DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

10 December 1997

Wednesday, 10 December 1997

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MR SPEAKER (Mr Cornwell) took the chair at 10.30 am and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

AUTHORITY TO BROADCAST AND PHOTOGRAPH PROCEEDINGS
Paper

MR SPEAKER: I present, for the information of members and pursuant to subsection 8(4) of the Legislative Assembly (Broadcasting of Proceedings) Act 1997, an authorisation to broadcast given to a number of television and radio networks in relation to proceedings of the Assembly for the Leader of the Opposition's statement relating to the report of the Board of Inquiry into Contractual Arrangements between ACTTAB and VITAB. I also advise members that a photographer from the *Canberra Times* will be taking still photographs in the chamber. I would hope that you would agree that that should be part of the same umbrella agreement.

ACTTAB AND VITAB CONTRACTUAL ARRANGEMENTS - BOARD OF INQUIRY REPORT
Statement by Member

MR BERRY (Leader of the Opposition): I seek leave to make a statement in relation to the Burbidge inquiry.

Leave granted.

MR BERRY: Mr Speaker, when I entered the ACT Legislative Assembly, it was to serve. I was honoured when I was elected. I embraced the trust that the people of Canberra placed in me to represent their wishes and, of course, protect their interests. I have always worked to uphold their expectations in this Assembly. I was honoured when I was made a Minister in the subsequent Labor governments. As a Minister, I embraced and accepted the responsibility that comes with being a Minister under the Westminster system. For that reason, I have always accepted responsibility for the VITAB affair, regardless of the circumstances, because I was the Minister at that time. I reiterate that three years later.

I, more than anyone else, regret that the ACT Government became involved with VITAB. Inquiries after the time have found that they were a shady group of people we all would like to have known about at the time. I was misled; I was deceived. All the advice that I received from my department, from the Government Solicitor, from the ACT Treasury

and from the ACTTAB board found no fault with VITAB and no fault with ACTTAB's involvement with the organisation. They were the decisions of the time. I was advised that it was a good deal; that it could increase revenue to the Territory. My mistake, I suppose, was that I trusted that advice. But who among us has not at one time or another trusted advice? The longer we stay here, the less we trust, it appears; but we take responsibility for that trust in the advice we receive.

Three years later the Burbidge inquiry has been scathing of that advice but recognises my efforts to abide by due process and ensure that checks were carried out not only by ACTTAB but also by the Treasury and the Government Solicitor. I did what I could, as a Minister, to ensure that the interests of4 the ACT were protected. Probity checks were conducted. When I found that my instructions were not heeded, I pressed for probity checks to be conducted, and I think that was recognised in the Burbidge report. I do not think there is any doubt that the advice given to me left a lot to be desired. One of the things that I have learnt is that advice has to be received with caution, and it has to be received with due regard to the interests of the community.

I am sorry that as a Minister I allowed the ACT to be involved with VITAB; but that is an easy decision to come to after the event, and it might sound easy to say that I am sorry that I allowed the ACT to become involved with VITAB. However, at the time my decisions were based on my understanding of all the issues and I made them to the best of my ability at the time. I paid the price. That is life in politics. The most important thing is that I have learnt from the mistakes of the past.

As a Minister or as an elected representative, one can never be too vigilant in protecting the taxpayer. It is why I take my job as Leader of the Opposition so seriously. It is why I demand scrutiny of the Government's actions. People criticise me for always attacking the Chief Minister, but I learn from my own mistakes. Does anybody in this chamber have a mistake-free life? Nobody's hand goes up. That is one of the realities of life. Regardless of what advice I received in relation to VITAB when I was Minister, ultimately I was responsible and I took the blame. It is a shame that the Liberals have not learnt from the mistakes of the past. The Victorian TAB cancelled our superpool link because of suggestions that VITAB was offering inducements. Inducements were the issue which concerned most TABs around this country, the totalisator agency board industry around this country, if you like. It was the tax haven offered to an operator in Vanuatu which enabled them to offer an inducement to punters in Australia which concerned the TAB industry in the country. I took every step possible to ensure that inducements did not occur while I was Minister.

Yesterday Mrs Carnell seized upon a letter that was mentioned in the Burbidge report at page 38, saying that I was warned about the VITAB event a few days before it was announced. I suspect that when the letter was sent the agreement was already signed. It was sent on Friday, 5 November. I am not quite sure whether I received that letter before the announcement on the 8th; but it was sent from the Minister's office in New South Wales on the 5th, on the Friday, and the announcement was made on the Monday. Mrs Carnell said it was a warning. Let us see what it does say. It says:

> Dear Minister,
>
> I refer to discussions which took place earlier this year at the Racing Ministers Conference held in Adelaide and to subsequent correspondence regarding the payment of inducements -

that word keeps coming up -

> to certain Totalisator investors.
>
> I am concerned that recent developments, particularly in relation to offshore activities have the potential to cause long term damage to Government revenue and to the viability of the Racing Industry.

He goes on to say:

> ... I have requested that my Department make arrangements to convene a meeting at the earliest opportunity ...

Again, it was about inducements. I knew what effect inducements can have on Australian TABs and was given written assurances from VITAB that VITAB would not offer inducements. If the rumours were true, then again I was deceived. Many of the people advising me are long gone. I think Canberrans would be amazed that any other government would allow inducements to be offered in the ACT and once again we would risk ACTTAB's link to the Victorian superpool, but it happened.

This is the interesting irony between events of some time ago and more recent events, contemporary events. Some time ago inducements were the big issue that politicians opposite me now were most concerned about. They were saying that inducements were the real issue and, in the event, did result in the link to the Victorian superpool being severed. But after the TAB board had negotiated a $3.3m settlement, again about the issues of inducements, would you believe that it could occur again in the ACT? Would you believe that that could possibly occur and that people who are supposed to be fully understanding of the totalisator betting industry, the same people who negotiated the $3.3m settlement, were in a position where it happened again? Inducements were offered by the ACT Racing Club and, according to the report, to the knowledge of the chief executive officer - - -

Mrs Carnell: Of the Racing Club?

MR BERRY: The Racing Club and the ACTTAB chief executive officer. They entered into one of these arrangements again. This is the same organisation which had suffered so much pain as a result of a settlement paid to VITAB to sever itself from an arrangement which could lead to inducements. Could you believe that? It happened.

Mrs Carnell claimed no knowledge of it. Perhaps she was deceived. Perhaps the people she asked deceived her, or perhaps she knew and decided to cover it up. Will we ever know? We know that a consultant was engaged to examine the matter and that, subsequent to that inquiry by the consultant, Mrs Carnell wrote to racing clubs and said,

"Do not do this. If you are doing it, do not do it. Do not offer inducements". Why would she do that? She would do it because she knows that it threatens our link with the Victorian pools. Here we are some years down the track and the very same board that negotiated the settlement, the chief executive officer - - -

Mr Humphries: Mr Speaker, I raise a point of order.

MR BERRY: No, there is no point of order, my friend. I have leave to speak.

Mr Humphries: I am sorry; I thought Mr Cornwell was the Speaker. I beg your pardon.

MR SPEAKER: Sit down, Mr Berry.

Mr Humphries: Mr Speaker, Mr Berry a moment ago said, "Perhaps the Chief Minister covered up. We will never know". I think yesterday you ruled that the mere making of an imputation by way of a question does not make it any less of an imputation. That the Chief Minister deceived, presumably, the Assembly and the electorate is clearly an imputation, and I would ask that that imputation be withdrawn.

MR BERRY: Can I speak to this point of order? "Deceiving the electorate" has never been out of order in this place. I never made the imputation that Mrs Carnell had misled this Assembly, Mr Speaker; so Mr Humphries is quite wrong.

MR SPEAKER: I accept the explanation. However, I wish to make something quite clear to members. This is an important debate and I would like the Leader of the Opposition to be heard in silence. This will not be the last we hear of this. I am sure the debate will continue. You will all have your opportunities to make the points that you wish to make.

MR BERRY: The Burbidge report clearly documents that ACTTAB has facilitated the payment of inducements. It makes that point clear. That, of course, would be in contravention of our agreement and understandings with various TAB agencies around the country, because it threatens the future of TABs. This was the Government's board and the Government's chief executive officer. I take the view that the chief executive officer has undertaken an activity which endangers the profitability of the TAB and has not acted in the interest of the ACTTAB, and I think there is a strong argument that his services should be dispensed with.

Here is a person who was knowingly involved in an activity of a board which had to deal with the issue of inducements and VITAB, and we see a repeat of inducements being offered in the ACT with the full involvement of the chief executive officer of ACTTAB. I think that is wrong. There is a strong argument that this person's services ought to be dispensed with. I think it is made clear in the report, if you care to read that part of it, if you care to remember that part of it. These are the interesting factors which emerge from this report. Whilst the Chief Minister - - -

Mr Moore: What page is that?

MR BERRY: Page 138.

Mrs Carnell: Which bit of page 138 - the bit that says, "I see no obvious illegality in the practice."?

MR SPEAKER: Mr Berry, do not provoke them on it, and members will stop interjecting. The Chief Minister was heard in silence yesterday. I expect the same courtesy, if that is possible, to be extended to the Leader of the Opposition.

MR BERRY: Paragraph 380 reads:

> By supplementary statement of 18 November 1997, Mr Glanville records that he became aware in late 1996 that the Club was paying a rebate based on turnover to the two punters. He believes that he learned that from Mr Smeed, and before being told, had been unaware that Mr Smeed was making the turnover figures of the two punters available to Mr Alexander.

That suggests to me that Mr Smeed is in it up to his ears. If that is not an indictment, what is? This report damns existing members of ACTTAB and it casts a great shadow over the ACTTAB board. It has been ignored in the discussion about this issue. Alexander made it clear in public reports I heard of him and from him that inducements were being paid, but still the denials flew about. This makes it clear that Mr Smeed was in it. It makes it clear that Mr Glanville was aware of it in late 1996.

There are some other interesting aspects of this report. One of the key sentences in paragraph 382 has been struck out, without explanation, in the list of errata. I will read onto the record the sentence that was struck out:

> Mr Glanville says that he did not become aware of the incentives until it became public knowledge.

Mr Burbidge then said:

> Whilst my own untutored and imperfect understanding of the racing world causes me to feel scepticism about the likelihood of this situation, I am certainly not prepared to find that this evidence is not true.

He then said:

> There is no contradictory evidence.

That is a curious statement. At least to the casual observer it casts a cloud over the operations of the ACTTAB board. It makes it abundantly clear that Mr Smeed was involved in inducements being paid to punters in the ACT and that the board had charge of Mr Smeed. The board is a board of this Government. Are you sorry this happened? I am sorry it happened. It is a great shame that it happened, but Ministers and boards are sometimes misled or not told interesting information.

It is interesting that it emerges again that the major cause of the concern about the VITAB arrangement was inducements. To my recollection of events, there is no proof of them being paid to Australian punters in the period when Labor was in office. There were lots of rumours. If they were paid and the proof can be laid on the table, I will accept that they were paid. This report says unequivocally that they were paid in the ACT with the full knowledge of ACTTAB. Would you not think that there would be some concern about that in the debate on this issue? I can see why the Chief Minister does not want to talk about it. It is a return to the VITAB days when they were making the accusations about inducements, and now they have suffered as a consequence of their own accusations. This very occurrence was occurring in the ACT. Sure, it was on a smaller scale; there is no doubt about that. But it occurs here in the Australian Capital Territory.

Considering the 1994 experience, it is incomprehensible that the CEO of ACTTAB and its board would place ACTTAB in such a situation. It is also incomprehensible that the Chief Minister did not monitor the situation more closely, given the circumstances of the past. Who will forget the cacophony that came from these people about this issue when they were in opposition? I will not. The point at issue must have dimmed in their memories when they got to having to manage the TAB themselves. Paragraph 381 states:

> Mr Alexander stated in evidence that he made Mr Smeed, CEO ... from June 1994, aware of the arrangements the Club had made with the two punters. Mr Smeed's evidence is to like effect, though differing in detail.

From 1994 he was aware of the arrangements.

Mrs Carnell: We were not actually in power then, Mr Berry.

MR BERRY: That is fine. But you are the one - - -

Mrs Carnell: Oops!

MR BERRY: No, no oops at all about it; no evidence at all. The paragraph I read states:

> Mr Alexander was the Chief Executive Officer of the Club from 31 May 1995. Mr Alexander stated in evidence that he made Mr Smeed, CEO of ACTTAB from June 1994, aware of the arrangements the Club had made with the two punters.

If it was happening in 1994, we accept that; but you are the people who squealed about it so much and you are the people, this Chief Minister in particular, who never paid particular attention to the matter. I say to you that Smeed should go. You should be issuing instructions to the board along those lines and you should also be examining the board to make sure that you are satisfied that the board or some of its members should not meet the same fate. How can a board which has been involved in such a large settlement over such an issue not pay due regard to this issue? Can you believe it? I cannot. Mr Speaker, that is one of the most important issues that have arisen out of the Burbidge report.

Where was the scrutiny? Where was the accountability? Where is the ministerial responsibility? Mrs Carnell uses the board as an excuse. She uses ACTTAB's entity as a corporation as an excuse. But for everybody else it is not an excuse - only for her. It is like Totalcare and the Canberra Hospital tragedy. Do you remember that? "It was Totalcare's fault, not my fault" - - -

Mrs Carnell: I did not ever say that.

MR BERRY: It was your decision, your Government's decision. Now she tries to blame ACTTAB. If ACTTAB are to blame, they should pay the penalty because there are certain things which have occurred there which are untoward. I at least admit responsibility for VITAB, regardless of the quality of advice given to me. We are yet to hear Mrs Carnell apologise or admit responsibility for ACTTAB or for the tragedy of the hospital implosion, as one example. Ministerial responsibility does not just cease.

I heard the Chief Minister talking about over $5m - I think it has been stretched to that much these days - and trying to lay that responsibility with me. We can argue about that. Why do we not start right now? The fact of the matter is that it was a debt incurred by ACTTAB and it was the Government which decided to switch the debt to the taxpayer instead of making ACTTAB - - -

Mrs Carnell: The debt was always with the taxpayer. It was a statutory authority. When is a debt of a statutory authority not a debt of the taxpayer?

MR BERRY: It was Mrs Carnell who decided that the debt would be borne directly by the taxpayer, that ACTTAB would not have to deal with it at all and that the responsibility would be taken away from them. It should never have been taken away from them. They should have been made to deal with the issue. They were rewarded for bad performance, as it has turned out. They are into inducements again. This is what happens when you reward people for bad performance.

The responsibility for the Government's actions lies at the feet of the Minister. I am willing to accept my responsibility and always have been. I am sorry for the actions conducted while I was Minister. I apologise for the actions conducted while I was Minister. I had no control over the advice which was given to me. I was deceived. I received bad advice. I apologise to the community that that occurred. I have no difficulty in apologising for that. I do not brush aside lightly the cost to the community. It was a serious issue. For example, does the Chief Minister accept responsibility for the $80m extra that has gone into health? Never. Does she brush that aside lightly? Always. You have to get things into context here. This is about the Burbidge inquiry, Mr Speaker. I have made my position clear and, with that behind me, I now look to government, if we are given the opportunity, as being a responsible position where people take their responsibilities seriously. This Government opposite has not. This Chief Minister, in particular, has not. Mr Speaker, the Burbidge inquiry expanded a long way on the previous Pearce inquiry. I heard Mrs Carnell shrieking yesterday about the cost of the Pearce inquiry. "Spare no expense", I think, were the words. It is a bit rich, Mrs Carnell, for you to be saying on the one hand, "Spare no expense" ,and then to come in here and start screeching about it. But that is nothing unusual for you.

It is a bit rich for you to come in here screeching about $3.3m being paid out to VITAB by the ACTTAB board and then not to take responsibility for giving that debt to the taxpayer. Why could ACTTAB not be made to take responsibility? Mrs Carnell will get up and say that having to pay that debt threatened their existence; that they were too debt-ridden. Of course that is what they would tell you. Do you think they were misleading you? Perhaps they deceived you when they gave you that advice. Perhaps they could have handled it but just did not want to. That would be the advice they would give. It is an independent board that makes its own decisions.

Mr Speaker, this inquiry, as I said, followed on from the Pearce inquiry. I was cleared by the Pearce inquiry. I am not mentioned adversely in this inquiry, though other people are. Some of the principals of VITAB were referred to. Not all of them attended the inquiry. That is their decision. In my view, the inquiry also adversely reported on the CEO of ACTTAB and, for those reasons, he ought to be removed from his position. It is very clear that this person was involved in something that was contrary to Government policy. He would have known that his activities would have threatened and damaged the ACT's link to the large pools in Victoria. He could not plead that he did not know, given his level in the organisation and his apparent understanding of the issues.

Mr Speaker, as I have said, I apologise for all the things that went wrong with VITAB. I will not take responsibility for those who deceived me or other officers in the Government or in its statutory authorities.

Mrs Carnell: Do you mean George Wason?

MR BERRY: I heard Mrs Carnell on the radio today say, "Berry appointed a couple of his union mates to the board". Let us get the facts clear. The board was inherited from the corporatised ACTTAB, corporatised by Trevor Kaine. The board was appointed by that Government. Mr Humphries might remember this. Perhaps he could have told Mrs Carnell of his memories before she made the statement. The board was appointed by the Liberal-led Alliance Government. One person was appointed to that board.

Mrs Carnell: Who was that?

MR BERRY: I have no difficulty in saying who it was. It was George Wason. Mr Wason was appointed because of his involvement with the licensed clubs industry and because - - -

Mrs Carnell: And he was the one who gave you the crummy advice.

Ms McRae: I raise a point of order, Mr Speaker. You have called for silence. Why do you not follow through on your order? We could barely hear Mr Berry's interjection the other day when you threw him out.

MR SPEAKER: I would be surprised if that was so in your case, Ms McRae; but I do call for order.

MR BERRY: The dialogue is handy. A member appointed to the board by the Alliance Government was subsequently appointed as chair. Keep the record straight when you are talking about these issues. That sort of chicanery does not do anything for your standing out in the community. That board has met its fate. It has been criticised in the Burbidge inquiry. I suppose I could apologise for reappointing the appointees of the Alliance Government, but that would be silly. The facts are that there has been a fair bit of chicanery about some of these issues, and the community deserves to be told the truth at all times, not only in this house, especially on serious issues.

This has been a long and drawn-out saga of events with a sprinkling of politics - or should I say a smattering of politics, perhaps a couple of layers of batter of politics, or a battering? The ACT was caught in a pincer movement between the then Liberal New South Wales Government-controlled TAB and the Liberal-controlled Victorian TAB before it was privatised. The longer I stay in this business, the better I understand when there is a little bit of politics involved, and there was a strong stench of it then. Let us not ever kid ourselves about that. It was an unfortunate period. It was particularly unfortunate for me as a Minister, as a newcomer to this business, and I suspect that I paid the price. I will not go into discussion about former decisions of this Assembly, because I might then be accused of saying something nasty about the decision-makers which, Mr Speaker, you might be called upon to check me on. I am sure that you would agree with me, but you might have to check me in relation to what I say about some of the earlier players and their decisions.

Burbidge expanded on the work done by the Pearce inquiry. The Pearce inquiry was called for by Mrs Carnell at any cost. The Pearce inquiry cleared me. The Burbidge inquiry never mentioned me adversely. No matter how much Mrs Carnell tries, all of the adverse criticism by the inquiry has been made of those who deceived and misled and of more recent people who were involved in inducements in the ACT. I call on you to sack Mr Smeed. Instruct the board to sack him. That is what he deserves. He has been reported on adversely in this report and he has been involved in activities which have put at risk the link with the TAB pools in Victoria, the same link which, when severed, cost the ACT $3.3m in a settlement. If you do not think that is serious enough, then I do not think you are fit to be Chief Minister.

MRS CARNELL (Chief Minister) (11.11): Mr Speaker, I think I probably need leave to speak.

Mr Berry: You will not get it. You can bring it on tomorrow and we will have the debate then.

MR SPEAKER: Just a moment. The Assembly will decide that. Are you seeking leave to speak, Chief Minister?

MRS CARNELL: Yes.

Leave granted.

MRS CARNELL: I certainly will be happy to speak later, but I think a number of issues that Mr Berry brought up need to be addressed right now, particularly when a member of this Assembly publicly calls for the sacking of a public servant in what could only be described as a kangaroo court approach by Mr Berry. I do not think that is an appropriate way to go. Even in the throes of the VITAB debates back in 1993-94 I do not believe that this side of the house ever suggested that a public servant should be sacked. I do not believe that is an appropriate approach.

I would like to use this opportunity to address the issues Mr Berry brought up. We can certainly discuss the whole report again, hopefully tomorrow. I would like to deal very quickly with Mr Berry's view that there was something similar between the second part of Mr Burbidge's report and the first part - that is, between the VITAB information and the information with regard to incentives that were paid by the Racing Club to two large punters. Those incentives obviously were paid. There is no doubt about that. They came about as a result of sports betting legislation that was passed under the previous Government in 1994. I need to make clear what Mr Burbidge said about the two deals. When Mr Burbidge spoke about the incentive payments paid to two punters in the ACT - no offshore connections - he said, on page 137:

> ... I see no obvious illegality in the practice.

With regard to VITAB, Mr Burbidge said that it was fraud; that it was maladministration. He said that there should be referrals to the Federal Police, to the DPP. On one side we have something with no obvious illegality and about which Mr Burbidge said that he does not believe that the matters need particular further investigation. These sorts of incentive payments to punters are believed to be common practice. On the other side you have a tax minimisation offshore betting deal that is fraud, as against something that shows no obvious signs of illegality and is common practice. On one side you have a deal with VITAB that cost the ACT taxpayer $5.3m, and on the other side you have incentives paid by the Racing Club that have not cost the ACT taxpayer one dollar. On one side we have fraud and a $5.3m cost to the taxpayer. On the other side we have no illegality and no cost at all to the taxpayer. How Mr Berry can go down the path of suggesting that these were similar deals is an absolute mystery to me.

You can keep going. The next thing is the action that was taken. Mr Berry went through question time after question time in this place when we asked why the people shown in the corporate records, in Vanuatu, as the shareholders of VITAB were not the same as the people who appeared to own VITAB here and why various things happened. Question after question was raised, not just by us but by people who knew something about the racing industry. What did Mr Berry say? Again, question time after question time over months, Mr Berry said that it was money for jam; that there was nothing wrong with the deal. He said that he took personal responsibility for signing off the arrangements that were entered into. I think he said he took personal responsibility for making sure the deal was safe to the Territory.

In fact, even when Mr Berry was relieved of his ministry, if you remember - and I am sure Mr Moore and others who were here do - he said that it was nothing at all to do with the VITAB deal. He said that that was not the reason that he was removed, and it was not.

It was simply because he misled the Assembly. Even then he continued to say that there was nothing particularly wrong with the deal. Even in his speech just a minute ago, he suggested that somehow the approach of the previous Assembly had not been appropriate. Look at page 137 and see how I reacted at the first indication that there was a problem. Mr Burbidge said that incentive payments to the first punter commenced in October 1995. That was the first one he could find. What did he say about what I did when I found out about incentive payments? He said:

> Payments of the incentives continued until February 1997, when ... [the] Chief Minister ... wrote to the Chairman of the Club Mr Norton, expressing the view that funds paid to the Club should not be used to pay rebates whereupon the practice ceased.

At the same time, I approached the Victorian TAB and ran a probity audit over the whole situation. On one side you have a Minister who goes through question time after question time totally refusing to act. On the other side you have a Chief Minister who at the first sign of a problem immediately stops the practice, goes to the Victorian TAB and runs probity audits.

And what happened? On one side the Minister who refused to act ended up with the TAB link being severed because he refused to listen. On the other side the TAB in Victoria entered into a three-year agreement with us, because they accepted that the approach we had taken had been, to quote them, "appropriate, under the circumstances". Mr Berry cannot compare - - -

Ms McRae: It does not wash.

MRS CARNELL: It is actually the reality here - - -

Ms McRae: It does not wash.

MRS CARNELL: Ms McRae was very concerned about interjections when Mr Berry was talking. What happened to the link? The Minister who did not listen, who took rotten advice but would not listen to people who were trying to tell him, ended up with the link being severed. The moment I got any evidence that something that I did not believe was appropriate was happening, we made sure the link was not severed. Not only was the link not severed but a new three-year agreement was put in place.

Mr Speaker, there is another issue here - consistency. I believe we have been consistent the whole way through this issue. We have made sure we have understood the issues involved. Mr Berry made no such attempt. With regard to inconsistency, I think there is a glaring issue with Mr Berry's speech. Mr Berry seems to believe that a debt that a statutory authority has in the ACT is not a debt that the taxpayer has to pay back. He said categorically - - -

Mr Berry: It is a corporation debt.

MRS CARNELL: Mr Speaker, I will follow up on that. Mr Berry said that a debt that a statutory authority has is not a debt that the taxpayer wears.

Mr Berry: I did not say that at all. I raise a point of order, Mr Speaker. Mrs Carnell is misleading this Assembly if she says that. If you check the *Hansard*, you will see that I did not say that.

MR SPEAKER: I am in no position to check *Hansard* at the moment.

Mr Berry: I did not say that, and you know it.

MRS CARNELL: What did you say?

Mr Berry: I said that you switched the debt from the TAB directly to the taxpayer. That is what I said.

MRS CARNELL: If you switch a debt from one entity that is the taxpayer to another entity that is the taxpayer, you do not switch it anywhere. Mr Berry could say, as he did a minute ago, that by the time we switched the debt the TAB was a corporation and therefore we did swap it from a corporation, and a corporation's debt is not necessarily a debt of the taxpayer. Mr Speaker, those opposite have been arguing ever since we brought down the last budget that an ACTEW debt is the same as government borrowings. Heavens! Can I please have some consistency from those opposite? They argued very strongly that a debt that ACTEW might enter into was exactly the same as a debt of the taxpayer. Now they are saying that it is not the same. Mr Speaker, I do not think we can ask for much in this place from those opposite, except a tiny bit of consistency.

I recap very quickly on the differences between these two issues. One has no illegality; the other is fraud. In one case, VITAB, it cost us $5.3m. In the other case it did not cost the taxpayer one dollar but potentially made the taxpayer some extra dollars. On one side a Minister refused to act and ended up losing the link between the two TABs. On the other side I acted immediately and got a new three-year contract for the TAB. On one side a Minister refused to respond to warnings. On the other side we acted immediately. On one side you have an ex-Minister who was totally inconsistent, and is still inconsistent today. On the other side we understand that any debt that the ACT picks up by any entity of the Government is at the end of the day a debt that we are responsible for. I do not believe that we can say that there are debts that any Territory-owned corporation or statutory authority enters into that we are not at the end of the day responsible for. Of course we are.

Without getting into the politics of this, which I am not doing at this stage, I am just asking whether we could please get from Mr Berry some sort of balance in these two situations. Mr Berry did cover up. He pretended that it was not a problem, and now we are $5m poorer. I accept that he said he was sorry that we are $5m poorer, but when you actually look at this Mr Berry has not shown an understanding of the difference between incentives paid to two big punters in the ACT, which I think were totally unacceptable and which were stopped, and an offshore betting operation that Burbidge has said was fraud.

Mr Speaker, can we afford to have somebody like that as Chief Minister and Treasurer of this Territory if he still does not understand the difference between something that is legal and something that is not, between something that costs $5m and something that costs no dollars but has actually produced dollars? This is something that I suppose at the end of the day the voters of the ACT will decide, but heaven help the ACT if somebody who has so little understanding of quite significant differences becomes Chief Minister.

I also hope that never again in this place do we see parliamentary privilege used to suggest that a public servant who has been found not guilty of anything should be sacked. Forget any of this other debate. That sort of approach, from my perspective, is absolutely unacceptable. Everybody has a right of reply. No public servant should have to wear that sort of an approach.

MR HUMPHRIES (Attorney-General) (11.23): Mr Speaker, I also seek leave to make some comments on the subject.

Leave granted.

MR HUMPHRIES: I thank members. Mr Speaker, I will try to be quite brief, but I think I need to comment on the comments by Mr Berry. Mr Berry, as usual, has left the chamber while this debate is going on. He is prepared to sling some mud but is not prepared to sit down and listen to comments or responses to it. Mr Berry's response has been a classic head-in-the-sand response to a problem which is very severe and which continues to afflict the Territory. We are in here, Mr Berry.

