# DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

## HANSARD

24 March 1999

**Wednesday, 24 March 1999**

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

## NATURE CONSERVATION (AMENDMENT) BILL 1999

**MS TUCKER** (10.32): I present the Nature Conservation (Amendment) Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

**MS TUCKER**: I move:

> That this Bill be agreed to in principle.

Mr Speaker, the Nature Conservation Act contains provisions for the appointment of a Conservator of Flora and Fauna who is basically the chief conservation officer in the ACT. The conservator is responsible for some key tasks under the Act - for example, preparing and maintaining a nature conservation strategy for the ACT, preparing action plans for the protection of endangered species, and the issuing of licences for various activities that affect native flora and fauna in the ACT and for activities within nature reserves.

The conservator also has an important role under the Land (Planning and Environment) Act. The conservator must be consulted over variations to the Territory Plan to ensure that nature conservation principles are taken into account. The conservator can also recommend variations to the Territory Plan to identify land as public land, such as for nature reserves or public open space, and is responsible for the preparation of management plans for public land in the ACT.

Obviously the conservator has staff to assist in these duties. The ACT Parks and Conservation Service is established under the Act to assist the conservator in carrying out his or her duties. However, as the statutory office holder, the conservator carries significant personal responsibility for ensuring that the natural environment of the ACT is protected for future generations.

Mr Speaker, it has been a concern of the environment movement for some time that the advice being given by the conservator to government on nature conservation issues has not been frank and fearless on behalf of the environment but has been compromised by political imperatives. There is a public perception that the conservator has been making

too many allowances for the Government's desire to promote recreation and tourism activities in nature reserves and generally to not place impediments in the way of development in the ACT rather than present a clear, scientifically based opinion on the impacts of such proposals on the environment.

The Greens actually dealt with this issue as part of a Bill we tabled in the last Assembly to amend the Nature Conservation Act but it was overshadowed by the debate over the tree protection provisions in that Bill. However, this issue has come to the fore again because of two reports that have recently come out of the Urban Services Committee in which the actions of the current conservator were seriously questioned.

First, in the committee's report on the draft management plan for Canberra Nature Park the committee made some quite scathing remarks about the conservator's actions in relation to recommending that horse riding be allowed in the Aranda bushland. The committee stated, and I quote:

> The Committee is seriously disturbed that the Conservator of Wildlife would approve an extension of horse trails in CNP, including into the Aranda bushland, in the absence of detailed knowledge about the effect of horses upon existing areas. In the opinion of members, this action is bordering on negligence.

The committee also stated, and I quote again:

> ... the duty of the Conservator is to protect and conserve, not to balance the competing claims of conservation, recreation and other activities.

Secondly, in the committee's report on the draft management plan for Tidbinbilla Nature Reserve, the committee noted that the conservator had a "curious" role as both the proponent of building development in the reserve and also as the person who would be giving advice to PALM on the appropriateness of this development. The committee recommended that the approvals process should be varied, and I quote:

> ... to ensure that the Conservator is not placed in a position where he or she is both the proponent of a development and the provider of what is expected to be impartial advice about the conservation impact of the development.

At present the Executive Director of Environment ACT, who is one of the senior executives in the Department of Urban Services, also performs the role of conservator. Both of these reports suggest that there is a need to separate the statutory role of conservator from that of Manager of Environment ACT as it is becoming increasingly obvious that the managerial role is taking precedence over the conservation role.

I agree that a separation of these functions would help to overcome the types of problems I have referred to. However, I think that a further step needs to be taken and that is to look at the need for the conservator to have sufficient qualifications to undertake the important nature conservation role. I noted yesterday, Mr Speaker, in their response to

the issue of the plan for Tidbinbilla and the concerns of the committee about the role of the conservator, that in fact the Government have not taken those concerns seriously. I think that underlines the importance of this piece of legislation that I am tabling today.

This Bill does add a requirement to the Nature Conservation Act that the conservator must be a person with graduate qualifications and work experience in nature conservation. I find it quite amazing that the person who is supposed to be advising the Government on the environmental impacts of development proposals and who is the chief manager of Canberra's nature reserves does not currently have to be qualified in the area. This type of work requires specialist knowledge of ecological processes and environment management and it is only reasonable that a person with high level skills in this area should be doing the job.

There are many precedents in legislation requiring government office-holders to have mandatory qualifications. The Director of Public Prosecutions must be a barrister and solicitor. The Chief Medical Officer must be a medical practitioner. Animal welfare officers must be vets. Magistrates must be legal practitioners. Within the Public Service there are qualification requirements in the selection criteria for a whole range of positions. For example, there is an expectation that computer programmers would be qualified in computing, or architects or engineers would be registered with the relevant professional bodies.

These qualification requirements are set because there is an understanding that these jobs require specialised knowledge that cannot just be picked up as you go along, and that only people with recognised training could undertake these jobs. So why should not the conservator be qualified in nature conservation? To not have such a requirement is really a downgrading of the importance of the biological sciences and a downgrading of the importance of environmental considerations in government decision-making.

There is a view within some Public Service circles that managers do not need to have background experience in the particular area that they manage; that all they need are the appropriate management skills to supervise those staff below them who supposedly have the technical knowledge and skills. This may be true for some general administrative areas where generic management skills may be all that is required. However, I think this approach is quite dangerous in many specialised areas of the Public Service where a detailed knowledge and understanding of technical issues are necessary to ensure that the Government receives comprehensive advice and that critical factors are not overlooked when actions are taken by agencies.

In the case of the conservator, they should have as their prime focus the conservation of the environment. Any decisions that involve trade-offs with other objectives should really be taken at a higher government level. What we have seen recently is the conservator making these compromises too early in the process and not giving strong conservation advice to the Minister. Requiring the conservator to be appropriately qualified will not totally solve these types of conflicts of interest, but hopefully a future conservator will be more understanding of environmental concerns and the scientific and

technical issues behind them if they have studied and worked in the area. It is also in the interests of the Government to get thorough and considered advice on environmental matters from an expert in this field.

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

## MOTOR TRAFFIC (AMENDMENT) BILL 1999

**MR OSBORNE** (10.41): I present the Motor Traffic (Amendment) Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

**MR OSBORNE**: I move:

> That this Bill be agreed to in principle.

Mr Speaker, there is no more important duty for members of this Assembly than to provide our community with a safe environment in which to live. This amendment to the Motor Traffic Act 1936 is a step in the direction of providing that safer environment. It removes an anomaly from the law governing seatbelts while still incorporating current laws in regards to child restraints. At the moment seatbelts must be worn where they are fitted, but there is nothing in the law to prevent more people being in a car than there are seatbelts. This amendment to the Motor Traffic Act will address this unsafe practice.

I know it is impossible to legislate away stupid behaviour, Mr Speaker. If we remember back to the days when we were all teenagers when we just got our licence - I know that is a lot further back for some of you than for me - and we had some of our friends around, if there was one too many of us to fit into the car we often did not leave our friend behind so shoved him into the back seat and made him fit. The back seat was a jam, with all the commotion, the fuss and the yelling. The distraction this caused to the driver was all a bit much and we were no doubt lucky that we got there in the end. The other side of the spectrum is that this will stop people from overloading their car with five or six kids while they are just running little Johnny to his mate's place around the corner.

Mr Speaker, no matter how quick the trip just around the corner may be, when driving a car there is always a risk to the safety of the passengers in the car, and this safety risk is put into jeopardy when the use of seatbelts is restricted. Studies have shown, Mr Speaker, that the vast majority of accidents occur within a few kilometres from people's homes. The legislation that I am proposing today will at least give the traffic police the power to stop drivers engaging in this unsafe practice of overloading their vehicles.

As we all know, there is a fine line between life and death when driving a motor vehicle. The driver is responsible for the safety of the other passengers in the car and that of other drivers on the road, just as we here in the Assembly have a responsibility to the

community to provide a safer environment in which to live. We cannot prevent every accident on Canberra's roads from happening but we can try to make Canberra's roads as safe as possible by following guidelines to protect the infinite passion and quality of life.

Mr Speaker, safety first does not mean a smug self-satisfaction with everything. It is a warning to all persons who are on the roads to play it safe. This new law will only add to the safety first approach to Canberra's roads. My office has recently checked with the National Road Transport Commission regarding the national road rules and the provisions provided in this Bill have not been included. Hopefully, with the Assembly's support, we can remove this anomaly and we can take a further step towards making Canberra's roads the safest in the nation.

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

## BUILDING AND CONSTRUCTION INDUSTRY TRAINING LEVY BILL 1999

**MR BERRY** (10.45): Mr Speaker, I present the Building and Construction Industry Training Levy Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

**MR BERRY**: I move:

> That this Bill be agreed to in principle.

This is a Bill to introduce a much needed levy to fund training in the building and construction industry. The building and construction industry is a major employer in the ACT and, in an era where there is an emerging shortage of qualified trades people, training is more important than ever. This Bill seeks to address the problem of ensuring that we have enough qualified trades people to take us into the twenty-first century. It will fill a gap created by government inactivity on this important issue over four years when the Carnell Opposition opposed it but, in an almost miraculous backflip before the last election, came to supporting this idea, only to drop it after. Doesn't that have a familiar ring to it?

The Assembly has dealt with this proposal in the past, first as a Labor Bill which was defeated, and secondly as a Liberal Bill on which this Bill is based. Since this proposal was first defeated there has been a lot of work done and discussion held. Majority industry support for the levy was re-established in 1996. The Construction Industry Training Council has worked with all interested parties over the intervening years to bring the building and construction industry training levy to fruition, and it is to be congratulated for its efforts in this regard.

The building and construction industry is characterised by subcontracting where subcontractors typically hire employees to do a particular job and then release them at the completion of the project, or re-hire them when they have another contract. Activity in

the industry has been especially depressed over the last couple of years. This environment does not lead to the situation where there is an adequate focus on the training of apprentices or the upgrading of the skills of existing workers.

The aim of this Bill, Mr Speaker, is to address the situation where the industry cannot support the cost of training on a voluntary basis and overcomes the problem of the cost of training being discounted because it is seen as part of the mix of competitive components pricing. This is a viable way of committing resources to training.

At the national level, investment in training in the building and construction industry fell from 1.8 per cent of gross payroll in 1993 to 1.3 per cent in 1996. This is the lowest of all industry classifications. In the five years from 1992-93 to 1997-98 the number of apprentices who commenced in the building and construction industry in the ACT fell from 212 to approximately 90, over half. At the same time, the work force in the industry is ageing.

This Bill proposes to apply a levy of 0.2 per cent on the cost of construction of all civil and private building and construction activity in the ACT in excess of $10,000. It is to be managed by the Building and Construction Industry Training Fund Board, under the auspices of the responsible Minister. The fund established under the Act will be managed by the board and will be directed at training needs as determined by the responsible Minister in accordance with the building and construction industry training plan. The plan will be prepared after consultation with the Building and Construction Industry Training Council and published by the Minister in the *Gazette*. The levy will be paid by the project owner before the commencement of construction, with provision in the Act for refunds in cases such as abandonment of the project and the conduct of exempt work, and adjustments for inadequate payments of the levy.

The introduction of the levy has so far received the support of the Master Builders Association, the National Electrical Contractors Association and the Civil Contractors Association. It is also supported, not surprisingly, by the trade unions - in particular, the Construction, Forestry, Mining and Energy Union and the Communications, Electrical and Plumbing Union.

Mr Speaker, the Bill will have no impact on the budget. The introduction of the levy will, however, go some way to filling the gap in training in the building and construction industry which occurred with the Government's moves to outsourcing and the consequent loss of training opportunities in government employment. The benefits of the levy include the following: The industry will take increasing responsibility for planning its labour market needs; alleviation of youth unemployment; and higher quality of product and improved productivity will result from the up-skilling of workers.

Initially, Mr Speaker, there will be a small cost to project owners which will be passed on totally or in part. It must be borne in mind, however, that there is wide recognition that additional training is required in the building and construction industry. It will cost around $200 for a $100,000 housing construction and $2,000 for a $1m project. To do

nothing, which is the course the Government has chosen, will lead to a skill shortage which, in turn, will lead to wages pressure and rising costs in the longer term, overtaking the small cost of this proposal.

Mr Speaker, the fund will be equitable, everyone will contribute; efficient, all sections of the industry vested in one body avoids duplication; industry driven, industry representatives will make up the board, and the annual training plan will be prepared in consultation with the Building and Construction Industry Training Council; and transparent, the fund will fall under the purview of the Auditor-General.

Similar levies apply in South Australia, Western Australia and Tasmania. All apply the levy on the cost of construction, all apply the levy on the principal contractor, all ensure that the levy is administered by the industry itself, and all use the funds to support both entry level and ongoing training. Western Australia and Tasmania set the level at 0.2 per cent, and South Australia sets the level at 0.25 per cent.

The fund is expected to raise about $1m a year, depending on building activity. These funds will be spent on supporting entry level training, especially apprentices, and on up-skilling of the work force. A small amount will also be needed to be spent on researching the training needs of the industry. This fund can be implemented virtually immediately to fill the clearly identified need.

Mr Speaker, the Minister for Education released a discussion paper in 1997 canvassing three options - a voluntary levy, a compulsory levy, and extension of the Long Service Leave Board funding. The results of the public consultation led to majority support for the compulsory levy, the proposal in this Bill. A minority supported the voluntary levy. However, a voluntary scheme would be inequitable in that not all would contribute. There is also a very strong argument, Mr Speaker, that if a voluntary scheme were feasible it would be in operation already. It is not.

The building and construction industry itself recognises the need for improved training, but the nature of the industry, which increasingly relies on subcontractors, with a majority of small organisations comprising less than four employees, does not lend itself to investment in training at the enterprise level. With the demise of a funding source from the Long Service Leave Board and the absence of any activity from the Carnell Government on this important issue, it is now crucial that action be taken to rectify this serious problem.

This is a Bill which will improve training and up-skilling of workers in the building and construction industry at a time when fewer resources are being put to that and skilled workers are becoming harder to find. It will also lead to better, more clever and safer workplaces - improvements that not one of us can question. Mr Speaker, I urge members to support the Bill.

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

## CASINO CONTROL (AMENDMENT) BILL 1999

Debate resumed from 10 March 1999, on motion by **Mr Kaine**:

That this Bill be agreed to in principle.

**MR OSBORNE** (10.54): I inform the Assembly that I will not be taking part in this debate or this vote because I believe this Bill relates to the casino, specifically to poker machines. Therefore, I will do as I have done in the past and see you all later.

**MS CARNELL** (Chief Minister and Treasurer) (10.55): Mr Kaine's Bill amends the Casino Control Act 1988 to provide that the Minister may determine the designation of a casino only by regulation. Under the Subordinate Laws Act 1989, a regulation is an instrument disallowable by the Legislative Assembly. Currently the Minister may make a determination by notice published in the *Gazette*. Simplistically, as the Minister, by publishing a notice in the *Gazette*, I can change the amount of space at the casino used by the casino. Mr Kaine is suggesting that such a decision should be disallowable by this Assembly.

Mr Speaker, the Government has maintained a policy of not extending modern gaming machines outside the club industry. However, the casino successfully applied for a change of lease purpose clause for the casino lease to include, among other things, a club. This decision by the Commissioner for Land and Planning was appealed against by the Licensed Clubs Association in the Administrative Appeals Tribunal. The ACT Supreme Court also rejected a challenge mounted by the Canberra Tradesmen's Union Club and the LCA. The matter is now before the Federal Court.

The fact that this particular issue was appealed by the Tradies, the Canberra Tradesmen's Union Club, means, in my view, that immediately those opposite must do exactly what Mr Osborne just did. They have a very clear-cut conflict of interest. Those opposite have argued that poker machines do not give any personal benefit to members of the Labor Party. That is a very tenuous argument. But now we have a classic case in this particular piece of legislation where a club that, on record, contributes to the Labor Party is opposing, challenging, a decision on the casino. The Tradesmen's Union Club, a club very closely aligned with the Labor Party, have opposed a decision lawfully made by the Commissioner for Land and Planning.

The Commissioner for ACT Revenue has received an application for a gaming machine licence from the Raiders Sports Club Ltd to be located within the current designated casino area. If the club meets all required criteria for a gaming licence, the commissioner would have a statutory obligation to grant such a licence. Similarly, the Minister, under the Casino Control Act, may exercise his or her discretion and designate an area for the purposes of a casino and hence allow room for the establishment of a club within the casino premises.

Under Mr Kaine's Bill, while the Minister may still designate an area for the casino, it would be done by regulation and, as such, the regulation would be subject to a majority vote of the Assembly. Mr Speaker, the problem with this whole approach is that the

proponents of a club in the casino have had to jump over so many hurdles already, and rightly so. They have had to show themselves to be a club under the Act. All sorts of things have had to be achieved and all sorts of legislation has had to be complied with.

The problem, as I see it, of allowing this sort of decision to be determined by the Assembly is that it just puts off a decision even further. As we know, the Assembly has 15 sitting days in which to consider a disallowable instrument. Fifteen sitting days in this place is six months. Is that fair after a particular entity has complied with all other legislation? I suppose that is a matter for the Assembly to determine.

While the Government has no objection to the Bill, I would like to draw the attention of the Assembly to the concerns expressed by Casino Canberra in a letter to Mr Kaine dated 12 March, a copy of which was sent to me by the casino. It states:

> Your -

that is, Mr Kaine's -

> proposal does not as suggested remove an anomaly, but it has substantial adverse consequences not only on the Casino but on other third parties, by creating lengthy delays of five or six months (due to disallowance provisions relating to the regulation making process) and by removing commercial certainty as a result of such unnecessary delays.

Mr Speaker, the Government believes that there is no anomaly in current legislation and that this Bill will not change the administrative processes undertaken by the Minister. We understand that in the interests of accountability and transparency in government decisions there are times when it is appropriate for decisions taken by a Minister to be disallowable, but these are rarely in areas where there are commercial concerns or where there needs to be, as the casino rightly says, a level of commercial certainty. If we take the view right across the board that the decisions of a Minister that have commercial impact can be put off by this Assembly for five to six months, it will have significant implications down the track.

I was also interested in another letter from the casino to Mr Kaine. I suppose it says a lot about the way Mr Kaine operates in this place. This letter says:

> Paul Whalan met with you -

meaning Mr Kaine -

> today in relation to your proposed amendment to the Casino Control Act.
>
> You advised Mr Whalan that you had rushed the presentation of your Bill -

and you could add to that now the debate on this Bill -

> and had inserted an operative date of March 10, because you had been advised that the Chief Minister had before her documentation for her signature which would de-gazette part of the Casino for use as a licensed club.
>
> I wish to advise you that such documentation would be prepared only on an application by Casino Canberra. The Casino has made no application - either formally or informally - to the ACT Government for degazettal of any part of the Casino for purposes of a Club.
>
> You have advised that the source of your information was a staff person within the Assembly building.

We now have on the table legislation that was rushed in and that is retrospective inasmuch as we have a date of operation of 10 March in the Bill. It has been raced on for debate. It was tabled only in the last sitting week. It is based upon what some staff member said to Mr Kaine in the Assembly building. This has to be ridiculous. It is a ridiculous way to run government. It is absolutely mind-boggling in its inefficiency and incompetence.

There is no application in front of me, on my desk or anywhere else in the system. Why would this Assembly pass a piece of legislation with an operation date of 10 March, a retrospective operation date, when there is no application on the table? In the past Mr Kaine has argued strongly against retrospectivity - as, by the way, have most members of this Assembly - and putting pieces of legislation on the table for no purpose.

I come back to the issue. The Government has no problems with allowing decisions to be disallowable and has supported that in the past. Although not always, the Government has regularly supported disallowable instruments. I ask the Assembly to think seriously about a piece of legislation based upon no fact whatsoever and with a retrospective starting date, for no reason. As the casino says, there is no application. They have not made an application for a degazettal of part of their premises. Therefore, there can be nothing on my table - and there is not - for me to approve.

**Mr Kaine**: The 10 March date is irrelevant then, is it not?

**MS CARNELL**: Mr Kaine says his Bill is irrelevant. It is irrelevant. There is no application on the table, so why would we pass something with a date in it, a date that is retrospective?

**Mr Kaine**: Move to have it deleted. I do not care.

**MS CARNELL**: Mr Kaine says to move to get rid of that date. That is a fair approach. Then we come to the next part, the disallowance - five to six months on top of all of the things that both the club and the casino have had to do to get to this stage. Assuming that there was ever an agreement that the club in question could have poker machines - and

that decision would have to be made by the Commissioner for ACT Revenue, not by me, and certainly, as I understand it, it has not been made - do we want to say to a commercial operation in this city that this Assembly requires another five to six months' delay after the commercial operation has met all of the requirements that have been put in place?

Again, I come back to the view that this Government does not oppose disallowable instruments. But in this case we have to look very seriously at why this Bill is on the table and what it really does. For the club in question to get the okay for poker machines it has to comply with current legislation. The Commissioner for ACT Revenue determines whether they have complied with all of the requirements, as they would for any other club. They still have not got that requirement. We know that the casino successfully applied for a change of lease purpose clause for the casino lease, which has been subject to a number of appeals. The casino has won those appeals. A huge amount of work has been done on this. Whether we do or do not oppose a club in the casino, a huge amount of regulation has to be met. Do we as an Assembly want to create another hurdle, one that is just arbitrary?

Does this Assembly want a disallowable instrument for all new clubs? If the Labor Club or the Tradies wanted to buy another club or a tavern and turn it into a club, do we want that to be disallowable? You cannot have it for one and not for others. If next week one of the current clubs buys a tavern or a hotel and wants to turn it into a club, do we say to them, "Sorry, it is disallowable, so you will have to wait six months."? I have to tell you that they will go bananas. Why is this one different? We have clubs in strange places in this city now. Recently the Labor Club bought the Kaleen Tavern and turned it into a club.

**Mr Quinlan**: Charnwood.

**MS CARNELL**: Sorry, Charnwood Tavern. Should that have had a disallowance period on it? The Labor Club would have been pretty unhappy if they had had to wait six months. Of course they would have. Are you happy to wear a scenario in which all new club licences are disallowable?

**Mr Kaine**: I take a point of order, Mr Speaker. My Bill says nothing about club licences. Virtually nothing that the Chief Minister has said has anything to do with the Bill before the Assembly.

**MS CARNELL**: Mr Speaker, that is not a point of order.

**MR SPEAKER**: No, it is not. There will be an opportunity to respond.

**MS CARNELL**: Mr Speaker, what I am after here is consistency of outcome, and that is what the whole Assembly should be interested in. It is true that Mr Kaine's Bill is not about club licences but, in terms of outcome, that is what Mr Kaine is attempting to achieve.

**Mr Kaine**: Rubbish! Not so.

**MS CARNELL**: If it is not about slowing down a club establishing in the casino, what in heaven's name is it about?

**Mr Kaine**: It is about Ministers making unfettered decisions, something Mr Moore has been very fond of.

**MS CARNELL**: Every single decision of every Minister would be disallowable, if that is the argument. That is patently ridiculous in the Westminster system. *(Extension of time granted)* That is a patently ridiculous scenario. There is no doubt what this Bill is about. It is to stop a club setting up in the casino. That is all it is about. If we are going to have consistency of outcome, we will have the same sort of disallowance on the establishment of every new club in the ACT. That will go down like a lead balloon with the LCA and the other clubs, so I ask members of this Assembly, before they vote for this legislation, to look at exactly what the scenario is here or what this is about.

When we pass legislation in this place, we always must look at what the legislation does. Mr Kaine says that this Bill is about a Minister being able to make a decision unfettered by the Assembly. Ministers make lots of decisions. In fact, that is the Westminster system of government. We have this thing called an Executive that makes decisions all the time. It is not about that at all; it is simply about the club establishing in the casino.

Let us concentrate now on three things. The first is what Mr Kaine is trying to do with this Bill. The second is that he has in the Bill a date that is patently ridiculous and unnecessary. The third is whether we want a six-month delay for clubs setting up in the ACT. In this particular case, it will be for one club, but if we are serious about it we will extend that to all clubs, for fairness and for equity. I do not think that is what this Assembly is really after. I am sure that if the Labor Club bought another tavern and wanted to change it into a club Mr Quinlan and those opposite would not want that decision to be disallowable and have to wait six months for the capacity to go ahead.

Let us be sensible about this. Let us look at what we are doing rather than the politics. The politics on this one are more confused than you could ever imagine. Let us make a sensible decision.

**MR QUINLAN** (11.13): Mr Speaker, first of all, let me clear the air and say that I have no direct association with the Canberra Labor Club other than being a member of it. I am also somewhat bemused by the relevance-irrelevance argument of the Chief Minister. If it is irrelevant, why have we spent so much time discussing it?

To be very brief, the principle behind this legislation is not dissimilar to that behind a Bill that amended the Territory Owned Corporations Act. I brought that Bill to this place and it was passed in the last sitting week. I am advised that it is consistent with legislation brought to this place by Mr Moore over the years - in his more enlightened years, I understand. Given our position on past occasions to the relationship between the Executive and the Assembly, we can do nothing but support the Bill.

