ready depends on the result of that tender process. I do not understand the question. The Assembly is going to be legislating, hopefully, next week. If not, I do not know how to answer your question.

MS HORODNY: May I reiterate the question? If the legislation is passed next week, do you make a commitment in this Assembly to have those truck parking facilities up and running so that the trucks which will be displaced from residential areas have somewhere to park? That is what I am asking.

MR SPEAKER: This is getting very close to being a hypothetical question.

MR DE DOMENICO: It is very hypothetical. The best advice available to me is that to provide secure truck parking on bitumen for about 150 trucks will cost from $6m to $8m. I cannot give this Assembly - nor can anybody else - an assurance about what timetable is likely to occur for people outside this place to put in for a tender process and then build that truck park, in either Hume or Mitchell, to the cost of $6m or $8m. I cannot give an assurance as to the exact date of when that is going to be ready. The answer to your supplementary question, Ms Horodny, is no, I cannot give you an assurance.

Mrs Carnell: So Ms Horodny is telling us that she does not want us to legislate now.

MR DE DOMENICO: I do not know what she is telling us, Mrs Carnell. All I can say is that I hope the Assembly, either this week or next week, sees the benefit of the 18-month community consultation process which has taken place and which has resulted in a quasi-unanimous decision on some guidelines.

Mr Berry: A quasi-unanimous decision?

MR DE DOMENICO: I am saying "quasi-unanimous" because people opposite might try to move a no-confidence motion against me for misleading the Assembly if I say "a totally unanimous decision". It was a nearly unanimous decision, Mr Speaker. I know that my command of the English language leaves a lot to be desired. It is not as good as Mr Berry's, for example. Let me reiterate what I have said in case I have not been able to express myself correctly. Ms Horodny, we have gone to a tender process. It will take some months, Ms Horodny. We hope to pass legislation next week. As to whether the Assembly is going to pass it or not, I do not know. As to when the truck parks are going to be ready, I do not know, because it depends on how many people put in for the tender. I think I have answered the quasi-hypothetical question quite adequately.

Cabinet Decisions

MR BERRY: My question is directed to Mrs Carnell in her role as Chief Minister. Chief Minister, you have said publicly - you are on the record - that when decisions were made in Cabinet in relation to shopping hours and in relation to anything to do with pharmacies you excluded yourself from decisions. Would you inform the house of on how many occasions you have excluded yourself from Cabinet decisions? What records would you be able to table in the house to demonstrate those occasions?

MRS CARNELL: Mr Speaker, you would be aware, as I am sure everybody except Mr Berry is aware, that Cabinet papers are not tabled in this place.

Ms McRae: You were not in the Cabinet when the decisions were taken.

MRS CARNELL: He wanted information from Cabinet tabled. That simply does not happen. I can guarantee - - -

Mr Berry: Mr Speaker, I think Mrs Carnell has misunderstood my question.

Mr De Domenico: She has not finished yet. Is this a point of order?

Mr Berry: I am just trying to assist the house.

MR SPEAKER: All right. Thank you. I think the Chief Minister has understood the question quite well.

MRS CARNELL: When any member of Cabinet believes there may be a pecuniary interest involved, or some other interest involved, in a decision made in Cabinet, they exclude themselves from Cabinet.

MR BERRY: And you never have. Is it true that you never have excluded yourself from the Cabinet room when these decisions have been made and - - -

Mrs Carnell: No.

Mr De Domenico: She has answered that.

MR SPEAKER: Just a moment. Mr Berry has not finished his question.

MR BERRY: If that is the case, why can you not demonstrate those absences by some record? Will you undertake, as a matter of policy, to inform the house every time you absent yourself in future?

MRS CARNELL: The first answer is no, and no, we are not going to give this Assembly records of Cabinet agendas.

Mr Berry: Because you never have.

Mr Humphries: That is not true. I have been at meetings and she has not been there.

MR SPEAKER: Order! Mr Kaine has the floor.

Kingston Foreshore Development

MR KAINE: That is nice. Thank you, Mr Speaker. My question is to the Chief Minister. I was rather astonished the other day to hear Mr Wood, one of the more responsible members of the Opposition, say on public radio - I think I heard him correctly - that nothing should happen in connection with the Kingston foreshore development until the economy improves. I would have thought that in making any decision about whether or not to go ahead with the Kingston foreshore development the state of the economy would have been a significant factor in the decision-making process. Chief Minister, can you assure us that the current economic climate, in fact, has been taken into account in planning for the Kingston foreshore development?

MRS CARNELL: Thank you very much, Mr Kaine, for the question. Mr Speaker, over the weekend I had the great pleasure of releasing the results of a major public consultation exercise on the Kingston foreshore development. That exercise found that overwhelmingly Canberrans think that the Kingston foreshore area is one of Canberra's great assets and they support it being transformed into a lively people-centred area for all Canberrans to enjoy.

Ms McRae: Ha, ha, ha!

Mr Whitecross: Dear me!

Mr Berry: Poke out your tongue.

MRS CARNELL: Mr Speaker, I find it interesting that those opposite do not believe that the Kingston foreshore is a great asset for Canberrans.

Mr Kaine: I raise a point of order, Mr Speaker. I can only assume from what is happening on the other side of the house that they think that any action taken to fix our economic problem is a big joke. Can you tell them that this is serious?

MR SPEAKER: Order! There is no point of order.

MRS CARNELL: Mr Speaker, it is serious. It is wonderful to see so many Canberrans get behind a project which will mean that the Kingston foreshore will be transformed into a lively people-centred area that all Canberrans can enjoy. It is an objective, Mr Speaker, that I would have thought all members of this Assembly would have supported.

It did come as some surprise that those opposite think it is a joke. Mr Wood, who usually is one of the more sensible members of those opposite, was playing the prophet of doom on this issue. The same Opposition member, Mr Wood, berates this Government, Mr Speaker, for not doing enough to generate investment and jobs in Canberra and not spending enough on capital works. Do you remember? Not enough on capital works; not enough jobs; all the rest of it. Mind you, all those opposite did. In fact, Andrew - what is his name? - Whitecross sort of said that sort of thing too, but it shows that they really do not mean it.

Here we have a project, Mr Speaker, that carries the promise of major investments and jobs, and what did Mr Wood say? He said we should not even be attempting the Kingston foreshore redevelopment. I think he said something about putting it in mothballs or something. I do not know how you would do that, but I think that is what he wanted to do. He said that he wanted to leave the site derelict, as it has been for decades, and as it was under the previous Government. He said that no-one will invest in it; nobody will come to the shops or the markets or to the cultural or tourist attractions. He said it was all too hard and we should just sit on our hands until miraculously, Mr Speaker, the economy recovers. One day we will wake up and the economy will have recovered after everyone has sat on their hands.

Mr Speaker, that is not the way this Government will be operating. In effect, he says to investors willing to spend money here, "Look, go away. Go away with your money because until the economy improves we do not want investment in this place. We do not want the jobs that you are likely to produce". Mr Wood, as we found out, was not even aware that P&O is a major employer in Canberra and has had a presence here, as we know, for 20 years, until the question that Mr De Domenico answered. I am sure that it would not come as any surprise that Mr Wood also did not understand the connection between new investment opportunities and economic recovery. Economic recovery does not just happen, Mr Speaker. You actually have to get it moving.

Mr Speaker, to answer the specific question asked by Mr Kaine, yes, the current economic climate is being taken into account in plans for the Kingston foreshore development. In fact, the current economic climate is a major reason for getting this project off the ground. The Interim Kingston Foreshore Development Authority - that entity with people like David Lamont, Rod Driver and all of those sorts of people on it - actually engaged Jones Lang Wootton to undertake a market feasibility study for the project, taking into account Canberra's population base, planning policies and economic outlook.

It was a very pragmatic exercise and it concluded that in the short to medium term - that is, in the next one to six years - there were a range of opportunities that were feasible, including expansion of the existing markets, recreational uses, trade fairs, innovation centres, restaurants, cafes, leisure centres and residential development, all of which, fascinatingly, are consistent with the community vision outlined in the recent consultation exercise. Here we have an exciting situation, Mr Speaker, where the community who were consulted for the community brief, Jones Lang Wootton and the Government - everybody except the Opposition - actually agree. The Opposition want us to do nothing.

It is very important to understand that this is not a monolithic town centre type of development that we are talking about. It is a mixed use development that builds upon what is already there and that Canberrans want to see in this area. It is a development that will occur in stages rather than all at once. It is the type of development that Jones Lang Wootton's study and other studies have found will encourage tourists to stay that extra night in Canberra and also a place, Mr Speaker, that all Canberrans can enjoy. I have to say, Mr Speaker, that I do not share Mr Wood's bleak cargo cult view of Canberra. It is defeatist, it is negative, and ultimately, if we went down that path, Mr Speaker, it would be self-fulfilling if it were allowed to run unchecked.

I believe that we need to welcome new investment, not reject it, and we need to give people who are interested in investing in this city some places in which to invest. We have already had significant interest in this site. We will not be sitting on our hands. We will not be negative. We will be getting on with the job. In the words of one observer in this place, even a boom and bust cycle is significantly preferable, I think, to the bust and bust cycle that Mr Wood gloomily predicts.

MR KAINE: I have a supplementary question, Mr Speaker. I can only assume that since Mr Wood is not part of the loony left of the Labor Party his concerns on this issue are genuine. I wondered whether his concerns had to do with the future of people who currently use the area, like people in the old bus depot markets. Chief Minister, can you tell us what impact the proposed redevelopment will have on existing users of the site, such as the old bus depot markets, so that we can allay Mr Wood's fears on that issue?

Mr Berry: Could you tell us about the Printing Office and the ACTEW substation?

MRS CARNELL: Mr Speaker, is it not a pity that Mr Berry and Ms McRae want to talk down one of the most exciting developments in Canberra? The market feasibility study that I referred to earlier had a strong emphasis on building upon the current strengths and successes of the Kingston foreshore area. The old bus depot markets are an example of that great success. Anybody who has visited those markets of recent days will agree with that. The proprietors and stallholders of those markets were involved in the development of the community brief. In other words, people who are on the site at the moment, people who have had input into that site over many years, are part of that community brief. If those opposite had been interested in reading at all they would have seen true community input. In fact, the markets were chosen as the venue at which to release the community brief on Sunday simply because they are such a great example of the sort of spontaneous, lively, people-centred activity that we want to develop on that site.

