DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

16 November 1999

Tuesday, 16 November 1999

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

CHIEF MINISTER
Notice of Motion of Want of Confidence

The Clerk: Notice has been received from Mr Stanhope that seven days hence, in accordance with standing order 81, he shall move:

That this Assembly no longer has confidence in the Chief Minister, Ms Carnell, MLA.

JUSTICE AND COMMUNITY SAFETY – STANDING COMMITTEE
Report on Emergency Management Bill 1998

MR OSBORNE (10.34): I present Report No. 5 of the Standing Committee on Justice and Community Safety entitled "Emergency Management Bill 1998", together with the minutes of proceedings. I move:

That the report be noted.

This is a very significant Bill for the Territory. The committee has made a number of recommendations specifically about the role of the Territory Controller and the make-up of the Emergency Management Committee. The committee is of the opinion that the Chief Police Officer should be designated as the permanent Territory Controller and that the Territory Controller, rather than the Minister, have the power to delegate authority to another person in relation to different emergencies that may occur in the Territory. We have also recommended that we delete any reference to a "dormant controller" which was part of the original Bill.

There are other recommendations in relation to committees. I think it is a very detailed report. I thank all members for their contributions and the committee secretary, Fiona, for the work that she has put in. I expect there to be some problems from the Government in relation to this report, but I think overall we have attempted to be balanced and to go in with an open mind. We have had public hearings. This is a unanimous report, and I thank members of the committee for their participation.

MR KAINE (10.36): I will just speak briefly to the report on the Emergency Management Bill 1998. I support the report and endorse the request by the chair of the committee that the Assembly adopt the report. There are a couple of things I want to touch on briefly. Firstly, I want to comment on the management structure. Essentially, the committee has recommended that there be only one management body, and that is the Emergency Management Committee. We thought the proposals from the Government were rather clumsy in that there were two committees - the Emergency Management Committee and the Management Executive. Membership was virtually the same, with one minor exception. The exception was that the Minister made appointments to one, and the controller made appointments to the other.

We did not see that there was a great deal of merit in that. If the controller were to become the chair of the Emergency Management Committee, the standing committee, we believe he would be quite capable of turning that committee into an executive committee in the case of a declared emergency. There is therefore no need for the duplication of responsibilities as were envisaged in the original Bill. If the Government looks at our recommendations, they will see that there is logic and some merit in our recommendations in that regard.

The other matter that I wanted to address is the question of the legislative provision for the establishment of ambulance services in the Territory. The Government has sought to include in this legislation - the basic purpose of which is to set up management arrangements for a declared emergency - the provision for setting up and regulating an ambulance service. I believe that was a pretty clumsy way of dealing with it. It was also a little absurd. We are reading a draft Bill that dealt with setting up the management arrangements that would switch into gear in the case of a declared emergency, and in the middle of it there is a clause that establishes the ambulance levy, namely the emergency services insurance levy.

To find that sort of provision in a Bill of this nature was quite bizarre. We have recommended that there be separate legislation to cover the provision of ambulance services in the Territory. That legislation should provide for the regulation of ambulance services other than the one provided by the Government. If you have a stand-alone piece of legislation that establishes accident services and regulates them, then you can properly incorporate into that legislation the provision for the levy which the Minister was proposing to incorporate into this emergency management legislation.

Our recommendations, if adopted, will produce a better solution to both the establishment of emergency management arrangements and the establishment and regulation of ambulance services. I would ask the Minister to examine very carefully the recommendations that the committee has made, because I believe they will provide better and more manageable legislation and more meaningful legislation than the original draft.

MR HARGREAVES (10.40): Like Mr Kaine, I support many of the recommendations in this report. I support all of them because I was not prepared to put in a dissenting report on some of the matters which caused me concern. I want to echo Mr Osborne’s congratulations to our committee secretary, Fiona Clapin, who did a particularly good job.

Mr Kaine just commented on the ambulance service levy provisions in the Emergency Management Bill 1998. It is totally inappropriate that a money Bill be included in the emergency management provisions. The whole idea behind the Bill was to address the structures and the forces that would be brought to bear in the case of a declared emergency; not just a crisis, not a small scale emergency, but a declared one. The provision of what is essentially, as Mr Kaine quite aptly described it, an insurance scheme within the context of legislation governing a declared emergency is quite inappropriate.

It is ,we believe, a money Bill. It is also inconsistent with the Government's own approach in terms of revenue. The Minister has said to me in an answer to questions in estimates committees that the Government puts all of its money into a bucket, and there is no relationship between the revenue collected and an activity. Here we have an exercise where it would appear to be directly related, but I do not see its relevance. I would urge the Minister to consider the recommendation of the committee that the ambulance levy should have its own piece of legislation. I also strongly support having separate ambulance service legislation.

Mr Moore: Why?

MR HARGREAVES: If the Minister will just hold his water for a little while, he might find out why. This service has a history of going from one portfolio to another. It also has a wider set of responsibilities than just its activity within a declared emergency. Indeed, we do not have too many declared emergencies in the ACT - certainly none that I can remember in my time. It would seem to me to be quite inappropriate that we have a set of legislative provisions governing absolute disasters and then have enabling legislation for supporting services included in that when for nine-tenths of its time it has nothing to do with that.