A debt of that size, a debt of almost $6m, is a debt which obviously certain areas of the ACT, including the TAB and taxpayers generally, are going to have to carry for some years to come. It is a very large debt. Mr Berry rises in this place and says on the record that he is sorry for what happened. For that I think he has shown some courage. I think he deserves to be commended for having said that. But he then immediately indicates that there are a series of other people who, in effect, ought to share his blame, to whom the limelight ought to shift immediately in order to fully understand what has occurred in this matter. He blames ACTTAB. ACTTAB are to blame, he says - not just the past ACTTAB board but even the present ACTTAB board. The advisers who advised him at the time are to blame, he says.

Interestingly, Mr Speaker, he does not mention one person in particular who was at the time his senior adviser, who is still his senior personal adviser and who was adversely mentioned by the Pearce inquiry. I am curious why Mr Smeed should resign or be sacked when you have not chosen to sack the person on your own staff who was named adversely by the Pearce inquiry. Why?

Mr Berry: Because Mr Smeed is the one directly organising inducements; that is why.

MR HUMPHRIES: We have already heard about inducements. While you were not here, the Chief Minister explained very adequately that the inducements, under Mr Burbidge's terms of reference and as he explained in his report, were not illegal and did not cost the Territory any money.

Mr Berry: They were not illegal with VITAB.

MR HUMPHRIES: But they did cost the Territory big money, did they not, Mr Berry, under VITAB?

Mr Berry: Not by themselves.

MR HUMPHRIES: They did cost the Territory big money - $5.9m. That is what the inducements in VITAB cost the Territory and the taxpayer. The inducements which Mr Berry is now trying to grasp like a man lost at sea grabbing at a log were a different kettle of fish altogether. They were not illegal and they have not cost the taxpayer any money.

Mr Berry: Neither were the VITAB ones illegal.

MR HUMPHRIES: But they have cost the taxpayer, Mr Berry. That is the fundamental difference. They were what sank VITAB. They were what caused the fact that today almost $6m in public money has gone down the drain.

Mr Berry is scapegoating. He has blamed his advisers. He has blamed the past ACTTAB board as well as the present one. By snide innuendo, he has blamed the New South Wales Liberal Government. There is nothing about the New South Wales Liberal Government in that report, Mr Berry. The New South Wales Liberal Government is not held up for blame. In fact, in that report the New South Wales Liberal Government was giving you fair warning that this had occurred. Mr Berry says that his letter from Mr Downy arrived after he signed the agreement, or that at least he did not see it until after he signed the agreement. That is fine. Let us assume Mr Berry is right. He probably is right. The letter arrived, or at least was not seen by Mr Berry until, after he had signed the ACTTAB agreement. Let us assume that is the case. I will give you the benefit of the doubt.

Let us look at the facts. Mr Berry, do not run away. Again Mr Berry leaves the floor. *(Quorum formed)* Mr Berry, who is the subject of this debate today, whose conduct is being discussed, who has apologised to the house already for his decisions, has left the chamber. That is the most extraordinary piece of incapacity to face up to reality I have ever seen. Mr Berry is scapegoating. He is finding excuses. He is finding people to blame. He is finding any reason at all to negate the reality that he himself is responsible for what occurred.

He says that he did not receive Mr Downy's letter from New South Wales warning him about this deal until he had signed the ACTTAB agreement. Fine. I think he is probably right about that. Let us assume that what he is saying is absolutely true. The fact is that he did see the letter sometime shortly thereafter. That was, as I recall, in late 1993. He then had that letter from Mr Downy saying, "Do not touch this with a barge pole.

It is dangerous. Do not go near it". He then had the warning from the racing clubs in the ACT: "This is a hot potato. You should not do this". If the so-called consultative former government had not spoken to them before he signed the agreement, they certainly spoke to it afterwards saying, "Do not do this". Of course, the Labor Government at the time had the persistent, powerful, longstanding voice of Mrs Carnell and the Opposition making exactly the same point.

Let us assume, for argument's sake, that he entered into that agreement with bad advice and was misled by his advisers. Let us accept that he made an understandable mistake by signing the contract. But he then made the mistake of ignoring strong, clear, articulate and well-reasoned argument that was put to him subsequently by the range of people I have referred to. He ignored that. That is the reason that I think he should be apologetic to this house for what he has done.

His approach today has been the classic adolescent approach of attacking as a form of defence. He realises that he is in the hot seat, so he finds someone else to scapegoat in this exercise - "ACTTAB are to blame. My advisers were to blame, but not Sue Robinson, of course. The Liberal Government in New South Wales was to blame. The Victorian Liberal Government was to blame. Kate Carnell was to blame somehow for what I did". This is a classic weak-kneed, weak-willed, unsophisticated, unprofessional approach to this matter. It is the approach of a man who is prepared to do anything he can to avoid facing up to the responsibility which he has to this house and to this community. I hope that residents of the ACT pay very careful regard to what has happened in this affair, not just three years ago but today as well, when they make their decision about who should be Chief Minister and Treasurer of this Territory after 21 February of next year.

TENANCY TRIBUNAL (AMENDMENT) BILL 1997

Debate resumed from 12 November 1997, on motion by **Mr Moore**:

That this Bill be agreed to in principle.

MR HUMPHRIES (Attorney-General and Minister for Fair Trading) (11.33): Mr Speaker, the Bill that Mr Moore has put forward deals with an area which was contentious when the Assembly first dealt with the Tenancy Tribunal Act and the code of practice on retail and commercial tenancy three years ago. Today it is still an area of controversy and keen interest for many in the community, particularly those who are in commercial or retail tenancy arrangements. The issues which are raised by this Bill have been debated in a number of forums, including the ACT Government working party whose Review of Commercial and Retail Tenancy Legislation was presented to me about three weeks ago. They also have been the subject of an extensive inquiry by a Federal parliamentary committee chaired by Mr Reid, which presented a committee report entitled "Finding a Balance: Towards Fair Trading in Australia". Subsequently there was a Federal Government response called "New Deal: Fair Deal - Giving Small Business a Fair Go", which attempts to pick up and deal with a number of issues arising out of that report. So, Mr Speaker, there are a number of issues on the table, reflecting the concern out in the community about commercial and retail tenancy in particular.

Mr Moore's Bill provides for a number of issues to be addressed in order to deal with the problems that he sees in the community from apparent weaknesses or deficiencies in the tenancy legislation and code before the community at the moment. I consider that the approach Mr Moore has taken goes too far in terms of addressing the problems that are obviously real and have given rise to this legislation. I think Mr Moore has rightly identified that excessive rent and practices surrounding rent remain as concerns in the ACT.

However, I think Mr Moore's proposal that the Tenancy Tribunal should, in effect, be allowed to review excessive rent is a provision which is too broad in its application. It effectively allows tenants - but not landlords, I note - to be able to reopen tenancy agreements and argue that the rent charge is excessive and should be reduced. I have a difficulty with intervening in commercial arrangements generally, particularly in cases where only one of the two parties is empowered to review arrangements which may have become unfair but the other is not given that same privilege. I think, baldly, that to allow a tenant to escape the provisions of the lease freely entered into is going too far, and I do not support that provision.

Mr Speaker, I do believe that we need to offer more protection than is currently available in the legislation. For that reason, I will shortly be moving amendments which do two things principally. One is to pick up a number of recommendations made unanimously in the working party report, which are supported, therefore, by landlords and tenants, to improve the operation of the Tenancy Tribunal Act. Secondly, and more importantly, they will adopt, in effect, the unconscionable conduct provisions which appear in the Federal Government's Trade Practices (Amendment) Bill which has recently been introduced into the Federal Parliament.

I think members have seen those provisions because they have been circulated. They allow for a tenant, or a landlord, for that matter, to come forward to the tribunal and to argue that provisions in an agreement are unconscionable, or the conduct engaged in by the other party is unconscionable, and that relief from those provisions or that conduct ought to be provided. The matters which the tribunal may have regard to are set out, and the relief that is available is also set out in that proposed clause in the legislation.

Why replicate a provision which is already available in the Trade Practices Act? The answer to that is that the provisions are accessible, in the Federal case, through higher courts - through bodies such as the Supreme Court or perhaps the Administrative Appeals Tribunal - but tenants, or landlords, for that matter, will very often be in the setting of the Tenancy Tribunal when they seek to access provisions of that kind. A provision which makes it accessible at that level is appropriate and I therefore urge members to adopt this provision as a means of being able to protect tenants, particularly to protect tenants in these circumstances. I will speak at more length about those provisions when we get to the detail stage. The Government's intention is to oppose clauses 5 to 7, and to move the amendments to which I have referred to clause 4 and so deal with some of the issues which Mr Moore has raised.

Mr Speaker, I do not think we have come to the end, by any stretch of the imagination, of dealing with issues in this area. I would imagine that whatever government is elected in February next year will have to deal with all the recommendations of the working party and also, no doubt, with issues given rise to by the Federal legislation. At a meeting last Friday in Canberra of State, Territory and Federal Ministers responsible for small business and fair trading, there was extensive discussion about the direction that should be taken with respect to that Federal report and related issues, and it will be a matter of ongoing debate and concern by governments across Australia. The ACT Government that comes in next year will have to take on board those same issues.

Mr Speaker, this Bill, as amended by the amendments that I will put forward, is a step in the right direction, and I hope that members will be prepared to remain open-minded about how to improve this area. There have been at times quite voluble and on occasions fairly unbalanced statements about what needs to be done to be able to improve this area to deliver justice to parties in this area, particularly the tenants. I have spent a great deal of time in the last three years listening to the concerns of tenants and I believe it is important that the Assembly acts to address their concerns about problems in this area.

It is the Government's intention, for example, that we should look at the question of improving access to mediation services as a way of providing a low-cost option for those in a tenancy dispute. Even the Tenancy Tribunal, at the present time, entails some cost in many cases for those seeking to come before it, and costs are often inequitably capable of being borne by the parties where a tenant is taking action against a landlord or is facing action of a certain kind by a landlord. Therefore, access to other forms of resolving problems and disputes is called for, and I believe we need to do work in the area of making mediation more accessible and more affordable in this field. For the moment, I think the amendments to this legislation will go a great deal of the way towards providing the protection that I think tenants, particularly, are entitled to. I would recommend to members, therefore, that they support the Bill, but with the amendments which I have tabled.

MS HORODNY (11.41): The Greens will be supporting Mr Moore's legislation. We believe it provides wider coverage of protection for tenants by increasing access to the Tenancy Tribunal for small businesses. Mr Moore's legislation removes size restrictions on who can appear before the tribunal, and it also addresses the issue of excessive rents. The Tenancy Tribunal Act and the code are supposed to address the imbalance between tenants and landlords, but there are many flaws in the legislation and in the code. For example, the code has only limited application to existing leases, and there is no right to renew leases or no right to compensation where a landlord refuses consent to the transfer of a lease. There are, as members would be aware, many unfair practices going on which disadvantage small businesses and where they do not have access to a fair hearing in the tribunal. We have been lobbied quite heavily by landlord groups over the past few weeks to oppose Mr Moore's Bill. The landlords argued that Mr Moore's Bill is one-sided, but I would argue that the legislation at the moment is tilted in favour of landlords. This Bill is attempting to redress that balance and tilt the favour a little bit more fairly back the other way, towards small business. All this Bill is saying is that tenants who are subjected to excessive rents should have access to a fair hearing. Landlords should not have anything to fear if they are confident that they are not charging excessive rents.

In addition to supporting this Bill, the Greens have prepared an amendment which has been circulated and which I will move later. Mr Moore said in his tabling speech that he would be open to amendments to expand the range of people who could appear before the tribunal to include those who entered a lease before 1 January 1995. My amendment is the same as the amendment that was defeated in 1996, but I am giving the Labor and Liberal parties an opportunity to reconsider their position and to show their support for small business.

We welcome the Government's proposed amendments in relation to unconscionable conduct; but, of course, those amendments do not go far enough. Many issues have been forgotten, unfortunately, in the recommendations of the working group. The tenants group - CARTA, the Commercial and Retail Tenants Association - has made a number of recommendations which have not been included in the recommendations of the working party report, "Commercial and Retail Tenancy Legislation into the 21st Century", and working through those recommendations will be work for the next Assembly, and certainly will be something that the Greens will take up in the next Assembly.

There are a number of issues that that working party review did not look at adequately. One is the right to renew leases. For instance, where a landlord unreasonably refuses to renew a lease, a tenant should be able to obtain compensation. Compensation should also be made where a tenant's trade is interfered with. Another issue that was not looked at was applying the code to all leases - that is something which our amendment seeks to address - and independent valuation of rental where there is a dispute about rent. There are currently many conflicts of interest, so it is very important that independent valuations be made.

The Government is concerned to make the tribunal work more effectively, and obviously an important issue here is mediation. I was pleased to hear Mr Humphries talk about the need for mediation. We would also like to see that we have very well qualified mediators doing that work and, of course, it is important that that mediation work be adequately resourced.

MR WOOD (11.47): Mr Speaker, it has been the Labor Party's stated position that we would prefer to wait to see the report of the working party before voting and acting on any proposed changes to the existing legislation. That working party did take a long time. We have been aware that tenants do need greater protection than they have had in the past, and that delay has been a concern. Nevertheless, we now have that report. Only last week, I think, we received it on our tables. I have had a reasonable look at it in that time. As we consider the amendments, I will commit the Labor Party to take some action - perhaps tomorrow, if we can adjourn this debate - if they are not in conflict with the report of the working party. No government or parliament holds to reports in their entirety. They are there for our information and advice. We may go beyond anything a report says, or take very little notice of it, as people are prone to do.

This morning we have seen amendments, first from Mr Humphries and then from Ms Horodny, placed on our tables. I have had nothing but a fairly cursory glance at those, and then only the courtesy of Mr Berry's 40 minutes and a little extra time spent on that first debate this morning. I indicate at this stage that when we get past the

in-principle stage we will adjourn the debate on clause 1. That will give us all a chance to put these amendments together and see where they may take us. I think we will probably need today to do that. Certainly, I need today. We can come back to it tomorrow, or later this afternoon perhaps, if that can be arranged.

MR MOORE (11.49), in reply: Thank you, members, for indications of some support. I think the choice here is whether we protect or half protect small businesses. That is really what this is about. Each of us has been lobbied by small businesses that have been in strife, particularly over the issue of excessive rent. It tends to be the case, although not always, that excessive rents are being charged, particularly in our large malls. Indeed, that is not an unusual finding across Australia. The report of the House of Representatives Standing Committee on Industry, Science and Technology also found that excessive retail space was creating problems, and I will come back to that.

Ms Horodny said in her speech that, really, the landlords have nothing to fear by going to a tribunal. It is true that they have nothing to fear unless they are involved in the misuse of their market position. In fact, it was that committee of the Federal Parliament that addressed the issue of misuse of market power, and that is what we are dealing with. We are trying to find a way of getting a balance between those with power and those without power, and that power is about this misuse of market position. It seems to me, Mr Speaker, that the general Liberal philosophy, which looks at trying to avoid interfering in negotiations between parties, is one that fails when we look at abuse and misuse of market position. Invariably, when somebody has come to me complaining that their business is going to fold, it has been because of the market position that has been established by one of the major owners or leaseholders of these malls.

Mr Speaker, it is also an appropriate time for me to correct something that Mr Humphries said. He suggested that my legislation would apply only to tenants. If my legislation would apply only to tenants as far as disputes go, then all of section 6 applies just to tenants, all the things that he has already agreed with apply to tenants, because my amendment would insert a paragraph 6(1)(c) so that section 6 would read:

> Subject to section 8, this Act applies to the following disputes:
>
> (a) ... breach of a mediated agreement;
>
> (b) ... harsh and oppressive conduct ...

Then, what I would add as paragraph (c) is:

> a dispute about whether the rent is ... excessive;

That does not say that a landlord cannot bring to the tribunal a dispute about excessive rent. Of course, the landlord could. I concede that a landlord is unlikely to. Remember that we are not talking about whether it is excessive rent. We are saying "a dispute about excessive rent". A landlord may well decide that a dispute about excessive rent is appropriately decided in the tribunal.

Mr Speaker, there is no doubt that a great deal more needs to be done on this issue. Even when we debated the Tenancy Tribunal Act in 1994, members were aware that it was a step forward at that time. I sought to have a series of amendments passed. They were not passed by that Assembly. I sought to amend the legislation on another occasion. The amendments were still not passed. I seek, once again, to amend the legislation. Looking at the amendments that Mr Humphries has circulated, the effort I have gone to has meant that at least we have dragged the Liberal Party forward on this, kicking and screaming. We have dragged them forward to ensure that they can do something for small business, instead of continuing to be overly influenced by the very effective lobbying of the property owners group.

I accept, generally, that the amendments circulated by Mr Humphries are an improvement, but they are going only halfway. We do not want a halfway improvement. What we want to do is protect small business from the misuse of market position that is happening in Canberra. The choice you have today is whether you will protect small business, and support, particularly, my amendment to section 6 in the last clause headed "Disputes", to allow the tribunal to consider "a dispute about whether rent is, in the circumstances, excessive". We are not doing anything else. All we are doing under this legislation is saying that a tribunal can consider the issue. Included in the amendments circulated by Mr Humphries is the proposal to oppose that clause. I realise that they will go halfway and talk about unconscionable conduct and a series of other things - the halfway measures - but we have the opportunity here to put the balance right. You either take that opportunity now or accept that when you have the opportunity, yet again, to protect small business in this Territory you are not taking it.

I have heard the Chief Minister say again and again that she cannot turn her back on jobs; that she cannot turn her back on small business. The Chief Minister knows better than anybody else, because she has been in the position of being a tenant under these circumstances. No doubt she has spoken to a series of tenants, as I have. I do not even know who her landlord was. I know that there are some fantastic landlords around the ACT who look after their tenants extremely well, even when a tenant is unable to pay for some time. They carry them. There are some great landlords around. We know that.

We also know that there are some very harsh landlords, particularly in the big malls around Canberra. We have spoken to people, again and again, who have gone out of business or, at the very least, have gone very close to the wall because of the misuse of power and because of the misuse of market position. That is what this debate is about, and the Liberal Party and the Labor Party know very well the power of market position. I hope that when, over the next few hours, Mr Wood looks at the working party report he will also look - I am happy to provide him with a copy - at the fairly recent report of the House of Representatives Standing Committee on Industry, Science and Technology about finding a balance, because I think that also identifies the sort of action that we should be taking in these circumstances.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clauses 1 to 3, by leave, taken together

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

TERRITORY OWNED CORPORATIONS (AMENDMENT) BILL (NO. 4) 1997

[COGNATE BILL:

ANNUAL REPORTS (GOVERNMENT AGENCIES) (AMENDMENT) BILL 1997]

Debate resumed from 3 December 1997, on motion by **Mr Whitecross**:

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 Annual Reports (Government Agencies) (Amendment) Bill 1997? There being no objection, that course will be followed. I remind members that in debating order of the day No. 2 they may also address their remarks to order of the day No. 3.

MRS CARNELL (Chief Minister and Treasurer) (11.58): Mr Speaker, the proposed amendments to the TOC Act seek to amend section 22 of the Act. This is to change the deadline for the provision of annual reports to the voting shareholders. The change reduces the time available to TOCs to prepare their annual reports, making their timeframe slightly shorter than private sector corporations in this regard. Members should note that this shorter timeframe does come at a cost, which may lessen the competitiveness of TOCs in relation to their private sector counterparts. Having said that, Mr Speaker, the Government acknowledges that this timeframe is consistent with the Financial Management Act and the Financial Management Act deadline for the preparation of whole-of-government annual consolidated financial statements. The amendments also go part of the way to enabling TOC annual reports to be available for the Estimates Committee. For these reasons, the Government supports the proposal to amend the TOC Act.

However, Mr Speaker, if the only intent of the legislation is to enable reporting in time for the Estimates Committee, the TOC Act is the only Act that needs to be amended. The TOC Act should be amended to require the submission of annual reports to the responsible Minister within 10 weeks after the end of the financial year. Such an amendment is consistent with section 7 of the Annual Reports Act and satisfies the intention of a shorter reporting timeframe.

Whatever the outcome of this debate, Mr Speaker, there is a need to ensure consistency in tabling requirements. Under Mr Whitecross's Bill, the tabling provision in section 22 of the TOC Act allows Ministers to table annual reports within 15 sitting days of receipt. Because this provision is unchanged, there is an inconsistency with the tabling provisions in the Annual Reports Act, which specifies six sitting days from receipt by the Minister. Leaving the TOC Act unchanged in this respect could result in the annual reports actually being tabled after the Estimates Committee hearings. To ensure consistency, then, subsection 22(4) of the TOC Act should be the same as the Annual Reports Act and should require the Minister to table such a report within six sitting days of receipt. Accordingly, Mr Speaker, I would like, at the appropriate time, to table amendments to address these inconsistencies.

Members should be aware that this Government agreed in 1996-97 that Ministers would table all reports presented under the Annual Reports Act early, that is, by the second sitting week in September. This ensures that reports are tabled by the time the Estimates Committee reconvenes in spring. However, members would be aware that including TOCs in this requirement could result in these reports being tabled in the Assembly before they are presented at an annual general meeting of TOCs' shareholders. While I am sure that our TOC executives will seek to avoid this occurrence, it is still possible that it may eventuate.

Mr Speaker, the second Bill seeks to amend the Annual Reports Act. The amendments to the Annual Reports Act appear to be aimed at giving greater consistency between the annual reports of TOCs and those of other Territory agencies. This consistency is achieved at the cost of additional reporting requirements that do not apply to the private sector. Greater consistency through additional reporting does come at this time at a quite substantial cost and is also not necessarily the most important consideration.

Through our program of financial management reform, my Government has shown consistent commitment to achieving greater efficiency in government and better use of public sector resources. We have, to a great extent, achieved this result. My Government has also shown its commitment to having less red tape encumbering private sector organisations, allowing them also to operate with greater efficiency. It is inconsistent, Mr Speaker, to now impose additional requirements at the cost of greater efficiency, and it does not make sense to require our TOCs to report as though they were the same as any other government agency. For example, more onerous reporting requirements apply to administrative units than to the reports of independent statutory appointees. The latter entities mainly report on the exercise of their statutory functions over the year. It simply does not make sense to apply the same rules across the board irrespective of what the different entities actually do.

If these amendments are agreed, the particular role of TOCs, including their role in the marketplace, should be taken into account in devising the reporting requirements to be set in the annual reports directions. The role of TOCs is different from that of other government agencies, due to the commercial nature of these activities. Their creation as

TOCs is intended to enable them to compete and operate as private sector organisations do in a very competitive market, Mr Speaker. We would send mixed signals to our TOCs if we were to burden them with additional requirements that are inconsistent with the private sector. It is for this reason that TOCs have, up until now, been excluded from the requirements of both the Financial Management Act 1996 and the Annual Reports (Government Agencies) Act 1995.

Members should note, Mr Speaker, that TOCs must already comply with the extensive requirements of the Federal Corporations Law. In addition, TOCs are bound by the provisions of the Public Interest Disclosure Act. Reporting and exposure of wrongdoing and corrupt conduct is so important in the public sector that these additional requirements rightly apply. I do not believe that it is the same argument for other reporting requirements.

For the above reasons, Mr Speaker, the Government will duly review the specific reporting requirements of other agencies before applying any additional disclosure requirements upon our TOCs through the Chief Minister's annual reports directions. My Government remains committed to ensuring that specific reporting disclosures will be imposed only where the benefits of the information outweigh the costs of obtaining it. Mr Speaker, I think that is the message that members must decide on when they vote on the second Bill, the Annual Reports Bill. In this case, are we asking for information just for the sake of it, or are the costs of obtaining it - and they will be quite significant - worth it in this case, taking into account that the whole point of setting up TOCs is to allow them to compete with private sector entities in a deregulated market, such as the electricity market? I am sure that none of us would want to disadvantage ACTEW in that market and this, potentially, would do that. So we have to make sure that the extra information that we are requiring is of some use. At this stage I have to say that I have not been convinced that it is of any particular use. I think the points I make about the Chief Minister's annual reports directions need to be taken into account as well.

MR MOORE (12.06): Mr Speaker, I rise to support this legislation. It seems to me that there has been some concern in the Assembly for some time that a method of ensuring less accountability is to hive off a part of the ACT administration into a Territory-owned corporation and then apply less stringent standards to that corporation - and we have just heard the Chief Minister doing it - in the name of comparing the Territory-owned corporation to private business. A Territory-owned corporation is not, and should never be, exactly the same as a private business. I accept it is also true to say that they ought not be exactly the same as a government department. So, what we are trying to do is find the appropriate balance between those two. It seems to me that the amendments that Mr Whitecross has proposed to these two pieces of legislation do find that balance.

There are amendments circulated by Mrs Carnell. Her second amendment, in particular, is very astute in ensuring that we do have consistency across the Assembly in how these things operate. I think that is sensible. I am likely to oppose the first amendment because I accept the way that Mr Whitecross has set up his amendment in referring it back to the other piece of legislation to get a better consistency there.

MS TUCKER (12.08): The Greens also will be supporting this Bill. We have been consistently concerned about the accountability of Territory-owned corporations. There have been statements made in this house on a couple of occasions that seem to imply that there is indeed quite a distance put between the operations of Territory-owned corporations and government. We have stressed on a number of occasions that government does have a responsibility for the operations of Territory-owned corporations. Therefore, their reporting mechanisms should be much closer to those reporting mechanisms of government agencies. It seems to me to be a very sensible move. The Greens will not be supporting the Government's amendments Nos 1 and 3, but we will be supporting amendment No. 2.

MR WHITECROSS (12.09), in reply: Mr Speaker, I thank members for their support in relation to the two Bills. There are a couple of issues which were raised in the course of the debate and which I do want to address, just to put on the record the Labor Party's views in relation to these matters. I acknowledge the Government's support for the Territory Owned Corporations Bill, although they have circulated some amendments. Amendments Nos 1 and 3 are really consequent upon the Government's decision to oppose our Bill to amend the Annual Reports Act, the second Bill in the package. I will be opposing them because I believe we should be going with our proposed Annual Reports (Government Agencies) (Amendment) Bill. The Government's second amendment is a sensible amendment. It avoids contradictory provisions in the Territory Owned Corporations Act compared with the Annual Reports (Government Agencies) Act and therefore is a very sensible amendment. I thank the Government for bringing it forward to clarify what otherwise would have been an unfortunate contradiction.

Mr Speaker, in relation to the Government's more substantive criticisms of this approach, there are a couple of things I need to say. The Chief Minister, in her remarks, said that imposing the requirements of the Annual Reports (Government Agencies) Act on Territory-owned corporations would come at the cost of more onerous requirements under the Corporations Law. This was an argument they also advanced in the Government response to the Estimates Committee. However, Mr Speaker, the argument does not hold up, because section 16 of the Annual Reports (Government Agencies) Act makes it quite clear that the requirements of this Act are in addition to the requirements of other law. So, Territory-owned corporations will still have to comply with the Corporations Law reporting requirements.

Mrs Carnell: That is what I said, actually, in my speech.

MR WHITECROSS: So this does not come at the cost of more onerous requirements under the Corporations Law.

Mrs Carnell: No, I did not say that.

MR WHITECROSS: It is in addition.

Mrs Carnell: I just said that.

MR WHITECROSS: The Chief Minister interjects across the table to say that she agrees that that is actually the case.

Mrs Carnell: That is what I said in my speech.

MR WHITECROSS: I welcome that. If I misheard the Chief Minister during her speech I apologise, but that is what I heard her say. I wanted to make sure it was clear to members in this house when they come to vote that these requirements are in addition to the Corporations Law requirements. Mr Speaker, there are requirements under the Corporations Law, but they are requirements which relate to the interests of shareholders in companies. They are onerous requirements and they are important requirements, but they are requirements which relate to the interests of shareholders in companies.

As Mr Moore said in his remarks, and as I said when I presented these Bills last week, there are additional issues relating to Territory-owned corporations that are different from other corporations because they are publicly owned. The additional reporting requirements which I would envisage under this Act are reporting requirements which go to the public interest and to the right of members in this place and the community as a whole to know how Territory-owned corporations are serving the public interest. I think it is only right and proper that there be some requirements on Territory-owned corporations in addition to the requirements of the corporations law.