Mr Speaker, people vote with their feet when it comes to developments such as these. Our aim is to build upon the same entrepreneurial spirit that has made the markets such a success; to produce the sort of approach, the sort of excitement, that already exists at the markets on that whole site. Mr Speaker, those opposite express doom and gloom and say it could not possibly be a good idea. They should go to the old bus depot markets on a Sunday and see the hundreds and hundreds of people who are already - - -

Ms McRae: And you are about to wreck it. That is what you are going to do. You are just going to wreck it.

MRS CARNELL: Ms McRae said that we are about to wreck it. Wrong, Ms McRae. That is what Mr Wood said. When he could not think of anything else to say and when he mentioned mothballing the whole thing, he realised that, quite seriously, the community did not want it mothballed. He then said, "Oh, but the markets will be closed". Wrong. The markets will be expanded, Mr Speaker. What the community is talking about, what Jones Lang Wootton are talking about, what the redevelopment authority is talking about and what the Government is talking about is adding; working on the strengths we currently have on that site to give us something to be proud of, to give us something for investors to develop and to invest in here. If those opposite had their way, quite seriously, we would mothball it.

Monash Preschool

MS McRAE: Mr Speaker, my question is to Mr Stefaniak in his capacity as Minister for Education. Minister, why have you permitted the closure of a full-time unit at Monash Preschool? Monash Preschool has always been allowed a level of flexibility in its management so that the needs of the children of defence personnel who are housed temporarily in Monash can be met. Why have you changed this policy?

MR STEFANIAK: I thank the member for the question. Mr Speaker, from the August census Monash Preschool was proposed as a 1½ unit school - in other words, 75 places - rather than its previous 2½ unit capacity. It also has 24 places for early intervention for three- to four-year-olds. The preschool has been operating with approximately 25 unfilled places for two years. That is equivalent to half a unit. Registrations and offers of place show that all home area and minded in-area children seeking a place for next year have been able to be accommodated, and there was, as I understand it, as at 20 November, one vacancy. There are also sufficient places in nearby preschools should further registrations occur at the start of next year.

MS McRAE: Minister, I would have appreciated an answer to the question why you changed the policy in regard to the defence personnel. You did not answer that. Minister, are you not concerned, by your very answer, that, in fact, some in-area children to Monash Preschool may next year have to travel to other preschools?

MR STEFANIAK: Ms McRae, in terms of preschools, this Government has certainly shown itself innovative, which is a little bit different from what you lot were in relation to Ngunnawal.

Ms McRae: You are closing them. Terrific! Just close them.

MR SPEAKER: Order! Let the Minister answer the question.

MR STEFANIAK: Secondly, in relation to preschool sizes, until recently we were adopting exactly the same thing you lot did when you were in government.

Ms McRae: You have not at Monash. Why did you change? Answer the question.

MR STEFANIAK: I might indicate, Ms McRae, that, apart from just the offer of places from the August census, my office is looking at a number of other things as well. As I think was indicated during the Estimates Committee process and even perhaps only a couple of weeks ago as well, we will ensure that the previous patterns of enrolment, particularly in areas which have historically had shifting populations in December and January, such as the inner north and south especially, are given due consideration in planning for preschool staffing. And also, Mr Speaker - - -

Mr Berry: Mr Speaker, I take a point of order. Confine him to the subject matter, as clearly mentioned in the standing orders. Ms McRae asked the Minister why they changed the policy. He does not seem to be able to get a grip on that. Can you tell us why the policy was changed?

MR SPEAKER: Order! You know perfectly well that Ministers can answer questions as they see fit. It would have been difficult for me to hear what the Minister was saying, anyway, because of the interjections. There is no point of order.

MR STEFANIAK: Unlike you lot, Mr Berry, we actually do consult. We actually do listen to people. I have talked to the preschool association in relation to this. As a result of a fair bit of discussion in relation to the general issue of preschools over the last couple of months, the department is reviewing the existing system to ensure maximum flexibility in meeting parents' needs and giving particular regard to such things as appropriate weight to previous patterns of enrolment, particularly in areas which have traditionally had shifting populations, for example - this is not absolutely exclusive; it is as an example - defence personnel. There are areas of Canberra where we have traditional movements of academic staff as well. There are some areas where, around the December and January period, you do get families moving in, and those things do need to be taken into account.

We are also looking at the appropriateness of preschool enrolment areas as a basis for preschool staffing, and the effectiveness of current procedures for determining projected enrolments. All those things are very sensible, Mr Speaker. All those things are as a result of concerns expressed by the preschool association in relation to how things used to be done, and all those things will lead to a much more effective handling of preschools in the future.

Methane Gas Power Generation

MS TUCKER: My question is to Mr De Domenico. For many months ACTEW have been negotiating with a company about the proposal to tap methane gas from the Mugga Lane and Belconnen tips for the generation of electricity, which potentially could supply up to 2 per cent of total ACT electricity consumption at very competitive prices. The proposed projects will prevent the emission of approximately 9,000 tonnes per year of methane, which is a major greenhouse gas. It will also have positive employment impacts. ACTEW have indicated that they are not prepared to enter into a long-term arrangement to purchase electricity generated from this source, because of the competition in the electricity market, unless they can find a customer. Mr De Domenico, as a major electricity consumer and customer in the ACT, and in light of the motion passed by the Assembly earlier this year calling for the development of quantifiable greenhouse gas reduction measures and this Government's own commitment to reducing greenhouse gases, will this Government purchase this power from this source?

MR DE DOMENICO: I thank Ms Tucker for her question. She gave me notice that at some time she may ask a question in relation to this issue. Mr Speaker, it gives me great pleasure to inform the Assembly, and Ms Tucker in particular, that a tender process has been completed and that ACT Waste are finalising a contract with Energy Developments Ltd for a landfill methane gas extraction and energy cogeneration system at both Mugga Lane and Belconnen landfills. EDL is an Australian company which specialises in the collection and conversion of methane gas into electricity. I expect that the contract will be finalised in January next year, upon which construction will commence on the first gas generator at Mugga Lane. The plant should be operational by July next year, when building will commence on the Belconnen generator.

Mr Speaker, this project brings us into line with other jurisdictions around the country and represents a commonsense and practical approach to both waste disposal and recycling in the ACT. It clearly proves that this Government is committed not only to effective and efficient waste disposal but also to preserving the environment. This project is the result of detailed negotiations undertaken over the past 12 months and is certain to achieve a best value result for Canberra. In addition to making a significant impact in reducing the generation of greenhouse gases in Canberra, the project is expected to produce about five megawatts of green power at peak production.

Mr Speaker, methane is a major component of landfill gas, as Ms Tucker would know, and has a greenhouse effect some 24 times worse than that of carbon dioxide. The project involves extracting most of this gas and using it to operate gas-fired generators. It also has the potential to remove over one kilotonne of the equivalent carbon dioxide emissions per day, enabling the ACT to make a milestone contribution to the reduction of greenhouse gases. Other benefits of the project will include greener landfills in the future, as methane - as you are probably aware, Mr Speaker - actually inhibits grass and plant growth, and power generators which can produce waste heat for localised use. This is indeed an exciting project for the ACT, one which I know my Green colleagues and other members of the Assembly will applaud.

MS TUCKER: I have a supplementary question. Thank you. That is an excellent answer. Congratulations.

Mr De Domenico: Thank you.

MS TUCKER: Could you also table for members of this place - - -

Mr Humphries: Where is his gold star?

MS TUCKER: I will organise that, Mr Humphries. Mr Humphries interjects that he wants a gold star for Mr De Domenico. I will be happy to organise that. Mr Speaker, I also ask the Minister to give members of this place, or the Greens in particular, further information about the nature of the contract and details.

MR DE DOMENICO: Yes, of course. I am delighted to be able to offer Ms Tucker, and anybody else who is interested, a full briefing on the whole issue, Mr Speaker.

Arawang Primary School

MS REILLY: My question is to the Minister for Education, Mr Stefaniak. Minister, can you inform the house as to what you have done to allay the concerns of the Arawang Primary School about school-based management outlined in the letter you received on 19 November?

MR STEFANIAK: I think that since 19 November we have had a debate about the issue in the Assembly, Ms Reilly.

Ms McRae: No, it was the same day.

MR STEFANIAK: Ms Reilly said "received on 19 November". In fact, I think it might have been the 20th. Anyway, as indicated in that debate, there are a large number of things occurring with school-based management. There are safeguards in terms of units in the department to specifically help any school that has any problems in relation to school-based management. There are help desks. There are people who can go out and assist the school in relation to any particular problems they are experiencing. That can include anything from assistance in terms of procedures to financial matters, if need be, if schools are experiencing some difficulties. So there is a very thorough system in place, Ms Reilly, in relation to helping the schools. Arawang Primary School, as they have indicated that they are having some problems, will be entitled to expect assistance from that. If that is not occurring I would certainly like to know.

MS REILLY: Can you assure the house that all schools will be able to implement school-based management in an effective and efficient manner which will not compromise the education of their children?

MR STEFANIAK: That is a somewhat difficult one, I think. It is fairly obvious. I think I can say, Mr Speaker, that school-based management has been worked out very thoroughly by the department, by schools and by all relevant stakeholders. As it commences next year, they will continue to do so. As I have already indicated, there are a number of safeguards and procedures in place to assist anyone who has any problems with it, so that the system can be a success. There are many schools in our system which are very much looking forward to enhanced school-based management and its commencement next year. I think it will prove to be of considerable benefit to the system.

Public Housing

MS FOLLETT: Mr Speaker, I have a question without notice to the Attorney-General, Mr Humphries. Minister, I wrote to you on 23 October 1996 asking that you intervene to stop ACT Housing from discriminating against the victims of domestic violence in its rulings about the eligibility for public housing of people who already own property. You might recall that in the Administrative Appeals Tribunal recently there has been a case which demonstrates that ACT Housing regards the subject of a restraining order as eligible for public housing but not the victim. Minister, when may I expect a reply from you in relation to this matter?