It also heralds the Government's intention, quite openly declared, of collapsing all the emergency services into one piece of legislation. Again, I disagree with declared emergency services being all folded in together. We all know that the Ambulance Service has been part of the general administrative services in its early life. It has been part of the health industry and it is now part of the emergency industry. My own feelings are that the Ambulance Service is a health related service, but I can understand why people would like to have it connected to the Emergency Services Bureau. However, it does not exclusively belong to the Emergency Services Bureau. It works hand in glove with Health, and quite rightly it should have legislation of its own. If it has its own legislation, it matters not which Minister has responsibility for that service.

As I indicated earlier, the Government has signalled its intention to collapse all the emergency services' arms into one piece of legislation. That includes the elimination of the Fire Brigade as a unique service and the incorporation of it into the legislation here. I think that is ill considered. It takes away the uniqueness of the service. I believe it will also detrimentally affect the provision of services in the ACT if the Fire Brigade Act is

deleted and the provisions are watered down and incorporated into the Emergency Services Act, as it then will be, to suit the convenience of the management of the Emergency Services Bureau.

I believe this is a good report. I think the committee has picked the issues fairly quickly and made very sensible recommendations. The only difference between the two committees that we have addressed - the Emergency Management Committee and the Management Executive - was the exclusion of the Chief Health Officer on the second committee. The recommendation is that you include that person on the committee. There is, therefore, no need for two committees and two bureaucracies. This should also eliminate the possibility of a misunderstanding.

I very strongly support the provision of the ACT Chief Police Officer as the permanent Territory Controller. The Minister's appointment of an officer as the ACT Chief Police Officer ought to remove any problems which may occur between the ACT Government and the Federal Government over the deployment of resources. I cannot for the life of me see an event which would cause that, and I think we should worry about that when and if it arises. The most consistent attendance at a declared emergency is the police. It does not matter what the disaster is; if it is a declared one, there is always the presence of the police. There is not always the presence of some of the other people on that committee. So it is most important that that go on.

Finally, when we were doing the considerations for this, the Government ran the furphy that we needed to get on with it really quickly because of the Y2K compliance problem. We were told of all sorts of provisions in this Bill which needed to be enacted before Y2K could be satisfied; for example, the provision for search and entry into premises in the case of a wholesale disaster, traffic lights not working; people's heaters falling over because of computers not working; and ticketing in buses not working. What a blow that would be! Bring on the Y2K in that case, if bus ticketing does not work.

That was an absolute furphy and it was not necessary. It has nothing to do with this Bill. The briefing that we received from the officers enabled us - and I am sure Mr Hird will agree - to feel quite comfortable about the actions which the Government has taken in preparation for Y2K. However, it was a furphy to introduce that issue in the consideration of this Bill. I commend this report to the Assembly.

MR HIRD (10.48): As I recall, it was mentioned during committee hearings that other jurisdictions throughout Australia have emergency management legislation. The Minister responsible argued that we do not have it. I would like to thank my colleagues on the committee, the secretary and those witnesses who submitted both written and verbal evidence to the committee.

I raised concerns in the committee about two issues. Those concerns appear under item 31 at page 8 and under item 67 at page 18. The two concerns that I had related to the Chief Police Officer not being under the control of the Minister responsible in this parliament. The Chief Police Officer comes directly under the Commissioner of Police, who is a federal appointee. There may be at some time in the future - as has happened in the past - some conflict as to who is giving evidence or who will take evidence on

matters that may arise out of an emergency situation or out of a direction given either by the Minister responsible in this place or by the Minister responsible in another place on the hill.

I took issue with that. I raised my concerns with my colleagues, and that is identified under item 31. It is a question on which the chairman did spend some time. It may well occur until such times as we have our own directly appointed police officer or the ability to appoint our Senior Chief Police Officer. I believe this matter will overshadow the appointment of the Chief Police Officer as the Territory Controller trying to serve two masters. I must say to the credit of Mr Daryl Williams, the Federal Attorney-General, and Mr Gary Humphries, the ACT Attorney-General, that their respective staffs are trying resolve this problem. I commend them for that. I hope that in the long term this will not be a problem.

The other concern that I voiced was that of separate legislation for ambulance services. Members will recall that ambulance services were under the ACT fire brigade legislation in the early part of the Territory's history and then under ACT police legislation. It has been under a series of areas and has had a series of masters. This Bill would qualify and identify ambulance services as an emergency component of the emergency services. I firmly believe ambulance services should come directly under and remain part of the Emergency Management Bill. However, other members of the committee disagreed with me.

I did not take the opportunity of putting in a dissenting report. I just raised these as concerns for members. I daresay when they read the report of our standing committee - which is an excellent report - they will take into consideration those points that I have raised. Apart from that, I commend the report to all members because it has been well prepared by the secretariat and by the chairman, who handled the situation very well.

We were briefed on the Y2K problems, as my colleague Mr Hargreaves indicated. It is pleasing to know that, if there is a problem, we can look to the New Zealand community. It is there that the Y2K bug will strike first. I urge members to support Report No. 5 on the Emergency Management Bill 1998 by the Standing Committee on Justice and Community Safety and to take in those two concerns of mine.

MR OSBORNE: I seek leave to speak again, Mr Speaker.

