DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

7 December 1999

Tuesday, 7 December 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.

PETITION

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

By **Mr Corbell,** from 1,442 residents, requesting that the Assembly restore to Draft Variation No. 110 of the Territory Plan (relating to the Ainslie Primary School) the wording of the Heritage Places Register, "This is best achieved through continued use of the place for educational purposes".

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

The petition read as follows:

Ainslie Primary School

> Whereas it is proposed to enter Ainslie Primary and Public Schools [Section 31 Block 1, Braddon] on the Heritage Places Register of the ACT, the citation appearing in Draft Variation to the Territory Plan No. 110 omits the words appearing in the Interim Listing referring to the conservation of the site, specifically, 'This is best achieved through continued use of the place for educational purposes.'
>
> Your petitioners therefore request the Assembly to:
>
> Restore to DV110 the wording above from the interim listing, now omitted.

Petition received.

PLANNING AND URBAN SERVICES - STANDING COMMITTEE
Report on Long Service Leave (Cleaning, Building and Property Services) Bill 1999

MR HIRD (10.33): Pursuant to order, I present Report No. 39 of the Standing Committee on Planning and Urban Services, entitled "Long Service Leave (Cleaning, Building and Property Services) Bill 1999", together with extracts of the minutes of the proceedings. I move:

That the report be noted.

Mr Speaker, it is with pleasure that I submit to the parliament today the report of the Standing Committee on Planning and Urban Services on its inquiry into the Long Service Leave (Cleaning, Building and Property Services) Bill 1999. I say "with pleasure", Mr Speaker, even though the committee has not been able to reach a unanimous position on this Bill. The fact remains, however, that this inquiry worked as committee inquiries are supposed to work. A reference was given by this parliament to the committee, the community was invited to make submissions, submissions were received, and witnesses gave evidence to the committee. The committee engaged in serious debate about the issues before it and a report was compiled that fully outlines the range of viewpoints put to the committee. Mr Speaker, the fact that we still have different viewpoints is a strong indication that we are a healthy, democratic parliament at work in the Territory.

As to the Bill itself, Mr Speaker, I would be the first to congratulate Mr Berry for recognising the problem that exists. Mr Berry is, as always, championing the cause of people who he considers are disadvantaged in the workplace, and in this case he has reason to be concerned. Whether or not this Bill is the best way to tackle a problem is, however, a different issue. The evidence received by the committee endorses Mr Berry's contention that a certain group of workers appear to be disadvantaged in terms of their ability to access appropriate long service leave provisions. On that basis Mr Rugendyke and Mr Corbell, my colleagues on the committee, have recommended that the Bill should proceed as presented, and I am sure that they will take the opportunity to explain their viewpoints shortly. I have not been able to join that view, Mr Speaker, for reasons which I will elaborate on now.

My first problem with the Bill as presented is the title itself. I recognise that this is not a major issue behind the philosophy of the Bill but it is confusing, as attested to by witnesses to the inquiry. This Bill is about contract workers in the cleaning industry and, whilst workers in other industries may be employed as cleaners, the terms of the Bill do not adequately recognise the difference or the fact that other awards may already cover these workers. The Government, and other submitters, have identified many similar definitional problems with the Bill, and I contend that at the very least these problems should be addressed before the Bill proceeds any further. There is also the issue of the existing legislation and regulatory practices, particularly those of ACT WorkCover.

I propose that a detailed examination should be carried out of the current situation relating to legislation and practices which are already in place and that a report should be made back to this committee. Without this further information I cannot agree with the conclusion that the current regimes cannot be amended to encompass the needs implicit in Mr Berry's Bill.

Mr Speaker, I and some submitters, including the Government, have expressed concern over the financial management of funds generated under the terms of the Bill. It is apparent that in time there will be a surplus of funds, but in the short term the scheme will cost more to run than it generates in income. Managing the surplus funds will, in itself, present some interesting challenges, as we have learnt from the construction industry scheme. I consider that a full actuarial study is needed before serious debate of the Bill can proceed.