MR HUMPHRIES: Mr Speaker, the answer to Ms Follett's question is: About half an hour ago. It was signed off this morning and it should be in your office at the moment, but I can give you information about the issue. I agree that there appears to be a perversity in the application of the Housing Trust rules in that respect. It is fairly clear that, under the rules that are presently drafted, those who are seeking the protection of domestic violence orders or who have protection orders are, in fact, disadvantaged vis a vis those who in fact are the subject of those orders. That appears to be a bit anomalous. I have considered the question and I have asked for action to be taken in that respect. I hope that between my colleague Mr Stefaniak and me we can resolve those issues.

Woden Plaza Car Park Development

MR MOORE: Mr Speaker, my question is to the Chief Minister. Chief Minister, when you launched the Lend Lease proposal for the development of the car parking area next to Woden Plaza were you aware that Lend Lease had had that car parking lease for only two years and that there was quite considerable debate within your bureaucracy as to whether or not they should be granted that lease? Furthermore, were you aware that Lend Lease had committed to spend $318,000 in order to upgrade that lease and had not spent any money at all on that?

MRS CARNELL: Mr Speaker, what I launched was the community consultation part. Lend Lease was interested in feedback on their proposed extensions. I am always very happy to launch community consultation approaches when entities like Lend Lease are interested in community input. I would do that again. I will do that for any organisation that is interested in finding out what the community thinks.

MR MOORE: I have a supplementary question, Mr Speaker. Chief Minister, would it be fair to say that such a consultation process should take into account whether somebody else might like to develop that lease, and whether or not the best interests of the Territory would be served by the auction of such a lease, rather than effectively suggesting that it belongs to a particular group such as Lend Lease? In fact, it is assigned to them for a 20-year car parking lease.

MRS CARNELL: Mr Speaker, Lend Lease was asking its shoppers and the people of Canberra what they thought of a particular planning approach that they were looking at taking. I understand that there is a commercial disagreement between two very large companies with cross shares in each other and all sorts of difficulties at that level. I believe very strongly, though, that to have community input to any proposal put forward by either side would be an appropriate approach.

Graffiti Removal Program

MR WOOD: Mr Speaker, my question is to Mr De Domenico as Minister for Urban Services. Following my question last week concerning shattered road signs, I refer to other visual eyesores in Tuggeranong and, indeed, all of Canberra. This is the graffiti which defaces underpasses and bus shelters around the place. Minister, when will your program move on to cleaning up those areas? Secondly, does the Government take responsibility for cleaning graffiti off private premises even though that graffiti is very public?

MR DE DOMENICO: I thank Mr Wood for his question. Mr Wood would be aware of the extensive graffiti removal strategy program. Mr Speaker, you were at the one at Woden a couple of weeks ago which was very successful. As you would be aware, most people wear gloves and even goggles when they are using things other than water to clean off graffiti. Some even use goggles when they are using water, Mr Speaker. Mr Wood, it is the intention of the Government - it is to happen, I think, very early in the new year - to do Tuggeranong in one of the graffiti clean-up days. In relation to the - - -

Mr Wood: The bus shelters and underpasses?

MR DE DOMENICO: Yes, bus shelters and underpasses. Mr Wood, we recently repainted many of the bus shelters, only to find that 24 hours or 48 hours later the graffiti was back on again before we got the chance of putting on - - -

Ms Reilly: Maybe you should look at why there is graffiti. Why do you not look at the cause instead of the symptom?

MR DE DOMENICO: Just tone down a bit. You will learn after you have been here for a while. You will learn that things - - -

Mr Berry: Over 50 per cent youth unemployment for three months in a row.

MR DE DOMENICO: Mr Berry, I suggest that you look at the budget which this Assembly has passed. To say things like that would be a reflection on the vote of the Assembly. The budget which you voted against, Mr Berry, has a provision to employ on a part-time basis many young people who are not employed at the minute.

Ms McRae: When?

MR DE DOMENICO: I suggest to members opposite who are interjecting, Mr Speaker, that they have lost their right to say anything about the unemployment of youth. They rejected a budget that had youth employment programs. Two weeks ago they rejected a Bill that was going to directly employ over 70 young people. For the Opposition to talk about unemployment is just the height of hypocrisy.

In answer to Mr Wood's very sensible question, yes, we will go to Tuggeranong. In relation to whether we are entitled to clean graffiti off private premises, no, we are not. We will clean it off, but we will charge those people because it is their responsibility to keep their place clean unless it obviously has an effect on community safety. Then we will go and clean it off, and I daresay we will send them the bill afterwards.

MR WOOD: I have a supplementary question, Mr Speaker. How many prosecutions have been launched against those people who put the graffiti on?

MR DE DOMENICO: I do not know the answer to that. I am aware of one conviction that I heard about last week, Mr Wood. The young man was caught by the police and convicted. I will check the figures as to how many prosecutions there have been and let you know, Mr Wood.

Mrs Carnell: I ask that further questions be placed on the notice paper.

John Dedman Parkway

MR HUMPHRIES: Mr Speaker, on 21 November Ms Tucker asked me a question concerning public consultation processes for the proposed John Dedman Parkway and some other issues, which I took on notice. I table a response to the question asked by Ms Tucker.

STUDY TRIP
Paper

MR SPEAKER: I present, for the information of members, a report of a study trip undertaken by Ms Horodny, MLA, to Great Keppel Island, Queensland, between 8 and 11 July 1996.

SUBORDINATE LEGISLATION
Papers

MR HUMPHRIES (Attorney-General): Mr Speaker, pursuant to section 6 of the Subordinate Laws Act 1989, I present subordinate legislation in accordance with the schedule of gazettal notices for amendment of approval to a code of practice, Supreme Court Rules and determinations made under the Remuneration Tribunal Act.

The schedule read as follows:

Occupational Health and Safety Act - Amendment of approval of a Code of Practice (S91, dated 8 May 1995) - No. 279 of 1996 (S313, dated 22 November 1996).

Remuneration Tribunal Act - Determinations -

No. 264 of 1996 (Remuneration determination - Health Promotion Board) (S307, dated 15 November 1996).

No. 278 of 1996 (Interim determination - Health Promotion Board) (S309, dated 18 November 1996).

Supreme Court Rules Act - Supreme Court Rules (Amendment) - No. 27 of 1996 (S300, dated 13 November 1996).

LAND (PLANNING AND ENVIRONMENT) ACT LEASES
Papers and Ministerial Statement

MR HUMPHRIES (Attorney-General and Minister for the Environment, Land and Planning): I present the schedule of lease variations and betterment payments for the period 1 July 1996 to 30 September 1996, which includes, pursuant to the Land (Planning and Environment) Act 1991, the schedule of leases granted for the same period and an addendum to the schedule of leases granted for the period 1 October 1995 to 31 December 1995. I ask for leave to make a short statement.

Leave granted.

MR HUMPHRIES: Mr Speaker, the Land (Planning and Environment) Act 1991 requires a schedule of leases that were issued by direct grant during a quarter to be tabled in the Assembly. The schedule I have just tabled covers leases granted for the period 1 July 1996 to 30 September 1996. I have also tabled two other schedules in relation to variations approved and betterment payments for the same period. In addition, I have tabled an addendum to the schedule of leases granted for the period 1 October 1995 to 31 December 1995, namely, two leases granted in the AMTECH Estate in Symonston. These leases were not tabled during the first sitting period of 1996 as expected, due to an administrative oversight which was not detected until recently. Arrangements have now been put in place to identify and report on leases where BASET has had carriage of all negotiations concerning the grant of leases. A record of all new leases and applications to vary crown leases is available for public inspection at my department's shopfront in the John Overall Offices at Braddon. Mr Speaker, I also note that the betterment payments, or change of use charge payments, for the period 1 July 1996 to 30 September 1996 have also been tabled.

PAPERS

MR STEFANIAK (Minister for Education and Training and Minister for Housing and Family Services): Mr Speaker, pursuant to section 14 of the Annual Reports (Government Agencies) Act 1995, I present the following paper:

> Annual Reports (Government Agencies) Act - Children's Services Council - Report for 1995-96.

The report was circulated to all members when the Assembly was not sitting, as it was inadvertently omitted from the Department of Education and Training and Children's, Youth and Family Services Bureau report for 1995-96. I regret that oversight. Mr Speaker, I also present, pursuant to section 19B of the Children's Services Act 1986, the following paper:

> Children's Services Act - Official Visitor's Report for 1995-96, dated 27 June 1996.

WODEN PLAZA CAR PARK DOCUMENTS

MR SPEAKER: Members may recall that during the adjournment debate on the morning of 22 November a series of papers relating to the leases granted for car parking areas adjacent to the Woden Plaza at Phillip were presented to the Assembly. There were 29 papers presented. They included copies of letters, tables, interdepartmental minutes and advices. The copies were dated between 1989 and 1994 and are listed at pages 508 and 509 of the proof minutes of proceedings for 21 November 1996.

On the afternoon of 22 November I received by facsimile a letter from Freehill Hollingdale and Page on behalf of their client Lend Lease. The letter, which I table, gave a background to the documents, claiming that some of the documents contained financial information which, due to its commercial sensitivity, was critical to Lend Lease. The letter asked that, pursuant to standing order 212, I decline permission for other persons to inspect the documents that had been tabled and that I communicate the decision within the Assembly. The letter proposed that Freehills meet with me and identify those documents which their client maintained were sensitive to it. This was done on Monday, 25 November.

Standing order 212 provides:

> All papers and documents presented to the Assembly and not authorised for publication may be made available to members, and, with the permission of the Speaker, may be inspected by other persons or copies thereof or extracts therefrom may be made.

All papers presented to the Assembly are made available to members and, depending on the availability of copies, the overwhelming majority are made available to other persons. Standing order 212 does make provision for the Assembly to authorise the publication of documents presented to the Assembly, and it is open to any member in due course to give notice of a motion to authorise publication of documents presented and the matter would be up to the Assembly to decide.

Occasionally, because of concerns relating to the protection that is available to the publication of documents not authorised for publication in the event of civil or criminal proceedings, copies are not made available to other persons unless the Assembly has agreed to a motion authorising their publication. Also, on one occasion there was concern about the publication to the press of a tabled document which included an article purporting to give instructions on how to manufacture home-made explosives. In that event, though interest was shown, no request was received and no decision made.