Leave granted.

MR OSBORNE: I think it is important that we do acknowledge that Mr Hird raised that briefing from the department on the Y2K contingency. I have to say on behalf of the committee that I think we were all very impressed with the level of preparedness. I would like to thank the Minister and his officers for providing the briefing. We are all pleased it is going to happen in New Zealand first. They have had a pretty bad run in the last couple of months, Mr Speaker, so we will not rub it in.

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

JUSTICE AND COMMUNITY SAFETY – STANDING COMMITTEE
Scrutiny Report No. 14 of 1999 and Statement

MR OSBORNE: I present Scrutiny Report No. 14 of 1999 of the Standing Committee on Justice and Community Safety performing the duties of a scrutiny of Bills and subordinate legislation committee. I seek leave to make a brief statement on the report.

Leave granted.

MR OSBORNE: Scrutiny Report No. 14 of 1999 was circulated when the Assembly was not sitting, on 8 November 1999, pursuant to the resolution of appointment of 28 April 1998. I commend the report to the Assembly. Before I sit down, our legal adviser identified a number of major concerns with the motor traffic legislation. I do not have a copy of the report in front of me. It is quite detailed and there are some glaring problems which I hope the Minister will look at. We look forward to his response.

MR KAINE: The chair of the committee has noted that there are some fairly weighty matters raised in this scrutiny of Bills committee report. While he chose not to identify them, I think it would be useful to do so.

MR SPEAKER: I am sorry to interrupt you, Mr Kaine. Is leave granted for Mr Kaine to speak?

Leave granted.

MR KAINE: There are one or two matters that I wish to raise which are quite significant, and which deserve specific mention. I think this will require the Minister to have a look at the legislation, particularly in view of the fact that he is seeking, unless circumstances intervene, to debate these Bills next Thursday. I think the import of the scrutiny of Bills committee report is that there might need to be some rewriting of this legislation before it is enacted. The first matter is becoming quite common. It has to do with the Henry VIII clauses. There is a particularly unpleasant one in this legislation. To quote our legal adviser: "This is a very extensive Henry VIII clause". It is not just an ordinary Henry VIII clause which, for some reason, in modern legislation we tend to overlook the import of.

He notes also that the explanatory memorandum does not attempt to justify this very broad Henry VIII power. I think it is one that I would have great difficulty with, even though somewhat of a convention is emerging to ignore these things. This is a particularly obvious case that I think the Minister should have a look at.

A rather more significant matter is the question of taxation by subordinate law, because that is what this Bill, the Road Transport (General) Bill 1999, does. Of particular concern is clause 96, subclause (6), because there is no doubt that what is dealt with in this legislation amounts to a tax. Not only is it a tax which we would not normally empower

a government to enact by subordinate legislation; but this is a case in which the subclause appears to be designed to not read in such a way that would protect the general constitutional position that a tax should be levied only by parliament.

I think this is a particular case of bad legislation being introduced by the Government. I wonder whether the Minister is aware of the fact that he is introducing a Bill which, if enacted, would allow the levy of a tax by subordinate legislation. I think it is something that the Minister needs to have another look at before he brings the Bill forward for debate.

I also have difficulty with clause 156. It allows the Road Transport Authority to exercise a discretion if it believes that a certain state of affairs exists. That is quite out of step with other legislation, where you have to "believe on reasonable grounds", not just "believe". The Road Transport Authority can "believe" anything. But, if there are not reasonable grounds for his assumption of a certain state of affairs, then this provision allows him too much latitude.

In clause 209, subclause (2), it is provided that the Minister may cancel the approval of an insurer as an authorised agent "for any reason the Minister considers appropriate". We are advised that that is an extraordinarily wide power. For any reason that the Minister thinks appropriate, he can cancel the approval of an insurer. It appears to place the personal whim of the Minister above the notion that administrative powers must be exercised according to law. We could not see any justification for the inclusion of those words, and we suggest the Minister have another look at it.

Another matter of some concern is clause 189. Under clause 189 the driver, or other person, of a vehicle involved in a motor vehicle accident is required to give an authorised insurer or the nominal defendant notice of matters such as the circumstances of the accident. This document, once produced, is a document that would be of interest to persons who might wish to sue that driver or other person. But under clause 189, subclause (6), such matters are not subject to discovery and are not admissible as evidence in a legal action, except for a prosecution for failure to give the notice.

What is the purpose of the secrecy about this document? We were advised that the object would appear to be to protect the authorised insurer or the nominal defendant. What other purpose could it have? It would restrict the ability of any party to a legal action to gain access to evidence that might be of critical significance to the ability of the party to pursue that action, and there appears no reason for it. There is no issue of any confidential communication being revealed. There appears to be no case for non-disclosure according to the common law approach. So, the Minister might ask why the secrecy in connection with such a document, when it removes, from a citizen, vital evidence that might be needed in pursuing a case under the law.

Mr Speaker, it was not adequate simply to table this, and leave it lie. I think there are some matters arising from this report that need to be brought forcibly to the Minister's attention, and they are matters that need to be addressed before this place adopts that

particular Bill. There is similar comment in connection with some of the others, and if we do get to debate these Bills on Thursday, the Minister has got a lot of work to do in the meantime. Thank you, members, for your indulgence.