My final point in relation to the Bill is that its very existence ignores the fact that the Commonwealth is right now considering initiatives to protect the long service leave rights of workers. Until the results of these considerations are known and until the other problems and actions which I have outlined earlier are addressed, I recommend that the Bill should not proceed.

Mr Speaker, committee members have received copies of the National Competition Policy Review of the Long Service Leave (Building and Construction Industry) Act 1981 prepared for ACT WorkCover by the Allen Consulting Group. I expect that proponents of Mr Berry's Bill may attempt to use this report to assist in justifying their case. I would like to read into the record one very important statement made by the report's authors, and I quote:

> While there may be some other industries in which employees follow the project and not the employer, the (Allen) Group's support of portability for the building and construction industry should not be interpreted as support for the concept more generally.

In other words, Mr Speaker, any attempt to portray the Allen review as being supportive of this Bill is not founded on the actuality of that document.

Mr Speaker, I am fully supportive of the right of all workers to have access to fair long service conditions. I just do not believe at this time that the Bill which we are discussing provides the correct mechanism to achieve the desired result. At this stage I have not opposed the Bill outright. I have just asked for a period of reflection that will allow a number of other events to unfold and for more background work to be done.

In closing, Mr Speaker, I would like to thank the committee members for the straightforward way in which they have approached this very complex issue. I also express the committee's gratitude to all those who addressed the committee or gave written material for our consideration. As usual, I would like to thank our hardworking, ever competent secretary, Mr Rod Power.

MR CORBELL (10.41): Mr Speaker, I join with my colleague Mr Hird in acknowledging the efforts of all members of the Urban Services Committee, Mr Hird and Mr Rugendyke, who, along with me, have worked through this very important piece of legislation. It is unfortunate that we have not been able to come to a unanimous view. Clearly, it is in the interests of the committee system and the Assembly generally that, wherever possible, members seek to achieve a unanimous view in relation to a report which the committee has been charged to produce.

In this instance, Mr Speaker, I must express my extreme disappointment with the Government's approach to this issue because the Government's approach to this issue, from day one, has been the approach and the role of the spoiler. At every stage they have attempted to obstruct, hinder, delay and put an obstacle in the way of ensuring that people who work in the cleaning industry have access to and actually get long service leave. That has been done at every stage of the journey that this committee has gone through and that this legislation has gone through prior to its referral to the committee. It has been the Government's role to spoil, obstruct, delay and hinder the passage of this Bill and the important objective it seeks to achieve.

Mr Hird, in his dissenting comments in relation to the committee's report, highlights why he believes that the Bill should not proceed at this stage. His main argument, Mr Speaker, is that the Bill would not cover those contract cleaners who are employed under the range of awards not covered by the Bill. I quote from the report:

> In Mr Hird's view, the problem of accessing long service leave entitlements, though serious, is not confined to contract cleaners employed under the Cleaning (Building and Property Services) (ACT) Award 1998. The problem exists in relation to cleaners employed under other awards as well as to 'directly employed cleaners' (who are generally covered by a separate Award) and contract cleaners who do less than 50 per cent work on cleaning activities.

The report goes on to say:

> The problem also extends to many people who are not cleaners but who are on contracts, especially those in the hospitality sector (such as contract caterers, security staff, groundsmen and nursery staff).

Mr Hird's final point, and it is underlined, is this:

> The Bill would cover none of these workers.

Mr Hird identifies what he believes to be a problem but does not suggest a solution. He does not suggest any solution at all. Instead he simply says, "This is a problem and this is why we can't proceed with the Bill". Mr Hird should have been aware, Mr Speaker, that during the public hearings a solution was presented to this problem. If he felt this was a concern he could have used that solution to make a positive recommendation.

That solution, Mr Speaker, was that the coverage of the Bill be extended to include those other awards that he was concerned about. But he did not make that recommendation, Mr Speaker. Why did he not make that recommendation? I put it to the Assembly, Mr Speaker, that he did not make that recommendation because if he had done so he would have had no reason for opposing the Bill. He would have had no reason whatsoever.