Having considered the representations made to me concerning the sensitivity of certain of the documents presented, and having considered the contents of the documents in question, I decided to use the discretion given to me as Speaker by standing order 212 and not give permission for other persons to inspect the documents or to take copies of them or extracts from them, and to report this decision to the Assembly. I have also asked that legal advice be sought as to whether publication of the documents to persons other than members, particularly the 10 documents nominated as containing sensitive information - that is 10 of the 29 - may be actionable.

Ms McRae: Mr Speaker, on a point of order: Are you saying that in such a situation a member should put a motion on the notice paper requesting the publication of those documents? Is that what you are suggesting is the correct action? Am I understanding right?

MR SPEAKER: Yes, although it is up to a member, I suppose, to move, not necessarily on the notice paper, publication of the documents. Standing order 156 - I will not read the entire standing order - talks about contracts. Any question concerning the application of that standing order should be decided by the Assembly itself. It is up to the Assembly to decide whether the publication proceeds. The Clerk reminds me that, of course, at any time a member can seek leave to move a motion.

MR MOORE (3.26): In fact, Mr Speaker, I might just do that very thing. I seek leave to move a motion that would authorise the publication of these papers.

Leave granted.

MR MOORE: I move:

> That the Assembly authorises the publication of the documents presented on 22 November 1996 relating to Woden Plaza Car Park and the subject of the Speaker's statement of 3 December 1996.

Mr Speaker, I have a series of reasons for seeking to have these papers published. I think they make particularly interesting reading for members who are interested in the leasehold system and protection of the leasehold system. We have a situation that I think is appropriately set out in one of the papers from 1991. Mr Speaker, the particular paper that I refer to is one of the papers that you have actually crossed something out of. Therefore, in deference to the decision you have made, I will not quote that piece of material, because this is not a backdoor method of trying to get the information into the Assembly.

The paper is a minute from Robin Anderson, the then manager of policy in the Transport Strategy and Programs Unit, in August 1991 to the director of the Land Division, with a copy to a couple of other people. It states:

> I refer to your minute of 5 August 1991, concerning a bid by Lend Lease Retail Pty Ltd to secure long-term leases over Sections 13, 17 and 19, Phillip.
>
> I have considerable reservations about the proposal, with concerns in three major areas:
>
> 1. The proposal does nothing to advance the Government's transport objectives and, in fact, leaves the way open for Lend Lease to possibly adopt parking strategies and pricing levels in the long term which could easily run counter to the Government's transport priorities. In particular, there seem to be insufficient measures to guarantee public availability to the car parks at required hours, sufficient primacy of short-stay parking, and an appropriately high level of charges for long-stay parking.

There is then a comment about the particular financial aspects. About the financial aspects - and I think it is a critical thing - it says that the offers would be totally inadequate. I am not going to give the figures, because I believe it is the figures that would have caused you some concern, Mr Speaker. The minute continues:

> It also ignores the benefits to Lend Lease flowing from the very substantial increase in the capitalized value of their property. Similarly, the current "competitive disadvantage" claimed by Lend Lease must also decline over time with the progressive introduction of parking charges in Belconnen and Tuggeranong.

The third point - and I think this is the critical issue, Mr Speaker - is:

> There are unanswered concerns about future redevelopment of the sites. In particular, information is needed in the following four areas:
>
> (a) Only part (Block 6) of Section 19 is car park, with the remainder as office/retail. Who holds the lease on this?
>
> (b) What are the lease periods and conditions for the similar car parks at Belconnen Mall and the Tuggeranong Hyperdome? ...
>
> (c) Lend Lease propose ongrade car parking on Sections 13 and 19. What are their plans for Section 17?
>
> (d) What are the arrangements if Lend Lease want to redevelop any or all of the three sites in the future?

I think this is the very critical question, Mr Speaker:

> What are the arrangements if Lend Lease want to redevelop any or all of the three sites in the future? If the leases were surrendered, would the ACT Government have to reimburse any part of the lump sum paid for the lease?

Ms McRae: Mr Speaker, I raise a point of order. The motion before us, surely, is whether something should or should not be published. We seem to be getting an awful lot of debating points about the merits or non-merits of the actual material. I wonder whether that is all relevant.

MR MOORE: I will pay attention to what Ms McRae has raised. I think what I have raised so far is the real issue that these papers illustrate. These papers illustrate that there was considerable objection and very good reasons, which are in these papers, why Lend Lease ought not to have been given a short-term lease over the car parking area in Woden that we referred to.

There is considerable evidence within these papers, which have all been gained under FOI, that suggests that, having had the lease for only two years, Lend Lease is seeking to develop the lease - in other words, to get a change of lease purpose. The advantage to Lend Lease was not to have a car park for a car park's sake but rather to use incremental development - this is what has been causing problems in planning in Canberra for some time - in order to develop a site. Is that in the best interests of Canberra? Is it in the best interests of the taxpayers? Is it in the best interests of the community? Or would it be in the better interests of the community to put such sites out for tender? This is what these papers are referring to, Mr Speaker. This is what is illustrated in these papers. It is illustrated most clearly when all the papers are read.

Mr Speaker, you have read these papers. I do not expect you to make a comment, because that is not your role; but what I am suggesting to this Assembly is that reading these papers in their entirety gives a very good insight into the process by which the Canberra community winds up being dudded by this sort of development. That is not a comment on Lend Lease. I do not have a problem - - -

Ms McRae: Is it a comment in the papers? Is it in the papers?

MR MOORE: You will get your turn.

Ms McRae: It is your interpretation. It is not in the papers.

MR MOORE: I do not have a problem with Lend Lease seeing what action they can take in order to further their profits, to enhance their own business, to develop their own site. That is their prerogative; that is what they are in business for. But we have an important role to ensure the best possible outcomes for the people of Canberra, and the best possible outcomes for the people of Canberra are illustrated in these documents as I read them. Ms McRae properly interjected, "This is your perception of things". Of course it is my perception of what is in the papers. Ms McRae may have a different perception. Let these papers get into the open public and let people get their own perception of what is in them.

Mr Speaker, I believe that these papers illustrate that the best way we can deal with leases in this sort of situation is to ensure that in a very public process and a very open process they go for auction. Considerable criticism has been levelled at the closed processes that have operated on many occasions in our leasehold system. For example, in Manuka there has been criticism about the process not being open enough. We should ensure that people have a reasonable chance to bid for such pieces of land. Otherwise, we effectively create town centre or district centre monopolies - something which I believe to be entirely undesirable. Mr Speaker, I believe that the most appropriate way to deal with this is to ensure that an open government and an open system make these papers available.

These papers were gathered under FOI. Indeed, they went through a whole process. In question time I asked the Chief Minister a question about Lend Lease replacing equipment and upgrading the car parking area at an approximate cost of $318,000.

That was one cost that I did mention and I do not see why it should be particularly sensitive that boom gate equipment is worth that much. The documents also talk about Lend Lease being responsible for lighting, cleaning and maintenance of equipment, paths, pavings, landscaping and traffic control devices. They say that the Government's share of the revenue would drop to 55 per cent to compensate for the increased cost of maintenance by the lessee and so on. Mr Speaker, there is also a question in here - - -

Mr Berry: Mr Speaker, I raise a point of order. You have already ruled on the content of debate so far as it relates to the - - -

MR SPEAKER: Yes, I have, in fact. Mr Moore, I draw your attention to the fact that we are discussing whether something should be published.

MR MOORE: In order to explain to members why the papers should be published, Mr Speaker, I have to tell them roughly what is in them, so that they know whether or not they ought to be published. It is a perfectly rational and perfectly reasonable part of the debate for me to explain them. I have been particularly careful, Mr Speaker, as you would be aware, having been through them, not to deal with commercial-in-confidence - - -

MR SPEAKER: I would ask you to be very careful of that.

MR MOORE: Other than the one particular situation where I had asked a question in question time, Mr Speaker.

MR SPEAKER: I would ask you to be careful.

MR MOORE: Otherwise, I have been careful about that in so far as I have been able to compare the two. Mr Speaker, it seems to me that people who are interested in openness or interested in open government would be prepared to ensure that such papers were in the public domain. If they were in the public domain, people who are interested would then be able to get the full picture of how this style of development has occurred in the past. Mr Speaker, I think that members who look at these papers will ensure that they do go out into the public domain.

At the same time I am conscious that a number of members have not had the opportunity to read these papers. That being the case, should a member seek to adjourn this debate, I would understand that they may feel it necessary to do so in case there is something of such great moment and something so secret in the papers that they would want to refer to it. I do not believe there is anything of that nature in them. I think that we have a supersensitivity on the part of Lend Lease, not because of financial information that affects a commercial-in-confidence issue but because there is information there that exposes the way they operate and the way they seek to bring about change in an incremental way. I think that is the critical part of these papers. That is why we should publish them.

MR HUMPHRIES (Attorney-General and Minister for the Environment, Land and Planning) (3.38): Mr Speaker, I have to oppose the motion that Mr Moore has moved.

Mr Moore: You still need open government, Gary.

MR HUMPHRIES: No, it is not a question about open government. It is a question about the legally appropriate way to proceed. My department, in fact, made the documents Mr Moore has referred to today available through FOI under principles of open government, if you like. My Government has no problem with the principle that people should be able to see documents in most circumstances. The suggestion, however, has been received from solicitors acting for Lend Lease that the release of at least some of those documents was inappropriate and ought not to have occurred had the principles of the FOI legislation been properly applied.

I do not wish to give details of the preliminary advice that I have received on that subject, but the advice does suggest that there is some basis for the argument that has been advanced by the solicitors for Lend Lease. I hope Mr Moore is listening to this, because this is quite important. I do not say that the Assembly should exclude access to information merely because the information is sensitive or offends some commercial interest or has some other reason for a proponent or advocate of a particular development wanting to stop that information going onto the public record. That is not a satisfactory basis on which to exclude information being available to the public, but legal advice that there may well be some problem pursuant to the freedom of information legislation in the releasing of certain information is a good reason. What the Speaker has said - - -

Mr Moore: Not if they are published by the Assembly.