Mrs Carnell in her remarks made what could be regarded as a slightly disturbing reference to the fact that these additional requirements will impose additional costs on Territory-owned corporations. If in saying that Mrs Carnell is saying that the motivation for shifting government activities from government departments or statutory authorities to Territory-owned corporations was to reduce the cost of reporting requirements to the Assembly, I would think that would be a very worrying suggestion. I hope that that is not what the Chief Minister meant.

Mrs Carnell: It is just because they have to comply with both pieces of legislation.

MR WHITECROSS: Mr Speaker, if what the Chief Minister is saying is that being accountable to the Assembly costs money, that is a cost which we believe is an investment that is worth making.

Mrs Carnell also made the point that this would leave Territory-owned corporations at a competitive disadvantage with private businesses. It is certainly the case that the competition of government companies and instrumentalities with private companies and private firms is a complicated area. It is an area which is dealt with in some detail in competition policy and in other agreements between the States in relation to taxation arrangements, et cetera. It is a complicated area - there is no doubt about that - but it is not simply a case of saying we are going to treat Territory-owned corporations as if they were private companies. It is not that simple. There is a very large number of differences between Territory-owned corporations and private companies. Some of those differences work to the advantage of Territory-owned corporations, and some work to their disadvantage. One of the intentions of competition policy, Mr Speaker, is to ensure that those advantages and disadvantages are weighed up in looking at Territory-owned corporations. So I do not believe that the existence of difference on its own is an argument against going down this path.

Finally, Mr Speaker, the Chief Minister referred to some potential problem in Territory-owned corporations having the same requirements as government departments. If we look at the Annual Reports (Government Agencies) Act, it talks about the annual reports of chief executives and the annual reports of public authorities, which, of course, includes Territory-owned corporations, statutory officeholders and authorities, tribunals, commissions, councils, boards, et cetera. It seems to me that the Annual Reports Act already acknowledges the different reporting requirements of different types of instrumentalities, authorities and government organisations.

The Labor Party does not seek to annihilate those differences. What the Labor Party seeks to do is to ensure that, in coming under the purview of the Annual Reports (Government Agencies) Act, the Government has to set out in instruments which are tabled in this place what the reporting requirements are for different kinds of Territory instrumentalities, public authorities or government departments. In that way we are able to see what reporting requirements are allowed. We are able to debate them if we seek to debate them. It puts these things out in the open, rather than being left up to the judgment of individual boards and individual chief executives of particular Territory-owned corporations, or even of the shareholders of those corporations.

Mr Speaker, if we look at the annual reports that were presented to this parliament and scrutinised by the Estimates Committee this year, we see quite significant differences in the standard of reporting from different Territory-owned corporations. We got much fuller reporting from ACTEW than we did from Totalcare or ACTTAB. In the case of Totalcare, apart from their failure to comply with the requirements of the FOI Act and possibly the Public Interest Disclosure Act, the fact is that you would not have got much idea of what Totalcare had been doing with the taxpayers' $25m just from reading the annual report. If you did not have some general knowledge of what Totalcare was doing, you would be very hard pressed to figure it out from the report. You certainly were not given information in relation to a lot of matters considered by people in this place, and in the past, to be important public interest issues that ought to be considered, such as how the activities of the corporation impact on the Royal Commission into Aboriginal Deaths in Custody, or what they are doing about fraud prevention, or any of a number of other issues that are dealt with in other people's annual reports.

Mr Speaker, I think it is appropriate that Territory-owned corporations do make those kinds of reports. In the past it appeared to be good enough for ACTEW Corporation to make those kinds of reports. I think that to assist boards, as much as anything else, it would be appropriate for there to be formal guidelines under the Annual Reports (Government Agencies) Act in the future. That is why we are going down this path. I think it is a moderate and sensible amendment. There is plenty of scope for the Government to consider any kind of commercial concerns that they have and to deal with those concerns; but they will have to deal with them in an open way under the scrutiny of the Assembly, not in private discussions between them and members of the board, or them and the chief executive of the Territory-owned corporation.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MRS CARNELL (Chief Minister and Treasurer) (12.19): Mr Speaker, I move amendment No. 1 circulated in my name, which reads:

> Page 2, line 3, clause 4, paragraph (a), omit "the prescribed time" substitute "within 10 weeks".

I spoke about this during my initial speech.

Amendment negatived.

MRS CARNELL (Chief Minister and Treasurer) (12.20): Mr Speaker, I move amendment No. 2 circulated in my name. Again, I spoke about this previously. It is about changing "15 days" to "6 days" to make sure that reports are presented to the Assembly in an appropriate timeframe. The amendment reads:

> Page 2, line 5, clause 4, after paragraph (a), insert the following paragraph:
>
> "**(ab)** omitting from subsection (4) '15' and substituting '6'.".

Amendment agreed to.

MRS CARNELL (Chief Minister and Treasurer) (12.20): Mr Speaker, I move amendment No. 3 circulated in my name, which reads:

> Page 2, lines 5 to 9, clause 4, paragraph (b), omit the paragraph.

Amendment negatived.

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

Bill, as amended, agreed to.

ANNUAL REPORTS (GOVERNMENT AGENCIES) (AMENDMENT) BILL 1997

Debate resumed from 3 December 1997, on motion by **Mr Whitecross**:

> 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.

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1997 AND MOTOR TRAFFIC (AMENDMENT) BILL (NO. 6) 1997
Paper and Statement by Speaker

MR SPEAKER: Following the introduction of the Motor Traffic (Amendment) Bill (No. 6) 1997 and the Residential Tenancies (Amendment) Bill 1997, I asked the Clerk for advice as to whether the two Bills contravened standing order 136. Standing order 136 provides that the Speaker may disallow any motion or amendment which is the same in substance as any question which has been resolved during the current calendar year. I table the Clerk's advice.

Having considered that advice, I am ruling that the Residential Tenancies (Amendment) Bill 1997 is in order, but that the Motor Traffic (Amendment) Bill (No. 6) 1997 infringes standing order 136 and is therefore out of order.

PRIVATE MEMBERS BUSINESS - CONSIDERATION
Suspension of Standing Order 136 -

Motion (by **Mr Osborne**) agreed to, with the concurrence of an absolute majority:

> That standing order 136 be suspended to enable the Assembly to consider the order of the day, private Members' business, relating to the Motor Traffic (Amendment) Bill (No. 6) 1997 in accordance with the *Notice Paper***.**

Sitting suspended from 12.23 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Chief Minister - Motor Vehicle Accident

MR BERRY: My question is to the Chief Minister. Chief Minister, yesterday you came into the Assembly and made a statement in response to a question concerning your motor vehicle accident, which occurred as you were returning from the Chief Minister's cricket match at the Madew winery. Last night Capital television ran a story with witnesses to your motor vehicle accident. Chief Minister, a number of serious questions were raised in the news item. In particular, the news item contained reference to erratic driving on your part, no other vehicle contributing to the accident and accusations of the smell of alcohol. How do you reconcile the inconsistencies between your statements and those of the witnesses?

MR SPEAKER: Chief Minister, I do not really believe that you need to make any comment in relation to what may have appeared on a television show. You gave an explanation yesterday.

Mr Berry: I raise a point of order, Mr Speaker. I refer you to the uncorrected proof copy of *Hansard*, which clearly sets out the statement which the Chief Minister made in this place yesterday in relation to this matter. That was a statement to the Assembly and therefore a matter of public record and a matter with which the Chief Minister is publicly associated. Last evening there were reports contrary to the statements made by the Chief Minister and I think the Chief Minister is required to respond to those reports if asked a question in relation to the matter.

MR SPEAKER: There were contrary reports, and there were imputations and inferences; is that correct?

Mr Berry: No, Mr Speaker.

MR SPEAKER: In that case they are out of order under standing order 117.

Mr Berry: Mr Speaker, you are struggling. The imputations, epithets and so on that you speak of are only those which occur in this place. The point that I am making is in relation to a television report of the Chief Minister's activities and therefore could not be ruled out on those grounds. Mr Speaker, I urge you to withdraw in relation to that matter and allow the Chief Minister to answer the question.

MR SPEAKER: I am not in a position to judge the veracity or otherwise of the television report or indeed - - -

Mr Berry: I raise a point of order. Mr Speaker, you are not asked to judge the veracity or otherwise. The Chief Minister has been asked to do that. She has already attached herself to the report in a statement in this place which is on the *Hansard* record. She ought to be responding to the question to tell this Assembly why the reports outside this place differ from the reports inside it, in order that we can determine that the Chief Minister is - - -

MR SPEAKER: How would she necessarily know what the reports were?

MRS CARNELL: Mr Speaker, I do not believe that this is in line with standing orders, but I am prepared to make a statement.

MR SPEAKER: It is not in line with standing orders.

MRS CARNELL: It is not in line with standing orders; but I am happy to make a statement on the issue if everybody in the house is happy for me to do that, but not answer the question. Mr Speaker, you have ruled the question out of order, but I am happy to make a statement on the issue.

MR SPEAKER: I will confer with the Clerk.

Mr Berry: Mr Speaker, if the Chief Minister is not prepared to answer the question, she should refuse - - -

MR SPEAKER: Order! I am conferring with the Clerk. The Clerk advises me that if leave is granted by the Assembly the Chief Minister may make a statement. If leave is not granted, then of course she will not make a statement.

Leave granted.

Mr Berry: I would prefer it, Mr Speaker, if she answered the question. She has refused - - -

MR SPEAKER: I would suggest to you that you resume your seat, Mr Berry. Leave has been granted for you to make a statement, Chief Minister. You have the indulgence of the Assembly, Chief Minister.

MRS CARNELL: Mr Speaker, I would not like to answer a question that you had ruled out of order. It is interesting that Mr Berry should raise the report run on Capital TV last night. He may or may not be aware that the anonymous young men featured in the report as alleged eyewitnesses to Sunday's accident have been touting their story around most of the media outlets in town over the last three days, offering it to the highest bidder. Indeed, I have been informed today that another witness who was there just minutes after the accident saw these young men begin calling media outlets at the accident scene, trying to sell their story.

They obviously saw the chance to make some cash out of my misfortune, which I think puts them in about the same category as those opposite, who have spent the last week trying to make political mileage out of a car accident. I think this is atrocious behaviour. To my knowledge, Capital TV is the only outlet so far suckered into the scam. A number of other media outlets have displayed higher ethical standards than Capital TV, turning down the demand for payment. The *Canberra Times*, one of the first media outlets approached, as I understand it, have made it clear that they are not interested in paying for alleged eyewitness accounts.

I would like to place on record my thanks to the people who did stop at the accident scene on Sunday and did offer assistance, asking for nothing in return. They showed genuine concern for my welfare, and it is a reflection of the strong community that we have here in Canberra that people are willing to stop and lend assistance at an accident. A number of them have contacted my office in the past few days expressing concern about how I was faring and expressing outrage at the way the story has been treated by some sections of the media, notably Capital television.

Mr Speaker, ethics are important in politics and are important in the media. In my view, the police have the task of investigating Sunday's accident, and that is exactly what they are doing. I understand that they are taking statements from a number of witnesses, and certainly those eyewitnesses who contacted my office have been advised that they should be willing - and, I have to say, have been willing - to provide a statement to the police. It seems that Capital TV did not ask why the two young people featured last night would be demanding money for their story if they were indeed telling the truth.

Mr Speaker, do people usually ask for money to put forward a true account of an incident? Why would they require anonymity if they had nothing to hide? It also seems that they did not think to check with the police to see whether the story matched other eyewitness accounts, or even whether other eyewitnesses had provided a statement to the police.

But, most curious of all, it seems that they accepted without question the claim that both I and the car carrying these witnesses were travelling at 120 kilometres an hour when the accident happened. Mr Speaker, it must mean that the people involved were speeding as well. Mr Speaker, I count myself pretty lucky to have walked away from the accident, but I doubt whether I could have walked away from an accident of this nature if I had been travelling at 120 kilometres an hour. I also suspect that the air bag might have been activated if I had been travelling at 120 kilometres an hour, and it was not. Mr Speaker, the interesting thing about this is that I understand that another eyewitness contacted Capital television last night before they put the story to air and gave a very different account. The claim simply does not add up. For Mr Berry to perpetuate these bogus claims simply indicates that he has even fewer ethics than the television station that paid for the story.

Mr Berry: I raise a point of order, Mr Speaker. I heard an imputation that I had no ethics. Would you ask that that be withdrawn.

MRS CARNELL: Actually, Mr Speaker, I did not say that. I said that Mr Berry had fewer ethics than the television station that ran the story. That could be anything.

MR SPEAKER: True.

Mr Berry: Mr Speaker - - -

MR SPEAKER: You did not say whether that was good, bad or indifferent.

Mr Berry: Mr Speaker, a new low standard has been set.

MR SPEAKER: No, I do not think so, Mr Berry.

MRS CARNELL: Mr Speaker, I am happy to withdraw if there was any imputation.

MR SPEAKER: Thank you. Let us get on with some business.

Offshore Betting Agency

MR OSBORNE: My question is to the Chief Minister, Kate Carnell. Chief Minister, I would like to draw your attention to an article from the *Sun-Herald*. I will quote just a couple of paragraphs from the article Chief Minister. It starts out by saying:

> Bob Hawke and three business associates will open an offshore betting agency in Vila, capital of the Pacific tax haven Vanuatu, later this month.

Does that sound familiar? It goes on:

> Their company ... is planning to attract mainly Asian punters to bet on Australia's horse racing fixtures.

Does that sound familiar? I see the nod again. The article continues:

> The shareholders are Melbourne businessman Cornelius (Con) McMahon -

a familiar name -

> former South Australian bookmaker Michael Dowd, financier Michael Bastian and the former Labor prime minister.

There is a different name to this company, Mrs Carnell. This company is called Asia Pacific Totalisators. The then Minister in Queensland said that the Queensland racing industry would be the big winner. Further on, the article talks about the VITAB situation and it says:

> The Pearce Inquiry recorded no evidence of criticism against the directors of APT who were involved in the ACT-TAB arrangement.

Chief Minister, this afternoon I have been in contact with the office of the Queensland Racing Minister, and Mr Cooper's office has confirmed that the company he knows as Asia Pacific Totalisators, which I prefer to call the son of VITAB, has a contract with the Queensland TAB and is currently operating. Mrs Carnell, do you intend to warn Mr Cooper, the Minister in Queensland, of the potential dangers posed by some people in this organisation?

MRS CARNELL: I thank Mr Osborne for this question. I am aware of the article in the *Sun-Herald* published in February 1996 referring to a new agreement between the Queensland TAB and a company known as APT, son of VITAB. I am also aware that the agreement, according to the article, was brokered between APT and the then Racing Minister, Bob Gibbs, who happened to be a member of a Labor government. It is hard to believe, is it not?

My first reaction upon reading this article again today when my staff brought it to my attention was, "Oh, no! They are at it again". Another Labor government decided to jump into bed with a Vanuatu-based offshore betting agency. Is it not interesting that all the names mentioned in the newspaper article - Con McMahon, Michael Dowd, Michael Bastian and, of course, Bob Hawke - are the same ones who were associated with VITAB? You would have thought that these people would have learnt from their first time around, but it seems that somebody else in the Queensland Labor Party thought that there might be money for jam to be had or that this was going to be a great deal. Mr Osborne is right. This is something that we have heard before.

I was interested in the quote from the Queensland TAB boss that the Pearce inquiry recorded no evidence of criticism against the directors of APT who were involved in the ACTTAB-VITAB agreement or arrangement. I wonder what kind of probity checks were undertaken and whether the company searches that were done came up against all of the same brick walls that we found when we tried to get to the bottom of the VITAB corporate structure.

Mr Speaker, in answer to Mr Osborne's question, yesterday I signed letters to each of Australia's Racing Ministers attaching a copy of the Burbidge report and highlighting the key findings. I am sure that the current Queensland Government and its Racing Minister, Russell Cooper, will be interested to read the document. I am advised that the arrangement with the company known as Asia Pacific Totalisators is still in operation in Queensland, as Mr Osborne said. I can obviously make no comment on the arrangements that may have been made over the latest deal involving a Vanuatu-based connection, but I sincerely hope that further investigations are now about to be undertaken. Members will be aware that Mr McMahon was the subject of an adverse finding in the Burbidge report, so I am sure that that issue, at the very least, will be a cause for consternation in Queensland.

I have to wonder, though, Mr Speaker, why two Labor governments ended up with deals with two business consortiums of the same kind, or a single consortium, as it may have been. Could Mr Hawke's involvement have anything to do with it? After all, I remember Mr Berry giving some evidence to the Pearce inquiry which might shed some light on the matter. Let me quote Mr Berry's statement to the Pearce inquiry:

> Mr Hawke's involvement and the enthusiasm of the ACT board suggested the proposal was entirely respectable and of some potential advantage to the Territory.

Mr Speaker, I think that statement speaks for itself. Don't you?

MR OSBORNE: I ask a supplementary question. Thank you for that, Mrs Carnell. Mrs Carnell, further to that, I am aware that in the Burbidge report the former Prime Minister, Mr Bob Hawke, was cleared by Mr Burbidge. However, what is clear is that Mr Hawke pocketed between $300,000 and $400,000 as a result of a deception organised by other people. Will you also write to Mr Hawke, send him a copy of the Burbidge report and explain to him that it appears that he received money as a result of a fraud committed upon the ACT taxpayer, and will you ask him to repay the money? I believe, Chief Minister, that Mr Hawke has a moral obligation to do so.

MRS CARNELL: Thank you very much, Mr Osborne. Mr Osborne, I think that is an extremely appropriate approach. I will be writing to Mr Hawke. Mr Hawke, as a previous Labor Prime Minister of this country, I am confident, would be aware that ripping off the taxpayer was not a sensible approach or not an acceptable approach morally. Mr Hawke would appear, at least from this deal, to have got something like $360,000 from ACT taxpayers. I am confident that when Mr Hawke becomes aware that that was as a result of fraud, deception, maladministration and incompetency - particularly the first two - he will be very happy to pay back the $360,000 to ACT taxpayers.

Of course, Mr Speaker, that would be the only moral approach that anybody in the sort of position that Mr Hawke is in would take. I am confident that everybody in this house, if they found they had profited from a deal that turned out to be fraudulent, would undertake to pay the money back. I would be very pleased if Mr Hawke would take that sort of moral approach. As Mr Hawke was a Labor Prime Minister, I would also be pleased if Mr Berry, as a fellow Labor member, would join with me in asking Mr Hawke to pay that money back. Mr Speaker, I am sure that Mr Berry would not accept a situation where - - -

Mr Osborne: Co-sign the letter.

MRS CARNELL: I think we should co-sign the letter. I think that somebody of Mr Hawke's financial background and political background would accept that a letter signed jointly by the Leader of the Opposition, the Labor leader in the ACT, and by me would need to be responded to.

Emergency Services - Motor Vehicle Accidents

MR WHITECROSS: My question is to the Attorney-General and our Minister for Emergency Services. Minister, can you outline the guidelines which apply to Emergency Services personnel such as ambulance officers and Fire Brigade officers attending the scene of a motor vehicle accident, in relation to what advice they can give to persons involved in the accident and witnesses to the accident? In particular, are Emergency Services personnel allowed to advise people on whether they should stay at the scene of the accident or not? What advice can they give and in what circumstances?

MR HUMPHRIES: Mr Speaker, what we clearly have here is another low and grubby attempt by those opposite, for whom no piece of dirt, no piece of mud, is too dirty to pick up and hurl - - -

Mr Berry: Mr Speaker, I raise a point of order. Mr Humphries was not asked for a description of the question. He was asked to answer a question.

MR HUMPHRIES: Mr Speaker, for those opposite to ask questions of that kind indicates very clearly their complete contempt for the decency and fairness which this process demands. Obviously, the kangaroo court of Labor has already decided what it thinks about the circumstances of the Chief Minister's unfortunate accident on Sunday. Under the guise of asking questions they are prepared to condemn her and to make accusations about what is supposed to have occurred.

Mr Berry: Mr Speaker, a question that was rather specific in its terms was put to the Deputy Chief Minister. Mr Humphries may have a view about the question, but it would seem more appropriate in terms of the standing orders if Mr Humphries could be directed to answer the question.

MR SPEAKER: He can certainly answer questions relating to his portfolio, but of course that applies only to the ACT.

MR HUMPHRIES: Mr Speaker, commentary on the nature of the question has never been out of order in this place, and it never will be, I suspect.

MR SPEAKER: No, indeed. I think it was relating to the ACT Emergency Services, Mr Humphries.

MR HUMPHRIES: That is right, Mr Speaker. Mr Whitecross's question is contemptible in its nature, and for that reason I do not propose to answer it.

MR WHITECROSS: I ask a supplementary question, Mr Speaker.

MR SPEAKER: I am trying to work out how you can ask a supplementary question if the question has not been answered.

MR WHITECROSS: I can assure you that I can.

MR SPEAKER: You can try.

MR WHITECROSS: I will not use words like "cover-up", even though they spring readily to mind. Minister, has an investigation - - -

Mr Humphries: I raise a point of order, Mr Speaker. You ruled on the term "cover-up" this morning, I believe, and I would ask that the same ruling be made now about the use of that term.

MR WHITECROSS: Mr Speaker, I said I would not use the word "cover-up" and I have not. Why would I use the word "cover-up" because the Minister refused to answer the question? Mr Speaker, I have a supplementary question, though.

Mr Humphries: Mr Speaker, may I press my point of order? You very clearly ruled this morning that that term was unparliamentary.

MR SPEAKER: I did.

Mr Humphries: The fact that it has been thrown around in this way does not detract from its - - -

MR SPEAKER: Objection has been taken. Please withdraw.

MR WHITECROSS: If Mr Humphries thinks that I was implying that he was covering up, I withdraw the imputation. Minister, can you answer this question? Has an investigation been conducted to ascertain whether the guidelines relating to the conduct of Emergency Services personnel at motor vehicle accidents were followed by the ambulance officers who attended the accident involving the Chief Minister on the Federal Highway on Sunday?

MR HUMPHRIES: Mr Speaker, since my answer made no reference to guidelines of any kind, I do not see what the question has to do with the question previously answered.

Mr Hird: "Cover-up" brings to mind overtime.

Mr Whitecross: I raise a point of order, Mr Speaker. You have always ruled that people cannot say that Mr Humphries was covering up, even though we all know he was; so can you rule Mr Hird's reference to a cover-up out of order?

MR SPEAKER: Withdraw, Mr Hird.

Mr Hird: I withdraw.

Mr Humphries: Mr Speaker, I would like Mr Whitecross to withdraw.

MR SPEAKER: Withdraw, Mr Whitecross.

Mr Whitecross: Mr Hird has withdrawn his imputation against the Minister, so I withdraw mine.

Racing - Betting Inducements

MR HIRD: My question is to the Chief Minister in her capacity as a voting shareholder of ACTTAB. I refer to claims made by the Leader of the Opposition, Mr Berry, that the practice of offering inducements in the ACT racing industry began during the term of this Government.

Mr Berry: No, I never said that.

MR HIRD: Chief Minister, is this claim true?

Mr Berry: No, it is untrue.

MRS CARNELL: I do thank Mr Hird for the question. Mr Berry came in here this morning and stated that the practice of inducements - - -

Mr Berry: It started in 1994.

MR SPEAKER: Mr Berry, you were out for two days last time. If you continue to interject, I can remove you for the rest of this Assembly, which would be a most ignominious end.

Ms McRae: Mr Speaker, do we take it from that that you have actually made a ruling that no-one is allowed to interject? I did not actually hear that ruling on a point of order. Would you please rule.

MR SPEAKER: I am tired of constant interjections during question time. Continue, Mrs Carnell.

Ms McRae: You are tired, are you, Mr Speaker? Is that what the problem is? Mr Speaker, really!

MR SPEAKER: You may be running the risk too, Ms McRae. Continue, Chief Minister.

MRS CARNELL: Mr Speaker, I did not think you had to rule against interjections. I thought the standing orders did that. But far be it from me to make a comment.

Mr Hird: You are quite right.

Mr Whitecross: I raise a point of order, Mr Speaker. Mr Hird has interjected. Are you going to rule him out of order?

MR SPEAKER: Sit down.

MRS CARNELL: Mr Berry came in here this morning and stated that the practice of offering inducements, as identified in the Burbidge report, began under this Government. He came in here and accused me of condoning this practice. Mr Speaker, I have very bad news for Mr Berry, news that is going to come as a bit of a shock to him. For Mr Berry's benefit, inducements were being offered by the Racing Club during the term of the previous Government. I will say that again so that Mr Berry can become very clear on this issue. Inducements were being offered by the Racing Club while he was the relevant Minister.

Government members: Oh!

Ms McRae: Mr Speaker, I rise on a point of order. Have you or have you not ruled on interjections? May I just have a clarification on that?

MR SPEAKER: All I heard was a bellow, something like a bull bellowing. I suggest that everybody stop playing games. This is a serious time, and you should have a little more respect for your constituents.

MRS CARNELL: Thank you very much, Mr Speaker; I could not agree with you more. When the Leader of the Opposition went on radio this morning, what did he say? To quote Mr Berry on ABC radio, he said:

> Inducements were the issue of concern for TABs around the country and there were written undertakings from the VITAB group that there would be no inducements. They never occurred in the period of the Labor Government as far as I can make out.

He went on to say later in the interview:

> ... inducements, which were the root cause of all the difficulties in relation to VITAB, occurred under the Carnell government and again put at risk our link with the pool in Victoria.

Mr Speaker, inducements were being offered while Mr Berry was the Minister. It does not matter whether he did or did not know about them. Now he is saying that he did know about them, when he said this morning, "Yes, I know that; I know that". It is very interesting. They were occurring, and they were occurring around Australia, and according to Mr Burbidge's report they were not illegal. So Mr Berry's claims, both on radio and in this house, were wrong.

What were the inducements, and why were they being offered? I am informed that typically the inducements were in the form of paying for air fares, accommodation, taxi fares or whatever was needed to have a major punter come to Canberra racecourse and bet through the facilities there rather than go elsewhere. They were offered, I am advised, because it was common practice around Australia, and the Racing Club was simply keeping up with its competitors. Is it not interesting that Mr Burbidge found exactly the same thing? Mr Berry must now accept that under his Government and, more importantly, during the time that he was the responsible Minister this practice was occurring.

Let us look at what I did as Chief Minister when I was advised of the practice. I commissioned an independent report, and when the report was received I wrote to the racing codes and requested that the practice cease. And I am advised that the practice has stopped. I took action before this became a public issue, not after it became a public issue, not after we had had months of questions in question time. I took action before this matter became public. In other words, I acted as any responsible Minister should. I took the warnings seriously, acted upon them and took decisive action. What did Mr Berry do when he was Minister and inducements were being offered? Obviously, he did nothing. Compare his approach with that taken by me.

Mr Speaker, I want to come back to what Mr Berry said on radio this morning, because it seriously concerns me, and it should be a worry to every member of the Assembly. Mr Berry said that the root cause of all the difficulties with VITAB was inducements. Wrong, Mr Speaker. The root cause which he was warned about was the fact that the ownership of VITAB was different from what he was claiming. The root cause was the fact that Mr Berry refused to investigate my claims in 1993 and 1994 that VITAB may have been a front for an SP operation involving two notorious individuals - Peter Bartholomew and Alan Tripp.

I can well remember Mr Berry telling me that Mr Bartholomew had only a peripheral involvement in VITAB. If Mr Berry thinks inducements were the biggest problem, then it is no wonder that he failed to come to grips with the crisis that we warned him about during 1994. Mr Speaker, if Mr Berry had even once taken my warnings and those of the Opposition seriously, if he had bothered to ensure that the probity and shadowy corporate structure of VITAB were properly checked, then we would not be here today with a $5.3m disaster.

If inducements were the main problem, according to Mr Berry, I suppose that the involvement of SP operators, the concealment of fraud, the use of a tax haven, the deception and the lies are all just minor matters by comparison! It is inducements that matter, Mr Speaker; not fraud, not all the other things that have happened here, but inducements! I do not know how many ways Mr Berry can try to gloss over the VITAB deal. He tries to blame everybody else; but, as I have just stated, inducements were offered during Mr Berry's time as Minister for Sport. You have to ask: What did he do? He did nothing.