DISCRIMINATION AMENDMENT BILL (NO 2) 1999

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (11.02): Mr Speaker, I present the Discrimination Amendment Bill (No 2) 1999, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: Mr Speaker, I move:

> That this Bill be agreed to in principle.

I seek leave to have my presentation speech incorporated in *Hansard*.

Leave granted.

The speech read as follows:

> For some time now there has been a level of anxiety amongst the disabled community due to the interpretation of section 27 of the *Discrimination Act 1991*, in the disability case of *Re ACT Community Care and Discrimination Commissioner and Vella and Ors* (number AT 98/14, 4 November 1998), decided by the Administrative Appeals Tribunal (AAT), and in a similar case more recently by the ACT Supreme Court in *Richardson v ACT Health and Community Care Service and the ACT* [1999] ACTSC *83* (27 May *1999).*
>
> Section 27 provides that it is not unlawful under the *Discrimination Act 1991* to do certain acts for the purpose of ensuring that members of an identified disadvantaged group in the community have equal opportunities with other persons, or to provide such persons access to facilities, services or opportunities to meet their special needs. For example, it is under this provision that special purpose built accommodation is provided for people with a physical disability, or special educational programs are provided for the intellectually impaired. Persons without a disability are barred from bringing a discrimination action. Similarly, men cannot complain if special measures, such as a women's health clinic, are provided for women pursuant to section 27.
>
> However, the AAT in *Vella* and the ACT Supreme Court in *Richardson* have interpreted section 27 to an additional effect. In the *Vella* case, the four residents of a house purpose built for people with

disabilities complained of discrimination when the service provider moved another person into the house. They argued that this action amounted to discriminatory conduct against them as it would result in a loss of amenity and an overall lower standard of care causing them to by treated unfavourably because of their impairment.

Members should note that under the *Discrimination Act 1991* a person discriminates against another person if the person treats or proposes to treat the other person unfavourably because the other person has a particular attribute as referred to under the Act, such as their sex, race, sexuality, marital status or impairment.

The AAT concluded that this action was not discriminatory because of the wording of section 27. The AAT said:

" nothing done in the course of a program designed to meet the special needs of disadvantaged persons can be the subject of a complaint of discrimination under the Act by any person, including a member of the class of disadvantaged persons that the program is intended to benefit.

The Supreme court agreed with this interpretation in the *Richardson* case.

This interpretation of section 27 has raised concern that the section could authorise undesirable discrimination against the recipients of special measures - particularly people with disabilities who are the major users of special measures programs. For example, fears have been expressed that a young person with a disability could not complain about being denied employment under a special youth employment program even if the reason for denying him or her access was because of racial or sex discrimination. Such outcomes would be clearly undesirable and detrimental to the interests of disadvantaged groups in our community and deny recipients of such special measures the right to allege discrimination and to take advantage of the dispute resolution mechanisms or the remedies provided by the *Discrimination Act* that are available to other citizens.

However, let me say that it is highly unlikely that section 27 goes as far as this. A misunderstanding appears to have arisen from the broad wording used by the AAT in the Vella case. The better view of section 27, is that for any act to be lawful it must be done for a purpose of ensuring that members of a relevant class of persons have equal opportunities with other persons, or to afford members of a relevant class of persons access to facilities, services or opportunities to meet their special needs. Any acts of discrimination on the grounds of race or sex, for example, would be unlawful as these would not be for a purpose of providing the special measure.

It is true to say however, that section 27 does prevent a recipient of a special measure from alleging discrimination if they feel they have been treated unfavourably in the course of the provision of a special measure. Any degree of dissatisfaction with a service could give rise to an allegation of discrimination against the service provider were it not for section 27. Obviously, allowing persons to allege discrimination every time they felt unsatisfied would make the task of service providers, who operate within limited budgets, virtually impossible.

Given that some doubt has arisen about the way that section 27 could be interpreted, it is clearly necessary to allay the concerns of disability groups, but at the same time ensuring that the operations of service providers are not hamstrung. The Discrimination Amendment Bill (No 2) 1999 amends and clarifies section 27 of the *Discrimination* Act 1991 by providing that any discrimination (or unfavourable treatment) which might take place in the provision of a special measure is only lawful if it is relevant for the purpose of achieving the special measure.

I want to make it clear that this even with this amendment, section 27 will not allow members of the class being assisted by the special measures to allege discrimination simply because they are unsatisfied with the level of service. As we all know, there are not unlimited funds to provide to each and every disabled person or person requiring a special measure a "rolls royce" service which they might want. Decisions on service allocation must remain the responsibility of government and the service providers taking into account everyone's needs.

Nevertheless, service providers should make their decisions on relevant grounds and this amendment makes it clear that this requirement must be met by service providers seeking to rely on the section 27 exception to unlawful discrimination. It puts beyond doubt that the section cannot be used as a blanket ban against any form of discrimination complaint by recipients of special measures. Discrimination for reasons that have no relevance to the provision of the special measure will not be tolerated.

I believe that this amendment is vital to reassure all members of our community that they will not be denied the protections afforded under the *Discrimination Act* and serves to achieve a fairer and more equitable legislative regime.

I commend the Bill to the Assembly.