MR HUMPHRIES: With respect, on the interjection, it should not be open to the Assembly to subvert the principles of the freedom of information legislation by using parliamentary privilege to overcome protections available in the legislation to people who get the benefit of the use of that legislation. If we build protections in the FOI legislation, they ought to be available to everybody, not just those who do not have friends in the Assembly who can table documents under parliamentary privilege. Mr Speaker, my argument is that we have obtained - - -

Mr Moore: What is the point of parliamentary privilege if - - -

MR HUMPHRIES: If Mr Moore would listen, he would hear. The Speaker has not ruled out the publication of these documents. He has said that legal advice should be obtained to determine whether, I suppose, the preliminary legal advice that I have had is to be confirmed or rejected. I think Mr Speaker's actions are appropriate in those circumstances, and he should obtain the advice before he decides whether to release the documents for publication. Mr Moore's concern is only at best a temporary one because, once advice is received, either documents will be published pursuant to the provisions that the Speaker has at his disposal, or they will not be published because of legal advice which I assume members of the Assembly would have some access to seeing in any case. Mr Speaker, I do not think that it is appropriate for the Assembly at this stage to defy the decision that you have made, and I would urge the Assembly to await the legal advice that you have commissioned.

MR BERRY (3.41): We will be opposing the motion. The reasons for that should be pretty clear to most people. In the first place, if documents of a sensitive nature are to be tabled in this place by a member, I think it would be best if all of the members here knew what was going to be tabled, so that they had full knowledge of what they were giving leave for; but that was not - - -

Mr Humphries: That is why I did not move to have them published at the time. They were tabled, but I did not move to have them published.

MR BERRY: That being the case, the papers ought not to have been presented in this place without Mr Moore having consulted with other members. I know that it was late in the evening when this happened. I am a little critical of the Government, because I think it is the Government's job to police these issues in the Assembly to make sure that good - - -

Mr Humphries: How were we to know it was going to happen? We were not told about it.

MR BERRY: If you have not been told - - -

Ms McRae: You were not there, Mr Humphries, but I did interject at the time.

Mr Humphries: Even if I had been, I would not have been able to stop it.

MR BERRY: It is the Government's role to protect citizens who might be affected by these sorts of things. I regret not refusing to give leave. I think one deserves to know exactly what is going on when one gives leave for a member to table in this place bundles of papers which in many cases could have no effect but in others could have calamitous effects. That is an issue that concerns us. We feel that we ought to have been consulted in the first place, before leave was sought and given.

So far as what has been said since then is concerned, I listened carefully to what the Speaker had to say. The Speaker described the way that he has been deliberating on the issue, quite appropriately as far as I can make out. One point he made is worthy of close interest. That is the fact that he sought further legal advice in relation to the matter. Mr Humphries referred to that as well. The Labor Party would be reluctant to agree with this motion while some part of the process is still in train. For those reasons, Mr Speaker, we will be opposing the motion moved by Mr Moore.

MS TUCKER (3.44): Mr Speaker, I think debate on the motion should be adjourned until such time as the legal advice has been received. I move:

> That the debate be adjourned.

Question resolved in the affirmative.

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

MS FOLLETT: Mr Speaker, I present Report No. 17 of 1996 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation and I ask for leave to make a brief statement on the report.

Leave granted.

MS FOLLETT: Mr Speaker, Report No. 17 of 1996, which I have just presented, was circulated when the Assembly was not sitting, on 28 November 1996, pursuant to the resolution of appointment of 9 March 1995. There is one matter in a fairly lengthy report which I would like to draw members' attention to, especially the Government's attention. It relates to the determination of fees and charges which were made under the Health and Community Care Services Act. I am sure the Government recalls that there was a degree of retrospectivity in the determination of those fees and charges.

Mr Speaker, the committee has sought and obtained advice from the Government on that question of retrospectivity and on the subsequent question of whether or not those fees and charges were valid. I would like to point out to the Government that the committee does not accept the arguments that they have put forward, and the committee considers that the Government should have given its attention to section 7 of the Subordinate Laws Act 1989. Had they given their attention to that particular legislative provision, I believe that they would have accepted the committee's view that retrospectivity in relation to those fees and charges is probably not a valid step.

Mr Speaker, I might just read section 7 of the Subordinate Laws Act 1989. It provides as follows:

> A subordinate law shall not be expressed to take effect from a date before the date of its notification in the *Gazette* where, if the law so took effect -
>
> (a) the rights of a person (other than the Territory or a Territory authority) existing at the date of notification would be affected in a manner prejudicial to that person; or
>
> (b) liabilities would be imposed on a person (other than the Territory or a Territory authority) in respect of any act or omission before the date of notification;
>
> and where any subordinate law contains a provision in contravention of this subsection, that provision is void and of no effect.

Mr Speaker, I think that the committee's view that section 7 of the Subordinate Laws Act does have application in relation to an attempted retrospective determination of fees and charges is a valid view, and I would urge the Government to have another look at that matter and perhaps to get back to the committee on it.

It is a fairly lengthy report that I am presenting today. It contains a number of responses from the Government for which I thank the Attorney-General. I believe that the work of the committee is continuing to ensure that legislation and delegated legislation are of a high standard. As we are at the end of the year, I would like to thank my fellow committee members, and of course our adviser, Professor Whalan, for his unfailing attention to the detail of the committee's work. I commend the report to the Assembly.

ADMINISTRATIVE APPEALS TRIBUNAL (AMENDMENT) BILL 1996

[COGNATE BILL:

LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) BILL (NO. 3) 1996]

Debate resumed from 26 September 1996, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Land (Planning and Environment) (Amendment) Bill (No. 3) 1996. There being no objection, that course will be followed. I remind members that in debating order of the day No. 6 they may also address their remarks to order of the day No. 7.

MS McRAE (3.49): Mr Speaker, I will not be very long. The Opposition will be supporting these changes. They are logical consequences of debates that we have had in the Assembly before and statements that have been made before.

MR MOORE (3.49): Mr Speaker, that was indeed a brief speech. Although I will not be seeking any amendments, I will be opposing this legislation, because it moves the functions of the Land and Planning Appeals Board to the Administrative Appeals Tribunal. Originally, I said to Mr Humphries that I would be supporting the outcome of the Stein inquiry if the Government also supported it. The Government's argument has been that they have supported the majority of the findings of the Stein inquiry, but I believe - - -

Mr Humphries: Four-fifths.

MR MOORE: Four-fifths, as Mr Humphries interjects. I believe that the other fifth is where the fundamental issues are, particularly the establishment of a land authority and the establishment of a separate planning authority. To me, these are fundamental issues that would make the system work. We have had those kinds of debates in the Assembly before, as Ms McRae appropriately pointed out, and I do not wish to elaborate on them here. I believe that, even with a number of warts, the Planning Appeals Board has been a very successful system. I do not mind talking about occasional warts. People have presented to me the idea that they have not been able to establish precedents from the decisions made by the Planning Appeals Board; but I do not think a single decision of the board has been overruled by a higher court, although I may be corrected - - -

Mr Humphries: They have often been negotiated down, though, back to the other court, on the basis of a mistake of the board.

MR MOORE: Mr Humphries may like to elaborate on that. The board was established not as a legal entity and as a legal body. It was established to make commonsense decisions about planning issues affecting people in this Territory. It was established so that people could make appeals at a low cost and without representation. They are the real issues. I believe that in introducing the legislation the Labor Government provided a very useful device for dealing with issues of great conflict for the individuals involved, although sometimes not of great moment to the community as a whole but sometimes of significance for the community as a whole. A recommendation of an Assembly committee on the Tuggeranong Homestead, or it may even have been an Assembly decision, was overturned by the Planning Appeals Board. That certainly required correcting. For all that, I think a lot of the problems were teething problems and the board actually did provide a useful device.

Had Mr Humphries accepted the full range of the Stein inquiry, then I would have also accepted this particular legislation. I realise that this legislation is going to go through. The Opposition has indicated that it will support the legislation. I believe that it is not the most appropriate way to go. We would be far better off retaining an appeals board that is as cheap as possible and as accessible as possible. I think that is what the Land and Planning Appeals Board has been. By moving to the Administrative Appeals Tribunal, there will be some legalistic advantages but they will come at the expense of ordinary people in the community getting commonsense decisions.

Mr Speaker, for me and I suppose for most people, this decision is an on-balance decision. There are some arguments about the Planning Appeals Board that carry some weight and there are some arguments about the AAT that carry some weight. I do not want any of my arguments to be construed as being negative towards the AAT. Rather, they support an on-balance decision about the advantages of the board. They are the prime reasons why I will be opposing this legislation.

MS HORODNY (3.54): These Bills are essentially returning the planning appeals system to what existed before 1994. The Land and Planning Appeals Board was established at the end of 1993 through amendments to the Land Act. Before that time planning appeals were handled by the AAT. The questions that must be addressed are whether the reasons why the Planning Appeals Board was established in the first place have changed or have become invalid, whether the board has somehow failed in its task and therefore needs to be replaced, and whether the AAT is a more appropriate way of dealing with planning appeals. In addressing these questions, it is instructive to go back to the original debate in 1993, and before that to the establishment of the Territory Plan. At the time, the Assembly's PDI Committee inquired into the draft Territory Plan and noted community concerns about existing appeals processes through the AAT. The committee report stated:

> It is clear to the Committee that the majority of complaints relate to disagreements which are matters of fact rather than matters of law. People are unhappy with decisions which result in their views being blocked, their privacy reduced or their amenity reduced in other ways. Alternatively, applicants wish to contest a refusal by the Authority which relies on these arguments. The Committee considers that these and other related matters - which include urban design controls and the appropriate land use and carparking provision - are best decided by an expert appellate body operating in an informal setting. This would encourage the proponents, objectors and planners to make direct representations rather than requiring them to be represented. It would also facilitate a cheaper and more expeditious process.

In fact, it was the Labor Government at the time which introduced the Planning Appeals Board. Mr Wood, who was then Planning Minister, noted in presenting the amending Bill that the then existing appeals process through the AAT was too formal and costly, that there were delays in finalising appeals and that these matters could deter a person from appealing. Mr Wood said that he wanted an appeals mechanism that would be accessible to members of the community and that would quickly, informally and in a cost-effective way resolve what are, in the main, disputes between neighbours, disputes which should not be resolved by an adversarial process. He believed that it was also important for parties to have an equal opportunity in representing their case and that it would not be in the public interest if parties were represented by another person as this could conflict with the desire for the appeals process to be as informal as practicable.