MR HIRD: I ask a supplementary question. I am horrified and shocked. My supplementary question is to the Chief Minister. From what you have just said, not only has Mr Berry misled this house but he has misled the people of the ACT on this matter.

Mr Berry: I think that ought to be withdrawn, Mr Speaker.

MR SPEAKER: Yes, I think it has to be withdrawn, too. Withdraw, Mr Hird.

MR HIRD: I withdraw. What part should I withdraw?

Mrs Carnell: Any imputation.

MR HIRD: I withdraw any imputation.

MRS CARNELL: Mr Speaker, as any imputation has been withdrawn, all I can say is that the information that Mr Berry put on the *Hansard* record this morning would appear not to be correct. I would assume that, now that Mr Berry knows, he would hop up in this place immediately and apologise.

Mr Berry: Mr Speaker, I will hop up immediately, as invited, with leave of the chamber.

Mrs Carnell: And apologise?

MR SPEAKER: You will do it under standing order 46.

Mr Berry: Mr Speaker, can I seek leave to make a personal statement?

MR SPEAKER: At the end of question time, yes. You will be able to do that under standing order 46.

Chief Minister - Motor Vehicle Accident

MR CORBELL: My question is to the Attorney-General and Minister for Emergency Services. Minister, in explaining the circumstances of her motor vehicle accident on the Federal Highway on Sunday, the Chief Minister said on Capital television news on Monday night:

> ACT Ambos turned up. They were great, as they always are. They gave me a quick look once over, and said, "Look, go back to the office and ring the Queanbeyan Police Station", which I did.

Minister, is it not the case that the ambulance officers concerned deny ever advising the Chief Minister to leave the scene of the accident as the Chief Minister has claimed? Minister, why did the chief executive of the Attorney-General's Department advise the ACT Ambulance Service not to put out a statement defending the actions of their officers? If it was not the chief executive, then who was it? Is the only reason that the statement was suppressed that it would expose the Chief Minister's shabby attempt to shift from herself the blame for her decision to leave the scene of the accident before the police arrived?

MR SPEAKER: Mr Attorney, I do not think you are in a position to answer half of those questions - if any of them, in fact.

Mr Corbell: Yes, he is. He is the responsible Minister.

MR SPEAKER: Is the Minister responsible for something heard on television made by - - -

Mr Corbell: I raise a point of order, Mr Speaker. If you had listened to my question, you would know that I asked specifically about the activities of the chief executive of the Attorney-General's Department, whom the Minister is responsible for, and he has to answer the question.

MR SPEAKER: Mr Attorney, I do not believe that you are necessarily in a position to answer those questions.

Mr Corbell: I raise a point of order, Mr Speaker. Under which standing order are you making that ruling?

MR SPEAKER: I suppose that under 117(b)(iii) there is an inference. There is a possibility of a hypothetical matter being discussed here, which is (vii).

Mr Corbell: Come on!

MR SPEAKER: You are quoting something that was said on television last night. You are asking the Attorney-General to comment on the matter. I do not know whether the Attorney-General is even aware of these things.

Mr Corbell: I raise a point of order, Mr Speaker. If you had listened to the question, which you obviously did not, with all due respect to you, Mr Speaker - - -

MR SPEAKER: I have listened very carefully.

Mr Corbell: You have not listened to the question. I am quite happy to read it again so that you can understand the context - - -

MR SPEAKER: I think the Attorney-General is well aware of what the question is.

Mr Corbell: Mr Speaker, I would ask you to realise that the quote that I read was to put the matter in context. I am not asking the Attorney-General to comment on the quote. I am asking the Attorney-General to comment on the activities of the chief executive of the department for which he is responsible as the appropriate Minister and on the activities of the ambulance officers, for whom he is also the responsible Minister.

MR SPEAKER: The matters that you raise may be very much hypothetical.

Mr Berry: Mr Speaker, I think that that is a quite unfair assessment of the question. I have a copy. It reads as follows - - -

MR SPEAKER: Never mind what it says. You have asked your question already.

Mr Berry: No, Mr Speaker. It is - - -

MR SPEAKER: I would ask you to be careful that you do not breach standing order 117.

MR HUMPHRIES: Mr Speaker, this question is clearly out of order; but I am prepared to answer it so as not to give those opposite the ammunition that they used yesterday to claim that they had been suppressed in their attempt to get information, despite the Chief Minister's very full statement yesterday on the matter.

Mr Speaker, the answer to the first question asked by Mr Corbell is no. As far as advice by the head of my department concerning ambulance officers' statements is concerned, I have no knowledge of any advice he has given or any instructions he has given. I will take that part of the question on notice. I am aware, however, that the statement that I understand was made by ambulance officers of the ACT Ambulance Service was entirely consistent with what the Chief Minister said both publicly and in her statement to the police. The inference Mr Corbell made about there being some problem with leaving the scene of the accident, implying that that was illegal, was clearly dealt with by advice tabled yesterday in this place showing that there was no such offence.

MR CORBELL: I ask a supplementary question. I wonder whether the Minister could table any advice that he has received concerning the activities of the ambulance officers at the scene of the accident on Sunday.

MR SPEAKER: If you have any advice.

MR HUMPHRIES: I received no such advice in writing.

Mr Corbell: I raise a point of order, Mr Speaker. The Minister made it quite clear in his answer that he was aware of the consistency of the advice given by ambulance officers with the statement by the Chief Minister. He must have been made aware of that in some way.

MR SPEAKER: I am sorry; you have asked your supplementary question.

Mr Corbell: I would be grateful if the Minister could table the information that he has drawn that advice from.

MR SPEAKER: You are now suggesting that the Minister is misleading the house. You will be withdrawing that very shortly.

ACTTAB-VITAB Contract - Recovery of Compensation

MR MOORE: I think he is just trying to get a couple of supplementary questions, Mr Speaker. I think it is a neat idea, although I would never try to do anything like that.

MR SPEAKER: We have not forgotten you down there.

MR MOORE: Thank you, Mr Speaker. Mr Speaker, my question is to Mr Berry in his role as Leader of the Opposition. I ask my question under standing order 116, which states:

> Questions may be put to a Member, not being a Minister, relating to any bill, motion, or -

as in this case -

> other public matter connected with the business of the Assembly, of which the Member has charge.

It is addressed to him in his official capacity as Leader of the Opposition. The Chief Minister, in answer to a question from Mr Osborne, has invited you, Mr Berry, in your official capacity as Leader of the Opposition, to co-sign a letter inviting former Prime Minister Bob Hawke to repay moneys he received from the $3.3m payout following the VITAB affair. Subject to appropriate wording, will you co-sign the letter? This also gives you the opportunity to respond in the way you were going to before I denied you leave.

MR BERRY: I assume that I will be allowed the leave that Ministers have when they answer questions. Mr Speaker, I am very pleased to take this question from Mr Moore, because it allows me to make a few comments in relation to the matters which really need to be tidied up. Mrs Carnell raised a moment ago the issue of inducements. Indeed, Mr Moore, inducements are the most feared aspect - - -

MR SPEAKER: Mr Moore wishes to know whether you are going to sign the letter.

Mr Moore: I take a point of order, Mr Speaker. There is no doubt that Mr Berry can give a fairly broad-ranging answer - I am happy about that - but standing order 118(a) says that the answer should be concise and confined to the subject matter of the question. I am very happy for him to talk broadly about co-signing a letter to Mr Hawke, what might be in that letter and so forth; but I think he does have to stick with that concept.

MR SPEAKER: Yes, I must uphold that point of order.

MR BERRY: Indeed you do.

MR SPEAKER: Restrict it within that range. Mr Moore has asked you whether you will co-sign the letter.

MR BERRY: Of course. Inducements were the issue - - -

MR SPEAKER: I do not think he is offering you an inducement. Are you, Mr Moore?

MR BERRY: Mr Speaker, inducements were the issue which was of most concern in relation to the VITAB matter. That was the group of people - and Mr Hawke was part of the group of people - involved in the VITAB arrangements. VITAB, on my understanding and from reference to the Burbidge report, was offered $3.3m in settlement of the matter. Mr Speaker, those same inducements, of course, occurred, as I said earlier this morning, in the ACT from June 1994. Yes, that was the period of a Labor government. I made that point very clear this morning.

Mrs Carnell: But you were wrong.

MR BERRY: I am just going from the Burbidge report, Mrs Carnell. It says from June 1994. Are you saying Mr Burbidge is wrong?

Mrs Carnell: They are not the same inducements.

MR BERRY: Telephones and lollies and things like that and cups of tea. Of course, they were able to get their own little keyboards. If that is an inducement, then they received an inducement. So far as Mr Hawke is concerned, he is the master of his own destiny. If the Chief Minister decides to send him a letter, then she may do so. Whether Mr Hawke responds and pays back the money which was - - -

Mr Moore: But my question is: Will you co-sign it?

MR BERRY: Of course I will not. What a stupid suggestion - that I would be part of a scam like this. I would say to Mr Osborne: Will you pay back the $600,000 for the Burbidge report if it does not return anything to the ACT? You do not have $600,000, I know. No, I will not be signing any letter to Mr Hawke. Mr Hawke is fully aware of the circumstances here in the ACT, and if his conscience does not drive him to repay the money a signature from me would not change it.

MR MOORE: I have a supplementary question, Mr Speaker. I am sure that Mr Berry would be delighted to take it. It is just a bit of practice for him for next year. I see that you have not lost the touch, Mr Berry. In your answer and also in an earlier interjection you said that Mr Osborne ought to pay back the $600,000 expenditure incurred through this inquiry. Do you understand, Mr Berry, the difference between expenditure of $600,000 which did not wind up in Paul Osborne's pocket or expenditure of $5.5m at a cost to the ACT taxpayer that did not wind up in your pocket and approximately $300,000 of ACT taxpayers' money which did wind up in the pocket of the former Prime Minister?

MR BERRY: Yes, of course I can see the difference. I can see that the chairman of the board of ACTTAB was the one who made the offer of $3.3m in settlement of the issue, as reported in the Burbidge report. It is very clear that the VITAB people did not have the money before the chairman of the board decided that they should have it and - - -

Mr Hird: You are defending VITAB now, are you?

MR BERRY: No, indeed not. I am not defending Mr Hawke either. Mr Hawke is the master of his own destiny. I am sure that he is aware of what is going on in relation to the matter here in the ACT. If Mr Hawke's conscience drives him to pay the $300,000, or whatever it was, back to the ACT, then that would be welcome; but I am not sure that adding my signature would offer him any more encouragement. In fact, it may well work against any chance of him changing his mind. I think that would probably be a negative.

I would suggest to the Chief Minister that she not bother writing to Bob Hawke either. That also might work against any chance of a return of the money to the ACT. I also suggest to you too, Mr Osborne, that you not bother trying to sign a letter, because I do not think that would work to our advantage either. I think you should leave it to Mr Hawke. If he is of a mind to repay the money, then he should do so. I understand the difference between the money that was - - -

Mr Moore: You will not prick his conscience or embarrass him into it?

MR BERRY: Mr Moore says, "Do you want to prick his conscience or do you want to embarrass him into it?". I would be quite happy if all of the people involved in the VITAB deal gave back the money. I cannot see the likelihood of that occurring just because Wayne Berry signs a letter. I think an even worse situation would be created if Mrs Carnell signed a letter. I think what you have asked, Mr Moore, is a rather dumb question. It proposes a silly attention-grabbing stunt. It is a quite silly proposal. I advise the Chief Minister, for what it is worth: Please do not write the letter. Leave it to their conscience. If you write to them, you will just make it worse.

Mr Whitecross: I rise on a point of order, Mr Speaker, to draw the attention of the house to the fulsome way Mr Berry answered the question asked by Mr Moore, compared with the non-answers we got from the Government.

MR SPEAKER: There is no point of order, and if you continue to clown around you may find yourself being named.

Statutory Bodies - Appointment of Solicitor

MS McRAE: My question to the Chief Minister refers to the solicitor named in paragraph 316 of the Burbidge report. Minister, will you review that person's appointment to the Arts Theatre precinct and other statutory bodies in the light of the Burbidge findings?

MRS CARNELL: I am certainly willing to have a look at the whole report. I think I probably should ask the Minister responsible to answer that question.

Ms McRae: Go on. The more answers, the better.

MR HUMPHRIES: I am the Minister responsible, as you well know, Ms McRae. You are perfectly well aware of that.

MR SPEAKER: Order! Mr Humphries has a bad throat and I do not want him having to shout over you people.

MR HUMPHRIES: Mr Speaker, I will examine the report and, if that is the appropriate course of action, this Government will act with integrity on those sorts of matters, as it has all along in this area. We will make sure that appropriate steps are taken if they are warranted.

MS McRAE: I address a supplementary question to the Chief Minister. Will you further assure the house that none of the legal costs of the two firms named in the Burbidge report - Macphillamy Cummins and Gibson and Deacons Graham and James - will be paid by the ACT taxpayer? Further, will you advise whether either company is also your personal solicitor?

MRS CARNELL: Still ask the Minister responsible.

MR HUMPHRIES: I think the same answer applies as for the first question.

ACTTAB - Payment to VITAB

MRS LITTLEWOOD: My question is to the Chief Minister in her capacity as a voting shareholder of ACTTAB. I refer to claims made by the Leader of the Opposition, also known as Mr VITAB, also known as Pontius Pilate and quite possibly known as - - -

MR SPEAKER: Order! Withdraw that.

MRS LITTLEWOOD: I withdraw. Good heavens above! Do you mean that is not true?

MR SPEAKER: Members must be called by their correct names.

MRS LITTLEWOOD: I do not think I could do that; but I will continue, Mr Speaker. I refer to claims by the Leader of the Opposition this morning that the $3.3m settlement payment to VITAB by the previous Labor Government was a debt that should always have been carried by ACTTAB. Mr Berry also stated that the people who had advised you that this Government should assume that $3.3m debt instead of allowing it to remain with ACTTAB may have been deceiving you. Chief Minister, who advised you that the Government needed to take over ACTTAB's debt in the wake of the VITAB scandal?

MRS CARNELL: I thank Mrs Littlewood for the question. It certainly has been a very busy morning for Mr Berry. It is his first day back in the house and, boy, is he out there. First, on radio this morning he made the following statement:

> The $3.3m was a debt that should always have been carried by ACTTAB. Both reports have made it clear that ACTTAB were the people who made the mistakes. They should have borne the responsibility of paying back to the ACT taxpayer the money that they effectively wasted.
>
> The Carnell Government has, of course, relieved ACTTAB of the responsibility and have handed over the debt to the taxpayer. The fact of the matter is the people who made the mistake ought to pay the price and they have not.

A short time later in this Assembly Mr Berry raised the issue again and accused me of making a mistake by allowing the Government to take over responsibility for ACTTAB's debt. In fact, he even went so far as to suggest that I may have made this decision because of advice I received and that perhaps the people who were giving me the advice may have been trying to deceive me. That concerned me a lot. Do we all remember Mr Berry making that statement this morning? Yes. Good. I was very interested to hear Mr Berry make this claim, and I know that all other members are going to be very interested when I tell them who did provide me with this advice.

Mr Speaker, one of the people who provided this advice, which according to Mr Berry may have been deceitful, was the Auditor-General. A nasty piece of goods this Auditor-General! Members of the house might remember that it was not secret advice. Mr Berry should have checked his memory a little more closely this morning before he made comments about deception. Mr Speaker, I would like to table some documents to refresh Mr Berry's memory.

Mr Berry: I would like to read what I said this morning. I would not believe your version of it.

MRS CARNELL: Mr Speaker, I would like to table the relevant pieces of Auditor-General's Report No. 8 of 1994.

Mrs Littlewood: I raise a point of order, Mr Speaker. Mr Berry just mentioned that he would not take Mrs Carnell's word; that he would not believe what Mrs Carnell said. I find that offensive and I ask him to withdraw it.

MR SPEAKER: There is no point of order.

MRS CARNELL: For the information of members, pages 63 to 65 of Auditor-General's Report No. 8 of 1994, which I have just tabled, have just come back to haunt Mr Berry. Let me quote from the supposed deceitful advice that these documents contain. On page 64 it says:

> On 10 August 1994 settlement was effected to an Agreement by which the long term contract between ACTTAB and VITAB Limited was terminated in consideration of the payment by the Board to VITAB of $3.3m. Concurrent with the termination, $3.3m was advanced to the Board by the ACT Government, with principal and interest re-payable over eight years.

The Auditor-General then outlined the costs of the contract termination, which at the time totalled just over $3.5m and included a $50,000 payment for the settlement of Mr Neck's contract being terminated. Under the heading "Findings" the Auditor-General says:

> Based on the operating results of the prior two years it appears that ACTTAB will have difficulty in meeting its financial obligations as a result of its debt commitments to the Government.

In other words, Mr Speaker, for Mr Berry's benefit, because he does not have a clue about financial management, what the Auditor-General was saying was that ACTTAB was in all probability going to go broke. The Auditor-General was saying that, if the debt that those opposite loaded onto ACTTAB was allowed to continue, then ACTTAB would go broke. According to Mr Berry, this may have been deceitful advice, so I had better turn to the next page of the Auditor-General's findings to see what else he said. On pages 64 and 65 Mr Parkinson undertook an analysis of ACTTAB's ability to remain financially viable in light of the debt that Mr Berry and his Government hung around its neck. Let me quote his findings under the heading "Viability":

> Based on current rates of interest the annual payments related to the VITAB loan will be approximately $600,000 per year. If profits remain at their current level it is unlikely that cash generated from operations will be sufficient to meet repayments of the loan and other financing arrangements may need to be made.

Mr Speaker, for Mr Berry's benefit again, the Auditor-General is saying that ACTTAB was unlikely to be able to service its debt and that it could well go under. Let me say it in two words for Mr Berry. He might understand two words. He might not understand financial management, but he probably understands "go broke". It means that we would not have had an ACTTAB. ACTTAB would have gone broke. Remember that this

report was tabled when Mr Berry was in government. This is not an Auditor-General's report that came down under us. This Auditor-General's report came down when they were in office. In July 1995 I announced that we would assume ACTTAB's debt. We did that because, to quote my comments which were reported in the *Canberra Times* on 21 July 1995:

> Faced with the prospect of loss of jobs and revenue if ACTTAB became insolvent we had little choice but to discharge the debt.

Is that not what a responsible Minister would do, Mr Speaker, if he or she was presented with that sort of advice from the Auditor-General? But wait a minute. Was this advice not potentially deceitful, according to Mr Berry in his remarks this morning? If Mr Berry is now demanding that I add Mr Parkinson to the list of people who should be sacked today, he will not get what he wants.

Mr Speaker, what this embarrassing revelation shows is that Mr Berry still does not have a clue what he is talking about when it comes to any financial matters. He does not have a clue what he is talking about when it comes to VITAB. As Chief Minister, I have acted in accordance with the Auditor-General's advice, and I have to say that, since this Government came to office and recorporatised ACTTAB, its financial recovery and performance have been, according to even Mr Burbidge, stunning. That recovery has been based on a board run by somebody Mr Berry was fairly negative about this morning and the executive director of ACTTAB, who Mr Berry this morning said should be sacked. Mr Berry, this is not deception. This is just good government.

Mrs Littlewood: Mr Speaker, under standing order 1 of the Corbell standing orders, I would like to point out the full and detailed statement that the Chief Minister has just given us, and I thank her.

ACTION - Temporary Bus Operators

MR WOOD: My question is to Mr Kaine as Minister for Urban Services. It refers to advertisements in the *Canberra Times* about 2½ weeks ago calling for the employment of temporary bus operators for ACTION. My question is a simple one, but I understand that you may not have the answer in your head. Could you tell us now or a bit later how many positions it sought to fill? Was the exercise designed to fill the casual driver roster? Do you know how many applications were received?

MR KAINE: Mr Speaker, I will have to take that question on notice.

MR WOOD: I have a supplementary question. A concern behind the question is that - - -

Mr Humphries: Mr Speaker, I am sure that Mr Wood has lots of concerns, but he is not entitled to a preamble. Can he just tell us what the supplementary question is?

MR SPEAKER: I uphold that. Go on, Mr Wood.

MR WOOD: I did not hear Mr Humphries.

MR SPEAKER: He said that there must be no preamble, and I am backing him.

MR WOOD: We see much body language from over there, Mr Humphries, that is usually explicable. Mr Kaine, increasingly when applications are sought, not just in Urban Services, a $25 payment is required to cover a police security check. My concern is that if there is a very large number of applicants they should not all have to forward that $25, because in the end only a very few might be successful. I would ask that you inform the Assembly when that $25 is required. Is it later in the process so that a very large number of applicants - and I understand that that was the case on this occasion - do not have to fork out $25 for no result?

MR KAINE: Mr Speaker, again, I do not know the details. I will get the details and answer that question fully. I was quite critical personally when that $25 payment up front for a security check was applied in another department to applicants who probably had no opportunity of getting a job at all at the end of the day. I would hope that my own department and the agency working for me have taken that to heart, but I will get the details and answer fully.

Park Maintenance - Yarralumla

MS HORODNY: My question is directed to the Minister for Urban Services, Mr Kaine. Over the last couple of days the residents of Hampton Circuit in Yarralumla have found in their letterboxes a letter from Canberra Urban Parks asking for their views on what is being called an exciting new program being developed by the ACT Government called Adopt a Park. Under this Adopt a Park scheme, community groups and businesses can enter into an agreement to provide basic maintenance for a park and, in return, the group can alter the layout of the park. The community would supposedly be consulted about any changes. The letter also said that a local investment and residential group has expressed an interest in adopting the park bounded by Hampton Circuit and that this letter was to seek residents' views on this proposal. Minister, this scheme appears to be a grand plan to reduce government responsibility for our public parks by handing them to whichever business wants to take them over. My question is: Who is the local investment and residential group referred to in this particular letter? Why has this park been chosen for this scheme? What does this group intend to do to this park?

MR KAINE: Mr Speaker, first of all, I would have to say that this suggestion that people might take up some responsibility for the care and maintenance of parks is still only embryonic. It flows from the same consideration that was given to our highways. We have moved to the idea of asking individuals and organisations to sponsor a section of highway by keeping it free of litter. The same sort of thinking went into the notion of asking people whether they wanted to adopt a roundabout and plant it with flowers and maintain it. It is very much part of getting the community to become involved and to make some commitment to their environment. The idea has been considered and it has not yet had the endorsement of the Government; it has been dealt with in the administration. That is the notion that public parks, or some of them, might possibly fall

into the same category and some of the communities may wish to adopt their local park and make some commitment to maintaining and looking after it. However, it is not something that has yet been put together as a proposal to the Government. At this stage it does not have the endorsement of the Executive.

This particular letter that was circulated, I understand, was prompted by an application from a developer. I do not have the name of the developer, but it has to do with a small development of some body corporate units in Yarralumla which, as I understand it, are adjacent or close to a small park. The developer put forward the proposal that the body corporate may take over the management, in some fashion, of this adjoining or adjacent small public park. No endorsement of that proposal has yet been given; but, given that the department was considering something along these lines, they did ask people in the immediate vicinity a few questions, such as, "Would you be interested in having this happen? What would you like them to do? What would be your reaction if this were done?". It is nothing, as I understand it at the moment, but a simple community consultation process to determine what the people in that particular suburb think of this proposal.

Depending on the results, we may move to do something. I imagine that the people handling this at the administrative level, if they believe it is worth while, will come to me with a proposal. It is not yet at that stage. It may never come to anything, but it rests on the premise that people in the community, whether private citizens or bodies corporate or individual corporations, may wish to make a contribution towards the maintenance of a particular public facility, whether it be a length of highway or a roundabout in a suburb or a small public park. Beyond that, at the moment it has no endorsement from the Government. It is merely a concept. If it develops, no doubt somebody will ask me for my imprimatur. When that is done, I will consider it on the basis of the information presented to me.

MS HORODNY: I ask a supplementary question. I would like to know from the Minister who will make the ultimate decision about whether these parks will be adopted and under what conditions. If the scheme does go ahead, are we likely to see advertising all over these public parks promoting the businesses that are adopting them? For example, will we see signs saying, "This park is proudly brought to you by McDonald's."?

MR KAINE: That is putting the cart before the horse a bit. In answer to the general question as to where the decision will be made, obviously if I am persuaded, on the evidence presented to me by my officials, that this is a reasonable way to go, a submission will be made to the Cabinet for their consideration. The decision, if it is to be made, will be made by the Executive. That is when the details will be dealt with as to whether there is to be any advertising, if so what form it will take, and whether McDonald's can advertise that they are maintaining a public park. In principle, of course, there could be no objection to that. If we adopt the concept of McDonald's, for example, adopting a mile of highway, they would certainly want to put a sign up there saying, "This section of highway is maintained by McDonald's", just as is done in other places in the world where this occurs. In principle, I have no difficulty with that. If they are paying the money, I have no difficulty with the Government acknowledging that they are paying the money.

COOOL Project

MS REILLY: My question is to the Chief Minister as Minister for Community Care. Prior to young people with disabilities leaving nursing homes and entering houses under Canberra's Own Option of Living project, known as the COOOL houses, they were given an undertaking by your department that they would know the number of their support hours, have control over how they would be delivered and be able to bank hours in much the same way as the individual support packages work, as this would lead to more spontaneity and control over their own lives. Would the Minister explain why, despite numerous meetings with ACT Health, a letter signed on behalf of all residents and a consultancy to resolve the issue, these people do not have an answer? When will these young people with disabilities be given the decency of a clear answer to their requests?

MRS CARNELL: I must admit that I am not aware that any of the people in the COOOL houses have significant problems at this time. Certainly, some time has been spent on sorting out the actual details of how we organise these particular houses, but the response I have had from the people in the COOOL houses is that they really love them and that they think they are a great improvement.

Ms McRae: That was not the question.

MRS CARNELL: It is. Ms Reilly indicated that the people in our COOOL houses were somehow unhappy with them. My understanding is that that is simply not the case. My understanding is that people in our COOOL houses are very pleased to be in independent living style of accommodation. This has been quite complex, as you can imagine, because we have been moving people from nursing homes, which of course are funded by the Commonwealth Government, into a scenario where we are funding the people involved.

Mr Speaker, I am very happy to find out for Ms Reilly whether any dates have been set for the finalisation of these discussions, but I think the bottom line is that the people involved are in a significantly better scenario now than they were when they were in nursing homes. My understanding is that the people who have moved in are very happy with the accommodation that they have and that the second lot of COOOL houses are progressing very well. I am very happy to find out what the timeframes are.

MS REILLY: I ask a supplementary question, Mr Speaker. As support hours are fundamental to individuals' control of their own lives, will you ensure that people will be able to bank their support hours, have access to their balance of hours and have access to them on demand, considering the fact that people have been living in the Macquarie houses since July and they still do not have any resolution to this important issue?

MRS CARNELL: Mr Speaker, I still think what Marion Reilly is saying here is that people are somehow unhappy. Mr Speaker, I understand that the people who moved into the COOOL houses did so because they chose to do so, because they believed that it would lead - and I believe it has led - to a significantly better scenario for them.

It is in our interest and the interest of the people involved to ensure that the model we end up with respects their rights to live as independently as is possible, that they have access to the sorts of services that they need to maintain that independence and that their quality of life is an improvement on the time that they spent in nursing homes. That will be the bottom line for the Government, and we will certainly work to achieve that.

Disability Program - Consumer Provider Arrangements

MS TUCKER: My question is also to the Minister of Health and Community Care. It is about the consumer provider arrangements in the disability program. I understand that the Minister is familiar with correspondence to the Department of Community Care from the Legal Aid Office of the ACT advising parents or guardians of people with a disability to hesitate to sign the proposed arrangements until they can be assured that the rights and interests not only of themselves but, probably more importantly, of their disabled family member are resolved in a role which maximises the safety and dignity of the disabled person. Will the Minister give an absolute commitment today that a copy of this important legal advice reaches every parent and guardian concerned?

MRS CARNELL: Mr Speaker, I understand that there have been ongoing discussions with regard to this agreement between Disability Services and people who will go into one of our disability houses. I can guarantee that there was never, and still is not, absolutely no interest whatsoever from Disability Services in not ensuring that the people involved have the best possible services that they can have. We have been going through a significant reform process in Disability Services over a period of time. I understand that it is a lack of understanding, or maybe a breakdown in communications, that has led to the problem that Ms Tucker speaks about. I must admit that I believed that it had been sorted out, Ms Tucker. I understand that this was a problem a couple of weeks ago but has been sorted out by now.