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

PUBLIC SECTOR LEGISLATION AMENDMENT BILL 1999

MS CARNELL (Chief Minister) (11.03): I ask for leave to present the Public Sector Legislation Amendment Bill 1999.

Leave granted.

MS CARNELL: Mr Speaker, I present the Public Sector Legislation Amendment Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MS CARNELL: I move:

> That this Bill be agreed to in principle.

I ask that my presentation speech be incorporated in *Hansard*.

Leave granted.

The speech read as follows:

> Mr Speaker, I am pleased to present the Public Sector Legislation Amendment Bill 1999, a Bill to amend the *Public Sector Management Act 1994* and the *Fire Brigade (Administration) Act 19 74.*
>
> This Bill is necessary in response to the Commonwealth's new *Public Service Act 1999.* The Bill provides for interim arrangements to continue the current system of review and appeal procedures in the A.C.T. Public Service following the proposed repeal by the Commonwealth of legislation which provided the necessary procedural infrastructure. The repeal will operate from 5 December 1999.
>
> Mr Speaker, the Public Sector Management Act, and the Fire Brigade Administration Act, deal with rights of review and appeal for A.C.T. public servants. These Acts have linked the A.C.T. Public Service to external review and appeal procedures set out in the Merit Protection Act by deeming A.C.T. Public Service staff to be Commonwealth staff for the purposes of that Act.
>
> The Commonwealth *Public Service Act 1999,* and a related consequential provisions Act, are expected to commence on 5 December 1999. This legislation repeals the Merit Protection Act.
>
> Mr Speaker, as a result of the Commonwealth repeal of the Merit Protection Act, it is necessary to ensure that A.C.T. appeal and review rights are retained until we can make longer term arrangements.

The Commonwealth will have a new system for review of employment decisions but the provisions of the repealed Merit Protection Act will be retained through regulations to allow the old system to continue for Commonwealth cases on foot before 5 December 1999.

The Commonwealth has agreed to continue access for the A.C.T. for a further year. Some technical amendments to both the Public Sector Management Act and the Fire Brigade Administration Act are necessary to support the interim arrangements until 31 December 1999.

The approach in the Bill is to make the minimum changes necessary to retain meaningful links to the Merit Protection Commissioner and the existing review procedures. Necessary modifications to the Merit Protection Act may be made through management standards as required.

There is provision in the Bill for further modifications to be made to the Merit Protection Act as it applies to the A.C.T. These requirements may arise depending on the final form of the Commonwealth review and appeal arrangements. The full Commonwealth arrangements are not yet available.

Mr Speaker, the Fire Brigade Administration Act is linked to the Commonwealth Merit Protection Act only in relation promotion appeals.

The Bill proposes changes to the Fire Brigade Administration Act, which have the same intent and effect as those I have just explained in relation to the Public Sector Management Act. That is, the continuation of the existing promotion appeal arrangements for an interim period, ending no later than 1 December 2000.

.Mr Speaker, let me be quite clear that this is an interim arrangement and it will be necessary to make wider amendments to these Acts in future to put in place a longer term A.C.T. system for review of employment decisions. I expect to be able to introduce these amendments early in the new year.

Mr Speaker, I commend this Bill to the Assembly.

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

WORKCOVER AUTHORITY BILL 1999

MR SMYTH (Minister for Urban Services) (11.04): Mr Speaker, I ask for leave to present the WorkCover Authority Bill 1999.

Leave granted.

MR SMYTH: Mr Speaker, I present the WorkCover Authority Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MR SMYTH: I move:

> That this Bill be agreed to in principle.

I seek leave to have my tabling speech incorporated in *Hansard*.

Leave granted.

The speech read as follows:

> This is a further and important step in the process of reforming the regulation of occupational health and safety in the ACT that began in 1997.
>
> The WorkCover Authority will provide an integrated approach to regulation and service provision covering the health, safety and compensation rights of employers and employees in the ACT.
>
> The Government's objective in establishing the Authority is overwhelmingly to ensure that it is empowered to conduct its business in an independent manner.
>
> This Bill ensures that the Authority will be enabled to discharge its statutory functions independently but within a clear legislative and accountability framework determined by Government and the Assembly. This is completely consistent with the Coroner's recommendation on page 294 of the Report of the inquest into the Death of Katie Bender that:
>
> *'Both bodies (Workcover and the Danger6us Goods Unit) should be created as one autonomous statutory unit independent of any departmental control answerable to a Minister of the Legislative Assembly'.*

Many provisions have been inserted in the Bill to ensure transparency of process and accountability to the Assembly either directly or through the Minister and Government.

It remains the role of Government to develop policies governing the health and safety of employees and the general public and to give these effect through legislation. Support for these functions will continue to be provided from within the public service.

However, these policies and laws are only as good as their application. A body, independent of the Executive, which is adequately constituted to act without fear or favour, is now essential.

Provisions requiring the preparation and tabling of annual business plans, quarterly reports and an annual report, together with the inclusion in the annual report of any directions issued by the Minister to the Authority are features of this transparent accountability process.

The legislation to be administered by the Authority is detailed at Section 4 of the Bill and is collectively known as 'workcover legislation'. The nominated pieces of legislation provide the core support for the responsibilities of the Authority. Additionally sub-section 4 (1) (i) enables further Acts, subordinate laws or provisions to be added by the making of regulations.