Before I sit down, let me refer quickly to the conflict of interest that the Chief Minister referred to. I have to observe that, having read the electoral returns, I can see that the Liberal Party and in particular Mrs Carnell received support from various business concerns, including the very clandestine 250 Club. As we do not know what the interests of the members of the 250 Club are, extending the Chief Minister's logic, there are very few decisions that those opposite could involve themselves in without the risk of a conflict of interest. I think that it is rather a spurious line that is drawn and a nonsense that is trotted out from time to time, not to specifically mention Mr Moore's direct support for the AHA once upon a time. We have no objection to the legislation, Mr Moore, and we expect that you will be voting for it as well, based on your history.

**MS TUCKER** (11.15): We will be supporting this piece of legislation. I have listened to the arguments. I was interested to hear Mrs Carnell say that she thought it was offensive because it was not about unfettered ministerial power. She said that the Westminster system is about the Executive making decisions, but most of us also understand that the Westminster system has a number of accountability mechanisms within it to make sure that there is not total power in the Executive, particularly in the ACT, where we continually get minority governments. I would have thought the Chief Minister would understand by now that there is broad support in the ACT community for mechanisms to be put in place to ensure that there is not too much unfettered power in the Executive.

Disallowable instruments are obviously one way that you can bring things to this Assembly. If Mrs Carnell thinks that a period of 15 sitting days is too long in this particular matter, then obviously you would have to look at why is it not too long for every other disallowable instrument. If that is the proposal, then we will no doubt have a debate about that on another day, for the sake of consistency.

Mrs Carnell also expressed grave concern because she felt that we were somehow imperilling commercial certainty. We in the Assembly are interested in the broader public interest issues. We are concerned that what are being imperilled are some broader public interest concerns. That is the balance that we are taking in this Assembly. We are obviously interested in the commercial sector having certainty, but we are also interested in the public benefit or public interest being looked after in processes in this Assembly. As I understand Mr Kaine's legislation, that is exactly what he is attempting to do in this instance.

**MR HUMPHRIES** (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (11.17): I want to make it clear that the Government is not indicating its opposition to this legislation. The Government has indicated, though, that not too much should be read into the legislation by way of the argument of correcting an anomaly that is supposed to exist in the legislation. I take the point Ms Tucker made a moment ago when she suggested that this is about wider accountability, a wider opportunity for the community, via members of the Assembly, to be able to question decisions made by Ministers and governments, and that this is a desirable process. Indeed, it can be seen as that. It depends very much on what kind of decision we are talking about.

I think that to suggest that this legislation clears up an anomaly goes too far. The suggestion behind that would be that processes are exposed to public scrutiny or to the capacity of the Assembly to disallow decisions that governments make, except in respect of the casino. I would argue that, as far as the casino's operations are concerned, the reverse is the case. If anything, it could be said that this Bill creates the anomaly.

Mr Speaker, I want to draw to members' attention the fact that there are a number of sections of the Casino Control Act under which Ministers make decisions that, although gazetted, are not subject to disallowance at the present time. Section 15 of the Act provides for the determination of casino licence fees, a determination made by the Minister and gazetted by the Minister but not subject to disallowance.

Section 16 provides for determination of the casino tax rate - a quite significant decision, I would have thought. It is made by the Minister and gazetted, but again it is not subject to disallowance on the floor of the Assembly. I would have thought that in the scheme of things setting the tax rate for the casino was a rather more significant decision on which the Assembly might have a view to take than is the question of what particular area the casino should occupy.

Under section 16A, the Minister may determine the commission-based casino tax rate by gazettal. Such a determination is not subject to disallowance. Under section 71 approval of authorised games is another significant decision made by the Minister in relation to the casino. Again, it is not subject to disallowance. Under section 72, approval of the rules of authorised games is a decision by the Minister. Again, it is not subject to disallowance.

Mr Speaker, it is not true to say that this Bill corrects an anomaly. It does not. In fact, it could be argued that it creates an anomaly by taking only one of a few areas and making it subject to a process of second-guessing a decision made by a Minister by having that decision put on the floor of the Assembly and subject to disallowance. I am not sure whether there are any provisions in the Casino Control Act under which a decision made by the Minister is subject to disallowance.

Having said that, I indicate that the Government is not opposed to greater scrutiny here, but it should be acknowledged that in a sense the Bill creates an anomaly in the legislation. People will come back in 10, 15 or 20 years from now and say, "Why is that one provision subject to disallowance? Why are the other provisions in the Act not also subject to disallowance? This is very strange". Indeed, they will be right, because what we are seeing here is specific case legislation, legislation to pre-empt some kind of decision, which obviously Mr Kaine believes has been made but which clearly has not been made or even contemplated, that there should be some kind of extension of the casino. We will see this in future years as an anomaly.

Mr Speaker, I simply make those points in respect of this legislation and hope that members will give them some thought as they consider what to do about the legislation.

**MR MOORE** (Minister for Health and Community Care) (11.22): This legislation raises a number of issues I would like to deal with. The first is retrospectivity. I see from Mr Kaine's acknowledgment across the chamber that the retrospectivity in this Bill is not important to him. As I understand it - and I am sure we will hear from him - the commencement date in the Bill is not fundamental to what he is trying to achieve. Therefore, I would suggest that members should consider voting against that clause. That would mean that the normal commencement provisions would apply.

There are other more fundamental issues here. The most important of those is the one that Mr Kaine raised in an interjection when Mrs Carnell was talking. That is whether a decision by a Minister should be a disallowable instrument. I have spoken in this house on many occasions encouraging members to make ministerial decisions disallowable in the Assembly. Why? It is a check and balance on government. Here I think it is a sensible check and balance on government.

Whenever we are dealing with checks and balances, it is worth keeping in mind the number of times that either disallowance or amendment has been moved. You could count them on one hand; at worst, two hands. Members go through decisions and say, "Yes, sensible decisions are being made". Ministers, in making decisions, are conscious that their decisions can be disallowed, so they make decisions that are likely to be accepted by the Assembly. If they are unsure, it is not uncommon - and this was my experience on the crossbench - to approach members to determine whether or not something is likely to be disallowed. They are some important fundamental issues that we are dealing with here.

One thing that comes out in this debate, something that all members need to consider, is whether 15 days for disallowance is an appropriate length of time. I do not recall the reason we made it 15 sitting days. Perhaps other members can recall why we went for such a long time. We would probably not like to see something introduced and dealt with in the normal two weeks of sitting. A member could miss out, because that is a busy time for members. I think we would want a period of days that would ensure that the time for disallowance went beyond one two-week sitting period. My view is that, if members are in agreement, we should revisit the Subordinate Laws Act and look at the 15 sitting days and perhaps change the number of days to six, or to seven so that the time for disallowance extends to the next period of sittings.

**Mr Wood**: I thought it used to be six.

**MR MOORE**: I hear an interjection from Mr Wood. That is something that we should debate. I think most members would agree that matters like this hanging for up to half a year is inappropriate. Probably when we are doing it we could also work into a disallowable instrument the ability for a government to bring it on. On a number of occasions we have used some interesting techniques to bring one on so that it was not disallowed and the matter was finished.

Another issue that always comes up is conflict of interest. Mr Quinlan interjected on the Chief Minister when she raised the question of whether Labor should be voting on this Bill. He said, "You accepted a donation from the casino". The editorial in the

*Canberra Times* some months ago identified clearly the level of conflict of interest and the sort of conflict of interest that exist here. That editorial, as I recall it, identified that Labor's re-election opportunities are fundamentally tied to the clubs because the vast majority of money that comes to the Labor Party comes from the clubs. I do not have a problem with that at all.

The question that was raised in that editorial was whether such a heavy reliance should prohibit members from voting on issues that protect or benefit clubs in some way. The conclusion drawn by the editorial was that they should stand aside from this sort of matter in the way Paul Osborne did. That is an interesting issue. It is not about whether or not you have received odd donations or even reasonably substantial donations. Those ones are dealt with by a declaration which is made public so that members of the public can see where a member has received a donation of over $500 and therefore the influence that that may have on a member when they are making their decision. That is how we deal with that. We know that to run a campaign it does require donations. They are dealt with by the declaration.

But this is so fundamental to the whole re-election prospects of the Labor Party, because the vast majority of their funding, almost the whole of it, comes from this particular source that is carefully protected by legislation. I have drawn out an argument that was in the editorial in the *Canberra Times*. It is an argument that I have put frequently in this house and that I will continue to put.

**Mr Hargreaves**: You will continue to make a fool of yourself.

**MR MOORE**: Mr Hargreaves interjects, "Every time you do you will make a fool of yourself". That may well be his judgment. At any time I have discussed this issue with people other than members of the Labor Party, they have been able to see the difference between a donation of a certain level that is declared and one that is fundamental to the existence of a party, as the *Canberra Times* was.

**Mr Berry**: As a man of principle, are you going to support the motion?

**MR MOORE**: Mr Berry says, "As a man of principle, are you going to support the motion?". In fact, we do not have a motion before us, Mr Berry. We have a piece of legislation before us. Granted, it is being considered as a motion. You will have to wait and see how the vote goes. Mr Berry, why do you not also think about some principle? You are asking me whether I will act on principle. I will make a decision and you will make a judgment about it. Why do members of the Labor Party not think about principle as well? You have a very clear conflict of interest that has been identified, amongst others, by the editorial in the *Canberra Times*. You have a very clear conflict of interest on this particular legislation, and you really ought to do what Mr Osborne did. He retained his credibility and said, as he has always done, "In this area I have a conflict of interest and I am standing aside". This legislation protects the nest egg which allows the Labor Party to be re-elected.

**MR RUGENDYKE** (11.31): Mr Speaker, it is clear to me that at the heart of this issue are poker machines. When the casino was granted its exclusive 20-year licence, it was under the provision that it would not have poker machines. The casino went into this arrangement with open eyes. Since then the casino has made no secret of its desire to have poker machines on its premises. Whether the casino should or should not have poker machines is not what we should be debating here today. The issue here is the process the casino is pursuing to get poker machines on its premises.

The Chief Minister has the power to degazette an area of the casino to enable the casino to rent space to a club. This is clearly a loophole. The public perception is that poker machines are being pushed through the back door. It is true that an area of the casino has already been degazetted to allow an ACTTAB outlet to operate. But the casino's exclusive licence was not granted on the provision that it would not have a TAB. The licence was granted under the provision that it would not have poker machines.

I certainly do not believe that it is good government to create the perception that poker machines are now being shuffled in through the back door. If the Government or anyone else feels it is time the casino should have poker machines, let us have the debate. Let us do it properly, rather than having this messy situation of exploiting a loophole to circumvent a clear provision of the casino's licence.

Mr Kaine rightly points out that this is an anomaly that should be fixed. Since coming into the Assembly I have had concerns about this loophole. I asked a series of questions in this chamber last year about the proposal to set up a club in the casino. I believe that this Bill is a step towards allaying my concerns. One aspect of Mr Kaine's Bill that I am not happy with is the retrospectivity implicated in the inclusion of the commencement date of 10 March. I foreshadow that I will be proposing an amendment to delete the date from the Bill. Based on that amendment, I will be supporting the Bill.

**MR KAINE** (11.35), in reply: In concluding the debate on this matter, I will address some of the things raised by members this morning. The first question that I think needs to be addressed is this question of conflict of interest and people abstaining or not abstaining from the debate. This debate is not about poker machines. It is not about licensing for clubs. It is merely a question of whether or not a provision of the Act that allows the Chief Minister to act unilaterally and without any debate at all should stand. It has long been the principle adopted in this place that that kind of unfettered ministerial decision-making is not acceptable, and we have moved many times to place ministerial decisions under the scrutiny of this place by making them disallowable instruments. That is what this Bill is about.

If we want to have a debate about whether or not a club licence should be issued for part of the premises of the casino or whether gaming machines ought to be in there, that is a debate further downstream, at another time, in another place, because the circumstances are not at the point yet where that decision needs to be addressed. The Chief Minister has told us that she does not yet have before her for approval or consideration a proposal to excise a piece of floor space from the casino. I can only assume that no application

has yet been processed for club premises there, since the question of excising part of the floor area has not yet even been brought before the Chief Minister. How can we be discussing those issues? They are not yet on the table.

People jumping to the conclusion that there is some sort of hidden agenda, some sort of program beyond what my Bill purports to do, are grossly mistaken. In that assumption there seems to be a predetermined view about what position I will take should the matter come before the Chief Minister, become a disallowable instrument and come to this place. They have a predetermined view about what position I will take when that time comes. Mr Speaker, they may well be surprised. What I am talking about here is the simple question of process. I think the fact that Mr Osborne withdrew from this debate is regrettable. It is not about poker machine licensing or club licensing or anything associated with that. Those are issues to be dealt with at another time but presumably in this place. I do not accept that this is about poker machine licensing or club licensing or anything else. Let us focus on what the issue is about. It is a very simple issue.

I will now deal with some of the questions raised by the Chief Minister. She talked about the 15 sitting days for disallowance of a disallowable instrument as being too long. If it is too long in this case, why is it not too long in every other case? I think Mr Moore is right. We should really be considering whether or not the current prescription that these regulations have to sit on the table for 15 sitting days is reasonable. We would serve the community a lot better and allow decisions to be made quicker if perhaps it was only three sitting days, or maybe four to cover two sitting weeks. But that is a matter that is to be debated. The current situation is that it is 15 sitting days. It is as much the Chief Minister's responsibility as anybody's to change that if she thinks that it is too long. But to argue against it on the basis that this involved a commercial decision - - -

**Mr Humphries**: But she did not do that.

**MR KAINE**: Yes, she did. She made much of the fact that there were commercial decisions involved in this case and therefore 15 sitting days was too long. I suggest that you reread the *Hansard*, Mr Humphries, because I was making notes when she said it. I do not disagree that 15 sitting days is too long. I do agree that it can take many weeks, and that in itself perhaps needs to be addressed.

On the question of the effective date being retrospective, the Chief Minister has assured me that there is nothing before her that would require this, and Mr Rugendyke has signified an intention to amend the Bill to delete that date. I am perfectly happy with that. I will act on the Chief Minister's assurance that she has nothing before her at the moment. After this Bill is passed this morning, which I suspect it will be, she then, in good conscience, could not move without the disallowance provision anyway, even though the 10 March date is not there. I accept that and I am happy to see the date removed. I accept Mr Rugendyke's amendment.

Ms Tucker talked about community input and community interest in debates like this. If a Minister can unilaterally make a decision like this and simply gazette it, there can be no community debate. I think it would be going too far to say that the community has no

interest in such things. I believe they do, and it is our responsibility to balance community interest on the one hand and commercial interest on the other. Somehow or other we have to reach a methodology for doing that.

Mr Humphries said that in many other places in the Act Ministers make decisions without review. He is correct in saying that, but he is not correct in saying that those decisions are not subject to review. He referred specifically to the casino licensing fee determined under section 15(1) and he talked about the commission-based player tax under section 16A(1). Those matters are in fact budget matters, and the Attorney would be the first one to complain if we said that fixing of a fee which comes before the Assembly as part of a budget is something that we should be able to disallow. He would protest as loudly as he could if it were suggested that putting those sorts of money matters up for disallowance should be the acceptable practice. The acceptable practice that is in place already is that they are money matters; that they are decisions that affect the revenue of the Territory; that they do come before the Assembly in the budget; and that they are shredded out through the Estimates Committee processes and the like. They are not decisions that are made by a Minister without any scrutiny at all.

Section 21 deals with 14 points where, the Minister having made a decision, copies of that decision must be laid before the Assembly. Such decisions cover a very wide range of matters indeed. Some of them are quite specific, but some of them are very wide. I would submit almost all, if not all, of the decisions that the Minister can make under the present Act are subject to review. The only one that is not subject to review, the only significant one, is the one that allows the Minister to make a decision about excising floor space from the casino for some other purpose. I submit that the Minister's argument was a bit tenuous when he said that there are all these other things that are not subject to review. In fact, they are in one way or another.

In conclusion, I want to make the point strongly that this Bill does not have the effect asserted by the Government. It in no way inhibits the process which the club and others have been going through. It just submits one element of that process to review by this place. I would argue that that is a legitimate responsibility of this place. The arguments against it that have been put to me by the Chief Minister, the Attorney-General and others seem to me to rest on the odd base that the Chief Minister would exercise her powers under the present Act where the case does not stand on its merits.

If the Chief Minister or any other Minister is not going to act on the basis that the proposal stands on its merits, why then would it be assumed that this place will not subject it to the same test? If the Chief Minister makes a decision on this matter, it comes before this Assembly, and if the proposition stands on its merits why would anybody in this place disallow it? It seems to be a very strange argument that we should not do this. The proposition seems to be that we might be able to slip it through the Chief Minister and she might sign it into place, but we do not want it reviewed. In other words, there is an implication that somehow the case would not stand on its merits and would not stand up under the scrutiny of this place. If that is the case, it almost strengthens my position that such decisions do need to be reviewed by this place.

Mr Speaker, this is essentially a simple amendment. It does not carry all of the secondary connotations behind it that have been asserted. It is a simple case of whether the Chief Minister or any other Minister should be able to make decisions of this kind, where there is a community interest, without review. At the moment the Minister can. That is not consistent with the view that this Assembly has taken over several years in other instances of ministerial powers of decision. I submit that there is nothing inherently improper or unnecessary about this amendment. I seek the support of the Assembly in putting this Bill into place today.

**Mr Moore**: I raise a point of order under standing order 47, Mr Speaker. I think that Mr Kaine has perhaps misunderstood the Chief Minister's speech. He said that she argued against the Bill. What the Chief Minister did was express a series of concerns. I would just like to distinguish between expressing concerns - - -

**Mr Kaine**: I take a point of order, Mr Speaker. Did I not conclude the debate?

**MR SPEAKER**: Order! There is no point of order, Mr Moore. I do not believe that you are in a position to defend the Chief Minister. The Chief Minister is quite capable of taking a point of order under standing order 47 at a later hour this day.

Question resolved in the affirmative.

Bill agreed to in principle.

**Detail Stage**

Clause 1 agreed to.

Clause 2

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

> Page 1, line 7, omit "shall be taken to have commenced on 10 March 1999", substitute "commences on the day on which it is notified in the *Gazette*.".

Clause, as amended, agreed to.

Clause 3 agreed to.

Clause 4 agreed to.

Title agreed to.

Bill, as amended, agreed to.

**ENERGY EFFICIENCY RATINGS (SALE OF PREMISES) (AMENDMENT) BILL 1999**

Debate resumed from 10 March 1999, on motion by **Ms Tucker**:

That this Bill be agreed to in principle.

**MR SMYTH** (Minister for Urban Services) (11.48): Mr Speaker, the Energy Efficiency Ratings (Sale of Premises) Act commences on 31 March 1999, next week. The Government generally supports the amendments brought forward by Ms Tucker as they clarify some operational ambiguities that are in the Act. I think many members would have been approached by different groups that wanted clarification on some points. In particular, the new definition of "premises" makes it explicit that the Act only applies to residences and not commercial or industrial buildings. Exemptions are supported for mobile homes, for caravans, aged care providers, and for buildings which are to be demolished.

Whilst the Government supports in principle that the Act should not apply to buildings which are to be demolished, reference to section 46 of the Building Act 1972 is proposed regarding demolitions or dwellings which are to be removed from sites, and I will move an amendment to that effect at a later stage. This is for consistency. The reference makes it quite clear that exemptions on the ground of demolition or removal of a building require proof that an approval to demolish or to remove the structure has been granted and therefore an exemption can be given.

Mr Speaker, the Government will also be moving an amendment to the Act to remove those provisions that effectively rescind a contract in the absence of an energy rating and instead will include a penalty of 0.5 per cent of the value of the sale. This is an issue that I think most members would be aware of. What is the penalty for not having had the energy efficiency rating done? Currently the penalty is to stop the contract or to rescind the contract. We have continued to consult the community on this, and there are concerns that the penalty is just way over the top; that it is draconian. It certainly does not fit the intention. There are unintended consequences there, where perhaps one sale depends on another sale in a chain of sales, which is not uncommon in this industry. We do not believe that individuals should be left in dire straits when faced with, say, bridging finance or other options, or the purchase of a house that they do not need when they have not sold their first one.

So this amendment, after much community consultation, has been put forward. I know that the Law Society was interested in this form of amendment. The Government believes that this will have the effect of removing what really is a draconian punishment from the Act and replacing it with a more appropriate penalty for not having had the energy efficiency rating done. Apart from that, we will support the amendments.

**MR CORBELL** (11.51): Mr Speaker, the Labor Opposition will be supporting this Bill. We believe that it addresses a range of obvious deficiencies in the original Act and we are happy to lend our support to the range of issues that it addresses. Obviously there is a very important measure to be addressed in relation to what sorts of premises are

included in the Energy Efficiency Ratings Act. Clearly, the amendment that deals with the exclusion of caravans and mobile homes is a sensible one. Clearly, the different requirements in relation to not providing a false statement in relation to energy and an energy efficiency rating or providing information that may lead to the preparation of a false or misleading energy efficiency rating are important measures.

I am concerned that the Government have only just brought forward their amendments to this Bill. This Bill has been debated for quite some time. It has been around in this Assembly for some time, but the first I saw of the Government's amendments was about 10 minutes ago. I am concerned that they have chosen to do these at the last moment. However, the one in relation to demolition, from what I can see of it, is a sensible proposal. Obviously there is not much point in getting an energy efficient rating if you are purchasing the building purely to demolish it, and I do not think we would have any difficulty with that proposal.

The other one relates to the change of the penalty for failure to provide an energy efficiency rating. The Labor Party has considered this issue, and we have also had representations from a number of parties on this matter, including the Law Society. I thank the Law Society for their advice in relation to this. We are not of the view that it is appropriate to change it to the proposal advanced by the Minister. We are concerned that this does, in effect, create a loophole. The fine, obviously, would vary, but on average it would appear to be around $500 for a $100,000 house. That is the lower end of the market. Obviously it is more the higher you go. It may be that a person seeking to sell their home is concerned - I do not believe they should have this concern - that an energy efficiency rating may mean that the value of their house diminishes if they disclose that, and they may choose instead simply to be prepared to pay the penalty rather than suffer, perhaps, a more dramatic reduction in the value of their home.

Obviously we, the Labor Opposition and this Assembly as a whole, have taken the view that there are many benefits to be gained from the provision of energy efficiency ratings. Certainly, the Labor Party does not accept that argument about it having an overall detrimental effect on the value of a home price, but that concern has been raised in the community. It has been pointed out to me that there are other fines for failing to provide an energy efficiency rating certificate.

**Mr Moore**: And to advertise without one.

**MR CORBELL**: And fines if you fail to advertise it also, as Mr Moore interjects. However, the enforcement of that is entirely a matter for the Government. I think the importance of the clause as proposed by Ms Tucker is that it essentially puts the requirement very clearly on the householder, the person selling the property, to ensure that that documentation is provided. I have not had any really strong reason advanced to me as to why a solicitor would fail to do that. For that reason, I do not see any reason why we should be accepting the Government's suggestion as to what the penalty is for failing to provide an energy efficiency rating as part of a sale contract. It should be a straightforward process. It should not be a complicated process. The weakness in the Government's proposal is that it potentially provides a loophole which could be exploited. For that reason, the Labor Party is not prepared to accept that amendment.

**MR MOORE** (Minister for Health and Community Care) (11.56): Mr Speaker, I supported this legislation when it came in in the last Assembly. I continue to support it. I think it is an excellent idea. I think the community is ready for it and I think it will enhance the energy efficiency of houses across the Australian Capital Territory.

Members may recall there was a time when a suggestion was made to force everybody into looking at the energy efficiency of their housing. That was opposed by the Assembly as a whole. At a time when houses are changing hands it was thought that it would be an appropriate time for people to look at the energy efficiency and make sure they understand the energy efficiency. That, in turn, should bring it more to people's minds so that we know we can get more and more energy efficient housing. There is very good reason behind it. The amount of fossil fuels that go into heating our houses at the moment, the amount of wood that goes into heating our houses, and the gases that they give off, are significant. Similarly, when it comes to summer, the amount of energy used to cool people's houses is also significant.

Mr Speaker, it is worth digressing to the amendment that has been put up by the Minister for Urban Services. We are trying to do a number of things. First of all, we have to take seriously the consultation that has occurred on this piece of legislation, such as the consultation that has occurred, amongst others, with the Law Society. The Law Society has a better understanding of the conveyancing issues involved here. We are not talking about a fundamental principle. We are just talking about the conveyancing issues.

Mr Corbell said that lawyers should be able to deal with this and it should be straightforward. Indeed, when there are lawyers dealing with the conveyancing there will be a low likelihood of non-compliance. However, quite a number of people do their own conveyancing. I have done mine. I know many other people who have done their own as well. Mr Humphries indicates that he has done his own, but he does have the advantage of having a legal background.