There are two sides to this issue. People moving into a house and their carers have to understand their part of the agreement and their commitment to the house. Similarly, Disability Services have a commitment to ensure that the people who are moving in are given a level - - -

Ms Tucker: I raise a point of order, Mr Speaker. My question was: Will the legal advice that has been provided by Legal Aid be forwarded to all parents and guardians who have children in the houses?

MR SPEAKER: I am sure the Chief Minister is coming to responding to that.

MRS CARNELL: Mr Speaker, I have not seen any legal advice, so it is very hard for me to answer that. I was leading up to what the problem was initially. I have not seen the legal advice, but I am happy to seek advice on that and take the question on notice.

MS TUCKER: I ask a supplementary question. Can I read it out again?

MR SPEAKER: No.

MS TUCKER: The legal advice is that - - -

MR SPEAKER: No, you have asked your question. Would you like to ask a supplementary question?

MS TUCKER: My supplementary question is: As Legal Aid has advised that parents should not sign this agreement, will the Minister guarantee that this legal advice recommending, I repeat, that people do not sign this agreement is forwarded to all parents and guardians who have family members in the program?

MRS CARNELL: Again, it is very hard for me to make a comment without having read the legal advice that we are talking about. My experience on legal advice is that you can get lots of different pieces of legal advice. On my briefing on this matter, I have to say that I believe that it really has been a lack of understanding of what those agreements really mean, but there has not been any effort by Disability Services to try to undermine the rights, or whatever, of people with disabilities entering into these houses. It has been about trying to make sure everyone knows exactly where they stand in this sort of an agreement. I understand that negotiations are still continuing to ensure that an agreement that everybody is comfortable with can be achieved. I am confident that that will continue.

I ask that all further questions be placed on the notice paper.

Chief Minister - Motor Vehicle Accident

MR HUMPHRIES: Mr Speaker, in question time Mr Corbell asked me whether the head of the Attorney-General's Department had issued a direction in respect of Ambulance Service officers not making a statement about the incident on Sunday. I am advised that no such direction was issued to the ACT Ambulance Service.

AUDITOR-GENERAL - REPORT NO. 12 OF 1997
Financial Audits with Years Ending to 30 June 1997

MR SPEAKER: I present, for the information of members, Auditor-General's Report No. 12 of 1997, entitled "Financial Audits with Years Ending to 30 June 1997".

Motion (by **Mr Humphries**, by leave) agreed to:

> That the Assembly authorises the publication of Auditor-General's Report No. 12 of 1997.

FINANCIAL MANAGEMENT ACT - INSTRUMENT OF TRANSFER
Paper and Ministerial Statement

MRS CARNELL (Chief Minister and Treasurer): Mr Speaker, for the information of members and pursuant to section 14 of the Financial Management Act 1996, I present an instrument issued and a statement of reasons for giving it. I ask for leave to make a short statement.

Leave granted.

MRS CARNELL: Section 14 of the Financial Management Act 1996 allows for transfers of funds between appropriations. An instrument under this section was signed on 9 December 1997. Transfers under the Financial Management Act enable changes in appropriations throughout the year to be accommodated within the total appropriation limit.

As part of the Government's retail policy initiative, a fund known as the Self-help for Local Centres Retail Fund has been established with the Department of Business, the Arts, Sport and Tourism - BASAT. The transfer of $200,000 funded from a reprioritisation of minor new works within the Department of Urban Services will provide a total budget in 1997-98 of $500,000 for works at local retail centres, known as the HelpShop Fund. Mr Speaker, I table the section 14 instrument, including reasons for the transfer, for the information of members and the ACT community.

CONSOLIDATED ANNUAL FINANCIAL STATEMENTS FOR 1996-97
Papers and Ministerial Statement

MRS CARNELL (Chief Minister and Treasurer): For the information of members, I present the consolidated annual financial statements for the 1996-97 financial year. I ask for leave to make a short statement.

Leave granted.

MRS CARNELL: Mr Speaker, you will recall that last week I presented to the Assembly the 1996-97 consolidated financial statements for the Territory. The statements showed that the Territory achieved an operating loss for 1996-97 of $100m, before abnormal and extraordinary items. To remind members, this result was $153m better than the previous year and $132m better than budgeted. I am sure members will agree that this is an excellent result for the ACT. Members will be aware also that these consolidated financial statements are the first of their kind for the ACT and have been prepared in accordance with accepted accounting practice, two years ahead of the mandatory schedule for all Australian governments. They also complete the first full cycle of this Government's reforms to budget, manage and report according to full cost and services to the community.

In keeping with the standard of detailed explanations and analysis of the Territory's financial position I have presented to this Assembly each month for over a year, I am now presenting a similar picture of the Territory's full 1996-97 outcome, now that the audit has been completed. The consolidated financial management report I have circulated to members provides a detailed outline of the Government's performance during 1996-97 and a snapshot of the Territory's position at the end of that year. I am sure that it will prove very enlightening to members, and I hope that everybody will ensure that they read it. I hope that it will avoid any inaccurate perceptions.

Mr Speaker, preparation of these financial statements for 1996-97 will provide a basis, for the first time, to examine the Territory's true position and the challenges and opportunities standing before it. The Territory, understandably, maintained its AAA credit rating during 1997. This shows a confidence in the Territory's recent financial performance and its position to face the challenges that lie ahead. But this confidence is based upon our history of prudent financial management to address the prevailing needs of the community and our economy. It is not based on irresponsible or unnecessary spending of public financial assets, nor ignorance of the need to prepare for future challenges.

In 1996-97, this Government's reforms have allowed it to improve markedly its financial performance by making informed decisions on service delivery. The financial results have been improved without reducing services to the community, particularly the community in need. This will form a foothold for further improvements to ensure that the ACT remains the healthy, well-educated and vibrant community to which the residents are accustomed and which the residents expect and desire.

Mr Speaker, this is a tribute to the people who work in OFM, particularly Mr Mick Lilley, who heads up that area, but also to all of his staff, who have worked extremely hard. The other person I would like to mention is Mr Geoff Ellis, who has put in an amazing effort over the last two years. I move:

> That the Assembly takes note of the paper.

MR WHITECROSS (3.54): I thank the Chief Minister for tabling this paper, which supplements the consolidated annual financial statements which were tabled last week. I appreciate the Chief Minister's tabling of them to provide all members with further information on the outcomes for the 1996-97 financial year. Mr Speaker, in tabling the consolidated annual financial statements last week, the Chief Minister made certain claims in relation to her projection of the position for 1997-98.

Mrs Carnell: I will be in a position to table them tomorrow, which I said I would do this week.

MR WHITECROSS: The Chief Minister indicated that she would produce a statement in relation to that this week. I have just heard the Chief Minister reaffirm that she will be making that statement tomorrow, and I welcome that. I was rather anxious to ensure that she did not overlook it, as we are in the last sitting week of the parliament.

Question resolved in the affirmative.

PAPERS

MR HUMPHRIES (Attorney-General): For the information of members, I present the following papers:

Calvary Public Hospital - Information Bulletins - Patient Activity Data - September 1997.

The Canberra Hospital - Information Bulletins - Patient Activity Data - September 1997.

Remuneration Tribunal Act - Determinations, including statements, for -

Full-time holders of public offices -

Determination No. 26, dated 5 December 1997.

Part-time holders of public offices -

Determination No. 27, dated 5 December 1997.

Energy and Water Act - Notice of adoption of the Emergency Plan - No. 265 of 1997, together with the Emergency Plan prepared by ACTEW Corporation Limited (S372, dated 24 November 1997).

SUBORDINATE LEGISLATION AND COMMENCEMENT PROVISIONS
Papers

MR HUMPHRIES (Attorney-General): Pursuant to section 6 of the Subordinate Laws Act 1989, I present subordinate legislation in accordance with the schedule of gazettal notices circulated in the chamber. I also present the notices of commencement of the Acts listed.

The schedule read as follows:

Crimes (Amendment) Act (No. 3) 1995 - Notice of commencement (1 December 1997) of remaining provisions (S385, dated 1 December 1997).

Cultural Facilities Corporation Act - Instrument of appointments to the Cultural Facilities Corporation - No. 252 of 1997 (S361, dated 21 November 1997).

Fair Trading Act - Fair Trading Regulations (Amendment) - No. 37 of 1997 (S400, dated 9 December 1997).

Independent Pricing and Regulatory Commission Act - A term of reference for the Independent Pricing and Regulatory Commission to determine ACTEW Corporation's charges to apply from 1 July 1998 - No. 267 of 1997 (S382, dated 28 November 1997).

Land (Planning and Environment) Act -

Determination of fees - No. 255 of 1997 (S364, dated 21 November 1997).

Instrument of appointment of Deputy Chair of the ACT Heritage Council - No. 256 of 1997 (S365, dated 21 November 1997).

Instruments of appointment to the ACT Heritage Council - Nos 257 to 261 of 1997 (inclusive) (S366, dated 21 November 1997).

Motor Traffic Act -

Approval of code of practice for accredited driving instructors - No. 253 of 1997 (S362, dated 21 November 1997).

Determination of registration fees - No. 251 of 1997 (S358, dated 21 November 1997).

Motor Traffic Regulations (Amendment) - No. 35 of 1997 (S384, dated 28 November 1997).

Vehicle inspection manual - No. 266 of 1997 (S381, dated 28 November 1997).

Nature Conservation Act - Action Plans - No. 262 of 1997 (S396, dated 9 December 1997) -

No. 1 - Natural Temperate Grassland (an ecological community)

No. 2 - Striped Legless Lizard (*Delma impar*)

No. 3 - Eastern Lined Earless Dragon (*Tympanocryptis lineata pinguicolla*)

No. 4 - A leek orchid (*Prasophyllum petilum*)

No. 5 - A subalpine herb (*Gentiana baeuerlenii*)

No. 6 - Corroboree Frog (*Pseudophryne corroboree*).

Occupational Health and Safety Act -

Approval of the Code of Practice for Safe Working on Roofs - No. 269 of 1997 (S395, dated 5 December 1997).

Occupational Health and Safety (Manual Handling) Regulations - No. 32 of 1997 (S340, dated 5 November 1997).

Public Sector Management Act - Management standards - No. 2 of 1997 (S387, dated 2 December 1997).

Supreme Court Act - Supreme Court Rules (Amendment) - No. 33 of 1997 (S349, dated 11 November 1997).

University of Canberra (Transfer) Act 1997 - Notice of commencement (26 November 1997) of sections 1 and 2 and (1 December 1997) of remaining provisions (S374, dated 26 November 1997).

TERRITORY OWNED CORPORATIONS ACT
Papers

MR KAINE (Minister for Urban Services): Mr Speaker, for the information of members and pursuant to subsection 19(3) of the Territory Owned Corporations Act 1990, I present statements of corporate intent for ACTEW Corporation Ltd for 1997 and for ACTTAB Ltd for the period 1 July 1997 to 30 June 2000.

TENANCY TRIBUNAL (AMENDMENT) BILL 1997
Detail Stage

Clauses 1 to 3

Debate resumed.

MR WOOD (3.57): Mr Speaker, I indicated earlier that the Opposition would look to see that the amendments being proposed today were in conformity with the recommendations of the working party on tenancy legislation, or at least substantially in conformity with them, and that the amendments did not depart too greatly from what was said there. This stand was taken because of the short timeframe that we have had in which to deal with that report and match it with the proposed legislation. This legislation has been on the table for quite a deal longer, although it was only today that we received two sets of amendments.

That approach by the Opposition is consistent with public statements we have made to that effect. In the next parliament we, as the Government, will give a full response to that report. Of course, we may well go beyond what the report has recommended or, perhaps, ignore what it has recommended. I say again that reports of this nature are for our information and for advice to us. This report seems to me to be a very substantial one. It is well put together. It took a long time, but it involved lots of people and lots of complex issues. I am grateful that the Assembly gave us time, albeit a brief amount of time, to consider the further amendments that we have received to date. I acknowledge the cooperation of the Minister in providing a briefing on that.

Mr Moore's amendments seek to expand the Act, and I will respond to two of his key proposals. He seeks to expand the business before the tribunal covered by the code of practice to all business and to remove the restriction relating to small business. Yet, the working party made no suggestion that this should occur. It recognised that the Act is to protect small business. I think the purpose of the Act from the beginning is to protect small business, not big business, which is quite able, too well able, to look after itself.

A key provision that Mr Moore wants to include is to allow for the tribunal to hear disputes about whether the rent is, in the circumstances, excessive. Yet, as I read it, this is another matter which goes beyond the recommendations of the working party.

Mr Moore: It is consistent with the minority report for the small businesses you talk about.

MR WOOD: The question of rent was discussed, but there was no clear agreement. That is not surprising, considering the nature of the working party, which had representatives evenly split between tenants and landlords, and a number of others who were not particularly committed one way or the other. But there was no clear statement in the report to support this amendment and there is no recommendation. On the other hand, the relevant amendments proposed by the Minister refine the provisions of the Act. In an appropriate manner, there is a strengthening of the provisions about unconscionable conduct, to allow tenants access to the tribunal and to make it easier for them to be successful in their disputes about rent. Accordingly, we will be supporting those amendments, but not Mr Moore's amendments.

The Greens also have proposed amendments which have not formed part of the recommendations of the working party. On that basis, they will not be supported by the Opposition. In short, we will not be supporting the amendments from Mr Moore - there might be one there that will be supported - or the Greens; but we will be supporting, in the main, the proposals from the Government.

MR MOORE (4.02): I must say, Mr Speaker, that I am not surprised about this. We have Labor and Liberal combining, once again, to support big business. We have Mr Wood saying he is going to rely on the working party and only on the elements of agreement of the working party, instead of getting the whole picture from the working party. The whole picture includes, of course, the minority report and the tenants' perspective. There was never going to be agreement between landlords and tenants on such a fundamental issue as excessive rents. So, all I sought to do was to say,

"Okay; in order to sort it out, it is a reasonable thing, where there is a dispute, to take that dispute to an arbiter, to go to the Tenancy Tribunal". We established the Tenancy Tribunal to sort out disputes. It is a dispute. There is a very sensible set of mechanisms involved there, mechanisms that begin with mediation. As an aside, I say to the Minister that one of the things that we do need to look at, if it comes out of that report, is appropriate funding for mediation.

Clause 7 is the critical part of the legislation, as far as I am concerned. To vote against it is to vote against the ability to bring instances of excessive rent before a tribunal. All we are asking is to bring instances of excessive rent before a tribunal. To vote against it is to exclude the possibility of having the issue determined by an independent arbitrator.

Mr Speaker, I must say that I am disappointed by the approach taken by the Government and by Labor. At the same time, I concede that the proposed amendments are still a significant step forward. This is a significant step forward, but it is not the leap forward that I had wished for. As we go into the next Assembly, it is appropriate for members to look very carefully at working party documents. This working party was set up, as Mr Wood said earlier, quite rightly, to provide advice to the Assembly. We must understand that it was also set up to see where you could get areas of agreement. Where it is clear that there are areas of agreement, I accept that we ought to see what we can do about implementing them.

I know that one of the amendments that Mr Humphries has suggested does that. I must say he has snuck it in, because he does not mention it in his explanatory memorandum. It is to omit section 36 and put in a new section 36. I think the fact that he did not mention in his explanatory memorandum that he was removing a section is quite interesting. However, it is consistent with an agreed position by the working group and, as I say, where there is an agreed position we should look at it carefully.

When we come back into the Assembly - and I am sure this matter of the Tenancy Tribunal will come before this Assembly again - we really ought to be careful in making judgments about the working group. That having been said, I also have to concede that there has been a relatively short time to look at this from the time the working party's report came down. I take Mr Wood's point that when you have a limited amount of time you look at something and say, "I am prepared to go only this far now". I have agreed that that is a step forward. I hope that Labor in government or in opposition, as the case may be next time, will be able to look at it also from the tenants' perspective. I made it very clear when I started with this legislation that I was looking at it from the tenants' perspective with the intent of trying to ensure that the misuse of market position did not continue. That is the approach that I will continue to take.

Clauses agreed to.

Clause 4

MR HUMPHRIES (Attorney-General and Minister for Fair Trading) (4.07): Mr Speaker, I move:

> Page 2, line 5, paragraph (a), omit the paragraph.

I present a supplementary explanatory memorandum. I seek leave to incorporate my speaking notes in *Hansard*.

Leave granted.

Speaking notes incorporated at Appendix 1.

Amendment agreed to.

Amendment (by **Mr Humphries**) agreed to:

> Page 2, line 8, add the following paragraphs:
>
> "**(c)** by omitting 'includes' from the definition of 'conduct' and substituting 'means any act or omission including'; and
>
> **(b)** by omitting from the definition of 'substantive commencement date' all the words after 'means' and substituting '1 January 1995'.".

Clause, as amended, agreed to.

Clauses 5 and 6 negatived.

Clause 7

MR MOORE (4.09): Although I would like to have seen the previous two clauses remain in the legislation because I think that any matter should come before the tribunal, I accept that there are good arguments for the Government and the Opposition opposing the clauses. They were not critical factors to me. Indeed, although I thought they were important, I made it very clear that the significant part of the legislation to me is clause 7. I take this opportunity to say to members that it is not too late to change your mind. This is an opportunity for you to support small business in the face of big business. It is an opportunity for you to correct the misuse of market position. It is an opportunity for you to correct the imbalance of power. It is an opportunity for you to support jobs in this Territory. Those are the issues that are tied to this addition to the Tenancy Tribunal Act.

Mr Speaker, it is the case that all this does is increase the opportunity for people to come before a tribunal. It does not say that it is going to make excessive rent invalid. Argument would have to be put to the tribunal and the tribunal could then consider whether there was a case. The tribunal could take into account a full range of issues after

the very good process that is set out in the Act and that seeks to find mediation as the way through. Even if members oppose it today, I would encourage them, on coming back next time and having a look at the report of the working party, to look at the minority position of the working party and consider whether this issue really does assist in making a more equitable situation for small businesses in this Territory.

MR WOOD (4.10): Mr Speaker, I take up the theme of Mr Moore that matters need to be more equitable. The Government amendments that are coming up will allow small business to have easier access to the tribunal. Once there, it will be easier for tenants to find success in the face of that tribunal. It may not go as far as Mr Moore would have indicated; but, to use Mr Moore's words, it is a step forward. Let us see how it goes. While the working party has spent a long time looking at this issue, it will be the task of the Assembly next year to look at it and all the other issues and see that we have the best possible legislation.

MS HORODNY (4.12): Mr Speaker, this clause is simply about access by small business to the tribunal for a hearing on what should be a fair rent. It seems that this is a fundamental principle of justice. Surely, in a democracy, people should have access to a fair hearing in order to determine what is a fair rent. I believe that this is a very fundamental issue.

Question put:

That the clause be agreed to.

The Assembly voted -

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

Question so resolved in the negative.

Proposed new clause 8

MS HORODNY (4.16): I move:

Page 2, line 23, add the following new clause to the Bill:

"**Substitution**

8. Sections 8 and 9 of the Principal Act are repealed and the following sections substituted:

Application of Act

'8. (1) This Act applies to a dispute referred to in subsection 6(1) where the relevant lease is entered into, varied, renewed or extended under an option, before, on or after 1 January 1995.

'(2) This Act applies to conduct giving rise to a dispute referred to in subsection 6(1) where -

(a) in relation to a dispute referred to in paragraph 6(1)(a), (b) or (d) - the conduct occurs on or after 1 January 1995;

(b) in relation to a dispute referred to in paragraph 6(1)(e) -

(i) if the relevant lease is entered into, renewed or extended under an option, on or after 1 January 1994 - the conduct occurs on or after 1 January 1995;

(ii) if the dispute relates to a provision of a lease, being a provision varied on or after 1 January 1994 - the conduct occurs on or after 1 January 1995; or

(iii) in any other case - the conduct occurs on or after the commencement of the *Tenancy Tribunal (Amendment) Act 1997*;

(c) in relation to a dispute referred to in paragraph 6(1)(f) or (g) -

(i) if the relevant lease is entered into, renewed or extended under an option, on or after 1 January 1995 - the conduct occurs on or after 1 January 1995;

(ii) if the dispute relates to a provision of a lease, being a provision varied on or after 1 January 1995 - the conduct occurs on or after 1 January 1995; or

(iii) in any other case - the conduct occurs on or after the commencement of the *Tenancy Tribunal (Amendment) Act 1997*; or

(d) in relation to a dispute referred to in paragraph 6(1)(h) - the conduct occurs before, on or after 1 January 1995.

Application of Code

'9. (1) The Code applies to a dispute referred to in subsection 6(1) whether the relevant lease is proposed to be entered into, or is entered into, varied, renewed or extended under an option, before, on or after 1 January 1995.

'(2) The Code applies to conduct giving rise to a dispute referred to in subsection 6(1) where -

(a) in relation to a dispute referred to in paragraph 6(1)(a), (f), (g) or (h) -

(i) if the relevant lease is entered into, renewed or extended under an option, on or after 1 January 1995 - the conduct occurs on or after 1 January 1995;

(ii) if the dispute relates to a provision of a lease, being a provision varied on or after 1 January 1995 - the conduct occurs on or after 1 January 1995; or

(iii) in any other case - the conduct occurs on or after the commencement of the *Tenancy Tribunal (Amendment) Act 1997*;

(b) in relation to a dispute referred to in paragraph 6(1)(b) or (d) - the conduct occurs on or after 1 January 1995; or

(c) in relation to a dispute referred to in paragraph 6(1)(e) -

(i) if the relevant lease is entered into, renewed or extended under an option, on or after 1 January 1994 - the conduct occurs on or after 1 January 1995;

(ii) if the dispute relates to a provision of a lease, being a provision varied on or after 1 January 1994 - the conduct occurs on or after 1 January 1995; or

(iii) in any other case — the conduct occurs on or after the commencement of the *Tenancy Tribunal (Amendment) Act 1997*.'.".

Mr Speaker, in 1996 the Assembly debated some important amendments to the Tenancy Act to expand the range of people who could appear before the tribunal to include those who entered into a lease before 1 January 1995. The Tenancy Act and code are flawed for a number of reasons. For example, disputes about multiple-rent review clauses or ratchet clauses are currently not covered by the Tenancy Act if leases were entered into before 1 January 1995. Claims by a party to a lease that another party to the lease has breached or is breaching the code are not covered by the Tenancy Act if the lease was entered into before 1 January 1995.

Unfortunately, in the previous debate on this issue last year, the Labor and Liberal parties voted together to prevent access to the tribunal for people who entered into a lease before 1995. One of the main arguments they used, which I believe is fundamentally flawed, was retrospectivity, despite the fact that the Bill did not call for the code to apply retrospectively to conduct. Mr Speaker, I think it is worth reminding members of the Residential Tenancy Bill that was recently passed. Within 18 months or two years of coming into force, the Bill will apply to all residential tenancies, regardless of when they were entered into. Yet in 1997, three years after the commercial tenancy legislation was enacted, tenants with leases entered into before 1995 have severely limited access to the code and the Tenancy Tribunal. There is an enormous inconsistency there.

While I acknowledge that the number of people who have leases entered into before 1995 is diminishing, there are still small businesses who are suffering. If they have to wait until harsh and unconscionable conduct has resulted, it may be too late. I urge members to reconsider their earlier position and to support the small businesses in this town.

This amendment will make the difference in the areas of rent review, including all provisions about valuations for market rent, and preventing claims for depreciation costs in outgoings. It will also give tenants rights in relation to interference by landlords, so that landlords will, in future, be liable for compensation for disturbances, relocations, demolitions and suchlike. It will also clear up the rights of tenants to transfer a lease and will apply the existing minimal rights in relation to seeking renewal and issues such as relocation in malls. While these rights will extend to leases entered into before 1995, they will not apply to conduct that occurred before this amendment, if passed, becomes law.

Landlords argue that most leases will expire in the next couple of years anyway and that any new leases will come under the Act. In the meantime, many businesses may face bankruptcy, with exorbitant rents and no chance of any relief under the Tenancy Act. Many tenants are on long leases - some up to 10 years - and it is, therefore, a very relevant amendment. I urge members to support it.

MR HUMPHRIES (Attorney-General and Minister for Fair Trading) (4.21): Mr Speaker, this amendment involves retrospectivity. That is always a dangerous concept. It also affects an increasingly small number of leases. Increasingly, the number of leases that are affected by the legislation grows each year as the time between its original passage and now increases.

Mr Berry: Fully understood; well argued.

MR HUMPHRIES: Yes; and in this case that is all I want to say.

MR MOORE (4.21): Mr Speaker, I think that had better go on record as the briefest speech that Mr Humphries has ever made. We all are aware that, when Mr Humphries stands up to speak, you look at the clock and if it says we have 10 minutes to go you know that there is going to be a 10-minute speech. But today I have been proved wrong. I can see new things coming, and it is a great blessing for this Assembly. For the record, Mr Speaker - - -

MR SPEAKER: It would be nice for others to follow Mr Humphries's example, Mr Moore.

Ms McRae: You have endless time. The clock is not even moving for you.

MR MOORE: That is because it is my legislation.

Ms McRae: It is stuck.

MR MOORE: No, it is because it is my legislation, Ms McRae. I can have as much time as I like on any of these issues. I think your mind has skipped you, because it is normally a government member that has the control of legislation. But, in this case, I could be here until midnight, easily. Having watched Mr Humphries over many years, it is a great delight to be in this position, I have to tell you. Because people reading *Hansard* might not understand, Mr Humphries is actually losing his voice and is having a great deal of difficulty getting any words out at all. I think I have probably taken advantage of him enough up to now.

I will say, though, that there are a couple of issues here. The issue that Mr Humphries made secondly is that the group of people that this involves is getting smaller and smaller, and that is correct. It happens by attrition, because the leases that might have been affected are running out. The first point that he made was about retrospectivity. He did not apply the same standards of retrospectivity to residential tenancies. I think we ought to keep that in mind. With residential tenancies we have said, "Oh, yes, we have the power to say that where there is a tenancy in place we can interfere". It is only the property interests that have managed to persuade the Government, as they did when I put forward similar amendments on a previous occasion, that this is retrospective legislation. It is not retrospective legislation at all. There is a retrospective element, in the sense that it interferes with a contract that has been entered into in the past. Yes, there is that element to it. But it is not retrospectivity in the way that we normally consider retrospectivity as applying to legislation. When legislation comes into place, will this affect somebody's actions in the past or make their actions of the past illegal? No, it will not. It says that leases that were entered into at that time are fine up to this day but from this day onwards the legislation as passed by this Assembly will apply. That is the sense in which it is not retrospective and that is the sense in which we normally deal with retrospectivity in law. It is just the same as if somebody has entered into a contract where there is taxation to be paid. We pass a budget Bill and we say, "As of this day, as of this time, the legislation prevails".

I know Mr Humphries is having difficulty with that at the moment. I am sure that he will take me aside in a little while. I know that this is highly likely to fail, even though I support Ms Horodny's attempt. I am sure that we will have a discussion about whether this is retrospective. I will just get an indication from you, Mr Humphries. Do you accept the argument I am putting that this is not retrospective? No. There is an indication that he does not accept that argument. I must say that I genuinely believe that this is not bringing about retrospectivity in the sense that we apply retrospectivity to legislation. It would mean that, as of today, the law applies and contracts that are in place as of today can be reviewed under today's legislation.

I am happy to support the amendment that Ms Horodny has moved today, because I think it would be an opportunity for a couple more small businesses to survive. That is what this legislation is about. The part that I find most upsetting is that lip-service is given again and again by the Chief Minister, in particular, and the Government to supporting small business, saying that what we are about is ensuring that there are going to be more jobs. That is what this amendment is about, and that was what clause 7 was about.

What we should be on about is ensuring the protection of small business and we should be ensuring the protection of jobs in small business. But when it comes to the crunch, the influence of the property lobby is just too great. That is why it is that I hope that this issue will be revisited. I am sure that it will be revisited in the next Assembly, because I am sure that there will be a strong crossbench - I am not quite sure who will be on it - that will be able to raise these issues again and again, and keep the pressure on the party in government or the party in opposition, dragging them, kicking and screaming, just a little closer to a fair and equitable situation. We have managed to date to drag them a bit closer, but there is still a long way to go.

Question put:

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

The Assembly voted -

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

Question so resolved in the negative.