In this regard, I expect to make regulations enabling the new Authority to administer the employment-related Acts currently administered by ACT Workcover.

The Government would also expect the Authority on establishment to review, in conjunction with stakeholders, the adequacy of the 'workcover legislation' and make appropriate recommendations to the Minister on the need to add other Acts or subordinate law to the suite.
Such a consultative process is important for ensuring that the Authority is able to present its views on any additional powers it believes necessary to effectively discharge its responsibilities.

In this regard, sub-section 4 (2) provides the power to then make regulations to effect necessary amendments to these other Acts or subordinate law as a result of bringing them under the definition of 'workcover legislation'.

Any such regulations must be tabled in the Assembly and then confirmed within one year of their making by amending the applicable legislation. If this does not happen within the specified period, the regulations will expire.

> The Government, in preparing this Bill, has been fully cognisant of the recent recommendations of the Coroner regarding WorkCover and the Dangerous Goods Unit.
>
> Of course, many of the recommendations of the Coroner have already been addressed in the reforms since 1997. Indeed, the Coroner recognised this in his report at page 196, noting that:
>
> *'the Government and civil service are to be commended for taking such a positive and immediate response to Katie Bender's death. It should be stated that the need for reform was seen shortly before the tragedy and steps were being taken to implement change when the death occurred.*
>
> Clearly, more remains to be done and this Bill delivers much of this.
>
> Mr Speaker, this Bill marks a significant milestone in the reform of occupational health and safety in the Territory. It places the ACT in line with contemporary practices in other jurisdictions, provides the appropriate independence for the regulator, enables enhanced mechanisms for delivering workplace and community safety and ensures accountability and transparency of decision making processes.

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

BUILDING AND CONSTRUCTION INDUSTRY TRAINING LEVY AMENDMENT BILL 1999

MR STEFANIAK (Minister for Education) (11.05): Mr Speaker, I seek leave to present the Building and Construction Industry Training Levy Amendment Bill 1999.

Leave granted.

MR STEFANIAK: Mr Speaker, I present the Building and Construction Industry Training Levy Amendment Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MR STEFANIAK: I move:

> That this Bill be agreed to in principle.

I seek leave to have the tabling speech incorporated in *Hansard.*

Leave granted.

The speech read as follows:

Mr Speaker, The Building and Construction Industry Training Fund Board held its first meeting on Monday 15 November.

The Chair is Mr James Service, nominated by the Property Council of Australia. The two employer representatives are Mr Peter Smith and Dr Sandra Tweedie. The two employee representatives are Ms Sarah Schoonwater and Mr Brian O'Reilly.

The Building and Construction Industry Training Levy Act 1999 is due to commence on 21 November 1999.

Two bills are before the Assembly are for minor amendments to the Building and Construction Industry Training Levy Act 1999 and to the Building Act 1972. I now present the required amendments to the Training Act.

The purpose of these amendments is to make the payment and collection of the Building Training Levies as efficient as possible. Amendments to both Acts are necessary because the levy collection regime of the existing Building and Construction Industry Training Levy Act 1999 is completely out of kilter with the way other building fees and levies are applied in the ACT.

There is a simple historical reason for this.

The Building and Construction Industry Training Levy Act 1999, passed by the Assembly in May 1999, had been in development for a considerable period of time. I won't go into a detailed history here, but the Bill introduced in 1999 had been in gestation for a number of years. During this period significant changes were made to the way in which the building industry was regulated, including radical changes to the building approval and levy collection processes. These changes were not picked up in the Training Act.

We now recognise that, in its current form, the Training Act introduced an entirely inappropriate levy collection regime. It now runs counter to the way the Building Levy, and other building fees, are assessed and collected. It was turning the clock backwards.

The combined effect of the Building Act and the Training Act is to require any person undertaking building work to pay two different fees to two different bodies, calculated on two different bases.

This would be very disruptive and inefficient, and should obviously be avoided. Mr Speaker, the amendments to the Training Act before this Assembly are necessary to redress this situation.

> The Training Act amendment brings the method of determining the value of the work, the basis for calculating the Training Levy, into line with that of the Building Act.
>
> These amendments in no way change the general thrust of either Act, but simply greatly improve the administration of the Training Act. I commend the amendments to the Training Act to the Assembly.

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

BUILDING AMENDMENT BILL (NO 2) 1999

MR STEFANIAK (Minister for Education) (11.06): Mr Speaker, I ask for leave to present the Building Amendment Bill (No 2) 1999.

Leave granted.

MR STEFANIAK: Mr Speaker, I present the Building Amendment Bill (No 2) 1999, together with its explanatory memorandum.

Title read by Clerk.

MR STEFANIAK: I move:

> That this Bill be agreed in principle.

I seek leave to have my speech incorporated in *Hansard*.

Leave granted.

The speech read as follows:

> Mr Speaker, as I said when presenting amendments to the training Act, the Training and the Building Acts both need to be amended to introduce a unified system, in order to ensure the requirements of the Building and Construction Industry Levy Act itself can be satisfied.
>
> It is important to ensure the Training Levy and the Building Levy can be collected in a workable and efficient way through existing collection procedures in the Department of Urban Services in order.
>
> Amendments to both the Training and the Building Acts, together, will produce a considerable reduction in cost and disruption to customers, and a significant increase in effectiveness and efficiency. Efficiencies that, will in turn, lead to a significant reduction in administration costs - releasing more funds for training.