It is many years since I have done it. These days I think it involves too much work to bother when you are trying to get things right and without enough knowledge. But there are people who still decide to do that. So the approach is, more than anything, to pick up those people and also to make sure that we are not using an overly jackboot style of approach. It is simply a question of balance. I probably put too strong a word on it. I was looking for a word other than jackboot. It is too strong a word. What we are looking for is the right balance as to the penalty.

It is a pretty severe penalty when a contract that has been signed is completely dismissed. Do not forget the way penalties operate in these contracts as a rule. The deposit is paid and a person who steps aside from the contract forfeits that deposit, which is usually 10 per cent. The penalty put up by the Minister for Urban Services is 0.5 per cent. As Mr Corbell says, that is about a $500 penalty, about double the cost of having the exercise done, for a $100,000 house. By the time you get to a $300,000 house we are looking at a $1,500 penalty. It seems to me, Mr Speaker, that this is a better level, but it is a matter for judgment by members.

We are talking about a judgment on the level of penalty, but this does not affect the legislation as a whole. Even in terms of the legislation, I think this particular point we are arguing about will affect a very small number of people. The vast majority of people, thanks to this legislation with this range of amendments, will begin the process of ensuring that they have identified the energy rating for the house, will advertise accordingly and will inform the purchaser accordingly. I think, Mr Speaker, that is a major step forward in the environmental approach, and it is a major step forward in terms of the action taken by this Assembly and this Government in regard to the greenhouse targets that we have taken very seriously.

**MS TUCKER** (12.02), in reply: I will close the debate on the in-principle stage, but I will talk to the amendments. I might as well, as everyone else has. I am glad to get support, obviously, for this piece of legislation. Mr Moore has explained clearly why it is a good piece of legislation. We know that in Canberra a large number of the buildings are quite primitive for the climate in which we live and there is definitely an advantage in raising awareness in the ACT community about the importance of making our dwellings more energy efficient. By having a rating scheme it is clearly there for everyone to see how primitive or not a particular building is for the climate that we live in. As Mr Moore has said, there are not only environmental advantages, such as greenhouse and firewood and so on, but there are also cost advantages for people who have a well-insulated home because their energy bills will be lower. So it is basically about environmental issues, it is about cost issues, and it is about consumer information, and I am glad to have gained support for that.

Regarding the amendments, I will deal briefly with the issue of rescission. Mr Moore says he has taken account of the Law Society's views on that. He had consulted with them and they had a better understanding of those issues than we do. So, in the spirit of consultation, he supports what they say. But we also consulted more widely and got other legal advice on that, and there are different views about whether or not it is such a significant aspect of the Bill. There are other instances where rescission is in standard contracts. Standard household contracts already include provisions in clause 7 where rescission of a contract is possible. Under the contract, the seller can warrant that the house is not subject to a heritage listing or does not include any unapproved structures. If this is found to be incorrect the buyer can rescind the contract. The argument that was given to us by the Law Society representative was that these warrants relate to factors that affect the title of the property, whereas the energy rating only relates to the quality of the property, but I am not convinced that these distinctions are that critical. If lawyers are already familiar with the possibility that contracts could be rescinded they would already be making allowances for this in their work by making sure they get the details of the contract right in the first place.

I do not think the issue of home conveyancing also is a very strong argument. If people take that on they have to meet other legal obligations. If they advertise the house they would already have a rating anyway, so I do not believe that that is a significant issue.

The amendment on demolition is interesting. I was just looking at the Government's amendment to my amendment on the definition. It is actually more narrow. I guess that that is what is intended. Mr Smyth might like to talk to that. It is a narrower definition.

Our definition was broader, but, if PALM or Mr Smyth is happy with that, I do not think we will argue with it particularly. We had in mind not only that there would have been a notice put in, which is what Mr Smyth's amendment appears to be doing, but that it may not be that someone who is selling a property has put in a notice that it would be demolished. It may well just be clear because the building is boarded up and falling down, and they would not have got a notice. Anyway, we can have a bit more debate about that. I think they are all the amendments that we are dealing with now. Thank you, everyone, for the support, and I hope it is implemented well in the community and that there are enough personnel on board to deal with possible extreme demands at this late stage.

Question resolved in the affirmative.

Bill agreed to in principle.

**Detail Stage**

Bill, by leave, taken as a whole

**MS TUCKER** (12.07): I move amendment No. 1, circulated in my name, which reads:

Page 2, line 15, clause 5, paragraph (b), omit "and".

Amendment agreed to.

**MS TUCKER** (12.07): I move amendment No. 2, circulated in my name, which reads:

Page 2, line 15, clause 5, after paragraph (b), insert the following paragraphs:

"**(ba)** by omitting from paragraph (1)(f) "or" (last occurring);

**(bb)** by inserting after paragraph (1)(f) the following paragraphs:

'(fa) premises in respect of which there has been given an approval within the meaning of Part 6 of the Land (Planning and Environment) Act 1991 for a development that involves the demolition of the premises;

(fb) premises that are offered for sale or sold as unfit for human occupation and that the vendor expects on reasonable grounds -

(i) will be demolished;

(ii) will not be used for human occupation before being demolished; or'; and".

**MR SMYTH** (Minister for Urban Services) (12.07): Mr Speaker, I move the amendment to Ms Tucker's proposed amendment No. 2 circulated in my name. That amendment reads:

> Omit proposed new paragraph 5(1)(fb) to be inserted by proposed paragraph 5(bb), substitute the following paragraph:
>
> "(fb) premises in respect of which a notice directing that they be demolished has been served under section 46 of the Building Act 1972; or; and".

Mr Speaker, this is for consistency of technical terms. The definition of demolition is set out in the Building Act 1972. We should have consistent definitions in Acts across the Territory as appropriate. Yes, it is somewhat narrower, but that is to avoid the situation where somebody says, "Yes, we are going to demolish a house", but then chooses not to. We think it strengthens it, and it is the more appropriate way to do it.

Amendment (**Mr Smyth's**) agreed to.

Amendment (**Ms Tucker's**), as amended, agreed to.

**MR SMYTH** (Minister for Urban Services) (12.08): Mr Speaker, I move the amendment to clause 6 as circulated in my name. It reads:

> Page 2, line 19, clause 6, before paragraph (a) insert the following paragraph:
>
> "(**aa**) by omitting from subsection (3) all the words after 'subsection (1),' and substituting 'the vendor is liable to pay to the purchaser an amount equal to 0.5% of the purchase price of the premises;' ".

We move this amendment for a number of reasons. For those who do their own conveyancing of their homes there may be difficulties. There are occasions when houses are not advertised and people may go ahead under the assumption that they are doing the correct thing. You then have to look at the level of punishment. The level of punishment here may be that the sale of your premises would fall through, which may affect your ability to buy other premises. It may have the effect of forcing people to take out bridging finance, putting them into undue financial difficulty, which I do not think is the intention of the Bill. You have to look at the level of punishment for not being in keeping with the Bill. We do not believe that the rescission of a sale is the outcome that we would desire. We believe that the penalty would be an inducement to make people go out and get the energy efficiency rating.

**MR OSBORNE** (12.10): I will be supporting this amendment of Mr Smyth's. My concern with this whole debate has always been the retrospective nature of it in that it places people who have been living in older homes under new rules. The reality is that, although I think all of us can see the merit in this piece of legislation for new houses, it does place an unnecessary burden or an unfair burden on people who are living in older houses built in a different era. I have had people approach my office who have been faced with thousands and thousands of dollars in costs in trying to get the highest rating, and I think what Mr Smyth has proposed is very reasonable. I still have my doubts as to whether this legislation will work in the long run. I think it is a little bit too harsh on people living in older suburbs in old houses, but I will be supporting this amendment moved by Mr Smyth.

**MS TUCKER** (12.11): I do not know what Mr Osborne thinks Mr Smyth's amendment does. I did not quite understand that speech. This is not going to make it any different for people in poor suburbs or people who are impoverished. Correct me if I am wrong. Is this the amendment about rescission or a fine? Is that what we are talking to?

**MR SPEAKER**: Correct.

**MS TUCKER**: So it is not a question of penalising or not penalising. It is what the penalty is. It is really not an issue about being concerned about people who feel that they have to spend a lot of money to upgrade their house so that they have a high energy efficiency rating. That is not necessarily what would be happening at all anyway. It is about information for consumers so that people who are on a low income will have knowledge to make a choice when they buy a house. It will actually have an impact on people on low incomes, which will be beneficial, Mr Osborne, because it will mean they will understand whether or not the house they are purchasing will have high energy costs. There is a real argument, in fact, to support this Bill if you are concerned about the costs of living in Canberra for people who are on a low income, because energy bills are very significant for those people. If we have instead a fine of 0.5 per cent, which on a $100,000 house would be, say, $500, or $750, it does create a loophole. In fact, Mr Smyth has acknowledged that that is possible and that they will be monitoring it. But it is obvious that you could use it as a loophole. You could say, for example, "Okay, we will say the price was $750, $100 higher than it is, but in fact it is not going to be because we will take that off because we will not give you an energy rating, so the price will stay as it is", and so on. I think it is quite a worrying amendment. As I said, legal opinion does not necessarily always support what the Law Society says on those concerns as well. We will not be supporting this amendment.

**MR CORBELL** (12.13): Mr Speaker, as I previously indicated, the Labor Party will not be supporting this amendment either. In the debate earlier Mr Moore advanced the proposition that one of the reasons for this amendment was the people who do the conveyancing themselves. They do not engage a solicitor. That is not a very strong argument. Whilst they may not advertise their home through the newspaper, where they are required to gain a certificate to include in the advertisement, clearly they do need to be aware of all the requirements associated with conveyancing, and this, if passed, will be one of the things that the law requires of them.

I think the Government has not really addressed the issue of the potential loophole that this amendment creates. It is certainly our view that that outweighs the argument that the Government has put forward that it is too severe a penalty. It is a simple process to ensure that when you prepare the sale contract you include with it the energy rating. It is a very simple process. It is a very straightforward process. I do not see any really strong grounds as to why a failure to do that should simply be dealt with through this type of penalty, a cash penalty of this nature. The risk if you have this sort of amendment is that someone may very well get out of providing an energy rating at all, which is the whole intent of the legislation. The Labor Party is unable to support this amendment.

**MR HUMPHRIES** (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (12.15): Mr Speaker, I do not know how many members of the Assembly have been involved in conveyancing or have often been in the position of having to deal with conveyancing. Presumably those who are not lawyers have not done so on a regular basis. I spent some time in the business of conveyancing when I was a solicitor and I can say that I think members underestimate severely the impact of the provisions as they stand in the Act unless they are amended as the Minister has suggested. Mr Corbell describes the payment of a penalty in the sale price as a loophole. I do not think we could ever regard the payment of money by way of a penalty as a loophole. The payment of financial - - -

**Ms Tucker**: But the loophole is that it might not have to be paid. That is what we are saying.

**MR HUMPHRIES**: I would argue that the provision about making the contract void as in the existing agreement is equally a loophole in that sense. Unless the parties discover, or have pointed out to them, that the contract is without this particular clause in it and does not have the certificate or whatever attached to it, or have the indication in the contract of the energy rating of the premises, it has no effect.

This is most often going to arise, Mr Speaker, as members have pointed out, in connection with the circumstance where somebody probably has used, perhaps in the early stages of this legislation, a lawyer who does not do much conveyancing and has not caught up with the existing law on this area. Maybe he has not caught up with the new forms produced by the Law Society which set out the new requirements for energy rating, or, more likely, where people do their own conveyancing and are unaware of the provision that says that they need to have an energy rating in their contract. This will be a small number of cases, I concede, but it will happen, and we are debating today what happens in those small number of cases where people have not taken into account this requirement.

Now, what should be the appropriate penalty? As the proposal from Ms Tucker presents itself, the penalty is a very severe penalty. It is that the contracts become void. A person in a situation where they are arranging a sale of a house will suddenly find that their contract is actually void.

**Ms Tucker**: Which is already possible for other reasons.

**MR HUMPHRIES**: I think I need to correct something you said. Contracts which have a flaw in them are very rarely void. They are often voidable, which is a difference. It means that parties can withdraw at their own decision. That is not often the case either. Only in a rare number of circumstances is the entire contract voidable, and in an even rarer number of cases is the contract void ab initio, to use the expression used by lawyers - that is, it is flawed from beginning. That is rarely the case.

What happens if Ms Tucker is selling her house to me and we discover, three days before settlement, that the energy rating clause is not present in the bill and we have not got the energy rating of the house? What do we do? Our contract is void. Do we proceed with the sale? She still wants to sell her house to me and I still want to buy it, but the contract, according to the law, is void. What do we do? What do the poor citizens do? They may go and ask a lawyer for advice. The lawyer may be scratching his head and saying, "Well, technically the contract is void, but if you go ahead and exchange title deeds, hand over cheques and so on on the settlement date, you've got a sale. Maybe the best thing to do is just to shut up about it, not say anything about it, and ignore it". Frankly, if I was a solicitor, I would be in a bit of a bind as to what to advise my clients in those circumstances.

The contract is void but I assume that if you get to the point of settlement of the sale, and you have your house in your name, you are not going to have the regulation police coming in and saying, "Sorry, the house doesn't belong to you. The contract on which you exchanged and on which you arranged for the sale to occur was void and therefore you have to give the house back to Mr Blogg or to Ms Tucker who sold it to you". That is a ridiculous situation.

I would put it to you that more often than not this provision in the present legislation amounts to a loophole because where parties want to complete a sale, and they discover that the contract is void because they have forgotten to put these provisions in, they will on most occasions just ignore it. That is what they will do.

However, Mr Speaker, a real penalty is where the parties are in the position of having to address a cost penalty which flows to the purchaser in the event that the contracts have been exchanged without that clause in it. That is a real penalty. Take that example before, that I am buying from Ms Tucker, and I have suddenly discovered that the sale contract does not have that clause in it. I will go back to her and say, "Well, it's a $300,000 house and the penalty is $1,500. I want $1,500 taken off the sale price when we settle this sale". That is a big penalty for Ms Tucker who loses $1,500 off her sale price.

If a lawyer is doing the conveyancing and he or she has failed to include the certificate in the sale price, the lawyer is going to lose his fees. In fact he might have to pay the client something because he overlooked the need to have that particular provision in the sale contract. That is a real penalty. But it does not take the thing to the stage where the whole contract necessarily falls through.

The fact is that parties who discover this very often are going to want to complete the sale. If the contract is actually void they are in the position of having to break the law in order to proceed to the sale or they have to go back and start from scratch, exchange contracts afresh and go through the whole process again at considerable expense. That does not make any sense to me. It makes no sense at all.

I think the more practical, effective way of dealing with this issue, to provide that the people actually get the benefit of the provisions here and actually provide an incentive to people to put those provisions in, is to build in a cost penalty that flows to the purchaser. It is a cost penalty to the vendor. You can bet your bottom dollar that every solicitor in town who deals with these things will make damned sure that his client is not going to be hit with that cost penalty because it will come out of his fees or her fees.

Mr Speaker, this is a better provision that the Minister has put forward than the one that exists in the legislation at the moment. It is also one that the Law Society has argued is more effective. I can see the entire scheme falling into disrepute if people are in the position of having sales fall through because of the provisions in this when at least one of the parties wants to proceed and when the house itself might have quite a high energy rating once it is rated. It might be, in fact, a very energy efficient house, but because someone has forgotten to get the bit of paper that says what it is the sale falls through. That is a very bad position to impose on people and we should not let that happen. I urge members to support the amendment put forward by Mr Smyth.

Amendment agreed to.

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

Bill, as amended, agreed to.

**Sitting suspended from 12.24 to 2.30 pm**

## QUESTIONS WITHOUT NOTICE

### Hepatitis C

**MR STANHOPE**: My question is to the Minister for Health and Community Care. A report in the *Canberra Times* of 19 August last year said the Minister would launch an inquiry to find out why ACT Health authorities took no action over the hepatitis C blood contamination issue between late 1994 and 1998. Mr Moore was reported at the time as saying he would conduct a low-level inquiry to see if a more vigorous investigation was required. Can the Minister say whether the low-level inquiry that he said he would launch did in fact reveal the need for a more thorough investigation of this issue?

**MR MOORE**: I thank Mr Stanhope for the question. I want to clarify something that I tabled yesterday before I get specifically to the question. The document I tabled yesterday had three or four pages of script and a table. There is a discrepancy between the table and the script. As it turns out, the difficulty was that both of them were

prepared at different times. At the last minute somebody said, "Look, it would be helpful if we included the script". The figures on the attachment are correct, the figures of six and five, whereas the body of the text refers to figures of seven and four for people who are either positive or negative in terms of hepatitis C; but let me emphasise that this is a matter that is changing every day, so we have to be particularly careful.

With specific regard to the question Mr Stanhope has asked, yes, I did order a low-level investigation. I asked the chief executive officer of the Department of Health to go back through and see first of all what governments knew. Mr Speaker, this is very difficult for me. There are questions now on the notice paper that I have to be careful not to answer, although I hope to have answers to those in the next couple of days.

The low-level inquiry that was conducted found that no Minister had been informed of the matter until Mr Humphries, towards the end of his time as Health Minister, a month or so before I was appointed; and, when I found out, that action had already been taken. Being aware that most of the people who had been involved in the issue were no longer with the Canberra Hospital - we were dealing with issues that were between a range of hospitals and the Red Cross - I thought it would be far better to put our energies into ensuring that we got the best possible outcomes in terms of compensation.

As Mr Stanhope would know, nobody has been more open about anything than I have been about hepatitis C. He has asked a series of questions. There is information that I have provided to him, which is the basis upon which he has asked the further questions. I will get that information back to him as quickly as I can. I think it is particularly important to be as open as possible.

I will go back through a little bit of the process, Mr Speaker. Originally when we looked at this issue we considered, although we did not adopt this approach, the possibility of restricting people's rights to compensation and did projections on that in terms of what that would cost the community. We decided that it would be far better to ensure that people were entitled to compensation that they would normally be entitled to under common law, but we would do what we could to try to avoid the large costs involved in litigation when it was possible to do so.

We said that we expected there would be something up to $8m in compensation. I think the figure was just over $8m, actually. In fact, we have reviewed that figure. We expect the figure now to be about $5.6m, I think, in a worst case scenario. We expect it to be between $2m and $3m, with a worst scenario of $5.6m. There has been a series of different figures that have been put around because it is very difficult to judge. As the health officer said to me today, "Michael, it is changing daily". We did not expect to find the number of people deceased that we have found. Remember, when we are talking about the 62 people referred to in the information I provided yesterday who have died, we are talking about people who were having transfusions for some major condition in the first place, for example, cancer, and therefore it is not surprising that they have died.

We also are looking at compensation now not just for the illness, for hepatitis C and the inconvenience it causes, but also for loss of earnings, should that be necessary. As I said in the information provided yesterday, we are aware of one case in another State that is

being negotiated at around $1m to $1.2m as a compensation package. Remember, each case depends on the level of earnings that a person might be able to manage. We expect, even taking into account one or more of those cases, that the compensation is more likely to be between $40,000 and $60,000 and therefore we have budgeted accordingly. But it is an estimate. It may well change.

What we are trying to do is ensure that our citizens who were unfortunate enough to be caught up in the circumstances between 1985 and 1990 have the possibility of sorting the matter out and getting the compensation they are entitled to with the least possible legal wrangling and costs and with the least possible stress; but an outcome that is fair to them and fair to the broader citizens of the ACT as represented by the Government.

**MR STANHOPE**: I have a supplementary question. Minister, are you able to tell us, in the context of the inquiry that you did institute, whether or not any explanation was given to you by your department as to why neither it nor the Canberra Hospital appears to have taken any action between October 1994 and the time that Mr Humphries was advised of this issue, and was any explanation given as to why neither the Canberra Hospital nor the Department of Health felt it advisable to advise the then Minister of this amazingly serious problem?

**MR MOORE**: I must say, Mr Stanhope, you are wandering into the questions you have on the notice paper, but I am trying to be as open as I can, as I have been in dealing with these matters all the way along. It is now some six months ago. I am certainly happy to go back, and your questions will take me back anyway to look at those reasons.

My recollection of the events is that when the explanation was given to me and I was taken through it verbally I felt that there would be no point in going back and trying to rake over those coals to get a higher level investigation because the vast majority of people who were involved and knew anything about it had gone. It was not just the Canberra Hospital and the Calvary Hospital. A range of hospitals within the region were involved as well. The Red Cross was involved as well. Therefore it was not worth going back through that process in any more detail than I had already done.

## Hepatitis C

**MR BERRY**: Mr Speaker, my question too is directed to the Minister for Health and Community Care. Material tabled by the Minister yesterday in relation to the potential infection of Canberra Hospital patients with hepatitis C from contaminated blood showed that seven or six individuals had so far tested positive to the virus. Given that the same material revealed that three people tested from within the period designated for compensation tested negative to the virus, can the Minister explain why his spokesperson told the *Canberra Times* on 11 March last that the Government was processing claims from about 35 people? Could you explain how we are getting these wild fluctuations?

**MR MOORE**: Mr Speaker, I do not have the information before me. What I tabled yesterday gave a series of figures. Just over 2,000 people have notified of hepatitis C. There were 157 people that we needed to contact, as I recall. There were also a number

of batches of blood. If I remember correctly, the figure was 159. Those two figures were quite close and are therefore confusing. There were 62 people who have died and 90 or so, as I recall, who were also contacted, leaving the 30, of which we have dealt with 11. It seems to me, Mr Speaker, that the figures are consistent.

I have to say it is quite difficult to present these figures because three things are operating at any given time. Just before I came down here I asked for a media release - I will make it available to members - giving a very clear presentation of just what those three factors are, what the difference in numbers is and how they occur. I am quite happy to table that in the Assembly later today and to make sure that we get a clarification of those figures to make sure there is no doubt about it.

**MR BERRY**: Rather than me pursuing a supplementary question, would the Minister try to explain the disparity in figures he tabled yesterday between the estimate that possibly 50 per cent of patients already identified by the donor triggered lookback program may have died and the two-thirds proportion of the 94 cases already identified who have died? Could the Minister assure the Assembly that none of these people died from hepatitis C or hepatitis C-related problems?

**MR MOORE**: I do not have to provide that information later. I can provide that information now. Mr Berry, we cannot tell whether those people who died did die from hepatitis-related disease. What we do know is that a large number of people who have died were already involved in quite serious conditions. I would also say to you, Mr Berry, in providing the figure that 62 people died, that we are talking about going back over a period of more than 10 years and it is going to be very difficult to find out some of that information. I think the effort to find that particular piece of information is not warranted by the current circumstances. I presume, although we do not know, that some of the deaths were probably accelerated by hepatitis. But we do not know that.

**Mr Berry**: Do the families have a claim then?

**MR MOORE**: That is an issue that we are dealing with.

## Traffic Calming Measures - Garran

**MR HIRD**: Mr Speaker, my question is to the Minister for Urban Services. It relates to a transport matter which I know that you, sir, have a very sincere interest in. It is to do with the suburb of Garran and the street known as Dennis Street. I know there have been some controversial approaches made by certain citizens in that suburb concerning the traffic problems in that area and in that street. Could the Minister tell us the result of the traffic calming trial measures that are being introduced into Dennis Street, Garran?

**MR SMYTH**: Mr Speaker, I thank Mr Hird for his question. It is a very important question which many members have raised here. Mr Speaker, as you would know, the Dennis Street trial has finished. The result of our survey is that the majority of residents were not in favour of the calming measures. As the majority of residents were not in favour, and that was one of the criteria for the permanent installation of the traffic

calming measures, I decided that they would be removed. They have since been removed. In consultation with the Traffic Branch and with the local residents, we have put in place some signs to remind motorists of their obligation to abide by the law and to be aware that there are children in the area. We have asked the Minister responsible for police to make sure that the police also keep an eye on that street.

**MR HIRD**: I have a supplementary question. Minister, from your answer it would appear that you are aware of the conflicting views of certain residents in the community over the outcome of these trials.

**Mr Stanhope**: Are you setting him up here, Harold?

**MR SMYTH**: He is not setting me up, Mr Stanhope. Mr Speaker, I am aware that there were conflicting views. I thank the member for his question because those conflicting views are quite interesting. We did a survey and one of the residents groups undertook to do a survey. Oddly enough, they came up with slightly different data.

The confusion just does not extend to local residents. It would seem, even though they do not live in Garran and certainly do not live near Dennis Street, that there is some confusion amongst the Labor Party about what should happen here. It is quite interesting. I guess this could be seen as another example of the Left faction of the Labor Party not talking to the Right faction of the Labor Party.

**Mr Stefaniak**: The left hand does not know what the right is doing.

**MR SMYTH**: As Mr Stefaniak says, the Left does not know what the Right is doing again. It is curious, Mr Speaker, because Mr Corbell, from the Left, rose with grave concern in this place on 11 March and brought up this issue as a matter of concern to him in the adjournment debate.