The Greens believe that the original reasons for establishing the Planning Appeals Board are quite valid and still relevant today. The question therefore arises whether the board has somehow failed to meet these objectives. In answering this question, it is important to separate criticisms of individual board decisions from criticisms of the board's processes. In any dispute it is likely that there will be a winner and a loser. Persons who have lost a planning appeal may criticise the board for its decision, but this does not mean that the board has not done its job properly. It is more likely that the circumstances of the case went against the individual. We should be wary of throwing out the whole appeals system just because some people have been unhappy with its decisions.

It is worth noting that nearly 80 per cent of appeals lodged with the Planning Appeals Board have come from proponents who have been unhappy with decisions to reject aspects of their development applications and that only a minority of appeals have come from third-party objectors. In addition, there is a fairly equal distribution of the number of planning decisions which the board affirms completely, affirms with some variation or sets aside. It would therefore be hard to argue that the board is grossly distorting the decisions of the planners or, alternatively, is favouring objectors. It should also be noted that, while the Stein inquiry into leasehold administration did make some recommendations regarding changes to planning appeals, these were done in the context

that the Government had already announced that the board's functions would be transferred to the AAT. Stein therefore did not assess the pros and cons of this move but merely suggested ways in which planning appeals could be handled by the AAT. Given these points, it seems that insufficient evidence has been put forward by the Government to justify the abolition of the Planning Appeals Board on the basis of its performance.

The final question therefore is whether the AAT would be better than the Planning Appeals Board. Again, we have doubts as to whether this would be the case. The critical issue seems to be whether the planning appeals system should be run as a quasi-judicial process with legal representation of the party, or whether it should be a more informal process which assesses appeals on the basis of whether the planning merits of a particular development proposal have been fully assessed by the planners and not only on whether the development strictly meets the quantitative criteria of the Territory Plan.

We remain to be convinced that the planning appeals process would work better through the AAT. The original reasons for keeping planning appeals out of lawyers' hands still seem just as valid as they did in 1993. The involvement of lawyers in appeals will inevitably increase the cost to people who lodge appeals. This could particularly discourage third-party objectors. The other main point is that lawyers are not necessarily expert in planning matters. Planning is more than just whether or not a development proposal complies with the formal rules. It also requires judgments to be made about the impacts of the particular development proposal and on its locality and the relative importance of these impacts. Under the Land Act there are already provisions for people to be represented at board hearings with the leave of the board. This deals with the situation where parties to an appeal may not feel confident enough about appearing before the board in person. There does not appear to be a need for legal representation to be made a right at appeal hearings.

In conclusion, the Greens will not be supporting these two Bills. The reasons for introducing the board in the first place appear to remain valid today. We have not heard a reasonable argument from the Government for why the board should be abolished. We accept that there may be ways of improving the operations of the appeals board, but this can be done in simpler ways than just abolishing the board altogether. We have not been convinced that transferring the appeals functions to the AAT will add much to the process. Indeed, it could return the appeals system to the situation where only those who can afford legal representation or who can argue on the finer points of ACT planning will have any chance of getting a reasonable review of a planning decision that affects them.

MR HUMPHRIES (Attorney-General and Minister for the Environment, Land and Planning) (4.03), in reply: I thank the Opposition for its support, but I have to express some concern about some of the comments made elsewhere on this legislation. At the very outset, I emphasise my complete rejection of Ms Horodny's closing suggestion that a considerable disadvantage flows to members of the public from having to make appeals in the Administrative Appeals Tribunal. Ms Horodny might not have been around for long enough - - -

Mr Moore: Compared to.

MR HUMPHRIES: No, she did not say "compared to". You should have listened to what Ms Horodny said, Mr Moore. She made - - -

Mr Moore: In the context of what she is saying.

MR HUMPHRIES: You might wish to revise what she said, but she did not say what you would like her to have said. She said, and the record will show, that there were disadvantages flowing to people from having to use the AAT to make appeals.

Mr Speaker, we should be aware of the fact that over a number of years the AAT has been built up as a specialist tribunal, as an alternative to the regular courts of the land, if you like. It has a very good reputation for providing access to people from all backgrounds and from all levels of familiarity with the law, and it has been very successful in providing access to the law in those circumstances. I completely reject the suggestion that people who now have to use the AAT because the Land and Planning Appeals Board is being abolished are in some way disadvantaged as a result of that. I strongly urge Ms Horodny to check what she has said about the Administrative Appeals Tribunal, because it was - - -

Ms Horodny: You still have not given a reason why you want to abolish the board.

MR HUMPHRIES: You might think that one is better than the other. That is fair enough. But to suggest that the AAT is an inappropriate forum or has some kind of problem of access is quite inappropriate. I view it as an attack on the Administrative Appeals Tribunal. I think it is most inappropriate.

Mr Speaker, Ms Horodny also made the point that we have not advanced many reasons for abolishing the Land and Planning Appeals Board. No, we have not. We have, however, relied very heavily on the recommendations of the Stein report. The Stein report recommended unanimously - and almost everything in that report was unanimous - that the Administrative Appeals Tribunal replace the Land and Planning Appeals Board because of a perception of widespread deficiencies in the operation of the Land and Planning Appeals Board.

Again I would ask my colleagues on the crossbenches who lecture us constantly about consultation who it is who has had dealings with the Land and Planning Appeals Board that they have actually asked about the success or otherwise of that board. I have heard a lot about the theory of appeals processes, the structure of the Land and Planning Appeals Board and why it is better to have a structure like that than to have a more formal structure to hear appeals. I have not heard any reflection of community experience with the Land and Planning Appeals Board in the comments that have been made, especially by Ms Horodny or, to a lesser extent, by Mr Moore. I, on the other hand, have had lots of exposure to community reaction to those processes.

To be perfectly frank with the Assembly, I have not heard favourable comments made of the Land and Planning Appeals Board process by very many people at all. Indeed, I go further and say that I have heard nobody say - - -

Mr Moore: It is always those who complain, of course, whom you hear. That is the nature of the beast.

MR HUMPHRIES: Mr Moore, I speak to lots of people about the processes. I have spoken to lots of community groups about their experience in the Land and Planning Appeals Board as well. I have to emphasise that that has not been a particularly happy experience either.

It is most unfortunate that we had to have this debate, because I did not really want to make adverse comments about the Land and Planning Appeals Board; but since criticisms have already been made I have to respond to them. The perception has been that decisions in that forum have been capricious. The board, in effect, has taken each case as a self-contained case unrelated to other matters which might come before the board and, purely on the basis of the circumstances of a particular matter, it has decided whether it is a fair thing or not to grant the relief being sought. Mr Speaker, to a lay person that might sound like a great idea, but it has the major disadvantage that it deprives people who come before the board, or whatever other body it is, on a day-to-day basis, of consistency in decision-making. People who use our system, particularly a system which deals with the right to use land in the Territory - an extremely valuable resource - people's homes and people's livelihoods, have the right to expect some consistency in the approach by appeal bodies.

I had a planning official say to me today that they would often have to deal with applications on the assumption that if they approved whatever was in the application they could expect a certain amount to be knocked off by the Land and Planning Appeals Board, not on the basis that it offended against some formula that provides for a need for it to be reviewed but because their custom is to give everyone a little bit of what they ask for. That is not the way to run an effective planning system, here or anywhere else in the country. People who seek to make applications in respect of land, be they ordinary householders wanting to build an extension or be they people wanting to build a multistorey block of flats - whoever they might be - are entitled to consistency. Frankly, the Land and Planning Appeals Board did not provide that consistency. Again, I would invite people like Ms Horodny to speak to those people - even community groups, if you like - who have had exposure to the process. They will find that the processes have often - in my experience, always, but I will give her the benefit of the doubt - been unsatisfactory.

We have had a very strong concern, reflected in the Stein report, to replace the Land and Planning Appeals Board with a process that is more certain. However, we are not replacing it with the Supreme Court or even the Magistrates Court. We are replacing it with an informal tribunal which has delivered service to the people of Canberra for a number of years now, a forum where a less rigid approach is taken to the rules of evidence and to the rules whereby evidence may be adduced and put before the tribunal, a forum which has a history of allowing people to appear unrepresented before it and of giving assistance to those people so as not to create a disadvantage for those who appear unrepresented. I believe that it has succeeded quite well in that task over a number of years. I reject the suggestion that there is some disadvantage in having to appear before the Administrative Appeals Tribunal.

I gather that Mr Moore says he bases a large part of his opposition to this legislation on the fact that the Government has not supported the Stein package in full.

Mr Moore: That is not what I said. I said that I would have gone with it if you had supported the full package.

MR HUMPHRIES: I accept what Mr Moore is saying, but I would put it to Mr Moore that supporting a part of the planning process which has been viewed by almost everybody who has commented on it as having been unsatisfactory or a failure - - -

Mr Moore: That is not my experience.

MR HUMPHRIES: That was the Stein report's view. That is the view of everyone I have spoken to, Mr Moore, including, I thought, you until not so long ago. If that is the view of the majority of the people, I think it would be unfortunate to want to oppose the legislation merely because the Government has committed some other transgression which it needs to be punished for. I think putting it on the basis that there are a number of warts in the legislation is a little bit of a longbow - or rather a little bit of a short bow. I think there are a great many things with respect to the operation of the board that I could draw attention to.

I want to respond to the suggestion that the Land and Planning Appeals Board has never, in Mr Moore's knowledge, been overruled by the Supreme Court. That may be true. I do not know whether it is or it is not, but I do know that there have been a large number of occasions when the Government has been asked to formulate a position in respect of an appeal to the Supreme Court from the Land and Planning Appeals Board and in looking at the decision of the Land and Planning Appeals Board it has had to concede that mistakes in process, in rules of natural justice or in some aspect of law have been made by the board. On a significant number of occasions since I have been Minister, I have needed to sit down and work out how the concerns that have been expressed legitimately about a decision of the board can be accommodated without having to run the matter all the way up to the Supreme Court. The actual record of overrulings by the Supreme Court does not demonstrate the true extent to which there have been problems with the process. Mr Speaker, this legislation is quite important to making our planning system work better, and I would urge the Assembly very strongly to support this legislation.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Mr Moore: Mr Speaker, in rising to speak to the legislation again, I think it is important to draw attention to a comment made by Mr Humphries - - -

Mr Humphries: On a point of order, Mr Speaker: I think we actually dispensed with the detail stage of the legislation. If Mr Moore wants to have leave, he can have it; but we have actually dispensed with the detail stage.