Clearly, Mr Speaker, the Government's agenda from day one has been to say, "This Bill should not pass". I think that particular instance highlights why I take the very strong view that this Government is simply not interested in having this Bill passed. Even when it has positive solutions available to it, it chooses to ignore them.

Mr Speaker, I am pleased that Mr Rugendyke and I were able to reach the position where we can say, "This Bill should proceed". I want to make one very important point - it is detailed in the report but I think it is worth reiterating - about why this Bill should proceed. It relates to the provisions of the Long Service Leave Act 1976. As was pointed out to the inquiry, the problem with the Long Service Leave Act was that it placed an unfair burden on a small number of employers who had to pick up the total cost of the long service leave entitlements of their employees even if those employees had only been employed for a year or even less, such as six months or two months.

Mr Coen, in his evidence to the inquiry, highlighted the fact that section 10A of the Long Service Leave Act meant that it would cause injustice to contractors who were made responsible for the long service leave obligations of former contractors, and I think that speaks for itself. Is it fair for an individual business operator, a contract cleaner operator, to have to pick up the entire long service leave entitlement of their employees even if that operator has only employed that employee for two months or six months or a year? Is it fair for that operator to have to pick up the entire 10 years? Quite clearly it is not. In fact, it is an imposition on the business. I would have thought the Government was interested in removing impositions from business, but it is not in this case. It does not seem to be the case here. That still puzzles me, but that seems to be the very strange position they are taking.

The way to rectify the problem with section 10A is to implement Mr Berry's Bill because it means the burden is shared fairly. For the period of time when the employer has the employee under contract the employer is entitled to set aside provisions for their long service leave entitlement for that period of time, no more and no less. That is a fair arrangement. It means each employer contributes fairly to the obligation they have to meet their employees' long service leave entitlement - no more and no less. That, Mr Speaker, I think, is the only responsible way to manage it.

In fact, relying on the Long Service Leave Act itself actually creates a handicap, not only on the employer but also on the employee, because employers, if they know they are going to have to meet an employee's obligation under the Long Service Leave Act, will obviously seek, wherever possible, to employ employees who are not going to come up for long service leave in a hurry because that way they will not have to meet the requirements to pay the long service leave for the full 10 years. So, it actually is a tool or

a mechanism that puts in place potential discrimination against employees with regard to long service because clearly they are more costly to the employer than are employees with a shorter amount of service.

Those are the arguments why this Bill should proceed. It is a fair Bill. It is a Bill that places the burden fairly on employers and it makes sure that employees get the entitlements they deserve. I commend the majority recommendation to the Assembly.

MR RUGENDYKE (10.50): I rise to concur with my colleagues on the committee, particularly Mr Corbell, who succinctly gave a precis of our inquiry. I fully support his words. I also recognise Mr Hird's additional comments that were somewhat different from mine and Mr Corbell's. It highlights the strength of this committee that three people from sometimes different philosophical positions can prepare a good report without the need for a dissent. It is the way that committees ought to work, and that is the way that, increasingly, the Urban Services Committee does work.

I commend the Long Service Leave (Cleaning, Building and Property Services) Bill 1999 to the Assembly. It certainly resolves the issues that the inquiry covered and discussed. I fully support this Bill.

Question resolved in the affirmative.

JUSTICE AND COMMUNITY SAFETY - STANDING COMMITTEE
Scrutiny Report No. 16 of 1999 and Statement

MR OSBORNE: I present Scrutiny Report No. 16 of 1999 of the Standing Committee on Justice and Community Safety performing the duties of a scrutiny of Bills and subordinate legislation committee. I ask for leave to make a brief statement on the report.

Leave granted.

MR OSBORNE: Scrutiny Report No. 16 of 1999 contains the committee's comments on 10 Bills, three subordinate laws and one government response. Mr Speaker, I will take some time with my speech in relation to this report because it is very important.