**Mr Stanhope**: And moved a censure motion against you.

**MR SPEAKER**: Order!

**MR SMYTH**: It is curious, Mr Speaker, that Mr Corbell said that - - -

**MR SPEAKER**: Order!

**Mr Kaine**: I rise on a point of order, Mr Speaker. It is interesting to know what happens in the Labor Party, but does Mr Stefaniak agree with Mr Smyth? That is the question.

**Mr Stefaniak**: Yes. I had a girlfriend in that street in 1969, Trevor.

**MR SPEAKER**: There is no point of order.

**MR SMYTH**: Mr Stefaniak tells me he knows the street well because of a relationship he had there. Mr Corbell told the Assembly that, after having been contacted by some residents there, the department's decision was wrong and that we should keep the traffic calming measures. In fact, Mr Corbell said, and I quote from *Hansard*:

> I think it is only appropriate that the Minister not proceed with the removal of that traffic calming measure until at least there is an opportunity for other options to be considered as alternatives.

I guess, Mr Speaker, that Mr Corbell, as a spokesperson for the Labor Party, a spokesperson for the Labor Left, in his role as planning spokesman, has made that statement on behalf of the Labor Party.

Then, oddly enough, Mr Speaker, the Right enters the fray. Unfortunately, like good road rules, the Left should give way to the Right, but in this case I guess we are going to find out that that did not happen. Mr Hargreaves has an opinion on this as well, Mr Speaker. Mr Hargreaves, from the Right, oddly enough has a contradictory view of this. I guess he is putting that contradictory view as Urban Services spokesman. Mr Hargreaves, in a letter to a resident that the resident very kindly sent on to me, said that he had visited Dennis Street and had a somewhat different appreciation of the matter. It was not a case of a slowdown at all, Mr Speaker. Oddly enough, the letter is addressed to the resident's street, not to the resident himself. I will quote from his letter. He said this:

> I visited Dennis Street about a month ago and made representation to the Minister regarding the problems associated with the closure of the street. It is illogical and absurd to redirect traffic past a school, which is already congested in the mornings and the afternoons.

So the Left is telling me to keep it in place, and the Right tells me to take it out. Mr Hargreaves went on:

> It is obvious that the traffic arrangements at Dennis Street have not been sufficiently thought through ... Hopefully the traffic island will be removed sooner rather than later.

So one is in, one is out. Nobody is giving any way. I guess Mr Corbell's experience may well have been that the Labor Left is screaming, "Wrong way. Go back". So we go on, Mr Speaker. I guess what highlights this unity on the part of the Labor Party for me is that recently on 2CN there was an interview with Gary Gray in which he said what a good job Mr Stanhope was doing; that he had unified the party; that they were working as a team; that they were tied together and were all pulling in the same direction.

**Mr Corbell**: I take a point of order, Mr Speaker.

**MR SMYTH**: Oh, look, here we go.

**Mr Corbell**: Relevance, Mr Speaker. I do not know what the national secretary of the ALP has to do with Dennis Street in Garran.

**MR SPEAKER**: Thank you. I uphold the point of order.

**MR SMYTH**: Almost over. I guess they are stuck on the roundabout, Mr Speaker. The question for Mr Stanhope is: Which of his spokesmen is right? Is it the Right? Is it the Left? Is it Urban Services? Or is it his planning spokesman? Should we put them in or should we pull them out?

**Mr Hird**: Mr Speaker, could we have that document that the Minister referred to tabled and incorporated in *Hansard*?

**MR SPEAKER**: If that is your wish?

**Mr Hird**: Yes.

**MR SMYTH**: Certainly. I will table the letter.

**MR SPEAKER**: Is leave granted to incorporate it in *Hansard*?

Leave granted.

*The letter read as follows:*

> Dear Mr Flanagan
>
> Thank you for sending me a copy of the letter that you wrote to the Minister, regarding the traffic arrangements at Dennis Street.
>
> I visited Dennis Street about a month ago and made representation to the Minister regarding the problems associated with the closure of the street. It is illogical and absurd to redirect traffic past a school, which is already congested in the mornings and afternoons.
>
> From the contact that my office has had with the Minister's office, it appears that the delay to remove the barriers is bureaucratic. I have been informed that the island will be removed and a sign will be erected to warn motorists to take care because children are playing. The delay appears to be with the construction of the sign and once this has been completed the island will be removed.
>
> It is obvious that the traffic arrangements at Dennis Street have not been sufficiently thought through and the consultation process poorly managed. Hopefully the traffic island will be removed sooner rather than later.

Yours sincerely

John Hargreaves MLA
8 March 1999

**Public Housing**

**MS TUCKER**: My question is to Mr Smyth as Minister for Housing. The Queensland Government has made some projections on the impact of the GST on public housing in that State. In light of the possibility that the Federal Government will impose a GST, has this Government done the same and investigated the implications to public housing funding and services in the ACT?

**MR SMYTH**: Mr Speaker, the issue of the GST is appropriately dealt with by the Chief Minister. Recently, Housing Ministers did have a teleconference. There was to be a meeting in Hobart, but it was cancelled at the last moment. There is an impact of the GST on housing. The Chief Minister, and I believe other Premiers and Chief Ministers, will raise this at the special Premiers Conference on 9 April. We will have a better view then of what will occur and the impacts.

**MS TUCKER**: I have a supplementary question. Is the Government aware that the Queensland Government estimates that it will increase the State housing costs by between 6 and 8 per cent, resulting in a loss of $30m in revenue? If you do have to deal with such an amount, which I understand from your answer that you are investigating, or you are going to discuss at least, how would you tackle that issue to determine how you can compensate in housing for that cost?

**MR SPEAKER**: That is a very hypothetical matter.

**MR SMYTH**: Indeed, Mr Speaker. This is a projection. There are some very widely varying figures.

**Ms Carnell**: Could I take that question?

**MR SMYTH**: I am happy to defer to the Chief Minister, who will be able to answer for me in this regard.

**Mr Stanhope:** It is hypothetical, Mr Speaker.

**MR SPEAKER:** Chief Minister, it is a hypothetical matter.

**MS CARNELL**: Mr Speaker, I understood that Ms Tucker was interested in some information about 9 April. This, of course, is in my portfolio. The issue of public housing is on the agenda for 9 April, and the effect of the GST is very real. I think it is very unwise though for Ms Tucker to bring up the issue of the Queensland Government's work because the Queensland Government's work is aimed at one thing and one thing only, and that is to get more money for Queensland. Queensland at this stage is lobbying

very hard for a significant extra amount of dollars to go to Queensland because they are a low taxing State at this stage. The unfortunate part for the rest of us is that if that money were to go to Queensland it would be at our expense. So I would be very negative about quoting Queensland figures that are aimed at nothing else but to undermine funding to the ACT.

## Public Hospital Beds

**MR WOOD**: My question is to Michael Moore, the Health Minister, and it follows on from a question yesterday about bed numbers in the hospital. After question time yesterday the Chief Minister offered an explanation for the Government's abandonment of its 1995 commitment to establish 1,000 public hospital beds in Canberra by the end of this year. The Chief Minister offered as one explanation the fact that the amount of day surgery, for example, gall bladder operations, had, in her words, "significantly increased". Given the Chief Minister's assertion, can the Minister explain why the January patient activity statistics from Canberra Hospital - that is, this year - show a 42 per cent drop in day surgery over the same period last year?

**MR MOORE**: I am glad to see you are reading those bulletins, Mr Wood, that we make readily available to you so that you can see the figures.

**Mr Stanhope:** That is very kind of you.

**MR MOORE:** It is open government. I just remind you that the Labor Government was very reluctant to do it. It had to be forced into doing it. I might just also say that there is no government in Australia that provides the sort of information that we do. That is something that they should be embarrassed about, not us. I hope when you are Chief Minister, Mr Stanhope, in due time, that you will do the same thing.

Mr Wood, it is a great disappointment to me that in January there was a reduction in the day surgery. It does not take away from what the Chief Minister said - that since 1994 there has been a significant increase in the amount of day surgery. As I see it, the figures have dropped. That does concern us. One of the reasons for that is the transfer of dental work to Calvary. That accounts for a large part of the day surgery. We still have to make sure that there is an emphasis on day surgery because we know that by keeping the emphasis there we can more effectively deal with a large number of people. It is something that we should be improving on through our efforts.

There have also been a number of administrative problems in dealing with theatres that have had some impact at times, as I understand it from a briefing that I had from the head of the surgical SMT. Mr Wood, we will be working to ensure that we can do our best to increase our efforts at day surgery. It is important to look at the categories to see where we are achieving and where we are not, and what has been transferred between one hospital and another.

**MR WOOD**: I have a supplementary question, Mr Speaker. I thank Mr Moore for his explanation and his assurance of a continued look at that issue. We will watch with interest the figures over the next month and hope they go up.

**Mr Hird**: A good supplementary.

**MR WOOD**: You are no help. Mr Moore, my question is this: Arising from that work yesterday, when you said that bed numbers at Canberra Hospital have fallen from 542 in January to 524 in March, do those figures indicate that the Government is intent on closing even more beds in the public hospital? Are we going, from this point, up or down or what?

**MR MOORE**: I think you are getting confused between the figures that I gave and the figures that Mr Stanhope gave. My information, as of 23 March, is that in the month of February 1999, the available bed use at the Canberra Hospital was 524; and at Calvary Public Hospital, 162. Mr Wood, I expect we will see a reduction in bed numbers and I expect we will see, much more importantly, an increase in throughput. That is what I was saying yesterday. The most important thing for us to assess is whether we are dealing with more patients, and are we still dealing with the complexities of particular patients.

Only last night I was briefed on possible future scenarios in public hospitals and public hospital beds. Consultants there have suggested that we have significantly too many public beds and perhaps private beds in the Canberra area. If there are too many private beds, market forces can sort that out. In terms of public beds, this may be one of the factors accounting for the extra costs of the Canberra Hospital. It is important for us to continue to work and ensure that we can improve our services and improve our throughput, as we have been doing.

## Australian Institute of Sport

**MR QUINLAN**: Mr Speaker, my question is to the Chief Minister, I think. Can the Chief Minister tell us if there have been any discussions with Federal counterparts in relation to Sydney Olympic facilities beyond 2000 and a potential impact on the Australian Institute of Sport?

**MS CARNELL**: Not that I know about.

**MR QUINLAN**: I have a supplementary question. Is the Chief Minister aware of a top level review - or white paper - being conducted by the Federal Sports Minister, Ms Kelly, which is looking at, amongst things, relocation of some of the training that is currently conducted at the AIS? Does the Chief Minister know whether or not this is part of Federal Liberal Party policy taken to the last election, given that Ms Kelly's office announced on 28 February last that the Government would implement the review? Is there anything we can do in relation to maintaining the AIS as the pre-eminent centre of sports development excellence?

**MS CARNELL**: Mr Speaker, obviously the ACT Government does support the AIS. All of the rest of the question is simply irrelevant to ACT Government. It relates to Federal Government policy, Federal Government administration and Federal Liberal policy, all of which, Mr Speaker, I cannot answer questions on in this place.

## Canberra International Dragway

**MR CORBELL**: My question is to the Minister for Urban Services and it is in relation to the Canberra International Dragway. Can the Minister confirm that the expired lease for the Canberra International Dragway at block 520, Majura, was written by the Territory on behalf of the Commonwealth and that the Territory inserted the provisions relating to determinations for national land purpose, rent and other lease conditions?

**Mr Hird**: I raise a point of order, Mr Speaker. I draw your attention to private members business item No. 5, namely, Canberra International Dragway. I would say that the member is anticipating debate of something that is on the notice paper this day.

**MR CORBELL**: What standing order, Mr Hird?

**MR SPEAKER**: Standing order 117(f). I listened carefully to Mr Corbell's question. Whilst, yes, I suppose you could argue that the matter could be canvassed in item No. 5, it is not specifically mentioned there. I think, therefore, that Mr Smyth can answer it.

**MR SMYTH**: Mr Speaker, as I said yesterday, this lease was issued in the transition period from Federal control to self-government. Some of the functions at that time, I understand, had not been divided; so, yes, you could say that at that time Territory public servants did issue that lease on behalf of the Federal Government. I am not aware that the Territory insisted that those conditions be inserted. I would have to find out.

**MR SPEAKER**: Do you have a supplementary question?

**MR CORBELL**: Thank you, Mr Speaker. Minister, as the Territory did write this lease and issue it to the dragway on behalf of the Commonwealth, why are you now refusing to make the determinations in relation to declaration of a national land purpose, rent and other conditions since they are determinations which the Territory gave to itself to exercise?

**Mr Humphries**: Mr Speaker, I ask you to rule on the question of whether this anticipates debate. If that does not, what does?

**MR SPEAKER**: I think Mr Smyth can answer it. He has, in fact, answered it.

**MR SMYTH**: Mr Speaker, the lease was issued on behalf of the national government. It is the Federal Government's lease. It is on national capital land. I am not sure of my copy of the Territory Plan. I should keep it down here. We spoke to Mr Hargreaves previously about the orange bits there, the residentials. Perhaps we should talk to Mr Corbell about the grey bits and national land.

## Emergency Services

**MR HARGREAVES**: My question is to the Minister for Justice and Community Safety. In today's *Canberra Times* the Minister stated that the cost of emergency services has increased by $13.084m per annum. That is each year, per annum, not an average, per annum. However, from the budget papers I have calculated an average of $1.014m rise over the past three years in operational expenses. Minister, your figure of $13m includes one-off capital costs. My question is: How much did you increase the operational costs per annum, each year, of emergency services?

**MR HUMPHRIES**: Mr Speaker, I thank Mr Hargreaves for the question. My press release on this subject has been fairly clear. What I have made clear is that the current expenditure on police and emergency services has increased to the level of $13m - in fact, to be more precise, $13.084m - since we came to government on a per annum basis. That is, annual expenditure now stands at $13.084m more than it did when we came to office. Obviously it has not been $13m from day one when we came to office. It has built up to that level over a period of four years. I have the figures in detail here on what that includes. I can obtain those if Mr Hargreaves wants them. Today we are spending on emergency services and the police in excess of $13m more per annum than we were spending when we came - - -

**Mr Hargreaves**: Every year? Every year? Per annum?

**MR HUMPHRIES**: Yes, per annum.

**Mr Quinlan**: Purely operating.

**MR HUMPHRIES**: Yes.

**Mr Hargreaves**: Per annum?

**MR HUMPHRIES**: No. That is recurrent expenditure. The capital expenditure is $12.85m. If you add those two together, obviously it amounts to a lot more, but I am not claiming they are both added together. The recurrent is $13.084m. The capital, which obviously goes on year by year, over the last four years has been $12.85m.

**MR HARGREAVES**: I thank the Minister for the answer, most sincerely. The supplementary question, Mr Speaker, is this: How much has the Government received from the emergency services levy so far this year?

**MR HUMPHRIES**: I do not know how much so far this year. Obviously it is sleighted to receive $10m over the course of this financial year because that is the amount prescribed in legislation. As far as I am aware the - - -

**Mr Hargreaves**: I know that is how much you have budgeted for. How much so far?

**MR HUMPHRIES**: I do not know because the payments are received not by me but by the Receiver of Public Moneys. The Commissioner for Revenue receives those monies. I have to check with her as to whether the moneys are coming in as expected. I think from recollection the moneys are payable quarterly by the insurance companies and there would have been at least two quarters paid. I imagine that we have therefore $5m in the kitty, but I will check that and find out. That is what the legislation says we receive - $10m over a full financial year.

## School Bus Services

**MR OSBORNE**: My question is to the Minister for Urban Services, Mr Smyth, and it is about school buses. I may have spoken to him about this in the past, but I will still ask it. Minister, it has been brought to my attention that some of the school buses which pull into St Edmund's College, the articulated buses in particular, are so crowded that children are sitting in the stairwells on those buses. I understand that ACTION's safety standard is to allow a maximum 110 children on an articulated bus, that is 69 seated and 41 standing, and 65 on a standard bus, with 40 seated and 25 standing. Are you aware, Minister, that parents and the school have on occasions this year counted in excess of these numbers? Given that some jurisdictions periodically consider the possibility of seatbelts on their buses, do you consider that to have 41 children standing in the aisle with their school bags is a safe standard to be using here in the Territory?

**MR SMYTH**: Mr Speaker, I thank the member for his question and his interest in this matter. For people to stand on buses is quite within the law, and the 110-passenger capacity of the articulated buses is based on a certain number standing. The same is true for the non-articulated buses. There were some dilemmas early in the piece. Because of fluctuations in the first couple of weeks of school, larger numbers and then smaller numbers of students were carried. I am advised by the department that those have all been rectified; that the appropriate numbers are carried; that excesses to the loadings are not carried, and that all buses now arrive on time for the commencement of school.

**MR OSBORNE**: I did not hear an answer on whether the Minister felt that having 41 children standing in the aisle with their school bags is a safe standard, so I look forward to that in his answer to my supplementary question. Minister, could you inform the Assembly what studies ACTION have undertaken or have looked at which specifically look at the safety on articulated buses, and who decided on the numbers that were safe on the buses? Was that ACTION or the manufacturers?

**MR SMYTH**: Mr Speaker, as to standing, it is considered safe to have a certain number of passengers per bus standing. That is appropriate. On many buses there is a place where students can place their bags. As to the safety studies, I would have to seek advice from the department as to what studies, if any, have been done. As to actual safety standards, I will find out which ones they comply to and respond to Mr Osborne's question accordingly.

## Belconnen Bus Interchange

**MR RUGENDYKE**: Mr Speaker, my question is also to the Minister for Urban Services. Minister, I have had representations from a family in the electorate of Ginninderra about two unsavoury incidents at the Belconnen bus interchange last week. A member of the family was assaulted by a group of youths, not once but twice in the space of five days, the first assault occurring mid-afternoon in broad daylight. The family has subsequently sought answers as to who is responsible for security at Belconnen bus interchange. ACTION says it is the police, the police say it is ACTION. Could the Minister please advise the Assembly what measures are in place at Belconnen bus interchange to ensure the security of ACTION patrons, and who is responsible for implementing them?

**MR SMYTH**: Mr Speaker, it is great to see that Constable Dave, Uncle Dave, is back on the beat and keeping a watchful eye on his constituents.

**Mr Moore**: We will support that. You can go back.

**MR SMYTH**: We are very happy for him to be back there full time at some time in the future. Mr Speaker, we take responsibility for the security of our passengers very seriously. I would have thought that it was a combined function where both ACTION and the police force take responsibility. I would be very sad if there was any duckshoving, as it were. I am not aware of the incident. I will consult with Mr Rugendyke and get the specific details and check it.

As to security, we do have staff stationed at the interchanges. Some of the interchanges do have security cameras to keep an eye on the goings on there. Again, I will find out from Mr Rugendyke the full details of what happened and see what measure can be taken to make sure it does not happen again.

## Water Franchise - Report on Overseas Study Trip

**MR KAINE**: Mr Speaker, my question is to the Chief Minister. Chief Minister, on 10 December last year, when we were discussing the future of ACTEW, I asked you a question without notice, part of which related to a study trip that a very senior member of your department made to France. In your answer to that question you initially said:

> As far as I know there are no written reports from the officers. It would not be normal for an officer to provide written reports in those circumstances.

At the end of question time on that day, however, obviously having been given some advice, you amplified that and you said:

> ... for the information of Mr Kaine, when the officer who did go overseas makes a report - he has not done so at this stage - I am more than happy to give a copy to Mr Kaine.

Chief Minister, that was over three months ago and I have not seen the report that you promised me. Has this very senior public servant who went swanning around France at taxpayers' expense nearly a year ago yet gotten around to writing up this report, and, if so, may I please have the copy that you promised me?

**MS CARNELL**: Mr Speaker, I take exception to comments about public servants swanning around anywhere. All of our public servants work very hard when they are away, I know, and do the job they are sent to do. I am confident that in this case, as in all other cases where public servants go overseas or, for that matter, interstate, they do their job professionally and well. Mr Speaker, I am advised that at this stage the particular report is in the pipeline. I have not seen it yet either. As I said, it was not a report that was required urgently and we have had one or two other things, such as budgets, to do in the meantime. When that report is made available to me it will certainly be given to Mr Kaine.

**MR SPEAKER**: Do you have a supplementary question?

**MR KAINE**: Mr Speaker, I am not disputing for a moment that when public servants do whatever they set about to do they do it efficiently, but it would appear in this case that the officer has not been as efficient since he got back because I made the point in my question that it was a year ago. When one talks about professionalism and efficiency one has to ask the question. My supplementary question, Mr Speaker, is this: Will this can-do Chief Minister require this senior officer to provide a copy of this report, perhaps even, say, by the end of this week? It is over a year, after all.

**MS CARNELL**: It is not over a year. Mr Speaker, it is not over a year to start with. As far as I know, it is certainly not over a year. It was over the Christmas break - - -

**Mr Kaine**: You said in December that as far as you know officers did not make reports, so - - -

**MS CARNELL**: Mr Kaine just said it was in December. That was a couple of months ago, not over a year ago, unless Mr Kaine got it totally wrong. A report will be made available when it becomes available to me. This report is not something that we see as being an urgent issue at this stage, but, when it is made available, it will be made available. Mr Kaine did just say, "over a year ago". The trip was late last year. The last time I checked it was only March now. That was a couple of months ago, over the Christmas break, Mr Speaker, when we have had many other issues on our agenda.

**Mr Kaine**: What a cop-out.

**MS CARNELL**: Mr Kaine, because he just got it wrong in his question, is getting embarrassed, but that is by the by, Mr Speaker. He will get a copy when it is available. When it is made available to me it will be passed on.

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

## Hepatitis C

**MR MOORE**: I would like to clarify a couple of issues, Mr Speaker, from question time. I have been provided with a bit more information. Mr Berry asked me about the numbers that are being handled in regard to hepatitis C. The number of cases being handled by the Government at the moment is 35. Of the number of cases being processed for consideration of payment in the Government's compensation scheme, 11 cases have been concluded. Of those 11, six appear to be entitled to some form of compensation, and five are hepatitis C negative and therefore there is no compensation involved.

I was asked by Mr Quinlan, I think, about the number of people who have died. We have reviewed a large number of the death certificates so far. We will review all the death certificates. Of the death certificates we have reviewed, none of them have given hepatitis C as the cause of death. The cause of death has been a major trauma or leukaemia or something along those lines. I think it was worth clarifying that for you. We will review all of them and I will be happy, should members ask, to provide them with that information at the time.

**Mr Stanhope**: Could you also explain what you mean by process - the 35 cases you are processing?

**MR MOORE:** We are looking at it. We are going through the papers.

## PERSONAL EXPLANATIONS

**MR KAINE**: I seek leave to make a personal explanation under standing order 46.

**MR SPEAKER**: Proceed.

**MR KAINE**: The Chief Minister a moment ago, in answer to a question, said that I was embarrassed. Let me assure the Chief Minister and the members of this Assembly that I am in no way embarrassed, but the Chief Minister ought to be because she demonstrates daily - - -

**MR SPEAKER**: No. We are now moving away from a personal explanation.

**MR KAINE**: No, we are not, Mr Speaker.

**MR SPEAKER**: Yes, we are. It is your personal explanation, not the Chief Minister's.

**Ms Carnell**: Are you red because of blood pressure then?

**MR KAINE**: The Chief Minister ought to be embarrassed because first of all she said that senior public servants do not write reports.

**Ms Carnell**: Mr Speaker, I take a point of order. This is not a personal explanation.

**MR SPEAKER**: Order! We are now drifting beyond the personal explanation, thank you, Mr Kaine.

**MR KAINE**: Well, I make it quite clear, Mr Speaker. I am in no way embarrassed, but the Chief Minister ought to be because she demonstrates her incompetence daily.

**MR BERRY**: Mr Speaker, I seek leave to make a personal explanation pursuant to standing order 46.

**MR SPEAKER**: Yes.

**MR BERRY**: Thank you, Mr Speaker. During question time Mr Moore made the point, if I can recall it correctly, that the Assembly forced the Labor Government to issue quarterly reports in relation to health performance figures. That, as I recall it, was an initiative of the Labor Government, and me in particular. To save those people who examine the chronicle of these events the problem of looking right back, I would say, Mr Speaker, that it was this Assembly that forced the release of financial reports, and that brought about the resignation of the board chair and ultimately the board.

**MR HARGREAVES**: I seek leave to make a personal explanation under standing order 46.

**MR SPEAKER**: Yes.

**MR HARGREAVES**: Thank you, Mr Speaker, and thank you, members. In response to the dorothy dixer from Mr Hird, the Minister for Urban Services said - I will not be able to quote exactly because I have not seen the transcript - that members of the Labor Party did not live anywhere near the Dennis Street area of Garran where the problems with the traffic calming measures are arising. I would like the record to show, Mr Speaker, that a former address of mine was 107 Gilmore Crescent, Garran. As you would know, Gilmore Crescent is parallel to Dennis Street. I have many friends there, Mr Speaker; more friends, I suspect, in the one house than the Minister can count on his hands. Indeed, I found the implication offensive and I would ask the Minister to withdraw it.