MR SPEAKER: You will need leave, Mr Moore.

Mr Moore: Mr Speaker, I can speak on the next Bill.

Question put:

That this Bill be agreed to.

The Assembly voted -

AYES, 13	*NOES, 4*
Mr Berry	Ms Horodny
Mrs Carnell	Mr Moore
Mr Cornwell	Mr Osborne
Mr De Domenico	Ms Tucker
Ms Follett	
Mr Hird	
Mr Humphries	
Mr Kaine	
Ms McRae	
Ms Reilly	
Mr Stefaniak	
Mr Whitecross	
Mr Wood	

Question so resolved in the affirmative.

Bill agreed to.

LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) BILL (NO. 3) 1996

Debate resumed from 26 September 1996, on motion by **Mr Humphries:**

That this Bill be agreed to in principle.

MR MOORE (4.17): Mr Speaker, I continue the debate from the debate on the previous legislation, which dealt with the same issue. Mr Humphries, during that debate, indicated to the Assembly that the Stein report had recommended that the Land and Planning Appeals Board be abolished and that the Administrative Appeals Tribunal take over its functions. I think Mr Humphries should listen to this very carefully because it is a very serious matter. I believe that Mr Humphries, in saying that, has misled the Assembly - inadvertently misled the Assembly, I accept; but I think that it is appropriate to draw his attention to it. Justice Stein said in paragraph 12.9 of his report:

> On 22 June 1995 the Attorney-General and Minister for the Environment, Land and Planning announced that it was proposed to transfer the functions of the Appeals Board to the ACT Administrative Appeals Tribunal. The Board is to become a division of the AAT.

In fact, in this report there is no recommendation at all that this be the case. The recommendations, as I read them, say that, if it is going to occur, then you should do a number of things. The report continues:

> At present (and since 1993) the AAT jurisdiction under the *Land Act* is confined to that arising under ...

It mentions certain sections and goes into detail generally about the Administrative Appeals Tribunal. At page 310 of the report, there is a comment about the Land and Planning Appeals Board which supports what Mr Humphries said, although I disagree with it to a certain extent. It states:

> This was hailed as an informal community-oriented tribunal, capable of resolving disputes quickly and cheaply. In a very short time the Appeals Board has come under sustained criticism, it being suggested that the Board has been unprofessional, lacks legal expertise and the ability to properly reason decisions. The Government has announced that it intends to legislate to make the Board a new division of the AAT.

The thrust of what you are saying is in the report, but there is no recommendation that that is what should happen. Recommendation 93 states:

> any order given by the Land Manager shall be effective immediately.

There is not going to be a land manager in the sense that Stein meant. It goes on:

> The order is only stayed upon an appeal to the AAT ...

There is a reference to the AAT there. Recommendation 95 states:

> 'any person' should be entitled to approach the AAT or Supreme Court to civilly enforce breaches of the *Land Act* without being required to establish common law standing.

Are you going to implement that? Recommendation 96 states:

> parties to an AAT appeal arising out of the *Land Act* should be entitled to be legally represented or represented by some other person with the leave of the AAT.

It accepted a decision already made by you that that was what was going to happen. It certainly did not recommend that. I think it is appropriate that you clarify for the Assembly that that is the case.

MS McRAE (4.20): I would just like to pick up on this area, Mr Speaker, in case Mr Moore should infer that the Labor Party took its position in support of the AAT purely and simply on what Stein said. The debate in the Assembly on the Government's response to Stein incorporated the process review that had happened within the department, the PDI review of the Land Act, the Red Tape Task Force review that had been undertaken, as well as the Mant/Collins review. When we were actually debating the response to Stein, we were not looking purely at Stein but looking at a range of other reports that had commented on land and planning management in the ACT.

Labor made its decision on something much broader than just the Stein discussion. Labor also came to its decision on the basis of the types of criticisms and concerns that Mr Humphries raised, which were repeated in many different forums and in many different ways. They led us to believe that the board had not fulfilled the charter for which it had been established. In case any wrong inference should be drawn from Mr Moore's accusations about Mr Humphries's remarks, in respect of which Mr Humphries will have ample time in a moment to defend himself, I just want to put on record that Labor put a lot more thought into its decision than simply responding to some whim in the middle of the night about a random sentence in Stein. I am sure that Mr Humphries did as well.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR HUMPHRIES (Attorney-General and Minister for the Environment, Land and Planning) (4.22): Mr Speaker, I move:

> Page 15, lines 1 to 4, Schedule, amendments to subsection 256(4BA) and paragraph 256(4BA)(b), omit the amendments.

It is a simple matter, Mr Speaker. The Land (Planning and Environment) (Amendment) Bill (No. 3), which we are now considering, was drafted on the assumption that the Land (Planning and Environment) (Amendment) Bill 1996 would be passed by the Assembly by the time this Bill was considered. In fact, that Bill has not been considered as yet. I am advised that the amendments that were to be effected to subsection 256(4BA) and paragraph 256(4BA)(b) are unnecessary in the circumstances. I urge the Assembly to support this amendment.

I also indicate that there is a minor error in clause 9 of the Administrative Appeals Tribunal (Amendment) Bill, the new section 19A. It refers to section 37(1A) but should refer to section 37(6A). That is an amendment which can be picked up by using standing order 191.

Amendment agreed to.

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

Question put:

That this Bill, as amended, be agreed to.

The Assembly voted -

AYES, 13	*NOES, 4*
Mr Berry	Ms Horodny
Mrs Carnell	Mr Moore
Mr Cornwell	Mr Osborne
Mr De Domenico	Ms Tucker
Ms Follett	
Mr Hird	
Mr Humphries	
Mr Kaine	
Ms McRae	
Ms Reilly	
Mr Stefaniak	
Mr Whitecross	
Mr Wood	

Question so resolved in the affirmative.

Bill, as amended, agreed to.

HOTEL SCHOOL BILL 1996

[COGNATE BILL:

CANBERRA INSTITUTE OF TECHNOLOGY (AMENDMENT) BILL 1996]

Debate resumed from 21 November 1996, on motion by **Mr Stefaniak**:

That this Bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Canberra Institute of Technology (Amendment) Bill 1996? There being no objection, that course will be followed. I remind members that in debating order of the day No. 8 they may also address their remarks to order of the day No. 9.

MR BERRY (4.28): Labor will be supporting this Bill, Mr Speaker. We recognise that which has been said in the Auditor-General's report, and we have also considered the issues which were raised by the relevant committee which oversighted the matter as well. It separates the management stream of the International Hotel School from the Canberra Institute of Technology by creating a new piece of legislation which is quite separate from the Canberra Institute of Technology Act 1987.

This hotel school was set up with all parties in this Assembly agreeing to its aims and objectives. Indeed, it had the fulsome support of the Liberal Party. The school's operations have been a disappointment; nevertheless the school has the potential to create something good for the ACT. As a significant number of taxpayers' dollars are invested in it, I am sure we are all committed to persisting with it to achieve the aims which were set out at the outset.

Mr Speaker, the Minister's speech contained a couple of rhetorical and political remarks which I think are regrettable. If the Minister had been honest I am sure that he would have accepted some of the responsibility for the school's difficulties, given that the Government has been in charge of the school for all of its recruitment period. I need say no more than that in relation to the Minister's speech.

I have had some discussions with the Minister about one area of the proposed legislation in respect of the constitution of the board of management. As the board of management and the school will be bestowing degrees and awards to successful students at the school, it seemed to me to be appropriate that one of the non-executive members should be a representative of a tertiary education institution. An amendment has been circulated in my name to accomplish that. It is understood that in many cases the board would have people with those sorts of qualifications, but it seemed to us, at least, that there ought to be a requirement to ensure that a representative of a tertiary education institution could not be overlooked in the formation of a board in the future. Mr Speaker, I will leave it at that.

MR DE DOMENICO (Minister for Urban Services) (4.32): I appreciate the fact that it seems that many members of this Assembly now see the benefit of what the Government, and Mr Stefaniak, in particular, who is about to conclude this debate, are going to do. I am delighted that we do have the Australian International Hotel School. I thoroughly recommend it to as many people as I can in terms of the facilities there for both the students and the everyday Canberran who wants a fantastic meal. It is a fantastic place to look at in terms of what our building and construction industry can do in refurbishing what was a magnificent old building into a magnificent new building, and a building with great history. We in this Assembly ought to be doing all we can to make sure that the AIHS succeeds. With the new structure that the Minister wants to put in place, there is no reason why we cannot market it better than we have in the past. It obviously remains a jewel in the crown in terms of what we can offer people from interstate and overseas in education in an area that is very highly regarded, and in an area that Australians are starting to be very good at.

MR STEFANIAK (Minister for Education and Training) (4.33), in reply: I thank members for their support. I think both of these Bills, the Hotel School Bill and the Canberra Institute of Technology (Amendment) Bill, are important pieces of legislation. The Hotel School Bill is the first step towards implementing the findings of the Auditor-General's report which was requested by this Government in March this year. The CIT (Amendment) Bill removes all reference to the AIHS from the CIT Act of 1987. The Government is acting quickly to assure the students and staff of the hotel school, and the taxpayers of the ACT, that it is determined to establish the school as a viable institution.

This Government is committed to addressing the mistakes made by the previous Government in relation to the establishment of the hotel school. The Auditor-General's report makes it clear that enrolment projections for the school have been overly optimistic. The report found that the school's financial arrangements and operational structures needed urgent review if the ACT taxpayer was not to throw good money after bad in the continued operations of the school. The legislation before you today, consistent with the Auditor-General's findings, separates the hotel school from the CIT and establishes it under its own Act as a statutory corporation. The intention of the Bill is to improve efficiency in the management of the school, and separation from the CIT is a necessary first step. The Bill also provides for greater financial accountability and more appropriate management arrangements.

Mr Speaker, this Bill gives effect to the findings of the Auditor-General that the hotel school should be separated from the CIT and established under its own Act, and that the financial and management arrangements of the school should be made more accountable and transparent. The overall intention of the Hotel School Bill is to improve management efficiency, and the CIT (Amendment) Bill amends the principal Act to remove all references to the hotel school. We owe it to the taxpayers of the ACT and the students and staff of the hotel school to move quickly to improve the efficiency of the school and to establish it as a viable institution for the delivery of high-quality training in the Territory. I would commend both Bills to the Assembly.