The work of the scrutiny of Bills committee on the Supervised Injecting Place Trial Bill 1999 has shown it to be one of the shoddiest pieces of legislation ever put before this Assembly, at least in my time as chair. I should also note for those unfamiliar with the process of the committee that legal assessment is not made by me but by an expert in law employed to assist the committee. He is a reader of law at the Australian National University's Law Faculty and I personally have no idea whether he supports or opposes the ideas behind this Bill. Nor do I care to know. That is not his job. His job is to advise the committee on how Bills stack up as law in light of our civil rights and international obligations, and he is an expert in the field.

Members are more than aware that I oppose this Bill on the ground that it is bad policy, in fact appalling policy, but the matters raised by the committee's report are substantive questions about whether this Bill is a good and workable piece of law, not whether it is good policy.

For the benefit of those who are seeking to rush this piece of legislation into our statute books, I will briefly outline the eight points made by the committee's legal adviser. Each of these points must be addressed by the Bill's supporters before , and I emphasise the word "before", the Bill is passed. I look forward to Mr Stanhope hearing the rest of my speech, Mr Speaker, so I will speak a little bit slower while he wanders back to his chair.

The first point that the committee raises, Mr Speaker, is that there is a longstanding principle of constitutional law that the Executive should not dispense with the operation of the law. That is a pretty sound principle, Mr Speaker. I see that Mr Stanhope is still ignoring me over there, but I hope he is listening. The Government should uphold the law. It is well entrenched and goes back to the 1688 Bill of Rights. Even the Government should be aware of this Bill; nor should it be novel to those highly paid whiz kids who penned the Financial Management Act, with its minor oversight of an equally longstanding principle on financial transparency. The committee notes that the principle may be displaced by statute, as is proposed here, but that members might like to think long and hard before they do so.

The report goes on to point out a number of problems with the lack of clarity of the Bill. It says it is not clear what kinds of directions to the Director of Public Prosecutions would be justified in order, and I will quote, "to ensure that drug dependent persons are not deterred by fear of prosecution for an offence from making use of a supervised injecting place". This question is raised by our legal adviser, and I quote:

> Might this extend to the protection from prosecution of the drug dependent person in relation to his or her purchase of the drug?, or of the seller of such a drug?

The quote continues:

> The point of these questions is that the drug user must obtain their supply of drugs from somewhere, and that is likely to involve an illegal transaction.

Mr Speaker, this is a point that Mr Moore has been at pains to avoid answering. I would have thought it is a fundamental issue and one that must be addressed before this Bill passes into law. I would have thought it was a point that would concern Mr Stanhope, with his legal background. The vast majority of the drugs used in the shooting gallery will have been bought with the proceeds of crime and they will have been bought in an illegal transaction.

Now, the question is: How far is the suspension of the law to extend to give peace of mind to the people who want to use this facility? Should it extend to the transactions, so that people may feel comfortable buying the drug? Should it extend to the dealer, so that no-one involved in breaking the law on selling illicit drugs feels under too much stress? Mr Speaker, should the suspension of the law extend into every Canberra home, so that users who break into those homes and steal people's property cannot be prosecuted if they genuinely intended to use the proceeds of that crime to buy drugs to use in the government-owned and sanctioned shooting gallery? Mr Speaker, this might sound like a joke but, tragically, as our legal adviser has identified, it is not. These are real problems caused by the suspension of the law.

The question is how far the suspension of the law should extend, and it is a question that this Bill, and the Minister who presented it, have patently, and I believe deliberately, failed to answer. The Minister has not answered these questions because he has no answers for them. I should say that I cannot believe the Minister is unaware of these problems. If he is not, then the Parliamentary Counsel has failed him miserably. If the Minister knows of these problems and is glossing over them or dismissing them as trivial, then that is an extraordinary abdication of his responsibility to the Assembly and to the community.

I might also add that yesterday the Director of Public Prosecutions, Richard Refshauge, the man who is expected to deal with this legislation on a daily basis for the next two years, stated at a Justice Committee public hearing that this aspect of the Bill, as he put it, "had major problems".