Furthermore, the Minister implied that my colleagues and I had contra views, Mr Speaker. We were representing a constituency and I found it offensive that the Minister would cast aspersions on that.

**Ms Carnell**: It does not matter what you find offensive. It is not a personal explanation.

**Mr Hird**: Just say your mate got it right. That is all you have to say.

**MR HARGREAVES**: I await the withdrawal.

**Ms Carnell**: Do not be stupid.

**Mr Hird**: He does not have to withdraw.

**MR HARGREAVES**: All right. Very well. The gloves are off.

**MR SPEAKER**: No, there is no call for that.

## OCCUPATIONAL HEALTH AND SAFETY (AMENDMENT) BILL 1999

[COGNATE BILL:

DANGEROUS GOODS (AMENDMENT) BILL 1999]

Debate resumed from 17 February 1999, on motion by **Mr Berry**:

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 order of the day No. 4, the Dangerous Goods (Amendment) Bill 1999? There being no objection, that course will be followed. I remind members that in debating order of the day No. 3 they may address their remarks to order of the day No. 4.

**MR HUMPHRIES** (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (3.22): Mr Speaker, this is a debate of considerable gravity. I hope that members will listen carefully to what is said in this debate, because I will go on to argue that what we are proposing to do in this debate goes a very considerable way down a path that we have not yet trodden as an Assembly. I particularly hope that those members of the Assembly, particularly those on the crossbench, whose views were indicated in the *Canberra Times* as having been made up on this issue, will listen to this debate because the arguments here are very pertinent and very important.

Mr Speaker, on its face, this legislation is eminently supportable. Indeed, the Government will actually support the Bills which are before the Assembly at the moment. They do, in fact, what the Government foreshadowed it intended to do in a legislative program which was tabled last month. But, Mr Speaker, the concern here is not the legislation itself. The concern is the amendments to the legislation which Mr Berry tabled today at half past eleven during a debate on an earlier matter. I note in passing that the amendments were drafted on 1 March, but they were not made available to anybody until today, 24 March.

**Mr Berry**: They were made available to others before then.

**MR HUMPHRIES**: They were not made available to the Government before today. They may have been made available to other members, but they were not made available to the Government.

**Mr Berry**: I am sure you can understand them, though; they are about three lines each.

**MR HUMPHRIES**: Maybe so, but they significantly and dramatically alter the effect of the legislation. Mr Speaker, I will come back to the amendments when we deal with the detail stage of the legislation, but I want to deal with the Bill as if it contained those amendments.

Mr Speaker, I ask members of this place to note - and I am concerned, to be quite frank - that Ms Tucker is not here at the moment to listen to these remarks. Ms Tucker was reported in the *Canberra Times* as being prepared to support this legislation.

**Ms Tucker**: I am here to listen.

**MR HUMPHRIES**: I hope you are, Ms Tucker. It is very good to hear that. Interjecting from outside your seat is out of order, of course, and even out of the chamber; nonetheless, Mr Speaker, I am grateful for that fact because I do want her to hear what I have to say.

Mr Speaker, if the Assembly passes this legislation today, it will be doing something which, to the best of my research, it has never done before. It will be taking a step which it has never undertaken before. Mr Speaker, the amendment before the Assembly offends a principle which the Assembly has stood by, to the best of my recollection, consistently since the very beginning of self-government, that is, that legislation should not create or extend criminal liabilities or penalties to apply retrospectively to citizens of the ACT. In respect of imposing or extending a criminal liability, this is, to the best of my recollection, the first time the Legislative Assembly has done so, the very first time it has done so. I am aware and members will be aware, no doubt, of occasions in the past where the Assembly has curtailed some civil right, some right in a civil sense, that a person enjoys - and I will come back to an example of that in a moment - but this is the first time, to the best of my research, that the Assembly has actually retrospectively imposed a liability on somebody who at this stage does not experience that liability, the first time that a criminal immunity has been removed from a person. Mr Berry shakes his head and indicates - - -

**Mr Moore**: If it passes.

**MR HUMPHRIES**: If this legislation were to pass. Mr Berry shakes his head and says that that is not right. I would be grateful if he would tell me what is the example or the precedent for this, because to my recollection there is no precedent for this. There are certainly precedents for curtailing the civil rights of people in the way of their obligations in a civil sense. One example that comes to mind is the decision, I think in 1994, to provide that people who had lottery tickets that had certain combinations and numbers on them could not claim prizes for those tickets on the basis of a particular reading of the tickets' conditions of entry. Members will even recall that on that occasion I moved in this place that the persons who had already commenced an action in the Supreme Court to sue for recovery of winnings under tickets bought under that system should not have their rights removed by the legislation. Even so, that legislation dealt only with a civil obligation or a civil right that a person had to be able to sue someone civilly for

a particular sum of money that they believed was owed to them. My recollection, and I stand open to be corrected by Mr Berry on this subject, is that all the other liabilities effected by the Assembly on those few occasions retrospectivity has been considered have been civil in nature only.

Mr Speaker, if this legislation passes as Mr Berry proposes to amend it today, for the first time we will make that step in a criminal sense. If we do that, we will do something that a parliament in the United States would not be able to do. I understand that in the United States there is a constitutional barrier against parliaments removing the rights of citizens after those rights have already accreted to those citizens. So, it would not be possible in the United States, but we are proposing to do it here. That may not be a particularly important argument, but members need to understand the gravity of the step that is being taken here. This is not an everyday piece of legislation. This is big. This is a big piece of legislation. It is highly significant.

Mr Speaker, let me deal first of all with the question which has been raised of whether it is, in fact, retrospective in nature and whether that retrospectivity is adverse. This is admittedly not a case of the legislature creating a liability for the very first time. What we would be actually doing if we passed this amendment would be re-creating a liability which has existed but which has expired by virtue of a limitation period contained in two pieces of legislation; that is, someone had a liability for prosecution but it expired and the liability ended on a particular date in the past. Mr Speaker, I believe that it is clearly retrospective in nature.

Members may have looked at the opinion provided to the Assembly in the scrutiny of Bills report that was tabled when these Bills were commented upon. I must say that the argument was not as clear-cut and as direct as it might have been; but, first of all, the amendments about retrospectivity had not come forward at that stage. So, understandably, it might not have been so clear. The argument about removing a limitation period was addressed very clearly by judges of the High Court in the case of Maxwell v. Murphy in 1957 and is referred to in a comment by the scrutiny of Bills committee. It comments that two judges, Chief Justice Dixon and Justice Williams, regarded such a law as having retrospective operation within the common-law concept of such a law. Sir Owen Dixon regarded it as a law which "destroyed a prescription already acquired". It is pointed out that another judge had a different view. However, the committee went on to say:

> The views of Dixon CJ and Williams J probably represent the view an Australian court would take on the matter ...

They make the same comment in respect of the Occupational Health and Safety Bill. Mr Speaker, there is also, very clearly, the view of the ACT Bar Association, which issued a press release on this subject on 23 February.

**Mr Berry**: Who is the president of the Bar Association?

**MR HUMPHRIES**: The statement was actually issued under the name of the executive officer of the Bar Association, not the president of the Bar Association, that is, Ms Elizabeth Turton.

**Mr Berry**: Ha, ha!

**MR HUMPHRIES**: Mr Speaker, I would ask for some silence while I am making these remarks. It is a very important matter and I have to emphasise the gravity of what is being said here. I do hope that Mr Kaine is listening to this debate as he is out of the chamber. The press release reads:

> The ACT Bar Association is opposed to both the Occupational Health and Safety (Amendment) Bill 1999 and the Dangerous Goods Amendment Bill 1999 introduced by Mr Wayne Berry MLA, insofar as the Bills have retrospective application.
>
> Retrospective legislation, particularly when criminal sanctions are involved, is always unfair and unjust. Such legislation is specifically forbidden by the Constitution of the United States.

They go on to make other arguments in respect of that matter. I invite members to look at that statement by the Bar Association. Mr Speaker, I think that it is also relevant to point out, as I have done today to the scrutiny of Bills committee and its chairman, that the High Court in its decision in the case of Rodway v. R made it very clear that, where a particular piece of legislation is passed which does not expressly make its operation retrospective, it would be assumed not to be retrospective in the absence of express words in that piece of legislation. That case was decided in 1990. The court in that case said:

> Where a period is limited by statute for the taking of proceedings and the period is subsequently abridged or extended by an amending statute, the amending statute should not, unless it is clearly intended, be given a retrospective operation to revive a cause of action which has become statute barred or to deprive a person of the opportunity of instituting an action which is within time. If it were given a retrospective operation, the amending legislation would operate so as to impair existing, substantive rights - either the right to be free of a claim or the right to bring a claim - and such an operation could not be said to be merely procedural.

I cite that, Mr Speaker, as authority for the proposition that we are not dealing here with a matter which is not retrospective. It is clearly retrospective in nature and no member should be in any doubt about that.

All right, we have a piece of legislation which is retrospective in nature, which is adverse to the people that it affects. Why should the Assembly do this? The reason given in Mr Berry's presentation speech - of course, his speech assumed that the Bill was retrospective and, as I have argued, it will not be retrospective until he moves his

amendment; but let us assume for the moment that it is now retrospective - is that the Government or, alternatively, the Attorney-General, failed in some way to bring forward legislation in the Assembly to cancel an immunity which had been acquired by certain people before that immunity was due to expire, that the Government failed to bring forward certain legislation at the appropriate time that would have extended the period in which a person could have been prosecuted and the problem would have been solved, that the Government failed to do that and, therefore, we are entitled now to act to remove retrospectively these rights that these citizens currently enjoy. We will assume, Mr Speaker, that there are citizens out there in the community who have these rights at the moment and we are proposing to remove those rights to be immune from criminal prosecution.

First of all, Mr Speaker, let me make it very clear that I deny, as Attorney-General, and the Government as a whole denies very emphatically that we failed to act in this area with respect to addressing this question. We very clearly did. Members have already had the benefit of correspondence on legislation which has been tabled in this place - extensive correspondence - between the Justice and Community Safety Committee, the shadow Attorney-General and me. That legislation has been put on the table. The Government clearly addressed its mind to these issues in a vigorous way.

Mr Speaker, the second argument here is a much more important one, and I ask members to note particularly this argument. Let us assume for the sake of this debate that I, as Attorney-General, had been negligent in my duty in not bringing forward this Bill to provide for this cancellation of immunity for these people. Let us assume that is the case for one instant. Why should an act of mine affect the way in which these people hold their rights? Why should an act of any government be used or an omission of any government be used against a person out in the community whose rights it is now proposed, by legislation, should be removed? It is not their fault that I did not introduce legislation to cancel this particular period of limitation. It is not their fault.

By enacting this legislation the Assembly does not punish me because I am quite certain, looking at the terms of this legislation, that I am not going to be subject to any prosecution under any of these pieces of legislation. By introducing this legislation and passing it, as amended, it is these individuals in the community who are being punished, people with rights that actually exist at the moment. Their rights are being removed. They are quite likely to be some white-collar workers and some blue-collar workers out there. Mr Speaker, what is the justification for that? Why should any omission or any failure of mine be a basis for punishing those people out there?

I ask members to consider another scenario. Supposing nobody had noticed that this limitation period was about to expire. Supposing we had simply not noticed it coming forward and suddenly, in July of last year, it became clear that this limitation period had cut in and prosecutions were not possible. Would there then be any greater argument for legislating now to remove those people's right to immunity from prosecution? Of course there would not. The argument would be no stronger or weaker by virtue of nobody having noticed its having expired at the expiration of that 12-month period. Why should any particular omission on my part, if that is what it was, make the case to remove those rights now any stronger? It is intrinsically unfair to take away the rights of these people

based on some action of a third party altogether. If anybody in this place enjoys a particular right, why should their enjoyment of that right depend on what some third party does? Why should the protection the law gives to that right be dependent on some third person's action? Mr Speaker, if we think about this in any kind of depth we realise that there is a fundamental flaw in what this legislation is trying to do. I urge members to be very clear. They should not do this. This is a serious and fundamental error.

If you do think that there is some kind of omission on the part of the Government - the Government should have addressed this issue and it is negligent for not doing so - that gives some kind of basis for bringing forward legislation now to cancel these people's rights, why did the Government not bring forward legislation before the expiry of the limitation period? Mr Speaker, the answer is clear. It is because the Government did not want to, because the Government did not believe that to do so was right. It believed that to do so would be morally reprehensible.

Mr Speaker, I am not telling members of the Assembly, particularly members of the Labor Party, anything that they do not already know. They know perfectly well that the Government's view was that the legislation was seriously flawed, at least in a moral sense. How do they know? They know because I wrote to the shadow Attorney-General on 8 May last year, copies of which have been tabled in the Assembly, and I sent a copy of an earlier letter which I had sent to the Justice and Community Safety Committee, in which I said:

> ... I am loath to present a Bill to the Assembly which potentially and retrospectively alters the grounds for the prosecution of an offence without seriously considering the implications of such an action.

What right did any member of this place have to assume that the Government was going to bring forward legislation within that 12-month period to effect that particular change? I ask that because I wrote very clearly:

> I am loath to present a Bill to the Assembly which potentially and retrospectively alters the grounds for the prosecution of an offence ...

**Mr Berry**: Read the second last paragraph, Gary.

**MR HUMPHRIES**: I will read the second last paragraph:

> The Government will need to urgently give consideration to a Bill to deal with the issue raised, but given its enormous sensitivity and my wish for this not to be a debate which, on the floor of the Assembly, may prejudice the inquest, I would appreciate the Committee's views.

Mr Speaker, I was writing for, first of all, the committees' views, and then Mr Stanhope's and the Labor Party's views, on whether there was any logical or reasonable argument to bring forward legislation which did retrospectively cancel people's rights. Did I get any argument about why it would be appropriate to do that?

No, I did not. Mr Stanhope did write back to me on 31 May but gave no argument whatsoever as to why retrospectivity should be used to cancel somebody's rights in these circumstances. *(Extension of time granted)* Mr Stanhope gave me no argument whatsoever, no reason.

That was a surprising omission, I would have thought, for the former president of the ACT Council of Civil Liberties. Here is something which governments and parliaments in some other countries are actually constitutionally barred from doing because it is so discriminatory to civil rights - it is so discriminatory to civil rights that in some countries parliaments cannot even do so - and the former president of the ACT Council of Civil Liberties had no opinion on this subject when I wrote to him on that issue, offered no justification and no reason. Mr Speaker, in the circumstances, it is hardly surprising that the Government did not move forward with legislation of this kind. It clearly was of the view then, after hearing what members had or did not have to say, to be more precise, and remains of the view today that there is not a justifiable case for cancelling the rights of people that may have accrued already.

In May of last year there was some argument that cancelling the rights may have been accomplished without retrospective adverse effect. That is an argument we may or may not have had if the legislation had come forward in May or June of last year, but it did not come forward - legislation which Mr Stanhope or anybody else in this place who is concerned about it could have introduced if they wanted to but did not do so. It was not introduced; the issue did not arise. There is no argument now but that this legislation is adversely retrospective and does remove a criminal immunity which certain citizens of this Territory may presently enjoy.

Mr Speaker, I again have to appeal to members of this place who do not appear to be listening to this debate, members of the crossbench who are critical in this debate, to pay attention to what is being said in this debate. It concerns me greatly that we are going to take an unprecedented step in this chamber today, potentially.

**Mr Berry**: Oh, Gary!

**MR HUMPHRIES**: It is, Mr Berry. Interject, then. Tell me where we have done this before.

**Mr Berry**: You were going to do it yourself. Crocodile tears.

**MR HUMPHRIES**: Tell me where.

**Mr Berry**: Just crocodile tears.

**MR HUMPHRIES**: We have not done it before, have we, Mr Berry? This is the first time that we have imposed a criminal liability by retrospective legislation, is it not, Mr Berry? Admit it.

**Mr Berry**: The hospital never got blown up before and there was never a 12-month inquiry.

**MR HUMPHRIES**: Mr Berry's failure to address my invitation indicates very clearly that he acknowledges that this is the first time we have done so.

Mr Speaker, I want to put a couple of other arguments which are very important in this debate and which, again, I have to plead with members to listen to very carefully. If we pass today this legislation to reimpose a criminal liability where one has ceased to exist, to cancel an immunity, this will not be the first time that we will have to consider this issue and to consider doing just that. This issue is going to come back in similar forms to be done again and again and again. I want to cite a particular case which has just come to light and which relates to a matter which was published in a Law Society journal just a couple of weeks ago. It relates to a piece of legislation which was passed back in 1976 by the Commonwealth Government - I think it was called the Sexual Offences Ordinance - and which applied to the ACT. It created certain offences in relation to certain sexual acts and it imposed a limitation period on the bringing of action against people for those particular offences - a 12-month limitation period. The legislation was repealed, I understand, in 1985, again by the Commonwealth Government. However, it was not repealed to the extent that it also repealed the limitation period. So, offences that may have been committed during that period up to 1985, as I understand it, could still be prosecuted except for a limitation period of 12 months.

My advice at this stage - it is only preliminary advice - is that apparently nobody noticed that limitation period having remained and it is possible that there are citizens in this Territory who have been prosecuted for offences under those provisions, who may even have been given prison sentences, whose prosecutions, in fact, were statute barred, illegal. Mr Speaker, I might advise the Assembly now - - -

**Mr Berry**: It is a matter for the courts.

**MR HUMPHRIES**: No, it is not a matter for the courts, Mr Speaker. It is a matter for me as Attorney-General. I will tell you now that if it is apparent to me that there are people in prison at the moment arising out of a prosecution which was statute barred and which people were unaware of, I will let them out of gaol, if that comes to my attention, as is my duty. The reverse question, though, is given rise to here.

**Mr Berry**: No.

**MR HUMPHRIES**: Yes, it is. Listen to me, Mr Berry. You are spouting off without knowing what you are talking about. Listen to what I have to say. It is possible that there are people who could have committed offences between 1976 and 1985 and who might today be capable of being prosecuted under those provisions, except for the statute barring of those provisions. We could be asked by some citizen who comes forward saying, "A member of my family was sexually molested by this person - - -

**Mr Berry**: Will you table the document?

**MR HUMPHRIES**: I have not got a document yet, Mr Berry.

**Mr Berry**: I'll bet you haven't!

**MR HUMPHRIES**: Mr Berry, this is a very serious subject and you are making light of it. It is not a joke, Mr Berry; it is serious. I would ask you to listen to what I have to say.

**Mr Berry**: Table the document and be truthful with us.

**MR HUMPHRIES**: I have not got a document to table.

**Mr Berry**: Give us all the information.

**MR HUMPHRIES**: I will give you the information when it comes to hand, Mr Berry, I can assure you.

**Mr Berry**: No, give it to us now.

**MR HUMPHRIES**: I have not got the information.

**Mr Berry**: Well, don't use the argument if you haven't got the information.

**MR SPEAKER**: Order, please!

**MR HUMPHRIES**: Mr Speaker, returning to my argument: I hope others are listening to this debate very carefully. The question could arise, potentially, if the information I have been given, mostly verbally, turns out to be the case, that is, the question of whether we should remove a limitation period - - -

**Mr Berry**: If it turns out to be the case.

**MR HUMPHRIES**: Yes, it is probably hypothetical, but it most likely is not, Mr Speaker. In other words, my advice at this stage is that this is a real issue. There are people who may be capable of being charged now but for a limitation period. If members urged people in this place to bring forward legislation to remove the period of immunity, remove the limitation period, on prosecutions under this legislation, would we pass that legislation?

**Mr Berry**: It is entirely hypothetical.

**MR HUMPHRIES**: It is a real issue. The point I make is that if we pass this legislation today and impose a criminal liability retrospectively, other identical or similar cases will come forward which we will have to consider. Are we prepared to recriminalise actions which have ceased to be criminal pursuant to limitation periods and other pieces of legislation as well? If we do it today, why should we not do it in those cases as well? Do not assume that this is the last time that we will have to consider this issue and that we can forget about it in the future. We cannot.

Mr Speaker, these issues are extremely serious. We cross an important bridge today if we pass this legislation, as amended. It is an unprecedented step. I ask members to consider carefully whether they are making a mistake. The people that we are dealing with are people who are workers, who most likely, I expect, would include potentially employees of this community, public servants of this community, who, at the present time, are not criminals. They are not criminals in respect of this legislation because the legislation provides that after 12 months any liability that they may have under the legislation ceases and they have no liability under that legislation. If we pass this legislation, those persons would become criminals.

Whether you think it is a good idea or not to give the ACT Government a kick in the head about this issue, to embarrass it, to drag it through the newspapers, that is fine. I am a big boy, as are the other members of this front bench; we will cop that if it happens. But the people out there whose actions are being criminalised are not in the same position.

**Mr Stanhope**: They are not.

**MR HUMPHRIES**: They would be, Mr Speaker. That is it; they would be. Their position is being affected by this and it is a major step to take, Mr Speaker. I ask members to consider whether this is the right thing to do. It may be a serious mistake, Mr Speaker, and I ask members to consider again.

**MR KAINE** (3.52): The Attorney-General a short time ago exhorted the crossbenchers to listen to what he was saying, somehow on the assumption that because we were not sitting here we were not listening. I have been listening very carefully. I had a pretty clear view of this position before the Attorney-General spoke. Now, I must say, I am extremely troubled with the proposition that the Attorney-General puts forward. His argument appears to rest on the fact that people who have committed a criminal offence ought not to be liable. He is saying that if we put this Bill through they will be made criminals. They could not be made criminals if they had not committed an offence that was a criminal offence in the first place. I do not see that what we are doing here is in any way turning anybody into a criminal. If they have already committed a criminal offence, they have done that.

The thing that troubles me more than anything else about the Attorney-General's contribution to this debate is that he seems to be taking the view that, the matter having been brought to his attention by the coroner, as I understand that it was, he was perfectly justified in doing nothing.

**Mr Humphries**: I didn't do nothing.

**MR KAINE**: You did nothing. That is why this piece of legislation is on the table now. If you had been doing your job, you would have had this amendment on the table months ago and the situation would not now be arising.

**Mr Humphries**: The amendment is wrong. We did not decide to do it because we did not believe that it was important or appropriate to do that.

**MR KAINE**: I do not know. You are talking about criminalising people. They cannot be criminalised if they have not committed an offence which, back a year ago, would have been a criminal offence. Nothing changes what they did then. I do not know whether there are any people out there who are potentially criminals under the Act. The Attorney-General seems pretty certain that there are. If he believes that that is the case, I would be interested in his putting the facts on the table, rather than simply speaking hypothetically. I have great difficulty with the notion that somebody a year ago commits an offence which the Attorney-General thinks is a criminal offence and he allows the period of time for which the indemnity applies to lapse, having done nothing, and now says that if we move in any way to rectify this omission on his part we will be criminalising people. I am afraid, Mr Speaker, I do not follow his logic. I do not follow his logic at all.

**Mr Moore**: I will explain it again.

**MR KAINE**: The Attorney-General did a pretty poor job of explaining it and I doubt that you can do any better, Mr Moore. It makes me wonder just why the Attorney-General did nothing if the situation as he now outlines it is, in fact, the case, and he must have known that that was the case six months ago.

**Mr Humphries**: Because we did not believe that it was right to take away the rights.

**MR KAINE**: I can only say that my understanding is that the coroner wrote to you and pointed out this position. He must have been worried about it. Why would he have written to you and brought it to your attention if he was not worried about the ramifications of it? But you chose to ignore, on the face of it, a communication from the coroner that brought the matter to your attention and you have given us no justification for doing that, really. I wonder what the coroner's view is today, given the fact that he brought this to your attention and you did nothing.

I think that some of us have good reason to be a little bit suspicious as to what your motives were in not acting at the time and why you now argue the case so vehemently that we have no right to turn the clock back to what it was six months ago. It is a very curious argument that the Attorney-General is mounting. He has said nothing that convinces me of the validity of his position. Whereas I did have an open mind on the matter before, I am coming to the view that perhaps Mr Berry has something in attempting to rectify the Attorney-General's omission. I am prepared to listen to the rest of the debate, but I must say that I am not much reassured by the Government at this point.

**MR RUGENDYKE** (3.57): Mr Speaker, I have wrestled with these two Bills at great length. From the outset, the inaction of the Attorney-General to the coroner's warnings about the expiry date of the OH&S laws in relation to the hospital implosion inquiry did disturb me. For whatever reason, Mr Humphries did not attempt to fix the problem. He did have time to fix it, but he did not act. On the scale of things, that is not acceptable.

In the case of Mr Berry's Dangerous Goods Bill, the deadline has not yet expired and we have the opportunity to make the necessary adjustments to procedure, which I will be supporting. Even taking into account the Government's neglect of the OH&S matters in the hospital implosion inquiry, I do have problems with the retrospective nature of Mr Berry's Bill. Just because the Government handled a simple problem extremely poorly does not mean that I can justify endorsing a Bill which has the potential to infringe on an immensely important factor - natural justice. The fact is that at the moment there are individuals out there who, rightly or wrongly, have escaped being liable for any possible breaches of the OH&S laws. Their situation is clear and they are going about their day-to-day lives in the knowledge that they cannot be brought before the courts under the present laws. What Mr Berry is proposing to do is to change the laws so that, if this Bill is passed today, suddenly they are liable again; we are changing their legal status.