Proposed new clauses 8, 9, 10 and 11

Amendment (by **Mr Humphries**) proposed:

Page 2, line 23, add the following new clauses to the Bill:

"Parties

8. Section 16 of the Principal Act is amended by omitting from paragraph (a) 'hearing' and substituting 'dispute'.

Substitution

9. Section 36 of the Principal Act is repealed and the following section substituted:

Unconscionable conduct etc.

'36. (1) Without limiting the matters to which the Tribunal may have regard for the purposes of making an order in relation to a dispute referred to in paragraph 6(1)(b), the Tribunal may have regard to any of the following matters:

(a) the relative strengths of the bargaining positions of the owner and the tenant;

(b) whether, as a result of conduct engaged in by the owner, the tenant was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the owner;

(c) whether the tenant was able to understand any document relating to the lease;

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the tenant or a person acting on behalf of the tenant by the owner or a person acting on behalf of the owner in relation to the lease;

(e) the circumstances under which the tenant could have acquired a lease on identical terms over similar premises from a person other than the owner;

(f) the extent to which the owner's conduct towards the tenant was consistent with the owner's conduct in similar lease transactions between the owner and other like tenants;

(g) the requirements of the Code;

(h) the extent to which the owner unreasonably failed to disclose to the tenant -

(i) any intended conduct of the owner that might affect the interests of the tenant; and

(ii) any risks to the tenant arising from the owner's intended conduct (being risks that the owner should have foreseen would not be apparent to the tenant);

(j) the extent to which the owner and the tenant acted in good faith.

'(2) An owner is not to be taken, for the purposes of this section, to have engaged in harsh, oppressive or unconscionable conduct by reason only of the referral of a dispute to the Tribunal.

'(3) In the application of subsection (1) -

(a) the Tribunal shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) the Tribunal may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.'.

Interim orders

10. Section 53 of the Principal Act is amended -

(a) by omitting subsection (1) and substituting the following subsection:

'(1) Where at any time after the referral of a dispute to which this Act applies to the Registrar under section 12 -

(a) a person who has a direct interest in the dispute applies to the Tribunal for an interim order under this section; and

(b) the Tribunal is satisfied that, if such an order were not made, the person applying for the order would suffer detriment;

the Tribunal may make such interim order as it considers appropriate to safeguard the position of that person,';

(b) by omitting paragraph (2)(a);

(c) by omitting from subsection (3) 'party' and substituting 'person who has a direct interest in the relevant dispute';

(d) by adding at the end of paragraph (3)(a) 'or';

(e) by omitting from paragraph (3)(b) 'or'; and

(f) by omitting paragraph (3)(c).

Power to grant relief

11. Section 54 of the Principal Act is amended -

(a) by omitting paragraph (2)(a);

(b) by omitting from paragraph (2)(b) 'paragraph 6(b)' and substituting 'paragraph 6(1)(b)'; and

(c) by adding at the end the following subsection:

'(3) The Tribunal is not limited in any amount it may order to be paid.'.".

MR MOORE (4.32): Mr Speaker, I must say, first of all, that I think Mr Humphries was a bit naughty in moving these amendments, in that there is no reference in his explanatory memorandum or in what he circulated, I think I am correct in saying, to the removal of section 36 of the principal Act. I should talk about section 36. Section 36 is about renewed hearings. If an order made by the tribunal was not followed, you did not have to go back to the tribunal and start again. It seemed to me to be a quite sensible section. I understand that the working party has accepted that it should come out; but I must say, Mr Speaker, that one is never quite sure when dealing with legislation like this as to what compromise was made within the working party, whether there was a trade-off in one area and not in another. However, because it is part of the agreement, I accept that it is there. Of course, the responsibility is not necessarily with Mr Humphries to present that to us. He has presented an amendment, and it is our responsibility to look at that amendment and understand what it means.

If I can come to the substantive part of the amendment, it is, as I said earlier, a step in the right direction. For that reason, I shall be supporting this amendment. It is interesting, though, that the Government was not prepared to accept my amendment to clause 7 to allow a dispute about excessive rent to come before the tribunal; instead, this amendment, which is basically clause 9 down, the new section 36, has come directly from the Federal Government's response to the report I referred to this morning, "Finding a balance",

of the House of Representatives Standing Committee on Industry, Science and Technology. This is the Government's response on how to do it. What we have is the ACT Liberal Party taking the Federal Government's response and applying it specifically to our Act. It is an improvement, but it does not go far enough. It is interesting to see that we are following so closely on the Federal Government's response.

MR SPEAKER: Ms Horodny, I think you have an amendment or some amendments to move. You might like to do that now. It will save a bit of time.

MS HORODNY (4.35): Mr Speaker, I will not be moving the first two of the three amendments that are on the paper that has been circulated; I am moving just the third one, which is an amendment to Mr Humphries's amendment No. 6. I move:

> Proposed new clause 9, subsection 36(2): After the words "an owner", insert "or a tenant".

This amendment is about applying consistency to the way that the tribunal approaches owners and tenants alike and is basically to remove any perception of any differential treatment, I suppose, by the tribunal between owners and tenants.

MR HUMPHRIES (Attorney-General and Minister for Fair Trading) (4.36): It does not make any sense, I would argue, because section 36(1) relates only to unconscionable conduct by the landlord. Section 36(2) spells out what was not to be regarded as unconscionable conduct and, therefore, the amendment does not make any sense.

Amendment negatived.

Proposed new clauses agreed to.

Title agreed to.

Bill, as amended, agreed to.

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1997

[COGNATE BILL:

ENERGY EFFICIENCY RATINGS (SALE OF PREMISES) BILL 1997]

Debate resumed from 3 December 1997, on motion by **Ms Tucker**:

> 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 Energy Efficiency Ratings (Sale of Premises) Bill 1997? There being no objection, that course will be followed. I remind members that in debating order of the day No. 4 they may also address their remarks to order of the day No. 5.

MR HUMPHRIES (Attorney-General and Minister for Fair Trading) (4.38): Mr Speaker, these Bills are designed to establish energy rating schemes for existing homes. I think we should distinguish between residential for sale and residential for rental in the ACT. I am having trouble speaking. Can the Chief Minister take over?

MRS CARNELL (Chief Minister) (4.38): We are having trouble hearing. I am taking over. These two Bills, the Energy Efficiency Ratings (Sale of Premises) Bill 1997 and the Residential Tenancies (Amendment) Bill 1997, are very interesting Bills and are Bills that this side of the house thought very deeply about. Decisions have been taken that we will support, at least in principle, the Energy Efficiency Ratings (Sale of Premises) Bill 1997 but not the Residential Tenancies (Amendment) Bill. The reason for that is actually quite clear. The Energy Efficiency Ratings (Sale of Premises) Bill, I think, is a very different piece of legislation and is the sort of legislation that is very much in line with the greenhouse targets that Mr Humphries announced in the last couple of weeks. What this means is that energy efficiency ratings need to be available on all sales of houses. The concern we have with that - and the reason it took us a bit of time to get to the stage of actually supporting it - is that currently, as I understand it, the ACT home energy rating scheme is quite complex; and it could end up being quite costly for people to get a home energy rating under the current rating scheme.

I understand, too, that the current rating scheme may not be as good as it could be, inasmuch as it does not include things such as horticulture, the trees, around a house. In other words, if somebody has been very clever and planted deciduous trees around their house that may provide shade in summer and may allow sun in winter, that is not taken into our current energy rating scheme; and, obviously, it should be, because it really does greatly affect the energy rating of a house. As much as we will be supporting the sale of premises Bill, we will be looking to make some amendment. We will be supporting the Bill but will not allow its enactment until a new energy rating scheme is agreed to. We would want such a statement to be a disallowable instrument and would want to be provided with, potentially, a business impact statement as well.

I think we have to make sure that when we do this we do not place at a disadvantage people who are trying to sell their houses, particularly as some of them will be in the older parts of Canberra. The owners may not be all that wealthy; we have to make sure we do not put impediments in their way. We have to have a system that is easy, fair and affordable. At the moment we know we do not have that in place. Taking that into account, we do believe that energy efficiency ratings on the sale of premises is appropriate. People should know what sort of energy rating their house has when they buy a house.

I have to say that rental tenancies are a different matter. Very few people sell their house every six months. With regard to rental properties, though, people can rent their house quite regularly. If we end up with a situation, at least as it is at the moment, where an energy efficiency rating is required on every single rental, it could become very administratively difficult and not all that useful at the end of the day. There may come a time when we have our energy efficiency rating system so efficient that it is simply so easy to do it that it will not be a problem going down this path. But at the moment it really could be a huge impediment, particularly as we know that a lot of the rental properties are not being rented out by huge landlords; they are being rented out by people who are fixed income superannuants and who might have one or two properties.

An extra cost on those people every time a tenant leaves could be a huge impost. It would be wrong to take the next step, which is the first step after going down the path of having energy efficiency ratings at the time of sale - something that does not happen that often. It is an obvious step flowing from the legislation already in place; that is, new houses have to have a four-star rating or better. Going down this path is in line with Mr Humphries's greenhouse gas targets; so, we will be supporting it, with the amendments that I spoke about.

MR CORBELL (4.43): There is no doubt that the legislation being put forward today by the Greens is, indeed, complex legislation. Whilst relatively simple in its drafting, the issues that it addresses are complex and deal with very important issues of energy efficiency and energy consumption in residential premises. The Labor Party is supportive of the concerns which the Greens have raised in this legislation and supports wholeheartedly the need for people, when they are purchasing or renting a property, to understand how energy efficient that property is. At the moment, if you purchase an existing dwelling in the Territory - not a new house but an existing house; it may be one that is 10, 15, 20 years old - you have no idea, unless you seek it out deliberately and consciously, what the energy efficiency of that building is; how much it will cost you to heat that house in winter; how much it will cost you to keep the house cool in summer; and so on. I think it is entirely reasonable that people, when purchasing a property, understand what that property is going to cost them in the long run. Whilst it may appear attractive for them in the first instance to buy the property because of its price, they may not be aware of the costs that they will incur in the years to come in terms of heating and cooling if that house is energy inefficient. Certainly, we intend to support the Greens' Bill in relation to energy efficiency. We think it is appropriate and is certainly a step that is welcome.

I must say, Mr Speaker, that I am concerned to hear the Government saying that they do not believe the Act should come into effect until a new scheme has been developed. They seem to be very open-ended about when they believe that should take place. I understand that Ms Tucker is proposing an amendment that would allow the Act to come into effect 12 months after its gazettal. We certainly feel that is satisfactory and is adequate time for the Government to make a judgment about the operation of ACTHERS, the ACT home energy rating scheme. I think I have the acronym correct. We think it is adequate time for them to make a judgment about the operation and efficiency of that scheme. This certainly should not be open-ended, which is what the Government is proposing.

We believe the Residential Tenancies (Amendment) Bill, proposed by Ms Tucker also, again, is appropriate. People in rental properties face the same costs as people owning a house do when it comes to heating and cooling their property. They also should be aware of how much it is going to cost them to heat and cool that property if they are in that rental property for six months, 12 months, 18 months, two years. Some indication, through the energy rating scheme, should be provided when that property is put up for lease or rental. I am concerned again to hear the Government say that they do not believe it is appropriate to move down that path in relation to rental properties. Mrs Carnell in her comments seemed - I may be misconstruing it - to be indicating that, every time a landlord puts a property out for rental, they need to get a new energy efficiency rating.

My understanding of the Greens' amendments is that that is not the case; that the landlord needs to get a rating once for that property; that if they make changes to the property that affect the energy efficiency of the building, either positively or negatively, they need to get a new rating; but that they do not need to get a rating every time they let the property, only when they make changes to the property. I think the Government's argument on that case is simply not correct. I think it shows perhaps an unwillingness to put into practice the very important principles that the Minister for the Environment stated when he announced the Government's response to greenhouse.

When it comes down to it, the Labor Party is prepared to support, certainly in principle, both the residential tenancies Bill and the energy efficiency Bill. I will leave some of my other comments in relation to the raft of amendments that are before us to the detail stage, but I would like to indicate my party's support for the Bills.

MR MOORE (4.47): Mr Speaker, I rise to speak on both pieces of legislation. I will be supporting the Energy Efficiency Ratings (Sale of Premises) Bill 1997. I think the legislation to ensure that, on the sale of premises, an energy efficiency rating is applied is entirely appropriate. It seems to me that the issue that was raised by Mr Corbell is one that I need to look back at and double-check on. He commented that, where an energy rating has been obtained, it can then continue. That part I agree with. That is correct; his interpretation is correct; and it was not correct on the part of the Government to say otherwise. He then went on, though, to say that, of course, if the house has been modified or changed you would expect another rating. Yes; you would expect another one. I do not think this is in this legislation.

Mr Corbell: I was referring to residential tenancies not - - -

MR MOORE: But I do not think it is in the residential tenancies legislation that when the house has been modified a new rating is required. Let me say, though, that the Government did make what I thought was a valid point when they said that, for the most part, fixed income superannuants are the owners of many of the rental properties in Canberra. Certainly, I am familiar with a number of people who are in this category. They do not have large incomes, but they are trying to ensure that they continue to look after themselves as they have taken responsibility for themselves all their lives. When we are dealing with people like that, we have to be very careful that we do not undermine their livelihood as well; just as we must be careful to do what we can to protect people who are renting the properties from them.

It is for those reasons, Mr Speaker, that I have circulated three minor amendments to the Residential Tenancies (Amendment) Bill. The impact of these amendments is that, where an energy rating exists, it must be advertised and must be in accordance with the legislation that Ms Tucker has put up; as opposed to the suggestion that these fixed term superannuants must get an energy efficiency rating. What I perceive will happen if my amendments are accepted by the house - and I hope they are - is that, in the initial instance, whenever a house is sold and used for a residential tenancy, under the Energy Efficiency Ratings (Sale of Premises) Bill there must be an energy efficiency rating. As soon as that exists it must be advertised and made available, so that people can see what the energy rating is on the house when they are renting it. The impact of that will be that after a very short time there will be houses advertised on the rental market

showing their energy rating. As soon as they are advertised, people who are going through their first run of looking for a house will say, "Why do we not go and look at the one with the better energy rating or the one with the advertised energy rating?". So, the market forces will apply. I think that what will happen is that people themselves will determine that they want tenants and, therefore, will, because of the market, spend the $100 to get that rating in order to give themselves a better chance in the market. But there will not be a compulsion from us, other than when there is a change of ownership. I think that is a much more effective way to introduce this sort of legislation into the tenancy market without causing a major problem for people who are currently trying to manage their own superannuation income in a reasonable way.

Of course there are other landlords who are out there for whom this is simply a business. They run their business; and, yes, it will be a bit easier for them. They probably can afford to get a rating. But it is exactly the same as saying that there are also tenants who earn very high incomes, who are in Canberra perhaps for a relatively short time and who can easily afford to pay extra rental. The argument applies on both sides. But I think this is a much more sensible way to go with the legislation that Ms Tucker has put up. It seems to me that these two pieces of legislation can enhance, first of all, the way we deal with the environment and our consciousness of it; and, secondly, can enhance decision-making for people when they are either buying houses or, in the slightly longer term, as I understand the impact of my amendments will be, renting a property so that they understand the short-term costs compared to the long-term costs.

MR STEFANIAK (Minister for Education and Training and Minister for Housing and Family Services) (4.53): Whilst I have not had a chance to look at Mr Moore's amendments or a couple of the other amendments which are floating around, there are some significant costs in this which I think do need to be taken into account. I wait to see what the officers have told the Chief Minister in relation to the proposal on the first Bill - that it come into effect after 12 months. I think people have to take into account, though, the nature of properties in Canberra. It is a simple matter for any new house, be it in public housing or in private housing, to have a proper, state-of-the-art, as it were, energy efficiency rating. ACT Housing tries to get a very good rating on any new properties we build; we ensure that they are energy efficient. But the fact is that in Canberra a significant portion of the stock, both public and private, is old. Many houses were built prewar. The average age of a lot of the stock in Canberra is certainly well over 20 years. One just has to look around the suburbs to see this. Most of the houses people live in in Canberra are probably between 20 and 40 years of age. That is a very significant factor.

In terms of these Bills, there are certainly costs to ACT Housing. The estimated costs of rating ACT Housing rental properties is somewhere between $300,000 and $500,000 per annum which, unless it was separately budgeted, would perhaps result in a reduction in things such as housing maintenance. The costs of an energy rating and improvement works would be passed on to tenants in the public sector through increased rents. They are the group in most need of housing and are in poverty in some instances. I am concerned that the proposals may force lower-income earners to opt for a low energy rated dwelling and gain lower rents but incur higher energy costs.

There are also, as Mr Moore and, indeed, the Chief Minister have mentioned, the factors affecting investors in the ACT. Most people in the ACT who invest in property are not big investors; they are not people who own 30, 40, 50 properties; many of them are superannuants; many of them are people whose one housing investment property is effectively their superannuation. They often have very low incomes themselves. I have received a number of letters from them about matters such as tenants who are not paying rent. That causes real problems because, in many instances, their one investment property has a mortgage. I am very concerned, and would be interested in what members supporting these Bills say, about the costs that these people will incur and how they are to be ameliorated. I think the costs do need to be. That is a very significant factor. When an older property is to be sold there may well also be an impact, especially now when there is not a huge demand perhaps for houses. If someone has to sell because they are moving in their job and they live in an older house which does not have a very high energy rating, it might be very difficult for that property to sell. Indeed, if work has to be done before the property can be sold, it might run into tens of thousands of dollars. There are a number of quite serious factors, I think, which do need to be looked at and to be worked through before these Bills can apply right across the board to all properties in Canberra.

I am also concerned that the Greens, in introducing the Bills - and whilst I appreciate they were in gestation with the Parliamentary Counsel for some time - do not appear to have consulted the Housing Industry Association. They spoke to me this morning and indicated that they were only aware of the Bills - - -

Ms Tucker: We have. I am sorry; we talked with the Housing Industry Association a year ago.

MR STEFANIAK: Well, you had better talk to Martin Walsh about that because, Ms Tucker, he indicated to me that he was really only aware of what was proposed when the Bills hit the table last week. That is not a very long period of time for consultation. There are a number of amendments which have been brought forward as a result of these Bills, and I think that indicates, perhaps, that there are certain things that do need to be thought out better. Perhaps some further consultation with relevant players such as the Housing Industry Association would not go astray.

MS TUCKER (4.58), in reply: I will quickly respond to Mr Stefaniak's last statement. This was announced in the *Canberra Times* over a year ago. We did talk with the Housing Industry Association then. It is not correct to say that we have not discussed it with industry. Obviously, we have had the Bill only recently; and if that is what Mr Stefaniak is saying, yes, I will acknowledge that there has not been a long time to look at the detail of the Bill. That is unfortunate. As a result of the continuing pressure on parliamentary drafters we had to wait over a year to get this out.

I would also want to make a couple of comments about the Scrutiny of Bills Committee's comments. They raised two definitional concerns, although both were about the inappropriate delegation of legislative power. The first was in relation to the concept of the energy efficiency rating system. As members are aware, the statement is consistent

with the wording in the Territory Plan. We have taken this approach to bring about consistency between the scheme that already operates for new dwellings in the ACT and the scheme we are proposing. The ACT home energy rating statement is already in place for new dwellings in the ACT. The power to prescribe that rating scheme is not in any legislation but in the Territory Plan. There is no full definition in any piece of legislation. What we are doing here is applying a similar scheme to existing dwellings. As we cannot amend the Territory Plan, we have used legislation to do this. While it would be possible to define the energy rating statement as the ACT home energy rating scheme, that does not present as much flexibility.

As I indicated in the tabling speech, I hope this scheme is improved over time. There is a review coming up, and I believe there will be adequate public debate about any changes to the scheme. The ACT home energy rating scheme was not something that was just whipped up by a Minister overnight; it was the subject of an extensive process. I am sure the same would be true of any changes to the scheme or of any energy rating statement that is prescribed under this legislation if it becomes law. If that is not the case, I will certainly use my powers of disallowance to amend or reject any scheme.

In relation to the comments about the definition of premises, I would like to point out that this definition is consistent with the Residential Tenancy Act. While I acknowledge there is some regulatory power, I think the definition we have provided is quite comprehensive, while still allowing for some flexibility if that proves necessary. Some members were unclear about the requirement under our Residential Tenancies (Amendment) Bill to have another rating if there were changes made to the dwelling. What the Bill says is that if there were structural changes which come under the Building Act it would actually be necessary. But what the Bill is primarily about is reducing our greenhouse gas emissions. I have listened to the arguments against this Bill, which range from the imposition of costs on landlords to how we do not quite have the rating scheme right or perfect.

Debate interrupted.

ADJOURNMENT

MR SPEAKER: Order! It being 5.00 pm, I propose the question:

> That the Assembly do now adjourn.

Mrs Carnell: I require the question to be put forthwith without debate.

Question resolved in the negative.

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1997

[COGNATE BILL:

ENERGY EFFICIENCY RATINGS (SALE OF PREMISES) BILL 1997]

Debate resumed.

MS TUCKER: Also from the Housing Industry Association I have heard that we are causing a distortion of the market. Well, yes; we are very pleased to distort the market in this way. But the claim from that association was that this is in contravention of competition policy. Competition policy is not meant to override the public interest. The increasing global warming is certainly going to negatively impact on public interest. Leaving the market to rule, letting competition determine what we, as a society, are doing is a very frightening thought. The report of the Assembly's Select Committee on Competition Policy Reform, which was formed after the Greens' motion was passed, quite clearly stated that we did have to take on competition policy with caution. I quote from that report:

> Competition policy is not about the pursuit of competition for its own sake. Rather, it seeks to facilitate effective competition in the interests of economic efficiency while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives.

I would think reducing greenhouse gas emissions should fit pretty easily in there. Interestingly, too, the commission and tribunal have recognised as a public benefit:

> ... supply of better information to consumers and business to permit informed choices in their dealings.

So, we are actually being supported by competition policy in this Bill. This Bill seeks to encourage an awareness in both the community and industry, through providing information, of the advantages of energy efficiency; with the ultimate aim, of course, to reduce greenhouse gas emissions. I found it very perplexing how easily people can ignore the danger of climate change when I read in the paper today that Robert Hill was complaining because Australia thinks it is unfavourable that the Kyoto conference draft paper allows Australia to increase emissions by only five per cent from the 1990 levels. I have to wonder where he has been and what he is reading. It looks like Robert Hill thinks this is a conference about increasing greenhouse gas emissions, and future generations will condemn him for this.

MR SPEAKER: It also looks as though you are debating something other than what is before the house.

MS TUCKER: This is about greenhouse gas emissions - - -

MR SPEAKER: No; I do not think it is. I think it is about residential tenancies and energy efficiency ratings.

MS TUCKER: In the ACT this Liberal Government - I am talking about the ACT and this Liberal Government - has shown more leadership and has produced targets, Mr Speaker. Let us see a real commitment to reaching those targets by support for these Bills. The initiative announced by Mr Humphries as part of the greenhouse gas reduction strategy to make ceiling insulation compulsory does not go nearly far enough. I am sorry; this is really not very impressive because, with the four-star rating for new homes, new homes mostly have ceiling insulation anyway. About 60 per cent of the ACT's non-transport energy is used in space heating, and 20 per cent is used in water heating. This is a significant matter. The Government's own statements on the benefits of the ACT house energy rating scheme claim savings of 30 to 50 per cent, or $400 to $600 per year, in house energy costs.

I just heard Mr Stefaniak talking about public housing. I know that energy bills for public housing tenants can obviously be very worrying. We have all heard the stories of people not able to keep their families or themselves warm in winter because of the energy bills. Today members have an opportunity, by supporting these Bills, to show a commitment to reducing greenhouse gases through allowing consumers greater information about the energy implications of the housing they choose. All these Bills are doing is providing information, the benefits of which far outweigh any problems.

I would like to briefly speak to some of the amendments that have been circulated. I am concerned that the Government basically, through its first amendment, which is a commencement clause, is suggesting that if regulations are not in place this Act would not kick into place. Our amendment to that amendment will ensure that, in fact, regardless, after 12 months this Act will kick into place; and if there are no regulations in existence then, hopefully, someone would notice this and actually take action.

The concern about the definition and whether or not we use just the ACT energy rating scheme or other ones, I believe, is quite clearly accommodated by our amendment on the green sheet, which quite clearly makes it possible to have another scheme. I do not see that we need that other definition at all.

MR SPEAKER: Would you like to address these at the detail stage, Ms Tucker? That is not where we are at.

MS TUCKER: Well, I am quite happy to talk about it then.

MR SPEAKER: We have not got there yet.

MS TUCKER: I understand we have not got there. I am interested in covering the issues beforehand, in case some of my amendments do not get up. I may not have the opportunity if other amendments get up. I wanted to make it clear what my amendments were.

MR SPEAKER: Very well.

MS TUCKER: Thank you. I can leave the other one till the detail stage because I believe that will definitely get up, regardless of what happens to the amendments of the Government. So, I will finish there.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 10	*NOES, 7*
Mr Berry	Mrs Carnell
Mr Corbell	Mr Cornwell
Ms Horodny	Mr Hird
Ms McRae	Mr Humphries
Mr Moore	Mr Kaine
Mr Osborne	Mrs Littlewood
Ms Reilly	Mr Stefaniak
Ms Tucker	
Mr Whitecross	
Mr Wood	

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1

Debate (on motion by **Mrs Carnell**) adjourned.

ENERGY EFFICIENCY RATINGS (SALE OF PREMISES) BILL 1997

Debate resumed from 3 December 1997, on motion by **Ms Tucker**:

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1 agreed to.

Clause 2

MRS CARNELL (Chief Minister) (5.11): Mr Speaker, on behalf of Mr Humphries, I move:

> Page 1, line 9, subclauses (2) and (3), omit the subclauses, substitute the following subclause:
>
> "**(2)** The remaining provisions commence on the first day after the end of the period within which a regulation made for the purposes of the definition of 'energy efficiency rating statement' in section 3 may cease to have effect by force of the *Subordinate Laws Act 1989* unless the regulation did so cease to have effect.".

Mr Speaker, this amendment delays the commencement of the legislation until after the regulation to establish the energy efficiency rating statement is made. This will enable work to be undertaken with industry and community groups to develop a scheme that is simple and cost effective. This amendment arises from our concern that the legislation should be phased in and not implemented without developing a simple but effective energy efficiency rating statement and educating people about its use, application and benefit.

MS TUCKER (5.12): Mr Speaker, I move the following amendment to the proposed amendment:

> Omit all words after "following", substitute:
>
> "**(2)** The remaining provisions commence on the day after the end of the period within which a regulation made for the purposes of the definition of 'energy efficiency rating statement' in section 3 may cease to have effect by force of the *Subordinate Laws Act 1989* unless the regulation did so cease to have effect.
>
> **(3)** If the Act has not commenced before the end of the period of 12 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.".

Basically, what this is doing is insisting that, if nothing has happened at the end of the period of 12 months, this Act will actually be put in place and enacted anyway. This is to prevent this thing from just falling off the edge of the table.

MR CORBELL (5.13): Mr Speaker, when reading the Government's amendment No. 1, members really should also read it in the context of the Government's proposed amendment No. 4, which adds a new clause 8, which is a sunset clause. It says that, if all of the provisions of the Act, other than sections 1 and 2, have not commenced before the end of the period of five years, the Act as a whole is repealed. It seems to me that, if you look at that provision along with the provision that the Government is providing for in its amendment No. 1, what it is basically saying is: "We do not really want to do anything at all with this Bill". What the Government will do is put up some regulations, which it has the option of enacting; and, if it does not enact them, then they just do not occur, and the Bill ceases to have effect after a period of time. The Labor Party does not believe that that is a very appropriate way for the Government to be going.

The Government has already demonstrated that it really did not want this Bill in the first place; but it knew that it was going to lose that vote. So, now what it is trying to do is amend this Bill so that it has no effect anyway. That is not an acceptable response from a Government that has come out and said, "Greenhouse gas emissions are an important issue and we want to address it". They are not addressing it in this context, because what they are saying is: "We do not believe that there should be energy efficiency rating schemes for residential properties". It is really nothing more than rhetoric from the Government about greenhouse and an unwillingness to put that rhetoric into concrete action.