I have had consultations with Mr Berry in relation to his proposed amendment. That is accepted by the Government. In relation to that, I should point out that already there are, I think, two people with that relevant expertise on the board, including a representative from Cornell. That amendment is fairly important, and obviously would occur as well, when you look at our attempts to also affiliate with an Australian university. If and when that occurs, Mr Speaker, obviously an appropriate board member might well be from that affiliated university. It is, accordingly, an appropriate amendment and we are happy to support it. I thank members, once again, for their support for these two very important pieces of legislation.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR BERRY (4.36): Mr Speaker, I move:

> Page 6, line 13, paragraph 15(b), add "provided that at least one member is a representative of a tertiary education institution".

I have already spoken to the issue. I will not bore the Assembly with a repeat performance.

Amendment agreed to.

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

Bill, as amended, agreed to.

CANBERRA INSTITUTE OF TECHNOLOGY (AMENDMENT) BILL 1996

Debate resumed from 21 November 1996, on motion by **Mr Stefaniak**:

> That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

ADJOURNMENT

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

> That the Assembly do now adjourn.

International Day for Disabled Persons

MS REILLY (4.37): I would like to bring to the attention of members that today, 3 December, is the International Day for Disabled Persons. This is one day to recognise the group of people within our community who have additional needs. One of the outcomes of these international days of recognition is to put focus on particular community groups and issues. On this day, obviously, it is people in our community with disabilities.

There are two issues I would like to talk about. The first is in relation to families who have within their family someone with a disability, and the second is access to employment. Many of you, I am sure, would have seen the family book which has been produced by the ACT Council on Intellectual Disability. This book has been distributed throughout the community and there will be a meeting tonight to discuss further issues. This book is a collection of family stories. The only thing in common for these families is that one member has a particular intellectual disability for which they need extra assistance.

These stories are quite beautiful as they tell of the love and strength of these families and how they work hard to maintain their lives. But these stories also illustrate all too much the gaping holes in services for people with disabilities in this ACT community, how hard these families work to care for their children who need additional support, and how few services are available to assist them to take part in normal day-to-day activities which many families can do without thought, such as simple things like going on holidays, simple trips to the shops, or going for a picnic. Many of these families and many of these parents are on call 24 hours a day, seven days a week, with little or no time off, and nothing envisaged in the future either. It is difficult to read these stories and not be awed by the strength of these families, particularly the women, the mothers of these children.

For a number of these children, as they grow and finish school, obviously one of the important things is access to employment. I think for all of us work is important. It is one of the ways that we have purposes for our lives. It is part of our identity. But, with the changes in employment services that are provided by the Commonwealth and with the possibility of disability employment services going to the States, there is going to be less opportunity for people with disabilities to access employment. Also, they will not be part of the mainstream of employment services. They will be marked out, discriminated against as people with disability, rather than just people who are looking for a job. Remember that having a job is so important to all of us.

People who have worked in workplaces with people with special needs or special support services know how successful these can be. They know of the many wonderful parts that these people play in workplaces. I think it will be very sad if these opportunities are taken away and we do not have workplaces that incorporate these people. People with disability have the same rights as all other Australians and we should be working hard to ensure they can have them.

Liberal Party Convention

MR WHITECROSS (Leader of the Opposition) (4.40): Mr Speaker, I rise today to reflect on the busy time the Liberal Party had last weekend at their annual convention. It made for some interesting reading and listening to the radio yesterday morning when the president, Brian Nye, was explaining all the good things they had got up to.

One of the things that caught my attention was the agonising which obviously went on in the party convention over the Government's bizarre supermarket trading hours laws. They were clearly desperately trying to find a formula to extricate the Government from their embarrassing decision to close supermarkets against the wishes of the vast majority of people in the community. The Liberal Party president said on radio that the Government needs to seek community opinion and facts and figures to back its case. Mr Speaker, as we all in this place know, they are going to be in a lot of trouble on that because when they seek community opinion they will find out that the vast majority of people in Canberra think it was a lousy idea. Maybe the president of the Liberal Party is hoping that they will seek that opinion, and then will turn around, change their minds, and back away from it. It is heartening, I suppose, to think that some of the members of the Liberal Party were trying to help the Government out on this one because the Government really has made a meal of it. Obviously, the party membership are feeling the heat and embarrassment of the Government's rather poorly thought out decision.

Mr Speaker, I noticed that they also discussed immigration and Aboriginal affairs. According to Mr Nye, they gave the Prime Minister a big wrap for his handling of immigration matters. As Mr Berry pointed out earlier, Mr Howard has studiously refused to use the "H" word, or to mention the disendorsed Liberal member for Oxley. Apparently, the local Liberal Party think that Mr Howard's soft handling of this issue is to be commended.

Perhaps the most bizarre information that we got on the Liberal Party conference on the weekend was about the deliberations on the vexed issue of jobs and employment. Mr Speaker, you will know from your following of the debates here that there are 5,600 fewer jobs in the ACT than there were 12 months ago. There are 2,700 more unemployed people than when the Liberal Party came to government. For 12 successive months employment has been dropping and retail turnover is falling, in trend and seasonally adjusted terms. Mr Speaker, obviously, it is a very serious question and one that you would expect, quite rightly, to tax the attention of the Liberal Party convention. So what did they have to say about that? Mr Nye said that these issues will be discussed next year. Obviously, it is a very important issue and he hopes that they get around to it next year. Obviously, the ACT division has as many ideas as the Government has on what to do about the state of economic growth, and they are hoping that between now and next year they will come up with some ideas and they will be able to contribute them to the debate.

Mr Speaker, I do not know whether this was discussed on the weekend, but perhaps the most interesting thing that Mr Nye said on the radio yesterday was when he talked about Cheryl Hill, the two-time Liberal candidate who is putting her hand up to be an Independent running for the seat of Fraser in the forthcoming election. Mr Nye thinks very highly of Cheryl Hill. He said of Cheryl Hill, "I think she will do well". Members opposite need to listen to this. The president of the Liberal Party says of someone who has just defected from the party and is going to run for the seat of Fraser, "I think she will do well. She has the right profile and is very passionate". Then he said, "I wish her well in her campaign". This is someone the Liberal Party want us to believe has nothing to do with the Liberal Party. They stand back from her.

They distance themselves from her. This is a candidate who ran on the John Howard team at the last election. Now she wants us to believe, "Gosh, I did not know that he was going to do all those awful things. Isn't he a terrible man?". Before the last election anybody with half an ounce of sense, certainly every Labor candidate, was saying, "John Howard is going to slash thousands of jobs in Canberra". I think the headline in the *Canberra Times* was 7,500. They said it was all nonsense but they knew it was true. Now they are not game to run the candidate in the seat.

MR SPEAKER: The member's time has expired. Mr Moore, are you packing up or are you planning to speak?

Liberal Party

MR MOORE (4.46): I am planning to speak. That is exactly what I am doing. Thank you, Mr Speaker. I am packing up at the same time, though, Mr Speaker. It is very interesting to hear how sensitive parties get when somebody goes Independent. I think it is terrific, Mr Speaker, that somebody who is well known in Canberra has decided to run in a by-election as an Independent.

Mr Whitecross: A Liberal Independent.

MR MOORE: Mr Whitecross interjects, "A Liberal Independent". I remember my colleague Paul Osborne being referred to in similar sorts of ways. Many a time over the last seven or eight years I have heard people refer to me as a Labor Independent or a Liberal Independent. It just depends on how they are thinking.

Ms Follett: Not by us.

MR MOORE: Ms Follett, in particular, guffaws at that; but it was a different story, of course, when she was in government. Mr Speaker, what this demonstrates is the major dissatisfaction people have with the Labor and Liberal parties. In this case, the major dissatisfaction is with the Liberal Party. I am absolutely delighted that there is an Independent who stands a chance. Granted, it is an outside chance. It would probably improve if the Liberals did not run a candidate, but it will be very interesting to see.

I agree with Mr Whitecross about the incredible dissatisfaction of people in Canberra with the Federal Liberal Government. That is why earlier today I was trying to get Mr Humphries to identify problems in terms of the Discrimination (Amendment) Bill, and problems with the Federal Liberal Government and what they are doing. They put out falsehoods at the last election about looking after all of us and all that sort of stuff. It is so clearly and patently untrue. Mr Speaker, the most frustrating part about the whole thing is that this is what drags politics down into the gutter. People pretend they are going to do something and then do not do it. We look at what people promise, but the question is what they deliver once they are in.

I suppose that people like the newly Independent Ms Hill - I must say that I do not know her particularly well, although I have had a number of chats with her - had she been successful at the last Federal election, would have been in there working to achieve what they had promised. I imagine that there are genuine backbench members of the Liberal Party who do that, but the trouble is that they have to have the gumption to stand up to their leader in their party room meetings and say, "No, you are not going to go ahead with this", or, "No, you are not going to go ahead with that". Instead, they allow the concentration of power to occur. The best possible outcome we could get in the Federal Parliament at the next full election would be to have so many Independents that there is a viable crossbench and a minority government.

Labor Party

MR STEFANIAK (Minister for Education and Training) (4.50), in reply: I will speak very briefly. I will just remind Mr Whitecross of three things, Mr Speaker. Basically, you had better look to your own party first, Andrew. Firstly, that pamphlet you put out really did not say much. It certainly did not say what you would do. I am reminded of two other things. Firstly, there was the lady in North Canberra who rang up Kate Carnell and asked, "Well, who is the Leader of the Opposition?", and she had to tell her. Also, I understand that a member of your own party asked at a meeting, "Who is our new leader? I know he has a beard, but the only bloke I know with a beard in the Assembly is Gary Humphries, and he is in the Liberal Party". Really, Mr Whitecross, you talk about the Liberal Party and you talk about Independents. Mr Moore has had his spray, too, in relation to Independents. Whatever you might think of the Liberal Party, it is in government in a large number of Australian States and Territories. Really, I think you should look to your own party and put your own house in order.

Question resolved in the affirmative.

Assembly adjourned at 4.51 pm