Mr Speaker, this is fracturing the course of natural justice which I would expect Mr Stanhope, the Assembly's champion of civil liberties, to justify from that perspective. The proposed Bill raises two issues of importance which are fundamental to the role of the Assembly and its relationship with the Canberra community and the judiciary. The attempt to make laws apply retrospectively, in my opinion, is dangerous. Although the motivation to make specific reforms is often commendable, its effect is to create uncertainty in the application of the law. When ordinary members of the community engage in an activity which may be lawful when performed, they need to feel secure that that lawful activity will not be rendered unlawful at some later time. The implications for business practice and commercial activity would be significant if the practice were to be acknowledged. The issue, I believe, is the need to send a very clear message that the law should be clear and unambiguous. This Assembly needs to consider the big picture and not to react to the expediency of a single issue.

The other issue of concern is the apparent failure of the legal system to respond within recognised time limits. One of the reasons, presumably, behind the original provisions was the need to prosecute matters in a timely manner. The original legislation obviously intended that any prosecutions needed to be conducted contemporaneously with any breach to ensure ongoing compliance or to effect necessary improvements to reduce the possibility of further risk or injury.

These sentiments are consistent with the role of the coroner. In the absence of any information as to why the coroner cannot respond to the requirements of the existing legislation or as to why any prosecution is entirely dependent upon the finding of the coroner, the reforms proposed should not be seen to prop up inefficiencies on the part of the courts or the relevant prosecuting authorities. No explanation has been offered as to why compliance with the existing time limits was not possible. So, Mr Speaker, I will be supporting the amendments to the Dangerous Goods Bill. Those amendments are in line simply because that time limit has not expired and there would be no possibility of creating the retrospective position. In the same vein, Mr Speaker, it is for those reasons that I am unable to support the amendment to the OH&S Bill.

**MR STANHOPE** (Leader of the Opposition) (4.02): Mr Speaker, I will not dwell too much on the past. I think Mr Rugendyke, to the extent that he has expressed a very clear disappointment with the Attorney-General's lack of attention to this matter, speaks for all members of the Assembly. Mr Rugendyke expressed so succinctly - I cannot remember the precise word - the level of disquietude which I think we all feel as to the Attorney's incompetence.

There is just one thing that I will say, though, about the genesis of this matter. I do think that the Attorney has been very artful in the way that he has sought to explain away exactly what happened last May, or earlier than that, when the coroner first wrote to him. The Attorney did write to me on 8 May. He wrote to me attaching a letter which he had written to Mr Osborne. The Attorney's letter to me suggested that the Attorney would be pleased to receive any views that I might have on the matter. The Attorney's letter to me was a request of me for my views on the matter and the Attorney attached to that letter a letter which he had earlier written to Mr Osborne as chair of the Standing Committee on Justice and Community Safety. I responded to the Attorney with my views. He asked me for my views; that was it.

**Mr Humphries**: On prospective legislation.

**MR STANHOPE**: He asked me for my views, any views. The Attorney said that he would be pleased to receive any views I may have on this matter and I gave - - -

**Mr Humphries**: Retrospectivity.

**MR STANHOPE**: No, not at all. You did not ask for views on retrospectivity. You said to me, in your words, Attorney:

> I would be pleased to receive any views you may have on this matter.

I gave you my views. I said:

> I have read your letter to Mr Osborne ... about the possible extension of the limitation period where an Inquest, Inquiry or Royal Commission is held.

That is what I said. I said:

> I would support the proposed amendments.

I went on:

> However, in its present form (provided an inquiry is in progress) the limitation period could extend far into the future. I would therefore suggest that an appropriate maximum period be specified within which the findings of the Inquiry would need to be presented.

I was suggesting that we did not want a limitation period for ever and ever. I continued:

> In the case of the Occupational Health and Safety Act (where an inquiry is held) the appropriate maximum would perhaps be two years.

That was my suggestion at the time. That is what I said. Some of the nonsense which the Attorney has extended today as to what we did or did not think really is not consistent with what happened.

There was also the issue that the Attorney had written to Mr Osborne. There was, in my mind, a suggestion that the Attorney had made some arrangement with Mr Osborne and his committee to look at this matter and I was conscious at the time that I was simply extending what I thought to be an additional view. It just goes to the fact that the Attorney took his eye off the ball. He had a letter to me which I responded to, in which I clearly indicated that I would support at that time in May, at a time when I knew the then limitation period had not expired, an amendment to extend the limitation period. I was clear and unequivocal in what I and, speaking on behalf of the Labor Party, the Labor Party would have supported at that time.

**Mr Humphries**: You did not address the question of retrospectivity.

**MR STANHOPE**: I was unequivocal in what I would do at the time.

**Mr Humphries**: It was a weasel-worded letter, Jon, and you know it.

**MR STANHOPE**: I did not need to specifically address the question of retrospectivity.

**Mr Moore**: Well, address it now with this legislation.

**MR STANHOPE**: I will address it now. The issue of retrospectivity was exhaustively addressed by Mr Osborne's committee, the scrutiny of Bills committee, and we have all had the advantage of reading and digesting its report.

**Mr Moore**: Without Wayne's most recent amendments.

**MR STANHOPE**: We do not need Wayne's most recent amendments. They do not detract from anything that the scrutiny of Bills committee said on this very difficult issue. The Attorney is right; there is much of what the Attorney says about retrospectivity with which we all agree. There is much of what Mr Rugendyke said about retrospectivity with which we all agree. But they have both misunderstood the impact and the effect of what it is that we are here doing. It is interesting that most of the opposition that exists around the world in relation to retrospectivity is, and can be summarised, in article 15.1 of the International Covenant on Civil and Political Rights. It sets it out succinctly, stating:

> No one shall be held guilty of any criminal offence on account of any act or omission which -

this is the important point for Mr Rugendyke, and I hope during this speech to change Mr Rugendyke's opinion on the second Bill -

> did not constitute a criminal offence, under national or international law, at the time when it was committed.

Discussions about retrospectivity all go to making an offence that which was not an offence at the time it was committed. That is what we are discussing here; that is what article 15 of the International Covenant on Civil and Political Rights says. It says quite specifically:

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.

We are not toying with or touching that principle at all in this legislation. The scrutiny of Bills committee went on:

> The law proposed by the Dangerous Goods (Amendment) Bill 1999 is not -

Mr Rugendyke needs to listen clearly to this -

> a law which imposes criminal liability on past conduct.

It is not a law which imposes criminal liability on past conduct. The scrutiny of Bills committee's report continues:

> It is perhaps a matter for debate whether the law might, in terms of Article 15.1 ... be characterised as one which would impose "a heavier penalty ... than the one that was applicable at the time when the criminal offence was committed".

That is, according to the scrutiny of Bills committee, if the approach of the courts were followed. The scrutiny of Bills committee concluded:

> If the approach of the courts were followed, this Bill would not be so regarded;

The scrutiny of Bills committee pointed out to us the analysis on this issue by F.A. Bennion in *Statutory Interpretations*, second edition (1992), which the Attorney obviously has not read. The report continues:

> What the Bill does is to enlarge the time -

and this is the important point for Mr Rugendyke -

> within which a prosecution may be commenced.

The scrutiny of Bills committee report goes on that we can look at this issue in terms of two approaches which have been taken by the courts, and the courts have set out the need for us to look at the two different kinds of situations. The report goes on:

> The first is where, in relation to a particular case, the time for prosecution under the "old" law (here, being within two years after the Act or omission alleged to constitute the offence ...) had expired at the time the "new" law commenced to operate. In this situation, it has been a matter of debate among the judges as to whether the new law should be regarded as a law having a retrospective operation. In Maxwell v. Murphy ... there was a difference of opinion between the High Court judges. Two judges - Dixon CJ and Williams J - regarded such a law as having retrospective operation ... Sir Owen Dixon regarded it as a law which "destroyed a prescription ...

And Williams had a view. The report goes on:

> But Fullagar J regarded the law as merely affecting the procedure for prosecution of the existing offence, and thus did not, in terms of the common law, have a retrospective operation ...
>
> The contrasting situation is where, in relation to a particular case, the time for prosecution under the "old" law had not expired at the time the "new" law came into effect. Here courts would regard the new law as having only a procedural effect on the operation of the old law -

see Maxwell v. Murphy -

> and would not thus attempt to construe the new law in such a way as to not have a retrospective operation.

The scrutiny of Bills committee's report goes on:

> A court faced with a provision such as is proposed by clause 4 of this Bill would in the first place accept that the Legislative Assembly had power to enact the law irrespective of whether it was seen as having any retrospective effect.

We can do it. All this talk about what the Yanks do is really quite irrelevant. Here in Australia we have the power and we can do it. The report goes on and on.

**Mr Humphries**: Hang on. Read what the majority view is.

**MR STANHOPE**: I concede that it is debatable. It is not the black-and-white scenario that you have painted, Attorney. It is not the situation you have painted that this is the end of the world as we know it, that this is the end of the common law, that this is the end of justice in the Western system. "We have never done this since the start.

The world will fall. We will have criminals all around the place rushing in to ask us to amend every limitation period in every statute that exists". That was the scenario painted by you, Attorney. The scrutiny of Bills committee goes on to say that the point is debatable, and these points always are. It is debatable here, and that is what we are doing. There certainly are two views on this matter. The scrutiny of Bills committee left the way open. They say on page 5:

> While the point is debatable, and while the Committee does not offer a legal opinion on the point, it may be that this is how a court would interpret the proposed new subsection 33(4) of the Act.
>
> If that interpretation was adopted, then there would (if the common law approach was accepted) be little ground for an objection to the Bill on the ground that it would have a retrospective operation.

I think, Mr Speaker, I have made the point that most, if not all, of what the Attorney said about the devil we would unleash on the ACT community if we accept this operation is put to rest by the scrutiny of Bills committee. The scrutiny of Bills committee's report did a couple of things. First, it left open the pathway for the acceptability of this legislation. The scrutiny of Bills committee in its extensive report, one of the most extensive and detailed reports it has done on a piece of legislation that I have seen in the last year, left open the way for this legislation, these Bills, to be acted on, debated and passed by this Assembly. The scrutiny of Bills committee did not find any fundamental flaws in the proposals put forward here by Mr Berry. The scrutiny of Bills committee, a committee which does vital work and which has a legal adviser of incredibly high standing and diligence, has not in its report to this Assembly put up any barriers to the passage of this legislation.

If the arguments being propounded by the Attorney were to be accepted, then one would expect that the scrutiny of Bills committee would have set the hurdles, would have said, "These are the hurdles that you must jump", and the scrutiny of Bills committee has not done that. The principle of retrospectivity is an incredibly serious principle.

One of the other things which the scrutiny of Bills committee does very clearly and starkly - and it is worth making the point, even though I said I would not harp on it - is indicate that, if the Attorney had acted before 13 July last year, the arguments that he has sought to propound here would have been quite unnecessary. We cannot get away from the fact that if the Attorney had done what we on this side thought he was going to do and expected him to do - - -

**Mr Humphries**: Why did you think that?

**MR STANHOPE**: Because we had every right to expect that you would fix an obvious problem. We had every right to expect that and we believed that you would do that. It was our belief that you would act on this matter because it was a matter of such seriousness. I am still staggered that you did nothing, that you sat on your hands. As Mr Berry has said, you, Attorney, are faced with that terrible conundrum that faces people in public life sometimes. Either you have to concede that you were incompetent

or you have to concede that you were just slack. You were either incompetent or negligent, and you can choose. Perhaps you were both, but you cannot avoid one or the other. You were either incompetent or negligent. Perhaps you were both.

**Mr Humphries**: I was principled.

**MR STANHOPE**: You were principled!

**Mr Berry**: Maybe it is a cover-up.

**MR STANHOPE**: It is. I hate to run rumours and be a rumour monger to that extent, but maybe it is a cover-up.

**Mr Humphries**: You could have done it, Jon. Why did you not do it?

**MR STANHOPE**: Because we expected you to do it, Attorney.

**Mr Humphries**: Why? I said I was loath to do it.

**MR STANHOPE**: We expected you to do it, and you were incompetent or you were negligent in not taking it up. This problem can be fixed. It has been fixed by Mr Berry in this legislation and this legislation should be passed. There is nothing standing in its way. As a matter of principle, it should be passed. Arguments about retrospectivity are spurious and do not apply in the circumstances, and you know that. You know that you are covering up your incompetence. You should simply cop it and you should, in embarrassment, allow this legislation to pass. In fact, you should support this legislation.

**Mr Humphries**: This is unprecedented in this chamber.

**MR MOORE** (Minister for Health and Community Care) (4.18): This legislation is, indeed, unprecedented in this chamber. Mr Speaker, I quote William Pitt from 1783:

> Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.

Mr Stanhope is one of those tyrants, from his defence of this legislation. Mr Speaker, he misrepresents the position of Mr Humphries. Indeed, I would argue that he misleads the Assembly in his misrepresentation of Mr Humphries.

**Mr Berry**: I take a point of order, Mr Speaker.

**MR SPEAKER**: Come on! Be careful, please. This is a serious debate.

**MR MOORE**: Mr Speaker, I withdraw "he misleads". He goes dangerously close to misleading the Assembly if, indeed, he does not, and that would be a matter for another debate, because he says that Mr Humphries was either incompetent or negligent. I would say no, no, no. The one who is incompetent or negligent is Mr Stanhope, because Mr Stanhope received a letter - - -

**Mr Berry**: I take a point of order.

**MR SPEAKER**: One moment, Mr Moore, please.

**Mr Berry**: Is "dangerously close to misleading the Assembly" an imputation, Mr Speaker? I just want to get a ruling on that for future use.

**MR SPEAKER**: Mr Moore withdrew the words "misleading the Assembly".

**Mr Stanhope**: And then he went on to say, "dangerously close". We will just use this for future reference, Mr Speaker.

**MR SPEAKER**: I will check it.

**MR MOORE**: Mr Speaker, just to save the difficulty, I withdraw any imputation about Mr Stanhope misleading the Assembly, but I will put these facts before the Assembly. In writing to Mr Stanhope, Mr Humphries copied to him a letter that he had written at the time to Mr Osborne. In that letter he said:

> But I am loath to present a Bill to the Assembly which potentially and retrospectively alters the grounds for the prosecution of an offence without seriously considering the implications of such an action.

Those were the words that Mr Stanhope had in front of him. Indeed, his response indicated that he had read Mr Osborne's letter and had responded to it. He could not expect that Mr Humphries would suddenly come in and introduce legislation in the Assembly, because Mr Humphries had said, "I am loath to". In the spirit of a nonpartisan approach he had gone to Mr Osborne and he had gone to Mr Stanhope and said, "I am loath to do it. There is an issue of principle here that is most important". Mr Stanhope now says to Mr Humphries, "You should have done it. We expected you to do it". He had told you clearly that he was loath to do it. He was loath to do it retrospectively and you failed, Mr Stanhope, to address the issue of retrospectivity.

I have always suspected, Mr Stanhope, that when you took over the Civil Liberties Council, when you crunched the numbers and took over the Civil Liberties Council, it was more about politics. You knocked off Laurie O'Sullivan, who had been head of the Civil Liberties Council for a long time. That is a reasonable thing; that is how democratic processes work. But I suspected for a long time that it was more about politics than it was about civil liberties, so for you to come in here and support this legislation really makes me suspect more than ever that it was just about politics, because this is a very clear issue of tyranny and a very clear issue of retrospectivity. I think the reason it is is very important. The reason it is is that it resurrects a liability which ceased to exist. That is fundamental. A person today does not have a liability and the right of the person to believe that they are free from liability exists under legislation.

**Mr Humphries**: That is right. Protection at law.

**MR MOORE**: It is the protection of the law. What we are doing here today is discussing whether we are going to change the law and suddenly create a liability for a person - and we are going to do it by retrospective legislation; that is how we are going to do it. It seems to me, Mr Speaker, that what is clear under the current legislation is that there is no-one who is a criminal, there is no-one who has that liability.

On 8 May, Mr Humphries signed that letter off to Mr Stanhope. It may well be, and Mr Stanhope raised this question, that had Mr Stanhope got on the phone with Mr Osborne and said, "Let's get together. This is a serious matter. We really have to act very quickly and do it", there would have been an entirely different issue. But the reality is, Mr Speaker, that the retrospectivity that we are dealing with here is an incredible and important precedent for this Assembly. Remember, the law operates on precedent and what we do here today could be yet another issue of precedent. This has never happened in the life of this Assembly. We have never used retrospective legislation to resurrect a liability of an individual. We ought not to do that.

If we have a problem with it, we can go back to the legislation and say, "To make sure that we never allow this situation to happen again, we can ensure", as I think Mr Humphries suggested when we were talking about inquiries, royal commissions or coronial inquests, "that from now on there should be no limitations" or that the limitation should be seven years or 10 years or something like that. It is perfectly reasonable for us to say, "There is a problem with our legislation and, as of today, we are going to change that and everybody knows what is going to happen in future".

But to resurrect a liability that a person does not have today is unconscionable. It is in direct contradiction of the notion of civil liberties. You cannot reconcile the notion of civil liberties with a notion of resurrecting liability. If we are going to say, "No, we are not interested in civil liberties; we are just going to do it", I must say that I would respect that view more than I would with somebody who tries to argue that there is some civil liberty issue involved here. If that is your attitude, so be it. But I would argue also that it is the attitude of the tyrant, as identified by William Pitt. Mr Speaker, it seems to me that the warning that William Pitt gave us in 1783 is a warning that we should heed very carefully:

> Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.

**MS TUCKER** (4.26): I have listened carefully to this debate and will be supporting this legislation of Mr Berry's. I have heard Mr Moore and Mr Humphries argue passionately about their understanding of retrospectivity. It is clear from the debate that there are two issues of retrospectivity. There is the issue where retrospective legislation is going to change the nature of a crime. Everyone rejects that as a notion. Then we have what Mr Humphries and Mr Moore are calling the resurrecting of liability in that there is a degree of retrospectivity in that. Obviously, there is, but it is an issue that we have to consider in the context of the whole incident and the situation in the ACT. We hear from Mr Humphries and Mr Moore that there is this principle of precedent and we have to be aware of that. For me, after listening to this debate, this is not a bad precedent at all.

What it is saying is that, firstly, there was a process in the ACT Legislative Assembly whereby the Government, which has a minority of members in it, decided not to take particular action.

**Mr Moore**: No, they tried to consult.

**MS TUCKER**: Mr Moore interjects that they tried to consult. "Tried" is the operative word here. I do not recall having a briefing on this issue from Mr Humphries. Mr Humphries did not successfully involve all members of the Assembly in that decision. He may have said he was loath to legislate. That does not mean "I will not legislate". I would read that to mean that Mr Humphries does not like it but he is getting the numbers. He is asking other people what they feel about it. Obviously, Mr Stanhope expressed his view on that issue. I do not recall being asked. Apparently Mr Osborne was asked, as chair of the Justice and Community Safety Committee. If Mr Humphries, as a member of a minority government, had involved the whole Assembly at that time, we would not now be having this discussion about whether we are prepared to support this particular type of retrospectivity, in that it is resurrecting liability. So, that has to be part of the context of this decision that we made. Basically, there was a stuff-up at that point in a minority government in the ACT Assembly.

We are now looking at the actual issue. The actual issue that I have been asked to look at here today is about justice. I know - not as a legal person but as someone who has listened to different legal opinions - how important is the issue of retrospectivity. We have received letters from legal people with a different opinion from Mr Humphries - - -

**Mr Humphries**: On this issue?

**MS TUCKER**: On this issue, yes - that, in fact, an arbitrary and inflexible timeframe is an impediment to justice, that in this case in the interest of justice it is fair enough to put in place this legislation so that if people were guilty of a particular crime they would have to face the consequences of that, because this is basically a procedural matter. That is the legal opinion that counters Mr Humphries' legal opinion.

**Mr Humphries**: Mr Speaker, I wonder whether I could ask Ms Tucker to table those legal opinions she is referring to. I have not seen them.

**MS TUCKER**: It was in the *Canberra Times*. There was a letter to the *Canberra Times* from Hugh Selby. You can find it. I have not got it here. I thought he was pretty big in the Law Society and was not known for his radical views - quite conservative, in fact. We do have different views on this issue within the community. We as legislators have to look at the issues that are of concern to the community and we do get differing views on where we have the ability to find a solution that is just, and that is what we are talking about. Mr Humphries is talking about civil liberties - that is what he is focusing on right now - in terms of whether this is a just action or a just piece of legislation.

That is one view. That is one aspect of it. I have listened to that and I am concerned about civil liberties being impinged upon. But I am also concerned about the legal system in Australia delivering justice. I know that there is growing concern in the

Australian community that the legal system does not necessarily deliver justice. We have to be prepared to challenge that. The people of the ACT had one of the most traumatic experiences ever in Canberra when we had this affair. There are people still suffering very badly. Because the Attorney-General in a minority government did not consult properly with the other members of the Assembly we have the possibility that, because of a technical issue, a technical detail, people who may have offended in some way will now not have to face the consequences or face the normal procedures.

Having thought about those issues, overall I believe that it is perfectly reasonable to support this piece of legislation from Mr Berry. I do believe that the ACT community wants to see processes which are just, and this is a procedural matter about a timeframe. I believe that the concern about resurrecting liability does not outweigh those other concerns.

**MR OSBORNE** (4.33): Mr Speaker, I move:

> That the debate be adjourned.

I seek leave to make a brief statement in relation to the matter.

**MR SPEAKER**: Is leave granted for Mr Osborne to speak? He wishes to move for the adjournment of the debate.

**Mr Berry**: As long as leave will be granted to try to talk him out of it.

**MR SPEAKER**: I am asking whether leave is granted for Mr Osborne to speak, although he wishes to move for the adjournment.

**Mr Berry**: Are you going to give me leave to try to talk him out of it?

**MR SPEAKER**: There being no objection, leave is granted.

**MR OSBORNE**: Mr Speaker, I have sought the adjournment because I need to clarify in my mind the amendments that Mr Berry has circulated. I understand that this issue does need to be resolved quickly, given that the coroner will be, I believe, handing down his report at some time in June or July.

**Mr Humphries**: The end of June.

**MR OSBORNE**: The end of June. Obviously, it is an issue that needs to be resolved well before then. I just need to look at the Bill. I did speak to the Attorney-General about it this morning. He identified a number of problems. Mr Berry has tabled some amendments to clarify that situation, but I just feel that I do need some time to sort that out.

I just want to make a couple of points, if I can, Mr Speaker. I have no major problem with what Mr Berry is attempting to do. I have listened to the debate, especially the things raised by Mr Humphries and Mr Moore. Certainly, some interesting arguments were put up by them.

**Ms Tucker**: I rise to a point of order, Mr Speaker. I thought Mr Osborne was talking to an adjournment motion and why he wanted an adjournment. Do we have to have the full debate on the issues now?

**MR SPEAKER**: The Assembly gave him leave to speak, Ms Tucker. It did not give him leave to speak on certain issues.

**MR OSBORNE**: You just explained the confusion in my mind now, Mr Speaker, about why I need the adjournment.

**MR SPEAKER**: Proceed, please, Mr Osborne.

**MR OSBORNE**: Generally, I think it is very dangerous of parliaments to pass retrospective legislation which makes illegal something that was once legal, but this is a special matter, Mr Speaker. At a time not too far in the past, during a period when there were some offences that were illegal, the statute of limitation ended and, all of a sudden, they were not illegal. I must admit to not having the same philosophical dilemma as Mr Humphries and Mr Moore.

It is an interesting situation that we find ourselves in. I have heard my name mentioned many times today in relation to correspondence and discussions that I have had with Mr Humphries. For the record once again, Mr Speaker, I was approached earlier last year by the Attorney-General, Mr Humphries, about this matter. He indicated at the time - and I think the letter that he circulated was confidential - that this issue had arisen. He did not wish at the time, I believe, to be involved in a major fight in the Assembly over it. I indicated that I was quite happy to agree to that in my advice to him and I think it was relayed through Mr Hargreaves, a member of the Justice and Community Safety Committee, that he should raise the matter with Mr Stanhope. What happened between then and, I think, about November or December of last year, I could not tell you, other than that the committee then received a letter - it may even have been early this year - in which Mr Humphries complained that we had not got back to him. I have to say, Mr Speaker, that the committee was quite disappointed with the tone of that letter.