Mr Speaker, the Labor Party will be supporting the amendment to Mr Humphries's amendment moved by Ms Tucker because what Ms Tucker's amendment says is that, if after one year no regulation has been made in relation to energy efficient rating schemes, then that provision comes into effect and the ACT home energy rating scheme comes into effect as the appropriate rating scheme. That is entirely appropriate. I think the Greens need to understand that, if they are wanting to introduce a Bill one week and have it passed the next week, there are certain people in the housing industry who are going to be concerned about that and who are going to want an opportunity to assess what it means. Fortunately, the Greens have responded to that by saying that there will be a 12-month period in which the Government can go through the process of making assessments about alternative home energy rating schemes. They can introduce those schemes within a 12-month period; but, if they fail to do so, there is a fall-back provision. We think that is a sensible amendment. We believe that it is an appropriate amendment to make sure that we have energy rating schemes for residential properties.

Mr Speaker, we believe that this is an appropriate amendment. We believe that it is important that the Government act, and not just spout the rhetoric about greenhouse. We believe that the Greens' amendment achieves that. We will be supporting it.

MS TUCKER (5.16): I would like to speak again to the amendment. I can see how the numbers are going here. I think that, by suggesting this amendment to Mr Humphries's amendment, we are actually offering a compromise. As our initial Bill stood, it was six months. So, I think it is quite reasonable that we do stick with this and that we give it 12 months.

MR MOORE (5.17): I must admit, Mr Speaker, that my personal approach would have been to say, "No, I just do not agree with the Government's amendment", and to have knocked those off together. However, I can see that, in the spirit of compromise, there has been a position reached that will still recognise the importance of allowing people time to do what needs to be done. So, the best method through it, as far as I am concerned, is to support the amendment put by the Greens to Mr Humphries's amendment, and that will get the desired result.

MRS CARNELL (Chief Minister) (5.17): Mr Speaker, we will not be opposing Ms Tucker's amendment to Mr Humphries's amendment. We are wedded to the greenhouse gas targets that Mr Humphries announced recently. The reason we went down the path of the amendment that is here was to make this system workable and accepted by the community. I think one of the things that it is easy to do when you are potentially in opposition - certainly those opposite find it easy to do - is simply to oppose or to just have a go. Mr Speaker, it is up to the government of the day to actually enforce this and make it workable. That means that we have to get people to understand what we are talking about, to get a system in place that is workable. In other words, Mr Speaker, we have to deliver.

Mr Moore: Wayne Berry can deliver it; it is okay.

MRS CARNELL: Yes, I am sure that he can! He will have to learn how to work out a balance sheet first; but I am not confident about it. Mr Speaker, we are wedded to making this thing work. Twelve months will be tight; but we understand the will of the Assembly and we will not be opposing the amendment.

Amendment (**Ms Tucker's**) agreed to.

Amendment (**Mrs Carnell's**), as amended, agreed to.

Clause, as amended, agreed to.

Clause 3

MRS CARNELL (Chief Minister) (5.19): Mr Speaker, on behalf of Mr Humphries, I move:

> Page 2, line 7, definition of "energy efficiency rating statement", omit the definition, substitute the following definition:
>
> " 'energy efficiency rating statement' means an energy efficiency rating statement prepared in accordance with the regulations;".

Mr Speaker, it is our view that the energy efficiency rating statement should not be the same as the complex one that applies to the design of new houses. It is our view that we should set about establishing a simple check list style of approach, which will not add significantly to the cost of completing an energy rating scheme. We intend, once this Bill is passed, to bring together industry and community groups to build and design a simple, cost-effective energy efficiency rating statement which can apply to all houses when sold.

The object of this amendment is not to add significantly to the cost of selling a house. This scheme needs to be simple to administer and cost effective for home owners generally, Mr Speaker.

MS TUCKER (5.20): I am concerned about basically what is happening here, because I think it is quite unnecessary. If you look at the drafter's amendment that I will be putting in a minute, you will see that there is plenty of scope in that for something other than the ACT energy rating scheme that is in existence now. If the Government wants to develop this alternative, it is quite possible within our Bill with this amendment that I will be putting.

MR CORBELL (5.21): Mr Speaker, there is certainly no reason why the Government cannot produce its own energy rating scheme for existing properties. If they wish to proceed with developing such a scheme, then that is a step to be commended. I do believe, however, and the Labor Party does believe, that if the Government is unable to produce such a scheme then the Bill should be specifying what should be occurring in its place. That is why we are not going to support the Government's amendment but will instead support the amendment to be moved by Ms Tucker, because Ms Tucker's amendment also ensures the retention of paragraph (a) about what "energy efficiency rating statement" means, and that is entirely appropriate.

Again, we are seeing from this Government all sorts of little manoeuvres trying to get itself out of having to actually do something concrete in the development of a regime for energy efficiency rating of buildings. That is not an acceptable attitude for the Government and the Minister for the Environment to adopt. If the Government wants to go ahead and produce its own scheme, that is fine; but, if it does not, it should not have an excuse not to do it at all. That is why we are wanting to support the retention in the original Bill of a scheme designated under the Land (Planning and Environment) Act. I do have to say, Mr Speaker, that my advice indicates that the existing scheme which is specified in the Land (Planning and Environment) Act, which is also specified in the Greens' Bill, does take account of things like the siting of vegetation around existing dwellings and the siting of neighbouring dwellings. So, there is no reason why that scheme cannot be used. But, if the Government wants to develop another scheme for existing dwellings, that is a quite appropriate step to take. We welcome it; but we do not believe that there should be an out for the Government in this situation.

Amendment negatived.

MS TUCKER (5.23): I move:

> Page 2, line 13, paragraph (b) definition of "energy efficiency rating statement", omit the paragraph, substitute the following paragraph:
>
> "(b) if the regulations make provision for energy efficiency rating statements - a statement prepared in accordance with the regulations;".

I have already spoken to this; but I would like to add support for what Simon Corbell just said as well. We have sought advice on this, and our advice also has been that the current scheme could quite easily deal with issues that an existing house would have that would make it different from a new house. Obviously, in a way, it would make for a more accurate rating, because when a rating is done on a new house in a new suburb, before any of the area around it has been developed, you can see that there are quite a number of unknowns that really cannot be factored into that rating. So, I think that that is really not a very convincing argument at all.

The other comment I would like to make is that we will be watching very carefully to see that any alternative rating scheme that is produced is at least of as high a standard as the existing one. If we get presented with some simple tick-a-box scheme, we will be seeking support from members here to reject that.

Amendment agreed to.

Clause, as amended, agreed to.

Proposed new clause 3A

MRS CARNELL (Chief Minister) (5.25): I am not sure that this is going to be terribly relevant at the moment; but I will move the amendment anyway. Mr Speaker, on behalf of Mr Humphries, I move:

> Page 2, line 22, after clause 3, insert the following clause:
>
> "**Industry and environment impact statement**
>
> **3A. (1)** When a regulation made for the purposes of the definition of 'energy efficiency rating statement' in section 3 is laid before the Legislative Assembly pursuant to paragraph 6(1)(c) of the *Subordinate Laws Act 1989*, the Minister shall cause to be laid before the Legislative Assembly an industry and environment impact statement.
>
> **(2)** For the purposes of subsection (1), an industry and environment impact statement is a statement prepared by the Minister describing the likely costs and benefits of the energy efficiency rating statement to the real estate and housing industries and consumers generally.".

This amendment causes an industry and environment impact statement to be laid before the Assembly when the regulation making the energy efficiency rating statement is made. This will allow the Assembly to consider the cost and benefit implications from an industry, consumer and environmental point of view.

MR MOORE (5.25): It is interesting, Mr Speaker, that the Chief Minister says that this will be considered from an industry and environment point of view; but, in fact, that is not what the amendment says when I read it. The amendment says that an industry impact statement is a statement prepared by the Minister describing the likely costs and benefits of the energy efficiency rating statement to the real estate and housing industries. It does not say what is the impact in terms of the environment at all. It does not indicate what is the social impact, in terms of tenants in the long term who have been able to save money; rather, it picks on a couple of specific industries. I think that the Minister, if the Minister would like to, is welcome to go and do this. Nobody is going to stop a Minister going ahead and doing this statement, I would suggest.

Ms Tucker: On a point of order, Mr Speaker: Can I just comment that I think Mr Moore has the wrong version. There is actually a later one which takes into account the environment.

MR MOORE: I will throw that one away.

Ms Tucker: That was their original intention, though. So, it was good that you pointed it out.

MR MOORE: Thanks.

MR SPEAKER: There have been too many late amendments. It is no wonder it is all confusing. But go on.

MR MOORE: It is, indeed, Mr Speaker. I apologise for commenting on that earlier version. I still think that, if a Minister wants to go ahead and do this, there is nothing to stop them doing it. I would be happy for them to do that. I just do not think it is necessary to put it in legislation. But I must say that, now that it at least has an environment impact, that is a step forward. It talks about consumers generally now. That was my major concern. So, I do not much mind how this goes.

MR CORBELL (5.28): Mr Speaker, the Labor Party will be supporting this amendment proposed by the Government. We do believe that it is appropriate that industry and the community generally have an understanding of the impact on them of the development of energy efficiency rating statements and regulations which are before the house. We believe that it is a sensible compromise, and it is one we are certainly prepared to support.

MS TUCKER (5.28): It was a quite fortuitous accident that Mr Moore read out the wrong one, because I think it is an indication of how heavily people are being lobbied at the moment. It is absolutely outrageous and alarming that the Minister for the Environment, who wants to reduce greenhouse gas emissions, could have come up with the proposal that there just be an industry impact assessment. Basically, what we are trying to address is the sway that industry has in determining policy in this country. If only we could have an environmental impact assessment on all the initiatives that occur, we would have a very different outcome. But I am glad that this clause will be inserted to actually include an environmental impact statement as well.

I agree with Mr Moore; I think it is very bad to actually have this in legislation. If this impact statement has been done, why is it necessary to refer to it in this piece of legislation? Anyway, I will support it as a measure of our cooperative approach and give the industry an opportunity to actually find out that this is in its interests as much as in anybody else's and as much as it is in the environment's interests. What is shown quite clearly is that there are going to be as many jobs for the building industry in retrofitting buildings. The job multiplier of money invested and jobs for building a new building and jobs for retrofitting a building is the same. So, what I hope that an industry impact analysis will show industry is that it does not need to be afraid of this; that it is really good for everybody.

Clause agreed to.

Clauses 4 to 7, by leave, taken together, and agreed to.

Title agreed to.

Bill, as amended, agreed to.

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1997
Detail Stage

Clause 1

Debate resumed.

Clause agreed to.

Clause 2

MRS CARNELL (Chief Minister) (5.33): Mr Speaker, on behalf of Mr Humphries, I move:

> Page 1, line 9, subclauses (2) and (3), omit the subclauses, substitute the following subclause:
>
> "**(2)** The remaining provisions commence on the day on which the provisions of the *Energy Efficiency Ratings (Sale of Premises) Act 1997*, other than sections 1 and 2, commence.".

This is a commencement clause, to make the commencement the same as that in the Energy Efficiency Ratings (Sale of Premises) Bill that we just passed. It was, of course, amended by Ms Tucker to 12 months. This amendment still makes sense.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 3 agreed to.

Clause 4

MRS CARNELL (Chief Minister) (5.34): Mr Speaker, on behalf of Mr Humphries, I move:

> Page 2, line 11, proposed definition of "energy efficiency rating statement", omit the definition, substitute the following definition:
>
> " 'energy efficiency rating statement' has the same meaning as in the *Energy Efficiency Ratings (Sale of Premises) Act 1997*;".

Again, for the same reason, this amendment is to bring the Bill into line with the Energy Efficiency Ratings (Sale of Premises) Bill 1997. Mr Speaker, I understand that this one is okay as well.

Amendment agreed to.

MS TUCKER (5.34): I move the amendment circulated in my name.

MR SPEAKER: I am advised, Ms Tucker, that you cannot move the amendment. It is inconsistent. So, we will just have to leave that.

Clause, as amended, agreed to.

Clause 5

MR MOORE (5.36): Mr Speaker, I seek leave to move my two amendments together.

Leave granted.

MR MOORE: I move:

> Page 2, line 25, proposed subsection 11A(1), omit "the energy", substitute "any existing energy".
>
> Page 3, line 8, proposed subsection 11A(3), insert the following definition:
>
> " 'existing energy efficiency rating', in relation to the habitable part of premises, means the energy efficiency rating, or the most recent energy efficiency rating, ascertained for the purpose of a sale or leasing of those premises;".

These two amendments to clause 5 - and I will explain my third amendment as well - have the effect of ensuring that instead of, as the current legislation applies, every residential tenancy that is advertised requiring an efficiency rating, where premises already have an energy rating, where the house has been sold or modified and therefore has an energy rating, then that must be advertised and must be made available. The import of this modification is to ensure that superannuants who have looked after themselves in this way, who may have owned a couple of homes, are not forced by this legislation to go out and get an energy rating. I think I explained in my in-principle speech what would happen instead. I think members do understand that. This is the import of these amendments.

MR CORBELL (5.38): Mr Speaker, the Labor Party will be opposing Mr Moore's proposed amendments, simply because we believe that they create a loophole in the legislation. What they do is create a situation where anyone can say, "I am renting a property. I do not need to get an energy assessment of this property done". We believe that that is inappropriate. We believe that that does not accord with the general direction that this legislation should be going in, which is to require people to make available information on the energy efficiency of the property that is being put out for rental.

I appreciate Mr Moore's concern about the incomes of some people who are letting properties. He has made reference to fixed-income superannuants. What we would say in response to that is that what needs to be understood, first of all, is that the cost of the energy assessment is a one-off cost. It is not a cost that you can be expected to incur every time you let the property, unless every time you let the property you have made some form of renovation to the property. That is not exactly a common occurrence. So, I think it is fair to say, first of all, that this is a one-off cost to the landlord. The second thing is that the landlord can claim this cost as a tax deduction. So, it is not a cost which they cannot recoup further down the track. Admittedly, they do not recoup it immediately. They have to wait until they put in their next income tax assessment; but they can make it a tax deduction.

Finally, Mr Speaker, it would be fair to say that the cost can be recouped over a period of time. With increased rentals, if you look at recouping it, not over six months, but over 12 months, 18 months or two years, the cost can be recouped. It is a one-off cost. It is appropriate information that someone letting a property should make available to a prospective tenant because those prospective tenants are also potentially on low incomes and need to know whether or not the property they are renting is going to cost them a lot of money to heat in winter, for example. It is fair information that should be made available. Whilst I am sure that the intention of Mr Moore's amendment is good, it does provide a loophole which effectively means that an enormous number of properties will not have that sort of assessment of their energy efficiency made. As such, we do not believe that it should be supported.

MS TUCKER (5.41): I too am disappointed in these amendments. We will not be supporting them. But I do understand Mr Moore's concerns. At least it is the beginning of improving the energy efficiency of rental accommodation in the ACT. So, I am acknowledging that at least - that it is a step in the right direction - but I am disappointed, because I believe that this is such a critical issue that we really do need to take a stronger stance.

MRS CARNELL (Chief Minister) (5.41): We will be supporting the amendments, Mr Speaker.

Amendments agreed to.

Clause, as amended, agreed to.

Clause 6

MR MOORE (5.42): Mr Speaker, I move:

> Page 3, line 17, proposed subparagraph 12(3)(c)(i), omit the subparagraph, substitute the following subparagraph:
>
> "(i) if there is an energy efficiency rating statement in relation to the habitable part of the premises - a copy of the statement; or".

The amendment continues that same impact, Mr Speaker.

Amendment agreed to.

Clause, as amended, agreed to.

Title agreed to.

Bill, as amended, agreed to.

MOTOR TRAFFIC (AMENDMENT) BILL (NO. 6) 1997

Debate resumed from 3 December 1997, on motion by **Mr Osborne**:

> That this Bill be agreed to in principle.

MR KAINE (Minister for Urban Services) (5.43): Mr Speaker, I think it goes without saying that the Government supports this amendment legislation. It was an amendment to our original Bill in September that brought about the present situation. The Government opposed it at the time because we understood the ramifications of what was being put in the amendment. What this amendment does is restore the original Bill to the condition in which the Government put it to the Assembly in the first place. What the amendment in September did was to preclude dealers from participation in arrangements for conducting vehicle inspections for registration purposes. Of course, we considered that that was discriminatory. That is why we opposed the amendments when they were put for debate last August.

The success of introducing competition into vehicle inspection services can already be seen, I submit, by the number of premises and persons already approved and appointed for the purpose. In the first week of the new arrangements, eight premises were approved and began conducting inspections and tests of vehicles, as required under the Act. There are a number of prospective participants progressing towards approval and appointment. There is no reason why anyone should be excluded simply because they are a dealer.

Obviously, Mr Osborne has been impressed by the fact that precluding dealers from carrying out these inspections was unreasonable and unfair in the first place, and he is now prepared to come forward and amend the Motor Traffic Act again to allow these dealers to perform these inspections. The new arrangements for vehicle inspections provide vehicle owners with a choice of where they have their inspections conducted. Many people would like to have the business that services their vehicle perform those inspections. Allowing dealers to participate in these arrangements will simply widen the choices that the Government has provided to the motoring community, Madam Deputy Speaker.

This amendment from Mr Osborne rectifies what I believe was a major problem with the Act resulting from the amendments that were made to it in September. I am pleased that he has recognised the problem and is now attempting to fix that problem. As I said, the Government supports his amendments.

MR WHITECROSS (5.46): Mr Speaker, Mr Kaine obviously was not listening to Mr Osborne's speech when he introduced this Bill last week, because his characterisation of Mr Osborne's motivations for presenting this Bill does not represent the motivations which Mr Osborne indicated. Mr Kaine said that Mr Osborne obviously realises now that it was unreasonable and unfair to exclude motor dealers from being able to conduct inspections under the Motor Traffic Act and that he has now seen the light. In fact, what Mr Osborne said was that he has given up. He said that there was a conflict of interest and there was a problem; but he has talked to people and he is convinced that licensed motor dealers will find a way of working around the provisions of the Act; and, because they will find a way around the provisions of the Act, we should just give up and remove the provision from the Act, rather than put licensed motor dealers to the trouble of having to construct some artificial arrangement to avoid the provisions of the Act. Madam Deputy Speaker, that was the explanation that Mr Osborne gave when he introduced the legislation. Incidentally, I understand that Mr Moore takes a similar position. I think that at least it is more consistent with the position they took before, when they voted for the provision. At least they are acknowledging that there is still a potential conflict of interest here. They just consider that it is too difficult to resolve.

Madam Deputy Speaker, I will not disguise the disappointment of the Labor Party that, rather than simply giving up, the Independents have not sought to come up with a more workable solution in relation to this matter which might resolve the problem in some other way. But I understand how the numbers are going to fall on this, Madam Deputy Speaker. The Labor Party will be proposing amendments at the detail stage. Those amendments are to reinsert into the Act our proposals for regular vehicle testing.

As I said when we first debated this matter a number of weeks ago, the Labor Party actually does not object to licensed motor dealers having the opportunity to inspect vehicles. We support licensed motor dealers having the opportunity to inspect vehicles; but we think that ought to be part of a system of regular vehicle testing associated with registration, not part of a system where vehicles are inspected only once in a blue moon, on change of ownership. In a situation where they are inspected only on change of ownership, they ought not to be inspected by the people who are selling them. That was our position. If Mr Osborne and Mr Moore are happy to support our proposed new clauses, we will be only too happy to support the proposal to allow licensed motor dealers to inspect vehicles. In principle, we do not have an objection to licensed motor dealers inspecting vehicles; we only have an objection to them inspecting the vehicles when the only time they are going to be inspected is when they are sold and they are going to be inspected by the people selling them.

Madam Deputy Speaker, I am disappointed that the Independents have so readily changed their minds and that they have not more actively sought to find a solution to the problem they have identified, but instead have elected to give up. I can only wonder why they have not tried harder to find a workable solution to what I think was a real problem. The Labor Party has proposed what we believe is a workable solution, which is to have a system of regular vehicle testing, which will mean that we will not need to have the exclusion for licensed motor dealers at all.

MS HORODNY (5.51): We also were concerned about the conflict of interest that arises when a private inspector has an interest in doing repairs on a particular vehicle. There is obviously a possibility that, to get it passed, an inspector would request repairs to a vehicle that might be unnecessary, just to generate extra business. Conversely, there is also the possibility of deals being done between private inspectors and car dealers to go easy on inspections of their particular vehicles. It was the latter case that Labor sought to address in its amendments to the Motor Traffic (Amendment) Bill (No. 3). That was to prevent car dealers and their premises from being appointed as authorised private examiners. However, Labor was still prepared to accept the intent of the Bill, that vehicle inspections should be undertaken by private examiners. We supported the Labor amendments because at least they tried to remove some of the conflict of interest, as we saw it, in establishing private examiners. But our view is that we should not have established private examiners in the first place.

Mr Osborne has now presented this Bill to fix up what has become an anomaly in the Motor Traffic Act, as it is now. We were also approached on this matter by the Motor Trades Association. We have accepted that they have raised some very valid points about how the original changes to the Motor Traffic Act may unfairly discriminate against certain car dealers. What we have now is that a car dealer cannot become an authorised examiner, but the garage next-door can become an examiner, and there is nothing to prevent the car dealer from making an arrangement with the garage next-door to do particular inspections. The dealer can also contract out his own repair business within those premises to repairers who could then become authorised. All that these original amendments seem to have done is create administrative complications for car dealers, and they do not necessarily lead to greater numbers of roadworthy cars on the road.

There is some truth also to the suggestion that reputable car dealers have a strong commercial interest in making sure that the cars they sell are roadworthy. So, they are unlikely to abuse the inspection system. It is also the case that only the larger car dealers who have their own workshop facilities would get an authorisation anyway. The smaller car dealers are less likely to have repair facilities, and they are the dealers that are possibly more likely to be dodgy. They are less likely to have repair facilities of the standard that is required to get an authorisation as a private examination station.

So, even though the Greens do not support the Government's approach to motor vehicle inspections, we do have an obligation as members to ensure that the legislation that we have is effectively implemented and that there are no anomalies or loopholes. It seems that Mr Osborne's amendment legislation is fixing up an anomaly. Therefore, we are prepared to support it.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MADAM DEPUTY SPEAKER: I believe that Mr Osborne has an amendment. Can somebody locate Mr Osborne?

MR MOORE (5.55): Madam Deputy Speaker, I seek - - -

MADAM DEPUTY SPEAKER: Thank you. You will just keep on making a bit of noise, will you, Mr Moore, on a point of order or - - -

MR MOORE: Madam Deputy Speaker, I was just going to say that I think it is an appropriate time to defer to Mr Osborne so that he can move the amendment that is circulated in his name.

MADAM DEPUTY SPEAKER: Well said, Mr Moore. Mr Osborne, I believe that you have an amendment.

MR OSBORNE (5.56): Yes, Madam Deputy Speaker. I move the circulation amended in my name.

Mr Moore: He means "the amendment circulated in my name". He does not move the circulation; I think he moves the amendment.

MR OSBORNE: Sorry; what did I say then? I move the amendment circulated in my name.

MADAM DEPUTY SPEAKER: Yes. We know that it has been circulated in your name, but we want the amendment.

Mr Kaine: Madam Deputy Speaker, just for clarification: I presume that Mr Osborne includes his more recent amendment to his original Bill, which amends clause 2.

MADAM DEPUTY SPEAKER: Mr Osborne, would you please clarify that.

MR OSBORNE: Yes, that is right, Mr Kaine. I move:

Page 1, line 6, clause 2, omit the clause, substitute the following clause:

"Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.".

MR KAINE (Minister for Urban Services) (5.56): Thank you for that clarification, Mr Osborne. Madam Deputy Speaker, as I indicated in the in-principle debate, the Government supports Mr Osborne's amendments, including his new amendment to clause 2, which takes out a bit of retrospectivity that would have been in his original Bill and which makes this new Bill, when passed, effective as from the date on which it is notified in the *Gazette*.

MR WHITECROSS (5.57): Madam Deputy Speaker, the Opposition will be supporting this amendment. It takes out the retrospectivity, which would only ever have been necessary if the Government had appointed somebody covered by the Act, and obviously the Government has not.

Amendment agreed to.

MR WHITECROSS (5.58): Madam Deputy Speaker, I move the amendment circulated in my name.

MADAM DEPUTY SPEAKER: Are you seeking leave to move the amendments together?

MR WHITECROSS: I am advised that it is effectively one amendment.

MADAM DEPUTY SPEAKER: Proceed, Mr Whitecross.

MR WHITECROSS: I move:

Page 1, line 23, add the following new clauses to the Bill:

"**Registration of motor vehicles and trailers**

3A. Section 14(2) of the Principal Act is amended by omitting 'that is more than 6 years old,'.

3B. Section 14(2) of the Principal Act is amended by inserting a new subsection (2)(a)(ii)(a):

‘14(2)(a)(ii)(a) in respect of which application for registration in the Territory is being made in a calendar year that is the second, fourth or sixth anniversary after its date of manufacture’,

3C. Section 14(2) of the Principal Act is amended by inserting a new subsection 14(2)(ab):

‘14(2)(ab) in the case of a motor vehicle or trailer in respect of which application for registration in the Territory is being made in a calendar year that is the third, fifth, seventh or subsequent anniversary after its date of manufacture — a certificate of inspection under section 26AP is issued certifying that the motor vehicle or trailer and its parts and equipment comply with such of the requirements of the manual as are applicable to the motor vehicle or trailer and its parts and equipment;

Approval of authorised premises

3D. Section 26AG of the Principal Act is amended by inserting a new section 26AG(3A):

‘26AG(3A) The Registrar shall not approve premises to be authorised premises unless the equipment to be used on the premises to test a motor vehicle or trailer that does not exceed 4.5 tonnes, to determine whether or not brakes fitted to it comply with such of the requirement of the Manual as are applicable to the motor vehicle or trailer, is a Roller Brake Testing machine that complies with the prescribed requirements.

Certificates of inspection

3E. Section 26AP of the Principal Act is amended by a new subsection (1A):

‘26AP(1A) An authorised examiner shall not complete a certificate of inspection in respect of a motor vehicle or trailer unless the machine used by the authorised inspector to determine whether or not the brakes fitted to the

> motor vehicle or trailer comply with such of the requirements of the Manual as are applicable to the motor vehicle or trailer, was a Roller Brake Testing machine of the kind specified in subsection 26AG(3A).".

The amendments, as I indicated in the in-principle debate, relate to our proposed system of vehicle testing. Madam Deputy Speaker, as long as we are redebating things that we have already debated, I want to reiterate on the record that the Labor Party does not think that the system of vehicle testing by which you inspect vehicles only on change of ownership is a sufficiently regular system of vehicle testing to ensure that vehicles are in a roadworthy condition. If, as it appears from the in-principle debate, the majority in this place believe that licensed motor dealers ought to be given back the power to inspect under this Act - and, as I have said before, I do not have a problem with that - it ought to also be part of a regime where vehicles are inspected more regularly, because that will ensure a more roadworthy fleet. Our other proposals deal with ensuring that the equipment used in testing vehicles is of a high standard. I do not believe that the Government has actually yet issued regulations in relation to the standards for vehicle inspections; but we wanted to prescribe some minimum standards in the Act, particularly in relation to roller brake testing. So, for that reason, we are moving our amendment.

Madam Deputy Speaker, I believe that, if we are to be serious about motor safety, we need to complement our efforts in relation to drink-driving, speeding, and driving without due care and attention. We also need to ensure that vehicles are roadworthy. The current arrangements simply will not do that.

MR KAINE (Minister for Urban Services) (6.00): The Government does not support this amendment. Reference to the *Hansard* of only three months ago will show that this very same amendment was rejected by the Assembly then. It was rejected for very sound reasons.

Mr Whitecross: People were changing their minds all over the place. I am just giving them a chance to change their minds on this as well.

MR KAINE: I would hope, having regard to the reasons why it was rejected only three months ago, that people would not change their minds on this matter now. As I said, it was rejected because of very substantive arguments put forward by the Government in terms of capital cost and the like, and the fact that, statistically, only a very low percentage of car accidents in the ACT were attributable to mechanical failure and, when they were so attributable, it was almost invariably because of things like bald tyres. Those things are picked up by the random testing that is in place.