The revised arrangements should also increase the amount of the levy available for training. The Building Act is being amended to -

ensure that the method for determining the Building Levy is based on the value of the work- at present, the Building Act is silent on this point; and

to ensure that the Training Levy is paid before building approval can be given.

I commend these amendments to the Building Act to this Assembly.

MR STEFANIAK: I have just one further comment. This Bill and the previous Bill I have tabled are quite urgent Bills. I note the will of the Assembly, as a result of today, to adjourn until next Wednesday week. The Bills will need to be debated next Thursday week as the training levy comes into effect on Saturday, 21 November. I make that point to members.

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

CULTURAL FACILITIES CORPORATION
Papers

MS CARNELL (Chief Minister): I present the following papers:

Cultural Facilities Corporation Act –

Cultural Facilities Corporation - 1999-2000 Business Plan, pursuant to subsection 24(8).

Cultural Facilities Corporation – Quarterly report (for the first quarter of 1999/2000: 1 July - 30 September 1999, pursuant to subsection 29(3).

PAPERS

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety): Mr Speaker, for the information of members, I present subordinate legislation, pursuant to section 6 of the Subordinate Laws Act 1989, in accordance with the schedule of gazettal notices circulated.

The schedule read as follows:

Subordinate Legislation (including explanatory statements) and commencement provisions

Blood Donation (Transmittable Diseases) Act - Approval of Blood Donor Declaration Form - Instrument No. 241 of 1999 (No. 42, dated 20 October 1999).

Building Act –

Publication of Building Code and the Australian Capital Territory Appendix – Instrument No. 248 of 1999 (No. 44, dated 3 November 1999).

Determination of fees – Instrument No. 253 of 1999 (No. 44, dated 3 November 1999).

Building and Construction Industry Training Levy Act -

Appointment of Chairperson of the Building and Construction Industry Training Fund Board from 1 November 1999 until 31 October 2002 – Instrument No. 255 of 1999 (No. 45, dated 10 November 1999).

Appointment of members of the Building and Construction Industry Training Fund Board from 1 November 1999 until 31 October 2002 – Instruments Nos 256 to 259 (inclusive) (No. 45, dated 10 November 1999).

Canberra Institute of Technology Act – Appointment of Member of the Canberra Institute of Technology Advisory Council until 20 April 2000 – Instrument No. 254 of 1999 (No. 45, dated 10 November 1999).

Community and Health Services Complaints Act - Appointment of Community and Health Services Complaints Commissioner - Instrument No. 245 of 1999 (No. 43, dated 27 October 1999).

Epidemiological Studies (Confidentiality) Act - Epidemiological Studies (Confidentiality) Regulations Amendment – Subordinate Law 1999 No 28 (No. 44, dated 3 November 1999).

Fair Trading Act – Fair Trading Regulations Amendment – Subordinate Law 1999 No 27 (including attachment to explanatory memorandum – Retirement Villages Industry Code of Practice – Explanatory Notes) (No.44, dated 3 November 1999).

Food Act -

Revocation of appointment of Analyst - Instrument No. 237 of 1999 (No. 42, dated 20 October 1999).

Appointment of Analyst - Instrument No. 238 of 1999 (No. 42, dated 20 October 1999).

Appointment of Analyst - Instrument No. 239 of 1999 (No. 42, dated 20 October 1999).

Health Professions Boards (Procedures) Act –

Appointment of Chairperson of the Veterinary Surgeons Board for the period commencing from 21 October 1999 to and including 26 September 2001 – Instrument No. 249 of 1999 (No. 44, dated 3 November 1999).

Appointment of Chairperson of the Nurses Board of the ACT for the period commencing from 26 October 1999 to and including 27 June 2002 – Instrument No. 250 of 1999 (No. 44, dated 3 November 1999).

Appointment of member of the Nurses Board of the ACT for the period commencing from 26 October 1999 to and including 27 June 2002 – Instrument No. 251 of 1999 (No. 44, dated 3 November 1999).

Liquor Act -

Approval of amendments to the Licensing Standards Manual and amendments to the Licensing Standards Manual – Instrument No. 252 of 1999 (S61, dated 29 October 1999).

Determination of fees - Instrument No. 242 of 1999 (No. 42, dated 20 October 1999).

Liquor Regulations (Amendment) - Subordinate Law No. 25 of 1999 (No. 42, dated 20 October 1999).

Liquor (Amendment) Act 1999 –

Notice of commencement (20 October 1999) of sections 4, 5, 6, 7, 8, 9, 10, 11 12 and 13; 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31; 32 (other than the insertion of section 93J); 33, 34, 35, 36, 38 and 39 of that Act commence (No. 42, dated 20 October 1999)

Notice of commencement (29 October 1999) of section 93J (S61, dated 29 October 1999).

Motor Traffic Act - Determination of parking charges - No. 243 of 1999 (No. 42, dated 20 October 1999).

Nurses Act. See "Health Professions Boards (Procedures) Act".