It is unfortunate that we are now in a situation where we are faced with this piece of legislation. I do intend to look at what Mr Berry has got up. I am inclined to support it. I think the real question that we should be asking is: Why has this inquiry dragged on for so long? I am cautious of not pointing the finger or criticising anybody involved, but, for everyone involved in this situation, including the family of Katie Bender, I think it needs to be resolved sooner and should have been resolved sooner. I am quite happy for the legislation to come back in the next sitting, which is in about three weeks' time, given the urgency of the matter, but I do feel that I do need to look at what Mr Berry has put up today in the context of what Mr Humphries and Mr Moore have spoken about this afternoon. I thank Ms Tucker for her tolerance.

**MR BERRY**: I seek leave to make a statement in relation to this matter to try to convince my colleague Mr Osborne to reverse his decision.

Leave granted.

**MR BERRY**: The issues here are quite straightforward. It is not an issue of considering what the courts would do, though they can be of assistance when it comes to guidance of the legislature. It is about this Assembly making a decision in respect of an important matter which faces the ACT community, one that will never be repeated.

**Mr Humphries**: Why not?

**MR BERRY**: If you are planning to blow up any more hospitals, Mr Humphries, you had better let us know about it. This incident will never be repeated. The legislation which has been put forward, though, anticipates the possibility of long coronial inquiries in the future. I would like to emphasise the need to resolve this issue today. The arguments will be basically the same in three weeks' time. It is an issue about whether this Assembly is prepared to make a decision about the retrospective elements in relation to procedures which have limited the time available to anybody who may prosecute in the future, rather than the criminal law. This Bill does not alter the punishment. That is an extremely important point to note. It does not alter the punishment. One of my colleagues said to me earlier that the law is an ass if one can escape a criminal conviction as a consequence of an inquiry and a time limit running out, especially when you know about it.

I want to make one other point. I heard the theatre and the lack of substance from Mr Moore and Mr Humphries, but both of those members voted on the Occupational Health and Safety Bill 1989 which did not have any time limit in it. It is merely some unexpected connection whereby the Magistrates Act has provided a time limit but the Occupational Health and Safety Act did not have a time limitation in it. They voted for that legislation in the full expectation that there were no time limitations. So it is curious to me that both of them now protest that the time limitation under the Magistrates Act should not be reversed.

**Mr Humphries**: Different penalties are involved, Wayne.

**MR BERRY**: Mr Humphries interjects that different penalties are involved. The penalties are not being changed. The only thing that is being addressed here is the expiry of a time limit. Mr Speaker, the point here is that I think that we can resolve this issue today. The arguments are pretty clear. It is not a question of how the courts would rule. It is a question of this Assembly facing the issue of the failure of the Government to deal with legislation in a proper and timely fashion. The Government clearly intended to do something about it, but changed its mind. It is an indictment of the Government that the Opposition has had to take up this issue and repair the damage.

I will just deal with the penultimate paragraph in your letter of 8 May, Mr Humphries, if anybody needs any more convincing. It reads:

> The Government will need to urgently give consideration to a Bill to deal with the issue raised, but given its enormous sensitivity and my wish for this not to be a debate which, on the floor of the Assembly, may prejudice the inquest, I would appreciate the Committee's views.

Mr Speaker, it was clearly the Government's intention to proceed with legislation and, for some reason, they decided to smother it.

**Mr Moore**: You've deliberately misled by taking it out of context.

**Mr Humphries**: That is garbage.

**Mr Corbell**: I take a point of order, Mr Speaker. Mr Moore has made a suggestion that Mr Berry has deliberately misled the Assembly. I would ask you to request him and Mr Humphries, who has supported that assertion, to withdraw.

**MR SPEAKER**: Gentlemen, if you made the assertion, withdraw, please.

**Mr Stanhope**: I heard it.

**Mr Wood**: I heard it.

**MR SPEAKER**: I did not.

**Mr Moore**: Mr Speaker, we are aware that there is no impact in a substantive motion against an Opposition member for misleading the Assembly. When it comes back to the reverse, Mr Speaker, it will be an interesting story. But, because of the standing orders, Mr Speaker, I withdraw the imputation.

**MR SPEAKER**: Thank you. I would remind all members of standing orders. It is not normal, though Mr Osborne did get permission to do so, to speak when you are adjourning a debate.

**Mr Kaine**: Standing order 65, Mr Speaker.

**MR SPEAKER**: We will have to look at the matter very carefully, I think, and perhaps amend standing orders to make sure that that does not happen again if we are going to go on with this farce.

**MR BERRY**: Mr Osborne, I think the case has been well made and I think we should proceed with it. It is a sensible piece of legislation which I will respond to more fully given the opportunity to close the debate at some point in time, hopefully today. The amendments which have been put forward address a situation which the community expects us as a legislature to repair.

Question put:

That the debate be adjourned.

The Assembly voted -

| *AYES, 11* | *NOES, 6* |
|---|---|
| Ms Carnell | Mr Berry |
| Mr Cornwell | Mr Corbell |
| Mr Hird | Mr Hargreaves |
| Mr Humphries | Mr Quinlan |
| Mr Kaine | Mr Stanhope |
| Mr Moore | Mr Wood |
| Mr Osborne | |
| Mr Rugendyke | |
| Mr Smyth | |
| Mr Stefaniak | |
| Ms Tucker | |

Question so resolved in the affirmative.

Debate adjourned.

## DANGEROUS GOODS (AMENDMENT) BILL 1999

Debate resumed from 17 February 1999, on motion by **Mr Berry**:

That this Bill be agreed to in principle.

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

## MOTOR TRAFFIC (AMENDMENT) BILL (NO. 2) 1998

Debate resumed from 20 May 1998, on motion by **Mr Osborne**:

That this Bill be agreed to in principle.

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

## NARRABUNDAH LONG-STAY CARAVAN PARK - SUGGESTED SALE

**MR WOOD** (4.51): Mr Speaker, I move:

That:

(1) no further action be taken on the suggested sale of the Narrabundah Long Stay Caravan Park until the Government:

(a) provides to the Assembly all costs and benefits of the current operation; and

(b) advises the Assembly on the long term protection of tenants' rights;

(2) final decisions on the sale be dependent on the approval of the Assembly.

I want to say at the outset that I am pleased that the Minister, Mr Smyth, has indicated that he will talk to the residents and hear their comments and the problems that will be presented to them should the sale of the Narrabundah long-stay caravan park proceed. Mr Smyth has done a good job by agreeing to that meeting, whether or not this motion is successful. Along with those tenants who are in the chamber today, I express my appreciation. This motion, as I am sure Mr Smyth knows, is about people's homes. I do not think there is much more in our world more important than our homes. You would have to say that life itself - health, wellbeing, food and family - are more important but in any event that is wrapped up around our homes and our occupancy of them.

When we are dealing with people's homes, in whatever circumstances, we have to pay very careful attention, because it is a vital issue when people face the threat of losing those homes and are in peril of not having an alternative. At this stage people at the Narrabundah long-stay park are quite uncertain about their future. The Minister has given some notice, but the future is unclear. As things stand, there will be a change of ownership. The suggestion in media releases has been that it is probably no more than that - there will be new owners and everything will carry on the same, thanks. That has been the inference. That may be the case, but my best guess is that it is not the case; that there will be a significant change one way or the other.

I see no reason for any change at all. The information that has been put out suggests that the park returns something like $100,000 a year to the ACT Government. I can only guess at the capital value of the site. I have heard figures of $800,000 upwards. It seems to me that $100,000 is a pretty good return on capital. I do not think the park needs to be sold. I do not think there needs to be any change at all, but I have to argue in the event that such a change arises.

Like the residents, I hear all sorts of stories. I hear stories that it may become an olive grove, which is not surprising, because there are olives around the place. I hear stories that it may become a housing development. I cannot accept those, because I cannot see

that under any sort of planning regime there would be an isolated housing development in that area. That really is not an option. It is going to stay as a caravan park or become an olive grove, or what else? What are the other options? The stories I hear are that it might be enough that the caravans will become olive trees in some sort of personal island in the ACT. That is the likely outcome, but we do not know. The residents do not know, and they do not know how much longer they will have a roof over their heads.

I have looked at the Territory Plan. I know what the plan says. It is pretty open actually because in the long term there are going to be changes there. Mr Smyth might have more recent figures than I do, but I guess that Gungahlin has quite a long way to go and Symonston is a long way down the track. The plan says that it is pretty open. The lease of that area is a key matter. I am told that a lease is being drawn up. There is not one at the moment, I gather. The Minister might apprise us about that, but there is no lease at the moment. That lease will be a key document. That lease will give a clearer picture of what might happen. That lease ought to be saying "for a caravan park", full stop.

**Mr Kaine**: Is it one block or three?

**MR WOOD**: Let us not go into that. What will that lease say? Will it say "for agricultural purposes" or "for a caravan park", or will it be a fairly open lease? A lease is being drawn up at the moment. I hope some influence can be brought to bear on the Minister about the wording of that lease.

Fundamentally, I do not think the park should be sold. It is a necessary asset for Canberra; it is a viable asset for Canberra. Across Australia local authorities own caravan parks. They have long recognised the need for them. I am sure that, like me, Mr Smyth, you have stayed at some of those caravan parks. The need is no less in the ACT. The Territory needs such a facility and the people who live there need that facility, without question. I have heard Mr Smyth say, "These are not public housing tenants. They own their caravans or their vans". I do not know about that. Every fortnight they front up to the manager, who sends the rent they pay straight through to the Government. They are government tenants. I do not know whether we need to argue whether they are government tenants or government housing tenants, but they are government tenants and the Government has a responsibility to them, especially because of the sensitive issue of this being their home.

In any event, I think it is important for the ACT Government to provide this sort of housing facility. It is quite appropriate for the Government to do so. Increasingly in Australia, as elsewhere in the world, we recognise that such a facility provides an important additional resource, a further choice for people as they seek an appropriate housing option. Not everybody can afford to live in a $300,000 house in Red Hill or somewhere else. They do not always want to move into a government house, although I say again that the Government has a responsibility here. In particular, this is an affordable choice for people. It gives them some security of tenure. I would like to see them given the same opportunity as residents at Sundown Village, who can get a sublease that gives them more certainty of the site that they are on.

Let us not forget the affordability. There are fewer barriers to entry, and that is an important factor. You do not need a large deposit as you do for a house, and you do not have to face up to $600, $700, $800 or $1,000 a month in repayments.

Let me make clear one thing that has been brought to my attention by the residents in the gallery today. This is a long-stay caravan park. We might think that if residents have to go all they have to do is hitch up their caravan to the car and move next door or somewhere else. That is not the case. It would be in some circumstances. But for a very large number of these people their home is basically a fixture. It is not easily moved. It certainly cannot to be moved without considerable expense.

Debate interrupted.

## ADJOURNMENT

**MR TEMPORARY DEPUTY SPEAKER** (Mr Hird): Order! It being 5.00 pm, I propose the question:

That the Assembly do now adjourn.

**Mr Smyth**: Mr Temporary Deputy Speaker, I require the question to be put forthwith without debate.

Question resolved in the negative.

## NARRABUNDAH LONG-STAY CARAVAN PARK - SUGGESTED SALE

Debate resumed.

**MR WOOD**: People cannot just shift their van. If they could, if they were capable of easily and economically moving their van, there is nowhere else to go. The availability of other sites is strictly limited. The danger is that if this sale goes ahead and if, as is likely, the park is used for some other function, we will have a few hundred homeless people with nowhere to go.

And what of their investment? I heard the story of one of the residents who was all lined up to sell their van for $30,000. When this announcement came down, that sale fell through immediately, and why would it not? Effectively, the investment in this place has disappeared overnight.

There are a very large number of factors here that are pretty obvious, but not perhaps immediately on the surface, but that bureaucrats and others may have missed. We need to take a pause to work out the ramifications of all this, to protect the roof over the heads of hundreds of people. The Government, who owns this site, has a responsibility to do so. That is what this motion is about.

I hope that we can have a greater input into this decision. It may be that someone has suggested to the Government that the park can be sold for a bit of money in our tough budgetary times, but no further thought was given to the matter. Let us give that thought. Let us think about this and let us look after the people and see that their home is protected. It is most important to do so.

**MS TUCKER** (5.03): The Greens support this motion, and I have circulated an amendment to the motion which I will move in a minute to include a requirement that the Government not sell the caravan park until there is legislative protection in place for the residents. I was very concerned to hear Mr Smyth yesterday, in answer to my question at question time, say he was not aware of the Law Reform Commission's discussion paper on the matter. But, even not knowing the issues, not knowing of the paper, he was able to state clearly in question time that he still knew it was not a reason to delay sale, because it is not part of his core business. Talk about passing the buck!

I would like to know what gets talked about in Cabinet. Does Mr Humphries know what Mr Smyth is doing in this area? It is his business to ensure that the rights of ACT tenants and landlords are protected. I would have thought that in such a small Cabinet it would not be too difficult to know when something impacts on the core business of another Minister. In fact, I would have thought that there would be a willingness and a desire to see whether that was the case. But no. It is public policy on the run, public policy without regard for the implications for ACT residents. Why is it irrelevant, Mr Smyth? Why does it not matter that the current residents will have less protection if the park is sold? Do you not think you have a responsibility to ensure the best possible outcome for current residents, whose lives have without notice suddenly been subjected to uncertainty?

People who live in caravan parks and relocatable homes have the same rights of protection through legislation as other residents and tenants in the ACT. In the Law Reform Commission report No. 8, "Private Residential Tenancy Law", legislative coverage of caravan parks and relocatable homes was recommended. The then Landlord and Tenant Act had limited application to caravans and moveable homes, and the matter was not addressed in the Residential Tenancies Act, which was passed in 1997. There are obviously particular characteristics of this type of accommodation which need to be taken into account in designing legislation. The mobility of residents is one such matter, but there is an increase in long-term residency in Australia generally. Between 1981 and 1985 long-term residency increased by 53 per cent, and between 1986 and 1989 it increased by 52 per cent. While there is legislation in most places regarding facilities and standards in caravan parks, only a few States have legislation on tenancy.

According to the Law Reform Commission, the Narrabundah long-stay caravan park is regulated to a degree by the long-stay caravan park assistance program gazetted under the Housing Assistance Act 1987, which gives some rights in relation to site allocation, transfers and frequency of rent increases. If the park is sold, it is obviously arguable that there will be a diminishing of the rights and protection afforded to the current residents. This should be, and must be, a matter of interest to this Government before they sell this park.

The Law Reform Commission put out a consultation paper, in order to inform, on a report they are to produce on matters related to residential tenancy, boarders and lodgers, and community housing and caravans. I understand that a final report will be released not too far into the future. Hopefully, this will guide the Government on how to legislate on these matters. My amendment requires the Government not to sell the Narrabundah long-stay caravan park until such legislation has been put to this Assembly.

A Commonwealth report on this matter has also identified the issues. In most States there have been reviews of tenancy legislation. With most of them, the report has expressed a need to have specific legislation covering residents in caravan parks. Of particular note are mobile or relocatable homes or caravans that have rigid annexes affixed to them. I understand from a resident of the Narrabundah park that out of 100 sites only three would not fit into this category. Special note was made of these residents because of the huge cost of relocation and because some residents would be unable to move their dwelling without totally dismantling it. The estimated cost of removal and relocation for a rigid structure is between $7,000 and $10,000. These issues are why New South Wales carried out an extensive review of caravan park living. New South Wales has covered caravan park residents since 1989, and in 1994 a review gave greater security of tenure, particularly for those with relocatable homes or rigid annexes.

In Victoria there is a regulatory framework protecting residents in relation to rents and charges, termination and resident's rights. This protection takes effect when a resident determines the caravan park dwelling to be their main residence, where they live for at least 90 days per year.

In South Australia the report of a working party consisting of government, industry and community representatives recommended that any legislation largely mirror the Residential Tenancies Act, with specific modifications for the type of dwelling and the special living circumstances of caravan parks. In Western Australia around 10,000 people, occupying approximately 21 per cent of caravan bays, are permanent residents. The Residential Tenancies Act does not exclude caravans. It does not, however, include specific provision covering caravan tenancies. A review of the Act once again recommended specific tenancy provisions for caravan park use that would include a standard tenancy agreement and regulation of fees.

I noticed in the debate on residential tenancy in 1997 that Mr Michael Moore brought attention to the need for government to address this area, so I hope to see support from him for my amendment and this motion. I hope to see Mr Smyth move on this issue as well, because the reason I have listed and explained the issues here is that he did say yesterday that he was not aware of them.

It is very important that the Government ensure legislative protection for its tenants before it sells the caravan park. The concerns of the current tenants are perfectly reasonable, and government has a responsibility not to rush off and sell this asset without first ensuring that the rights of tenants are protected.

I move the following amendment to the motion:

Paragraph (1)(b), omit the paragraph, substitute the following paragraph:

"(b) introduces to the Assembly legislation to provide protection of tenants' rights, specific to the needs of long term caravan park residents and the Assembly has considered such legislation.".

**MR KAINE** (5.10): From my perspective, I do not know whether it is important for the Government to be in the long-term caravan park business or not. The Minister says that it is not core business, but that is not necessarily enough justification in itself for changing the status quo. The fact is that the Government is in the business of long-stay caravan parks. It has been there for some years. If the Government wishes to change that position, they would have to satisfy me of the merits of the case, on two counts.

The first is that there is some benefit to the Government and the community by making the change. That would mean that the Government would need to demonstrate to me that there is some net reduction in costs or some financial advantage to the Government in getting out of the long-term caravan park business. I do not know how they would demonstrate in what ways they would benefit financially from selling it off. It may get a bit of money in the bank, but there might be many things that would run counter to that, so there may not necessarily be any net financial benefit to the Government in the longer term from selling it. I would need to be satisfied of the financial and other benefits.

That is one of the points that Mr Wood brought out in this motion. He wants to know the cost and benefits of the current operation. I would like to see also the potential costs and benefits of a changed position - not just the current position but what the costs and benefits would be if the ownership changed, because only then could you see whether it was in the community interest in the long term to make the change or whether it was not. That is the first thing I would want to see.

The second thing I would want to see is the kind of thing envisaged in subparagraph 1(b) of Mr Wood's motion, which Ms Tucker is trying to make a bit more positive. The fact is that some of the tenants of this long-stay caravan park have been there for a long time. The question in my mind is: If we sold that establishment and the new owner decided to turn the land to something else, where would the current tenants go? What options do they have available to them? I do not know of too many other places in Canberra where somebody could move their substantial caravan and set it up under anything like the terms that they enjoy at the existing long-stay caravan park at Narrabundah. Perhaps the Minister can outline at some stage what he sees as the alternative options for existing tenants. In any case, whether or not he can demonstrate that there are other readily available places to which these tenants could move, I think that the tenants are entitled to some consideration. They do have rights. They are long-term tenants.

As I said, I have no particular philosophical position on whether the Government should be in the long-stay caravan park business or whether it should not. I note Mr Wood's comments that local governments elsewhere do have such caravan parks. That is fine.

Maybe we need to be too or maybe we do not, but I would like the Government, rather than simply putting forward the proposition that they are going to change the ownership status of this piece of ground, which in my view would carry some detriment to the existing tenants, to explain these matters.

For that reason I support Mr Wood's motion, together with the amendment put forward by Ms Tucker. I am sure that the Government, if they take these matters seriously, can justify their case if at the end of the day they decide to go ahead and change the ownership arrangements, but I think these are necessary prerequisites before the Government takes that step.

**MR SMYTH** (Minister for Urban Services) (5.15): The decision to sell the Narrabundah long-stay caravan park was taken as part of ACT Housing's commitment and the Government's commitment to upgrade public housing. ACT Housing's core business is to meet the Government's and the ACT community's expectation as a provider and manager of public housing property and tenancies. The park has never been treated as part of public housing stock. There is no means test for residents, and commercial fees are charged. Accordingly, the Government believes that the private sector would be better placed to own and operate the park and release government resources to be better used elsewhere by the reinvestment of those funds in public housing.

Mr Speaker, as I said in my press release, at this stage the indicative annual cost of running the park is estimated to provide a net revenue of some $100,000, with a gross turnover of some $240,000. However, the park is in need of substantial upgrading, and the Government does not believe that it is appropriate to divert funds from public housing for this purpose. The Government believes that the residents' interests will be better served by a private owner whose main focus and priority is to run it as a caravan park.

The park was set up as temporary accommodation back in the late 1970s. It also fulfilled a role in providing low-cost accommodation for workers constructing the new Parliament House in the 1980s. Although responsibility for the park was transferred to the Commissioner for Housing in the lead-up to self-government, there is no longer a valid role for government in this area.

Both the Government and, through the Government, ACT Housing are conscious of the potential implications for the residents of the park. We understand that the 108 leases are home for 186 residents. We appreciate that while the park is for mobile homes everybody knows that there are substantial buildings there with additions and add-ons. They are the homes of people.

Accordingly, we intend to sell the caravan park as a going concern, with the residents having their site permits transferred to the new owner. As well as maintaining the permits, ACT Housing will extend the caretaker's contract to April 2000 and this arrangement will transfer to the new owner, again supporting the Government's intention that the park continue in its current operation under any new owner.

We will also ensure, through the sale agreement, security of tenure for the residents, so that they know, possibly for the first time for some of the very long-stay residents, that they do have some security of tenure. While the permits are normally for a period of three weeks, I understand that some tenants have been there for as long as 17 years. We appreciate that we are talking about people's homes.

Mr Wood asked earlier for some assurance on the lease. I can assure him that the lease will reflect the current usage and the lease will specify that the site is to be used for a caravan park site. That is what we want.

**Mr Wood**: And only a caravan park site?

**MR SMYTH**: Only a caravan site. In order to render it attractive to a purchaser to continue to use it as a caravan park site, the lease, which is currently in preparation, will reflect the current usage for the site as a mobile home park with a maximum of 102 mobile home sites. It is possible to vary a lease. We all know that. We will issue the lease with that intention. It will specify 102 sites for the use of mobile home residents. Tenants here today might not be aware of the full process. People can vary leases. Under the Land (Planning and Environment) Act 1991 somebody could seek to vary their lease and, if successful, would have to pay a change of use charge, but under the Land Act anybody who objects to such a proposal to vary a lease would have the opportunity to appeal to the AAT.

Any such lease change would also need to be consistent with the current broadacre land use policy under the Territory Plan, and then there is an overlay that is extended to broad use of the caravan park site. It is our intention that the new owner purchase the site and run it as a caravan park site. We will secure that through the sale agreement. Any change would have to be consistent with the Territory Plan. Given the time that that would take, residents of the mobile home park are likely to have as much notice as any normal private tenant would under the Residential Tenancies Act.

As part of our commitment to consultation on this matter, ACT Housing informed residents of this decision by hand delivering letters on Tuesday, 16 March 1999. The process will take some 2½ months. ACT Housing has now conducted two information sessions as an extension of the consultation process with residents and has agreed to provide detailed responses to residents' questions and to provide this information in person prior to the tendering process commencing. I have extended the offer, and I extend it to Mr Wood and Mr Rugendyke, who have taken an interest in this matter, to meet with tenants. I will come to their place or they can come to mine, and we will continue to discuss their concerns with them. A full list of questions was received earlier this afternoon, and we are now working to answer those questions and any of the issues that have been raised in the meetings.

ACT Housing has advised residents that, on the basis that the sale would be by open tender, any or all of the existing residents are entitled to submit a tender. They were given notice of this opportunity in advance. In addition, residents who feel that they may qualify for public housing have been advised of how they can go about registering with the applicant services centre, and to date some interest has been shown in that option.

The basic issue in this case is whether or not ACT Housing should be required to continue to operate an activity that is outside its business of delivering housing and tenancy to those who are eligible. The Government has taken the view that it is inappropriate for us to continue this. I do not have a figure but I am told that the majority of local and municipal governments have got out of the caravan park business and that the majority of caravan parks are now run by private concerns.

The Government has also taken the view that their highest priority must always be upgrading the stock for, and providing new stock to, those eligible for public housing assistance. The Government recognises that some of the residents of the caravan park may be in this category and has already offered assistance to those people who believe that they may qualify. We believe that this approach, together with the sale of the park as a going concern, with tenancy rights written into the agreement of sale, will be adequate protection for those who have chosen the lifestyle of living in the caravan park. Those who qualify for public housing will be allowed to apply for it. The period leading up to the sale will be an uncertain time for the residents. I have asked ACT Housing to ensure that residents continue to have access to appropriate information throughout the process, and staff will continue their liaison with residents.

Mr Kaine asked about the benefits. The benefit to the tenants of ACT Housing is that the sale will free up money that we can use for new properties or maintenance on existing properties. Mr Kaine asked where the tenants would go were the park to be changed. It is not our intention that the park be changed. We see that it does provide a function and we wish it to continue as a going concern as a long-stay caravan park. We will secure that through the lease and through the sale agreement.

I do not believe that the motion in its current form is necessary. I foreshadow that I will be seeking leave to move the amendment that has been circulated in my name. I am happy to provide details to Assembly members and to advise the Assembly on the long-term protection of tenants' rights, but I believe that what we have here is the Government moving to sell an ACT Housing property. We have that right. We should have that right, and we intend to proceed with the sale.