I would say, however, having made that point, that the Government will continue to keep the matter under surveillance and, if there is substantive evidence brought forward over time that there are difficulties occurring, we would want to review the frequency of testing. But we would do that only on the basis of very substantive evidence that it was warranted; and, if we did make a change, it would not necessarily be to go back to the complete system that we have had in the past where vehicles were all inspected

frequently, because we are not convinced that the return is in proportion to the cost of doing so. But, for the time being, I submit that there is no evidence, statistical or otherwise, to support reverting to the system that we had in the past. I repeat: This amendment was rejected only three months ago. I do not think the circumstances have changed. I presume that the people who voted against this amendment three months ago will do so again today. I would exhort them to do so.

MR MOORE (6.02): Madam Deputy Speaker, I will be opposing this amendment and will continue to oppose it. For quite some time I have felt that the need to have a vehicle testing station has not been proven. I know that Mr Whitecross raised safety issues and so on; but the reality is that, in regard to safety, we do a cost-benefit analysis. On a cost-benefit analysis, one of the things that come out worst in all of the expenditure on safety measures is vehicle testing. That is the main reason why I will continue to resist any expansion of vehicle testing.

I think that the responsibility for vehicle safety belongs with the owner, and that is how we should keep it. I know that the argument is that it would make sure that we do not have shonky brakes and all these things, and we can always find business people who will come out and say, "Yes, I have found a vehicle with terrible brakes since we have not had testing". But there were vehicles with terrible brakes before, when we had testing. Of course, it is in their own interests. They have a vested interest in ensuring that they get more business. I have been in a situation myself where I have been told that I need new brake pads, and I have said, "Okay, proceed with them; but I would like to have the old ones". When the old ones have come back to me, it has been a very embarrassed garage. So it ought to have been embarrassed, because they did not need replacing. Needless to say, it was not necessary to pay for that particular job.

But it seems to me, Madam Deputy Speaker, that in most cases people do not operate in that way. They operate, as most businesses operate in Canberra, on the basis of honesty. What we do need to ensure is that we work on the most cost-effective ways of improving our safety, and this is not one of them.

MS HORODNY (6.04): Madam Deputy Speaker, we will be supporting Mr Whitecross's amendment, as we did last time. We have never agreed with random inspections. I believe that there are a number of problems with random inspections. An example is that in random testing there is no opportunity to test emissions. Also, you obviously cannot test brakes, although we have been told that inspectors do have the capacity when they can track people down - or I suppose that they can stop people as they are driving along - to test brakes to some extent. But I have not been convinced that that can be done properly. I believe that, in the interests of safety, we do need more regular testing of our vehicles and we need all our vehicles tested. I believe that under the current system of random testing there are a number of vehicles that could actually get by for a very long time without ever being inspected.

I am glad to hear that Mr Kaine has made a commitment to review the current practice. Indeed, if after a number of years we see that random testing is producing a fleet of cars in the ACT that are less roadworthy than they should be in the interests of public safety, I hope that the Assembly will have a willingness then to go back to a system of testing at testing stations.

MR WHITECROSS (6.06): Madam Deputy Speaker, I thank members for their views on this. There are only a couple of things I wish to respond to in what has been said by others. Mr Kaine wonders why we are redebating amendments which were put and lost only a few months ago. The same could be said of the whole Bill, because, of course, we debated that a few months ago as well. The reality is that, if members are able to change their minds on one aspect of the vehicle testing arrangements, the Labor Party does not see why they should not be given the opportunity to change their minds on other elements as well, especially given that they have changed their minds on that one element in response to representations from the Motor Trades Association, who, I understand, would be more than happy for a return to regular vehicle testing. It seems interesting that members here are happy enough to accept those representations in relation to one matter but see no basis for even rethinking about it in relation to other matters.

Mr Moore, in his remarks, indicated that he is concerned that vehicle testing is not necessary because most repairers act in an honest way and that it is the responsibility of owners to test their vehicles. It is ironic that Mr Moore, who is supporting this Bill because he believes that a licensed motor dealer might act outside of the spirit of the law and construct artificial arrangements to avoid the clear intent of the law, then turns around and says that he believes that people will act in a - - -

Mr Moore: I have not given that reason. Do not put reasons in my mouth.

MR WHITECROSS: You did say that. He is now arguing that he thinks that most people act honestly and in the spirit of the law. So, that is an ironic perspective from Mr Moore.

I return to the basic principle underlying our amendment. We believe that it is the responsibility of individual motorists to ensure that their vehicles are in a roadworthy condition; but we also recognise that in this area, as in a number of other areas, individuals cannot always be expected to have the level of technical expertise necessary to be confident that that is the case. They may - and many do - make errors of judgment about how quickly components wear out and about their need for repair. There is plenty of testimony anecdotally in this town about the impact of random inspections on the roadworthiness of the fleet; but we do not have to rely on those anecdotes. We can rely on the practical experience of the Victorians, with inspections only on change of ownership - which is that the roadworthiness of vehicles is significantly lower and that there are huge rates of defects identified on change of ownership where that system has been in for some time. While, in principle, it may be, as Mr Moore says, the responsibility of the owners of vehicles to maintain them in a roadworthy condition, the practical experience in Victoria is that they do not. So, I commend the amendment to the house. I understand the views of others here; but I believe that, in principle, it is right and members should be supporting it.

Amendment negatived.

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

Bill, as amended, agreed to.

NATURE CONSERVATION (AMENDMENT) BILL 1997

Debate resumed from 3 December 1997, on motion by **Ms Tucker**:

That this Bill be agreed to in principle.

MR OSBORNE (6.10): I will be very brief. I believe that this debate is going to be adjourned, but I would like to make a couple of points. I do not particularly have anything against trees. I quite love trees, but I do not know whether I would go so far as to say I hug them.

Mr Moore: You should branch out.

MR OSBORNE: Mr Moore says I should branch out. I believe that Canberra's unique garden character is due in no small part to the number and variety of trees here, and they have been planted since we moved here, I believe. It was a plain prior to our coming here. I also think that, as a general rule, people should have a good reason if they are going to cut down a tree. However, I can think of 469 reasons why I will not be supporting this Bill today - not four, not six, not nine, not 100, not 200, not 300, not even 400, but 469 reasons why I will not be supporting it today. Madam Deputy Speaker, over the past three years the Greens have talked about community consultation 469 times in this place, and I do not see why those who hold community consultation in such high regard, and hold others to it, I might add, should be allowed to push this Bill through with such haste. It would appear, Madam Deputy Speaker, that community consultation applies only when it suits the Greens.

Having said that, there are a couple of consequences of this Bill that make me believe that it needs to be discussed by the wider community. It may be that on hearing of this Bill people decide not to plant native trees, preferring to keep control of their yards. Maybe they will not, but maybe we should ask. I also wonder about the wisdom of allowing third parties to object to cutting down a tree. Do we really need both the Government and our neighbours looking over our fence, making comments about the landscaping?

However, I will say this, Madam Deputy Speaker: I agree that this Bill does have some merit. It certainly requires further consideration and some community consultation. Should I return after the election I will reconsider this Bill. I am sure that if the Greens are returned they will bring it back before the house. However, as I said, I find it appalling that the Greens are attempting to rush through a Bill of this nature which has the potential to affect every household. As I said, there are 469 reasons why I will not be supporting it today.

MR MOORE (6.14): May I give reasons Nos 470, 471 and 472? Reason No. 470, Madam Deputy Speaker, is that I went to the last election saying I would not support tree preservation legislation. Sometimes that was difficult. I went to the sorts of forums where the Conservation Council wants people to stand up on their election platform and I knew that they wanted to see something different. I said, "No, I do not believe so",

and I gave the reasons. That takes me to reason No. 471. Reason No. 471 is what I believe is the risk associated with tree preservation, and that is that people will be reluctant to plant trees for fear that they will grow and they will not be able to cut them down. Reason No. 472, Madam Deputy Speaker, is to do with this piece of legislation. It seeks to preserve native trees but not preserve exotic trees that are part and parcel of almost all of inner Canberra, in particular, and which are very important.

The Greens have raised this issue. On a number of occasions over the last three years situations have come to my attention where tree preservation orders would have been a good thing. Therefore, I will not be going into this next election saying that I will oppose tree preservation orders; rather, that I will consider the issue on merit. I think the Greens have put up some particularly good arguments in their lobbying and therefore I am prepared to consider it.

My other reasons are probably largely covered by the first 469 reasons. I think tabling this legislation last week and then dealing with it this week really is not a viable thing, not just because of the lack of consultation because there are times when I believe it is reasonable to deal with legislation quickly. In this case there are some complexities about the legislation, not the least of which is the one I mentioned - that it covers only native trees. There are other complexities as well that we have not had time to deal with. Not only should I have time to deal with them, but also members of the public generally ought to have the opportunity to see the legislation and to comment on it. As Mr Osborne pointed out in reasons Nos 1 to 469, they have not had that opportunity. I will be interested to hear what other arguments are put up. I will be interested to hear Mr Corbell give reason No. 473.

MR CORBELL (6.17): Mr Moore has not exactly pre-empted my comments in this debate. The Labor Opposition supports in principle the concept of a tree preservation scheme. We believe it is appropriate. We believe it is an important aspect to have in a city such as Canberra. It is a surprise that we do not have a formal scheme in place for protecting significant trees or trees over a certain size in residential areas. It is inconsistent in the context of legislation that protects trees generally in the Territory in that we do have legislation that protects native trees on rural leases. We also have provision in our legislation to protect trees on blocks of land that are being developed as part of a land development proposal. For instance, there is a provision, under the Land (Planning and Environment) Act, to protect native trees on blocks of land being developed in areas of Gungahlin. But there is a loophole. When that land stops being part of a land development project and becomes part of a residential lease, when someone moves into the house, those trees are no longer protected. All of this effort may have gone into protecting a tree on land when the land is being developed as part of a residential subdivision, but once the houses are built you can chop the thing down. Mr Speaker, we believe that that is a little inconsistent, and it is certainly worth further consideration.

However, we believe that the points that have been raised by Mr Osborne and Mr Moore in relation to public awareness and education on this issue are also important. The Labor Party does not believe that this Bill should be progressed beyond a general debate today, for that reason amongst others. There are a number of other reasons that we do want to raise. In particular, there is the issue of the structure of the proposed

legislation that the Greens have put to us today. In particular, I want to make mention of how, under the Bill, it is proposed that the conservator would make decisions in relation to which trees should be kept and which trees should not. At the moment that is completely unclear. We would like to have an understanding of how the conservator would make decisions about which trees should be retained and which trees should not be retained before we pass a Bill that protects native trees on residential leases. Those are two issues that the Labor Party is concerned about.

The third is in relation to people on low incomes getting assessments about whether or not a tree needs to be chopped down. Mr Speaker, you look quizzically at me, but let me explain it to you because I know there are many older residents in the part of Canberra where you live who would be very interested in this. Say you have a large eucalyptus tree on a residential lease, Mr Speaker, and you want to remove that tree. Under the Greens' proposed legislation you need to get an assessment done of that tree as part of your application to the conservator for a permit to remove the tree or to prune the tree. That is a cost, and for people on low incomes it is a cost that they need to take account of. We believe that there needs to be consideration given to the Parks and Conservation Service providing a service to people on low incomes by making that assessment so that they do not need to make that outlay.

MR SPEAKER: Can they keep the wood for the fire?

MR CORBELL: Mr Speaker, it all depends on whether or not permission is given to remove the tree. In some instances it will not be given. Mr Speaker, we also believe that, on a broader scale, there needs to be consideration of a service for the removal of trees for people on low incomes. At the moment people on low incomes often need to get volunteer labour and other people in to remove a large tree. Removing a large tree is a difficult process, and potentially a dangerous one, and again some consideration needs to be given to people on low incomes.

Mr Speaker, whilst the Labor Party is supportive of the concept of tree preservation orders, we believe that there are enough question marks over this proposal for tree preservation orders being put forward by the Greens that we do not believe we are in a position to support it in the detail that they are asking us to do today. We do want to place on the record that we believe there is a place for some form of tree preservation process in the Territory, and we would like to see that explored further. We would also like to place on the record that if we are going to be dealing with native trees there also needs to be work done for exotic species as well, and we would like to see that work progressed also. In principle, tree preservation orders are going to be needed in the Territory, but we have to make sure we implement the scheme appropriately.

MR STEFANIAK (Minister for Education and Training and Minister for Housing and Family Services) (6.23): The amendments to the Nature Conservation Act proposed by the Greens are intended to introduce a laudable tree preservation scheme in the ACT. However, I believe that the scheme proposed in the Bill will cause far more problems that it will solve. It is ill-conceived, naive, impractical and bureaucratic. This Government does not oppose tree preservation schemes in principle, but before a decision is taken

to go down this path the broader implications must be considered. The need for and the extent of a tree preservation scheme should strike a balance between the rights and responsibilities of private lessees on private land, the protection of life and property, the legal liability of lessees and the Government, and broader community objectives for landscape quality, amenity and environmental protection.

Because of these complex and possibly competing issues, an assessment must be made as to whether there is a need for tree preservation in the ACT. Can it be demonstrated that the environmental and landscape qualities of our urban areas are under threat because of the absence of such a scheme? I think not. Is the existing protection afforded under the Nature Conservation Act and the planning and heritage provisions of the Land (Planning and Environment) Act adequate, or is there a need for review? Are the resource implications of requiring tree maintenance and/or removal to be approved in certain circumstances justified in terms of return of benefit to the community? I have seen no evidence from the Greens that the answer to one or all of these questions is yes; and, unless the answer is yes, this Assembly should not support the amendments to the Nature Conservation Act as proposed here today.

Turning to the proposed amendments in more detail: As a matter of principle, the Government would find it impossible to support this Bill in the absence of any clear statement of objectives or desired outcomes. To gain community support, a tree preservation scheme must have clearly identified objectives. Are we preserving trees as a matter of landscape interest and aesthetic quality, to enhance urban amenity and privacy, to protect cultural heritage and ecological or scientific values, or to improve general environment quality through soil conservation, air quality benefits, noise amelioration, et cetera? I would also like to highlight other difficulties we have with the operation of the proposed legislation, in particular noting the equity implications for rural lessees.

The proposed amendments require a licence for the felling or damaging of native trees only, irrespective of whether they are on leased, unleased or rural land. By comparison, any lessee would be free, within existing requirements, to fell or damage any non-native tree on their lease. I acknowledge that there is a reasonable excuse exemption, but it is not clear what this would entail, particularly as the amendments already exempt, in some circumstances, felling and minimal pruning for safety and property protection reasons.

The size criteria that requires trees over five metres to be subject to a licence applies only to land in the built-up area. This effectively means that only a proportion of urban lessees would be subject to tree preservation licences; yet the legislation seems to require rural lessees to have a licence if they wish to prune any native tree on their leases, irrespective of the size of the tree. It should be noted that the existing right of rural lessees to use timber from their own land for fencing and other uses on the land has also been removed.

The Bill also refers to a “reasonable belief of an immediate danger of injury or damage” being necessary for the exemption to apply. This could be interpreted as requiring that a tree could not be felled without a licence on a calm, windless day, and that a lessee would have to wait for sufficiently risky weather conditions so as to justify a reasonable belief to be able to avoid the licensing process.

The amendments are confusing in that it is stated that a licence will be required for leased and unleased land both within and outside the built-up area; yet the definition of a "standing native timber licence" is expressed to apply only to leased land. Subject to this being clarified, it is possible that native tree felling or maintenance carried out by government agencies on unleased land would also be subject to the licence approval requirement. The requirement is for a licence to fell or damage a native tree, but "damage" is not defined. It is conceivable that minor tree surgery, for the benefit and health of the tree, would be construed as damage and therefore require a licence application and the onerous approval processes I will outline. The process required to apply for and be granted a licence is extremely bureaucratic and is likely to be time and resource consuming, particularly given that it appears to apply equally to urban and rural lessees. For instance, to obtain a licence to undertake non-urgent maintenance on a native tree, a lessee, whether urban or rural, would, firstly, have to apply in writing to the Conservator of Flora and Fauna and accompany the application with a report from a qualified person stating whether or not the work was justified. Secondly, the conservator must then notify by post all adjoining lessees and publish a notice in the newspaper. Thirdly, any person who may be affected by the approval then has 21 days to object, and those objections must then be passed by the conservator to the applicant. Fourthly, after the conservator has made a decision, the licence cannot commence until the day after the last day on which the decision can be reviewed by the Administrative Appeals Tribunal. Fifthly, the conservator must then notify all adjoining lessees and any objectors of the decisions and the date of commencement of the licence. Sixthly, the applicant must then engage a different person from the one who provided the justification report to actually undertake the work.

As I noted earlier, the cost implications of a tree preservation scheme should be warranted in light of the benefits to the community and the environment. It has been conservatively estimated by DUS that the cost of a tree preservation scheme dealing only with native trees in the ACT could be up to $450,000 per annum, based on a calculation of $45 per application for 10,000 applications, which is 10 per cent of 100,000 residential properties. The figure of $45 per application is within the range of costs of administering similar schemes in New South Wales council areas.

I would also like to note that the amendments proposed in the Bill are not limited to requiring a licence for individual trees. They also purport to expand the application of the existing "ecological communities" and "threatening processes" provisions of the Nature Conservation Act and make reference to the qualifications of the Conservator of Flora and Fauna. Both these amendments demonstrate a lack of understanding of the operation of the relevant legislation. "Ecological communities" and "threatening processes" were defined in the Nature Conservation Act for the express purpose of the Flora and Fauna Committee's assessment processes. The meaning of these terms is subject to interpretation and would require expert assessment as to whether a certain group of trees or certain activity is in fact an ecological community or a threatening process.

There appears to be an assumption in the proposed amendments that any group of trees can be regarded as an ecological community. Only one ecological community has been declared through the declaration process, yellow box - red gum grassy woodland.

It is not certain that other woodland communities in the ACT are under such threat that they would also qualify for declaration. They have not been nominated or assessed. Therefore, inclusion of ecological communities is unlikely to be an effective way of preserving trees, as most trees would not fall within the assessment criteria established by the Flora and Fauna Committee, which comprises experts in biodiversity. I would also note that there are sufficient procedures available under the Nature Conservation Act for the Conservator of Flora and Fauna to take action to prevent felling of trees on areas containing a declared ecological community.

In relation to the qualifications of the conservator, the proposed amendments again clearly demonstrate a misunderstanding of the role and functions of the conservator. The conservator is not intended to be the Government's expert adviser on matters relating to conservation of flora and fauna. That is why we have a statutory committee of recognised experts called the Flora and Fauna Committee established under the Nature Conservation Act.

Mr Berry: Take it easy.

Mr Corbell: You are so well read.

Mr Moore: You are such a greenie, Bill.

MR STEFANIAK: Well, I used to be the environment spokesman a long time ago. The conservator's role is also not restricted to matters of conservation of flora and fauna. The Land Act quite clearly - - -

Mr Berry: He is lusting to get the job back. You are in trouble.

MR STEFANIAK: No, he is doing a wonderful job; it is all right. I like trees, Wayne. The Land Act quite clearly places the statutory responsibility for management of all categories of public land in the hands of the conservator. While this involves management of the nature reserve scheme, it also includes urban parklands, sportsgrounds and lakes. Competent management of this range of land uses requires the capacity to balance competing interests, which would include recreational, social, economic and equity of access issues, as well as issues relating to conservation and other aspects of environment protection.

Finally, I would note that, unlike Government presented legislation, there is no evidence that this Bill has been subjected to the usual scrutiny and analysis of its implications for business, the labour market, the environment and other social issues. As I have noted earlier, the issue of tree preservation is not one to be considered lightly and dealt with in a cursory manner. Given the deficiencies I have highlighted, together with the equity implications for rural lessees, the complex time- and resource-consuming approval process, and in the absence of any demonstration that the Greens' amendments are meeting any community demand or need, it would be irresponsible for this Assembly

to support these amendments which have the potential to affect the rights and responsibilities of private lessees on private land. If the ACT is to have tree preservation legislation it should meet clearly stated objectives, and its development should have the full involvement of the community. The Government, therefore, opposes in their entirety the amendments to the Nature Conservation Act as proposed by the Greens. Obviously they have a lot of problems.

Motion (by **Mr Hird**) negatived:

That the debate be adjourned.

MS HORODNY (6.33): Mr Speaker, I think almost from the day that Ms Tucker and I were elected to this Assembly we started to receive phone calls and letters from residents and members of the community who were concerned about the wanton destruction of trees in Canberra's residential areas.

Ms Tucker: In the bush capital.

MS HORODNY: That is right; this is a bush capital. It is very important that we maintain the bush that is part of our heritage here in the ACT. What we have here in the ACT is an ageing stand of eucalypts. What is missing in our landscape is a middle-age stand of eucalypts. We have a lot of young eucalypts growing in our newer areas in particular. As more people have become aware of the importance of eucalypts, of natives over exotics, in providing habitat for species in the Canberra environment that do need and do thrive in our native bush, more people have been planting eucalypts in residential areas; but what we do not have is a middle-age stand of eucalypts in our landscape. Our Bill attempts to preserve and protect the very old eucalypts that we have in our residential areas for a longer period.

Mr Moore: I take a point of order, Mr Temporary Deputy Speaker. I think on this point that Ms Horodny is barking up the wrong tree and is branching into areas that "leaf" us alone.

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): There is no point of order. Did you think that up on your own, Mr Moore? Work a little more "deciduously".

MS HORODNY: The end-of-Assembly adjournment debate is tomorrow, Mr Moore. You are a day ahead of yourself. As I was saying, the aim of our legislation is to try to protect the old eucalypts in our landscape. They are important as habitat. It is important that we preserve and maintain them at least until - - -

Mr Moore: Do you think I should plant another one on it?

MS HORODNY: Mr Moore, stop interjecting. It is important that we protect those trees until such time as the new trees in our landscape reach an age when they too can provide habitat for our species. I think it is important that we do not continue the practice of removing eucalypts from our landscape in the willy-nilly fashion that I believe we have been doing. I think that is particularly important because our eucalypts are

a community asset. All the trees in our landscape are obviously an important community asset. We have chosen natives because of their importance to our native species. We know that birds frequent species other than natives in our landscape, but they are generally not the species that are most at risk, the species that are most vulnerable. There are species of birds, particularly, but mammals as well, that do require native trees as habitat. They are species that are more vulnerable and rarer. It is important that we protect our native species. That is the reason why we have started with native trees.

Other members have pointed out that if we are to put preservation orders in place we should include exotic trees. Obviously, exotic trees would have to be dealt with in a separate Bill because we are dealing with the Nature Conservation Act here. Obviously, this Bill applies only to natives. We do not want to bring forward exotic trees at this stage because there are a lot of issues around exotics that are very complex. Obviously, we do not want to have protection orders in place for exotic trees that may also be invasive, for example. We need to look very carefully at species of trees to ensure that we are very selective about the exotic trees that we choose to protect.

Members have talked about consultation. Obviously, people in the community have not been ringing other members of the Assembly as much as they have the Greens. Perhaps we have been the only ones getting the calls and letters from people - - -

Mr Berry: Did you get 300,000 calls?

MS HORODNY: We have had a huge number of calls and letters. I can show you the files in our office, if you like. We have been working on this issue virtually from day one. We have been consulting with community - - -

Mr Moore: And you introduced the legislation last week.

MS HORODNY: We put it together in recent weeks, Mr Moore. Part of the reason for that is problems with Parliamentary Counsel. That has often been the reason for our legislation not coming up as early as we would have liked. We have been speaking with many residents and community groups. In fact, there is a community group that started in recent months. I believe they have been going for about six months. It is a coalition, I suppose, of various groups of residents, for example. Various members of different resident groups and conservation groups have come together to form a group whose main aim has been to try to put in place a tree protection order and, as well, to put together, in consultation with other people in the community, an education kit on the topic to convey to the community the importance of protecting these ecologically important trees.

Mr Moore has said once again that his reluctance to support our Bill is that it may work to prevent people from planting trees. He says that they will be reluctant to plant trees because they may find it difficult to remove them should they want to do so in the future. Our experience, from talking with people from other jurisdictions where there are tree protection orders, is that that is not the case. There are many jurisdictions around Australia that do have tree preservation orders in place, including Queanbeyan,

which is just across the border. Queanbeyan has a tree preservation order, as indeed do most of the shires surrounding the ACT. My understanding, and my advice, is that there has been no reluctance on the part of residents to plant trees for fear of them not being allowed to remove them in the future.

I am disappointed that members want to adjourn this debate. It sounds to me again that people do not want to make a hard decision. It is not such a difficult decision. It is something that people should have been thinking about. Members of this Assembly have had the opportunity to think about this for a very long time. It is not as though the issue came up for the first time when we tabled our Bill. It has been around for a jolly long time. We had this discussion back in 1995. In fact, when the Government put up an amendment to the Nature Conservation Act to take out - - -

Mr Berry: We opposed it.

MS HORODNY: Yes, that is right. It wanted to take out the provision that the Labor Party had put into the Nature Conservation Act some years before. Unfortunately, the Liberals and Mr Moore and Mr Osborne voted together to amend the Nature Conservation Act to take out the provision that you required a licence to take out eucalypts over two metres in height. It is disappointing that that happened in 1995. We argued against it then. We have tried to work, in the meantime, on some of the arguments that people presented at that time. We have tried to find a compromise and to work on some of the difficulties that people said then that they could not agree to.

I am disappointed that this has happened at this time. It would have been a lot easier if members had indicated the direction that they were moving in on this issue last week, or even before that. Even though I have said that perhaps we have been the only members lobbied, I know, from the groups that I have spoken to, that they have lobbied other members in this Assembly. So, it is not a new issue; this is not the first time it has been on the table, and it is a shame that this debate is being adjourned.

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

ADJOURNMENT

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

That the Assembly do now adjourn.

Conflict of Interest

MR MOORE (6.45): Mr Temporary Deputy Speaker, on a number of occasions in this house I have raised the issue of conflict of interest, and today I wish to raise it again. Today there was a debate on the Tenancy Tribunal (Amendment) Bill and in that Bill I had sought to ensure there was a situation whereby a tenant could take a landlord, or, for that matter, a landlord could take a tenant, before the tribunal to consider excessive rents. It has been drawn to my attention since the debate, otherwise I would

have raised it then, that there is one landlord in Canberra who probably would be at a huge disadvantage if that legislation had been passed. That landlord, over the next 10 years or so, would be looking at something in the order of a $12m interest. It is a $12m issue, Mr Temporary Deputy Speaker, and that conflict of interest, I guess, applies to the Labor Party. It applies to Centenary House where the Australian National Audit Office has a contract with the Labor Party which probably benefits the Labor Party. The figure I have heard is in the order of $12m. Had I been aware of that earlier I would have called on the Labor Party not to have voted on this issue. However, I was not aware of it. I presume that some members of the Labor Party probably were not conscious of it as well. Certainly, I have known about that situation for some time, but, quite clearly, the legislation would have an impact on that.

I think this is an issue that we need to deal with. It concerns me, Mr Temporary Deputy Speaker, that the Labor Party did vote on an issue which could be of benefit to the party. Obviously it is not of benefit to any individual member, but it could be of benefit to the party. In that context, I today asked Mr Berry whether he would distinguish between money that goes into individual pockets as opposed to money that is spent on the Territory. The issue here is that there is some $12m at stake. It is a huge sum of money and it is over a long period. We have seen, yet again, a vote of the Labor Party which does protect the interests of the Labor Party, and I think that is an appalling situation.

Planning Legislation

MR HUMPHRIES (Attorney-General and Minister for the Environment, Land and Planning) (6.48): Mr Temporary Deputy Speaker, I promised yesterday to table a response to comments by Mr Mossop of the Environmental Defender's Office on the planning legislation. I do so now.

Conflict of Interest

MR WOOD (6.48): I must respond, Mr Temporary Deputy Speaker, to Mr Moore's comment about conflict of interest. I have to say it surprises me because in the debate we have had internally on this matter it has never been raised; it has never been mentioned. I can see the point he makes, but it has never been referred to at any time. I do not believe it has ever been part of any consideration. I am not even sure - I will go back and look at the relevant legislation - that if those amendments were made the Commonwealth would, in any event, be able to seek a change of rent, or that the Commonwealth is not able to do it at the moment anyway. I refute any suggestion that there has been any conflict in this way.

Question resolved in the affirmative.

Assembly adjourned at 6.50 pm