Public Health Act –

Declaration of a public health risk activity – Instrument No. 261 of 1999 (No. 45, dated 10 November 1999).

Determination of Code of Practice (Operation of Public swimming and spa pools) – Instrument No. 260 of 1999 (No. 45, dated 10 November 1999).

Determination of notifiable conditions - Instrument No. 240 of 1999 (No. 42, dated 20 October 1999).

Public Place Names Act -

Determination of nomenclature in the Division of Nicholls - Instrument No. 246 of 1999 (No. 43, dated 27 October 1999).

Revocation of Instrument No. 147 of 1995 determining nomenclature in the Division of Nicholls - Instrument No. 247 of 1999 (No. 43, dated 27 October 1999).

Radiation Act - Appointment of member to the Radiation Council - Instrument No. 236 of 1999 (No. 42, dated 20 October 1999).

Supreme Court Act - Supreme Court Rules Amendment - Subordinate Law 1999 No 26 (No. 43, dated 27 October 1999).

Veterinary Surgeons Act. *S*ee "Health Professions Boards (Procedures) Act".

Miscellaneous paper

Financial Management Act, pursuant to section 26 – Consolidated Financial Management Report for the month and financial year to date ending 30 September 1999.

Performance reports

Financial Management Act, pursuant to section 25A – Quarterly departmental performance reports for the September quarter 1998-99 for the:

Chief Minister's Department.
Education and Community Services.
Health and Community Care.
ACT Department of Justice and Community Safety.
Department of Treasury and Infrastructure; and
Urban Services.

ANNUAL REPORT

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety): Mr Speaker, I present, pursuant to section 14 of the Annual Reports (Government Agencies) Act:

Totalcare Industries Ltd - annual report and financial statements, including the Auditor-General's report for 1998-99, dated 21 October 1999.

AUTHORITY TO BROADCAST PROCEEDINGS
Paper

MR SPEAKER: For the information of members, I present, pursuant to subsection 8(4) of the Legislative Assembly (Broadcasting of Proceedings) Act 1997, authorisations to broadcast given to a number of television networks and radio stations in relation to proceedings on:

> The public hearings on the Chief Minister's Department's annual and financial reports by the Standing Committee for the Chief Minister's Portfolio for Wednesday 27 October, Friday 29 October and Friday 5 November 1999, dated 26 October 1999.
>
> The public hearings of the Select Committee on Public Housing on Tuesday 26 October 1999, dated 26 October 1999.

ASSEMBLY SITTING PATTERN – AMENDMENT

MR BERRY (11.10): I seek leave to move a motion to amend the Assembly sitting pattern for 1999.

Leave granted.

MR BERRY: I move:

> That the resolution of the Assembly of 26 November 1998 setting the days that the Assembly shall meet in 1999 be amended by omitting the dates of November 17, 18 and 23.

Mr Speaker, this motion arises in light of the notice of the motion of no-confidence in the Chief Minister which was read out by the Clerk today and given notice by the Leader of the Labor Party, Mr Stanhope. Mr Speaker, this is in accordance with the pattern which has developed in the Legislative Assembly in the past, and really needs no further discussion.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (11.11): Mr Speaker, I put on record that the Government opposes this motion, and I spoke at length about this on the last occasion a motion of no confidence was moved in the Chief Minister. I simply adopt the comments I made on that previous occasion. I realise that the Opposition has support to adjourn the Assembly, but I point out to members just a couple of things. First of all, there are precedents going both ways on this matter. Previously during the Alliance Government's time when motions, which were apparently doomed to failure, were moved, there was agreement even by the Labor Party at the time not to adjourn the Assembly for the duration of the no-confidence motion. That seems to have gone by the board.

Secondly, Mr Speaker, there are obviously consequences for us down the track. We will have to come back for extended sittings later this year at a cost to the community, and this may involve late night sittings. I have to ask myself and the community why we are doing that, what is the importance and urgency of doing that.

If the Assembly wishes to have a rolling system of no-confidence motions, as we seem to be in the process of doing, we should at least allow governments of the day to get on with some business in the meantime while we are waiting for the sword of Damocles to fall at some point or other on the government's head. So, Mr Speaker, I simply put on record the Government's opposition to the motion.

MR BERRY (11.12), in reply: To close the debate, I just want to make a few comments, Mr Speaker. It needs to be put on the record that Labor made it clear that it wanted a special sitting of the Assembly to introduce this motion. That would have relieved the Assembly of the loss of a few days of sitting. We have also indicated that we are prepared to have extra sitting days should our motion fail, and it should not. The decisions to change the Assembly pattern of dealing with these things is always in the hands of Assembly members. We move the motion because we believe that it is important that very serious motions of no confidence in the Chief Minister of a territory government need to be given the respect they deserve.

Mr Speaker, it is always in the hands of members of this chamber to change the pattern. We have formed the view that it is important on this occasion - given the weighty circumstances that preceded the motion of no confidence - and we urge members to support the motion.

Question resolved in the affirmative.

ADJOURNMENT

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety)(11.14): Mr Speaker, I accept the will of the Assembly that we not do any further work. I move:

> That the Assembly do now adjourn.

Question resolved in the affirmative.

Assembly adjourned at 11.13 am until Wednesday, 24 November 1999, at 10.30 am.