**MR QUINLAN** (5.24): I have attended a couple of meetings at this caravan park, one called by the residents and one with government officials. If the Minister wants to know how to get there, I am happy to let him know, or he can get directions from some of the people I think he has met for the first time here today. I do think that he might have paid them a personal visit. When the officials and the inevitable consultant turned up to the meeting, they were there only to justify a decision. There was no room for them to negotiate with the residents and there was no sense amongst the residents that their concerns were actually heard. The process was highly ritualistic. Certainly, that came through to the residents of the caravan park. I have copies of the Government's letter to the residents and the Minister's press release. Let me share some of the letter with you. The first paragraph says:

> The mobile home park is not part of ACT Housing's core business ...

Might I suggest to you that that is a little shopkeeper's view of the world. ACT Housing's core business is housing and the Government's core business is people. The letter given to residents, the little bombshell they got a few days before the Government scheduled meetings, included a question and answer sheet. I ask members whether they would take reassurance from this question:

> Will I have to move?

Answer:

> ACT Housing will not make you move.

That, I am sure, is likely to engender confidence! They have dumped you and they have washed their hands of your problem, but they will not move you. They will not move you, because they have dumped the whole caravan park. Question:

> Can I get public housing assistance?

The response distils down to: "Get in the queue. It matters not that you have invested your limited resources to stay independent from public housing because it is not attractive, because you do not want to live there, because you do not want to end up in Burnie Court or Lachlan Court. It does not matter that you have maximised your independence and, in fact, not burdened the taxpayer by putting yourself into public housing". Question:

> Will my occupation fee increase?

Answer:

> At the time of sale, the new owner will have the current occupation fee levels transferred to them.

Hey, that is okay, then. Not a problem. I think the Minister said in his speech that he did appreciate that there are people who have lived at the caravan park for up to 17 years. There are also young families there, young families who find that it is a safer and securer environment than in public housing. There are pensioners there getting on by their own devices. There are people there who have invested virtually all they possess, based on a government assurance of a few years ago. Yes, it was a Labor government assurance but one that subsequent governments inherited and must recognise.

Does this Minister know how many people would qualify for public housing? Did you bother to inquire before the decision was taken? If the sale forces only some of the park residents onto public housing and the Government takes action to meet that increased need, as it should, the decision to sell might be financially unsound. It might well be a very dumb decision, because you will be creating an extra pool of people who might require public housing. The point is that you do not know. You did not ask. Of course, if you do not care about an increase in the number of people for whom you cannot provide public housing, then financial analysis does not matter, does it?

This could well be another exercise where this Government flogs off assets today to balance its budget, with absolutely no regard for the long-term future. But has this Government or this Minister thought to carry out a fundamental analysis of the net impact of the decision? No. They are thinking only of the immediate dollar and ignoring the future consequences, consequences that will be carried by the people of the park.

When officials met with the residents, there was no suggestion of protection of any sort. A decision had already been taken when officials were sent out to meet the residents of the park. What protection do residents have against early lease termination? Zip. What protection do they have against inordinate increases in charges? Zip. What protection do they have against lack of care or maintenance of the park? Zip. I hear some very delayed noises from the Minister, maybe to mollify the residents who have stood up for themselves.

The residents have been assured that there have been no offers on this property; that there have been no expressions of interest in this property. Unfortunately, I have to say they do not appear convinced to me. But if we have the Government's word through their officials, then we take that as such, at least until we hear otherwise. The designation of the lease is a long-stay caravan park or mobile home park, and the owner would need a change of lease purpose clause to change it. We all know that that happens on a regular basis.

I have had some discussions with Mr Rugendyke, who quite rightly pointed out that a change of lease purpose would have to go to the Urban Services Committee and that he, as part of that committee, would look seriously at that particular proposal. However, that is still cold comfort. If I owned the joint, I do not think it would be a real problem to make it an unpleasant place to live and to change its nature. If my intention was - - -

**Mr Humphries**: I think you could too, Ted.

**Ms Carnell**: I think you probably could without trying.

**MR QUINLAN**: Exactly. There are more monsters like me out there, let me tell you.

**Ms Carnell**: We will sell it to somebody nice.

**MR QUINLAN**: I bet! Somebody with money - that is what makes them nice. Residents of this park have made a real investment. They have invested in their properties there. It is not just the money, a substantial amount of money, particularly from the perspective of the people we are talking about; they have also invested in the sense of community that they have built there. It is quite a pleasant place to be. Quite a number of the residents say, "We do not want to live in the public housing that you provide, even though we qualify for it".

I would like to know whether the Minister is aware of the cost to any resident who is forced to leave or relocate or who finds it necessary to leave. I have heard quotations that range from $3,500 to $10,000. This is a unique situation where people have built

attachments to land that they do not own, but those attachments are not easy to disassemble and move. The ALP just happens to believe that government should provide the maximum choice of housing, particularly for people with limited resources. These people, to the maximum of their economic capacity, have made an effort to provide themselves with housing. Some - with good reason, I suppose - want to avoid going into the public housing of today. They ought not to be treated so shabbily, yet we have said to them in the letter, "You can go on public housing but get on the end of the queue". For the main part, they are probably one of our best economic investments right where they are, unless we do not care about an expanding demand for public housing.

The Government claims that the proceeds of the sale will be put back into public housing. I have to view that with deep suspicion. We only have to cast our minds back to the emergency services levy. *(Extension of time granted)* Mr Humphries told this place that the money would be spent on emergency services.

**Mr Humphries**: Yes, specific things, not that.

**MR QUINLAN**: So that was blatantly misleading. There is no discernible increase in this financial year - - -

**Ms Carnell**: There was never going to be.

**MR QUINLAN**: I know. Of course not. We are going to spend this extra dough we are taking off the taxpayer on emergency services. We are just going to take away the dough we used to spend. This is just a misleading bookkeeping shuffle, and I would suspect that this one will go down the same chute, with the same dishonesty involved, if the track record is any indication.

Let me return to my initial theme. The Government is here to serve the people. It is not a collection of discrete business units and commercial functions. The business units are a means to an end, not the end itself. The core business of the Government is people and the core business of Housing is housing.

The Minister's immediate problem is a potential personal and economic disaster that could be visited upon the people - the people we serve - of the long-stay caravan park because the Government just wants to flog off another asset. This Assembly needs to see not only the detail of the proposal but also the wider options. There is a precedent next door to this park that demonstrates that all things are possible. The Assembly as a whole has an obligation to the citizens of this park to ensure that they are not simply the victims of the Government's asset sale fixation. I commend the motion to the Assembly.

**MR CORBELL** (5.37): Mr Speaker, I will be brief, as my colleagues have canvassed the issues quite extensively, but I rise to reject the arguments put forward by Mr Smyth in support of his amendment and to urge members not to support his amendment. Substantially, his amendment means that we delete paragraph (1) of Mr Wood's motion, which reads:

> no further action be taken on the suggested sale of the Narrabundah long-stay caravan park until the Government ...

It goes on to list a series of things that the Government needs to do before that occurs. Mr Smyth is proposing that we remove that. I would argue that we cannot do that. We cannot do that for the very reason that Ms Tucker highlights in her amendment, that is, that the Assembly needs to provide for the protection of tenants' rights, specific to the needs of those who live in long-term caravan parks. If we remove the requirement that the Government not proceed until it meets the concerns of the Assembly in relation to the costs and benefits and the protection of tenants' rights, then those people will not be protected by any effective legislative regime in the ACT. That is what the Government is proposing, and that is why the Minister's proposal to remove that paragraph from the motion is wrong.

We would like to see the Government come back to this Assembly with a proper framework for protecting the interests of tenants. The Minister stood up in this place and said, "We all know that a person can move for a lease variation". So it does not matter what guarantee he makes as to how long the caravan park will operate as a caravan park. His words mean nothing, because we all know that a person can come to the Government and say, "I want a lease variation to change the purpose for which I use this land". When that happens, I can hear the Minister saying, "They are entitled to do this". That is exactly right - they are. It does not matter what guarantee the Minister makes. Unless there is a proper legal framework that protects the rights of tenants, that lease variation process will disregard the rights of tenants. That is why we should not be proceeding with a sale until the Government meets these demands. I urge members to reject Mr Smyth's amendment.

**MR WOOD** (5.40): Mr Speaker, I wish to speak to the amendment, only to say that the Opposition supports Ms Tucker's amendment.

**MR HUMPHRIES** (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (5.41): Mr Speaker, I suspect that there is a little bit of grandstanding going on here today. I do not quite know why but - - -

**Ms Tucker**: Probably because people's lives are being affected.

**MR HUMPHRIES**: I realise that. This dichotomy of uncaring, callous, money-grubbing Liberals versus the people on the other side of the chamber with their hands on their hearts is, to use Mr Berry's words, slightly theatrical, and I reject it. We are also concerned to make sure that we deal properly with people's concerns and issues affecting the security of people's homes, but we also have to deal with other issues, including appropriately managing assets of the Territory. I am sorry to have to say that at the one time this particular block is both an asset of the Territory and people's homes.

We are trying to reconcile the issues in a number of ways. On the issue of what long-term protection of the rights of tenants in caravan parks exists and in particular what is being proposed, members might be aware that the Law Reform Commission has a long-term reference on issues dealing with the rights of tenants in the ACT generally.

That work has already produced a number of important steps which, in turn, have led to legislation. The first major report by the commission was in December 1994. That led to the enactment of the new residential tenancies legislation in May of last year and the repeal of the old Landlord and Tenant Act, which was a very archaic piece of legislation.

In September 1997 the commission issued a further report dealing with public housing which resulted in the residential tenancies law covering both public and private tenancies in the ACT. Since then the commission has considered a range of issues dealing with boarders and lodgers, hostel accommodation, community housing and caravan parks. The commission has had discussions in this area. I note that the commission issued a discussion paper dealing with caravan park issues some while ago. I understand that the commission has now prepared a report dealing with these issues. That report is going to be released following some further discussions within the commission, but I expect that to be in the next few weeks.

In considering this area, I understand that the commission has taken as its starting point the desirability of all accommodation arrangements being integrated within the framework of the Residential Tenancies Act 1997. I think that is appropriate. There is not any basis for saying that, in principle at least, that should not be the case. Under that approach and in view of the commission's report dealing with public housing, I think it would be most unlikely that the forthcoming report would recommend a scheme giving different rights to residents simply on the basis that they live in public or private housing.

Obviously we need to see what that report actually says before we consider what steps to take by way of legislation, if that is what is required - and I suspect it is. The work already done by the commission in this area has been very positive and has led to significant improvements in the legal position and the clarity of the position of parties in the ACT. I believe that the report, which is expected imminently, should also contribute positively to that debate.

**MS TUCKER**: I seek leave to speak again very briefly to respond to Mr Humphries.

Leave granted.

**MS TUCKER**: I do not think Mr Humphries was here when I spoke. I did outline the history that he has just outlined, but it is fine that it has been repeated. That is exactly the point of my amendment - I did not know when the report was going to be produced. I was interested to hear you just say that it is imminent. You made a statement that you did not think there should be different rights for public and private houses; that you believed that the commission is going to recommend that general residential tenancy law take into account caravans and relocatable homes. I do not know whether you are aware of the Commonwealth report. I assume that you are. It clearly outlines differences with community houses and boarders and lodgers. You are telling the Assembly that this work is well progressed. That is good.

My amendment is saying that we should wait until you have turned that into a proposal for legislation for the ACT Assembly to address before you sell this caravan park. That is because under the existing protection people in this caravan park have greater

protection than they would have if they were in a private park. I argue that you should not sell this park, because you will be diminishing residents' protection. You need to ensure that there is protection in place before you sell.

**MR OSBORNE** (5.45): Mr Speaker, I will be supporting most of Mr Wood's motion. I heard what the Government, through Mr Smyth, had to say about the lease stipulating that the site remain a caravan park if sold. I have no view one way or the other about whether it should be owned by the Government or the private sector. However, I do think that more information does need to come before the Assembly. I intend to support subparagraphs (1)(a) and (1)(b) of the motion.

Paragraph (2) is of some concern to me. If we support this, are we then saying to the Government that every time Housing wishes to sell stock they need to come before the Assembly to seek approval? By supporting paragraph (2) that is basically what the Assembly would be doing.

If we support the first paragraph of Mr Wood's motion, more information will be supplied to the Assembly. I believe there are to be meetings between the Government and the residents at the long-stay caravan park before anything is done. I think that is fair and reasonable. Supporting paragraph (2) puts the Assembly in a difficult situation in the future with any decisions Housing wish to make in relation to selling land, which they do all the time, I believe.

I appreciate many of the arguments put up by Mr Quinlan, who has harassed me about this for a while. I appreciate that there are people living there who are only on short-term leases but have been there for a long time. I think we need to look at the information in the Assembly before anything is done. We need to consider the concerns of tenants, and information on what rights they have needs to be made available to us before we progress this matter any further. As I said, I have no problem with the caravan park being owned by someone other than government if that is what the Government wishes, as long as the information in relation to the rights of the tenants is on the table.

**MR RUGENDYKE** (5.48): Mr Speaker, my concern is that there appears to be an unholy rush to sell this caravan park. That is implied by Mr Smyth's amendment, which at first I was quite sympathetic to. I wonder what the unholy rush is for. I do not think it has been explained. We saw an unholy rush to sell off ACTEW before last Christmas. That was a concern to the community.

**Mr Berry**: We soon fixed that.

**MR RUGENDYKE**: That is right. The crossbenchers saved ACTEW. I just wonder why there is such an unholy rush to sell. Will there be time, for example - and what guarantee will there be that there will be such time - for current residents to assess their capacity to purchase the caravan park? What guarantee will there be that site fees will not rise unfairly after the sale? Mr Smyth mentioned security of tenure. That is a positive step.

Another aspect that may have been overlooked is who would be potential buyers. Will it be part of the tender that only bona fide caravan park operators may purchase the caravan park, or could some unscrupulous character purchase it in order to work towards a different use for the caravan park? These are concerns that I believe need to be addressed. No further action should be taken on the sale before these concerns, as well as the concerns of Mr Wood, are assessed. I agree with Mr Osborne on paragraph (2) of Mr Wood's motion. In my view it is unreasonable.

On Ms Tucker's amendment, I believe that the procedures in place at the moment are suitable. Whilst I am concerned about an unholy rush, this should not be delayed too long. Ms Tucker's amendment implies that a large amount of work should be done prior to the sale. I do not agree with that. I believe that the rights of the people currently residing in the caravan park are catered for, so long as the guarantees I have mentioned are given. I support paragraph (1) of Mr Wood's motion.

Question put:

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

The Assembly voted -

| *AYES, 8* | *NOES, 9* |
|---|---|
| Mr Berry | Ms Carnell |
| Mr Corbell | Mr Cornwell |
| Mr Hargreaves | Mr Hird |
| Mr Kaine | Mr Humphries |
| Mr Quinlan | Mr Moore |
| Mr Stanhope | Mr Osborne |
| Ms Tucker | Mr Rugendyke |
| Mr Wood | Mr Smyth |
| | Mr Stefaniak |

Question so resolved in the negative.

**MR SMYTH** (Minister for Urban Services) (5.56): I seek leave to move an amendment.

Leave granted.

**MR SMYTH**: I move:

Omit all words after "That", substitute the following words:

"the Government:

(a) provides to the Assembly all costs and benefits of the current operation of the Narrabundah Long Stay Caravan Park; and

(b) advise the Assembly on the long term protection of tenants' rights.".

I believe the issues have been well canvassed; it is clear where people stand on this issue.

**MR WOOD** (5.56): Mr Speaker, I rise to oppose this amendment. It is clear that all members who have spoken have expressed concern for the homes of these people and their rights. We have all said that. We all want to keep in touch with this. Mr Smyth's amendment very considerably waters down the strength of the motion. He simply wants to advise us of what he is going to do, perhaps in a little more detail. Members have said that we just want a bit more input than that. We want to debate this further. We want to be able to see what the protections are. As my colleagues have said, if the park is sold, a lease variation could follow, or the new owner could make it so intolerable for residents that they have to move. We want to know more. We want to follow up our expressions of concern for the residents, to make sure that they are protected; that it is not mere words. I would urge members to oppose Mr Smyth's amendment.

Amendment negatived.

**Mr Osborne**: I seek leave to have the motion divided, so that we can vote on paragraph (1) and paragraph (2) separately.

Leave granted.

Paragraph (1) agreed to.

Question put:

That paragraph (2) be agreed to.

The Assembly voted -

| *AYES, 8* | *NOES, 9* |
|---|---|
| Mr Berry | Ms Carnell |
| Mr Corbell | Mr Cornwell |
| Mr Hargreaves | Mr Hird |
| Mr Kaine | Mr Humphries |
| Mr Quinlan | Mr Moore |
| Mr Stanhope | Mr Osborne |
| Ms Tucker | Mr Rugendyke |
| Mr Wood | Mr Smyth |
| | Mr Stefaniak |

Question so resolved in the negative.

Motion, as amended, agreed to.

## ADJOURNMENT

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

That the Assembly do now adjourn.

### Casino Control Act - Mr Paul Whalan

**MS CARNELL** (Chief Minister and Treasurer) (6.01): Mr Speaker, I speak about a matter of some seriousness. Early today the Assembly passed the Casino Control (Amendment) Bill which was introduced by Mr Kaine. This afternoon some more information came to light which I believe should be publicly disclosed. It is information that will be of interest to every member of this Assembly and the wider community as a whole because it highlights how one party chooses to operate in this place when it comes to putting political opportunism ahead of principles.

Mr Speaker, for the information of members, I table a letter sent by a representative of Casino Canberra to the Leader of the Opposition, Mr Stanhope, on 23 March. I am going to read this letter in full because if I do not it will be said that I have somehow misquoted it. The letter says:

> Dear John,
>
> Thank you for meeting last Friday to discuss the implications of the proposed Kaine amendments to the Casino Control Act.
>
> We were greatly encouraged by your account of your lunch meeting that day with the Housing Industry Association when you gave the Association the assurance that it was Labor's view that once a development process had commenced, it should be allowed to proceed to completion without interference from legislators and administrators. Clearly you believe there should be no "shifting of the goalposts".
>
> We were particularly heartened by your acknowledgment that the Kaine amendment created an identical situation in respect of the Casino Club proposal. In this case the Casino embarked three years ago on a course of action to change its Crown Lease purpose clause to enable the operation of a licensed club within the lease precinct. This was a process permitted by the law, subject to public scrutiny and objection, and was challenged unsuccessfully by the Dickson Tradesmans Club in four legal tribunals, with a further decision of the Federal Court pending.

> Now as the process is reaching conclusion Mr Kaine has introduced legislation which will frustrate the process and destroy years of work in pursuit of a legitimate commercial objective.
>
> At our meeting you indicated that although the ALP had devoted considerable energy to cultivating the support of Mr Kaine in his new role as an independent MLA and that you were loath to alienate this support by voting against Mr Kaine, you felt that as a matter of principle there was strong argument against the Kaine proposal, and you would express this view to the Labor caucus.

**Mr Corbell**: When have you ever believed what Paul Whalan said?

**Mr Quinlan**: You know who you are getting into the boat with now, folks.

**Mr Stefaniak**: I want to hear it.

**MR SPEAKER**: Order! This is important.

**Mr Corbell**: I am sure Paul Whalan does not have a vested interest.

**MR SPEAKER**: Order, please! Look, you are not in a party meeting now, trying to shout down somebody on the other side. That goes to both sides.

**MS CARNELL**: The letter continues:

> It was with considerable dismay that we received advice that caucus had decided to support the Kaine legislation.
>
> It is difficult to reconcile your words of encouragement to the HIA, with your actions in opposition to the Casino. One can only conclude that the party is willing to abandon principle in the hope of some future support from Mr Kaine.
>
> Until such time as the ALP in the Assembly distances itself from the other non-government members of the Assembly, and establishes itself in the eyes of the community as a party of principle rather than a party of opportunism, you will have no prospect of electoral success.

Mr Speaker, the letter does come from Paul Whalan. The last time I checked, Mr Paul Whalan was a former Deputy Chief Minister in this place in the first Labor Government, a colleague of Mr Berry and Mr Wood. Well, Mr Speaker, there you have it. You have two alternatives here, or two issues. One of the things you can gain from this particular letter is that Mr Stanhope's leadership is worth nothing. Mr Stanhope saw considerable problems with Mr Kaine's legislation, Mr Speaker, but was willing to put the considerable problems with the legislation aside on the basis of political

opportunism. Mr Stanhope may have gone to caucus and argued for what was a reasonable approach, a sensible approach, and was rolled. That means his leadership is up to nothing or, alternatively, the Labor Party has no principles.

## Casino Control Act - Mr Paul Whalan

**MR BERRY** (6.06): Mr Speaker, I too received a letter from Mr Whalan. Many of you may not know that Mr Whalan attended the same school that I did. In fact, that little school produced two Deputy Chief Ministers.

**MR SPEAKER**: I do not know whom we can apologise to.

**MR BERRY**: Mr Speaker, I recall serving the people of the ACT with Mr Whalan in the First Assembly. Much was said in the letter about shifting the goalposts, but in fact the goalposts were not shifted. They were locked into the same concrete which Mr Whalan and I poured around them. The casino could not expect to have poker machines.

**Ms Carnell**: Mr Speaker, this has absolutely nothing to do with it.

**MR SPEAKER**: It is all right. This is the adjournment debate. He is entitled to speak.

**MR BERRY**: The Chief Minister may wish to come in here and spit the dummy and try to embarrass Mr Whalan by producing his letter, but Mr Whalan has proven himself to be an active worker for the people he represents. In this case he is working very hard to represent those people he appeared for. Those who have debated Mr Whalan would well know that in the course of the toing-and-froing about a particular issue Mr Whalan takes no prisoners. Mr Whalan always acts in the best interests of his clients, and I am sure that he will be very successful on that score because it is well known that he does. But I think he is a little offbeat on this one.

My old schoolmate, talented though he is, has forgotten, perhaps, that he and I and others in the first Labor caucus gathered together, in much the same way as Labor caucuses do today, and we made decisions. At the time many of us were concerned about what was to happen with the casino in the ACT. I doubt that the casino would have gone ahead in the ACT if the argument was that it should be approved with poker machines. The casino accepted that position in the first place. I am a little surprised to see Mr Whalan advocating so forcefully a different position now, given his total commitment to fixing the goalposts deep in concrete in 1989.

**Mr Stefaniak**: What was the school you went to?

**MR BERRY**: St Joseph's Convent, Cundletown.

## Mr Paul Whalan

**MR STANHOPE** (Leader of the Opposition) (6.10): I would like to respond very briefly to the Chief Minister's use of correspondence obviously provided to her by her bosom buddy and travelling companion, Paul Whalan. It is interesting to see Mrs Carnell linking herself inextricably with Paul Whalan. Bitter and twisted perhaps as Mr Whalan is, it was intriguing to listen to the extent to which Mrs Carnell has taken this other defeat, this next defeat, in the list of defeats that she is suffering. One reflects back to the ACTEW defeat and the horror we had to suffer as a result of that, the horror budget that we have never seen the back of. I wonder whether the success of Mr Kaine's legislation will lead to such similar prognostications of doom and gloom in the ACT in respect of the budget. One looks forward to further chapters in Mrs Carnell's dual dummy-spit with Paul Whalan and what it means for the people of the ACT.

Mrs Carnell lost again. She took another blow. She lost another vote. What does Mrs Carnell do when she loses a vote? The big, gigantic dummy-spit. Isn't it intriguing to see Mrs Carnell joining with Paul Whalan in these dummy-spits. He is bitter and twisted that he did not win the day. Perhaps Mr Whalan's involvement in the matter had something to do with the fact that the casino did not get the case they want. I think there is something there for Mr Whalan and the Endeavour Consulting Group to dwell on - whether or not in fact Mr Whalan's involvement in this issue led to the ultimate result. We have the spectacle of Mrs Carnell's gigantic dummy-spit because she lost again. That is something that is happening more and more and more. It is becoming a habit, Mrs Carnell. I would watch it if I was you.

## Miss Sylvia Curley

**MR HUMPHRIES** (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (6.12), in reply: Mr Speaker, I want to change the subject matter and report the sad news that Miss Sylvia Curley has passed away. This news comes as a bit of a shock to us all. We had expected her to go on for many more years. She showed every sign of it. She was, as my colleague Mr Moore tells me, only a few weeks ago still very mentally alert. She was still telling the Government in no uncertain terms what she wanted to happen and how to handle issues as diverse as the Mugga Mugga Homestead and the Canberra Hospital. I am sure we all immediately call to mind the enormous contribution that she has made to the Canberra community. She celebrated her 100th birthday last November and had a mass of thanksgiving to celebrate that occasion.

Mr Speaker, the Government is proposing that we have a condolence motion on 20 April, the next sitting of the Assembly, to mark the passing of this great life. I hope members will join on that occasion in expressing suitable words on the death of Miss Sylvia Curley.

Question resolved in the affirmative.

**Assembly adjourned at 6.14 pm**