The committee's report also points out that this Bill's definition of a drug dependent person is limited and may not pick up many who want to use the facility. Once again, this Bill abjectly fails to say how, and when, it is to be ascertained whether a particular person is drug dependent.

The fourth point the committee addresses has been raised by the Australian Federal Police Association in the public debate about this Bill, and predictably dismissed by Mr Moore. There is no doubt that police officers have discretion in relation to their common law and statutory powers to arrest and charge people. The committee questions how this Bill can be adjusted to meet the duties and functions of a member of the police force. The committee would also like to see some clarification of how the Attorney-General gives directions to the DPP not to prosecute and how long those directions remain in force.

A further point which has been noted is that the interrelationship between sections 5 and 8 of the Bill limits the power of the Attorney-General to direct the DPP once an injecting place has been established.

Finally, Mr Speaker, the committee draws attention to two of our international treaty obligations. Once again, that is an issue that has been raised in the public debate and again dismissed as having been resolved by Mr Moore. Typically, the Minister's assurances do not assure me, or the committee, or actually do anything to address the problem.

Mr Speaker, the way Mr Moore gets around our treaty obligations is to say that this will be a scientific trial. I will not waste the time of the Assembly on this point now, but let me just say that something does not become scientific just because the Minister says it is. The important distinction to make is that this trial would only become scientific when it satisfied the specific criteria as stated, and what was agreed to by the signatories in the convention, and neither this legislation nor Mr Stanhope's proposed amendments even come close to doing this.

Let me finish by saying that there are many members in this place who make a meal out of our international treaty obligations when it suits them. If Mr Moore was in the process of trampling over an international obligation on the environment, we would not be able to hear ourselves think in this place because of the blood-curdling scream that would come from some members of this place as they tried to out-shout each other in condemnation of the Government. So neither party should bother me again with talk of international treaties, should they, as appears likely, dismiss the need to take this one seriously.

Mr Speaker, in the past the Assembly has placed enormous weight on the work of the scrutiny of Bills committee, as it rightly should. It is one thing to allow bad policy, but it is entirely another to allow bad law. This report sounds a loud and clear warning about this Bill on a number of fronts, and the problems it raises are not trivial. Other Bills have been consigned to committees for much less. If this place is to be consistent and, as a legislature, show due regard for the law, then there is no way that this Bill is anywhere near ready. I would say that it can never be made ready, but members who support it might like at least to make some effort to improve it. I should add that, on his track record, I put no weight at all on any assurances Mr Moore might give that the problems highlighted by the committee can be instantly ironed out. His word on this matter carries no weight at all.

Should the Assembly continue to rush this Bill into law this week, as is the plan, but I hope not, it will save us, I suppose, a lot of work in the future. No longer will there be debating time taken up by members who are complaining about certain processes not being followed. No longer will members be saying that a piece of legislation is being rushed through without enough time being taken to iron out its obvious flaws. No longer will members be taking up time to quote from United Nations treaties or other international agreements, because the right to do all that stops with this Bill here.

As a final comment, I would remind members that the legal adviser to the committee is an impartial expert who, in doing his job, has spotted some major problems with both the structure and application of this legislation. I suggest that members who intend to support this Bill take his comments seriously and take time to address the Bill's shortcomings before it passes into law.

Mr Speaker, I fully expect this piece of legislation to pass, but I do hope that Mr Stanhope and the Labor Party will agree with me that, if it is going to happen, it will be done properly and that the problems highlighted by the legal adviser will be sorted out.

Turning to another issue, Mr Speaker: As chair of the committee I feel it important to highlight the committee's concerns with government responses, in general, to our reports. It has become patently clear that this Government has little regard for the scrutiny of Bills process and the role that we play. I could stand here and go over many times where issues have been raised by our legal adviser, supported by the committee, yet it appears, time after time, in government responses or in legislation that comes up afterwards, that the Government is just not listening. Mr Speaker, I think it would be fair to say that the scrutiny of Bills process and its reports are given great weight in all jurisdictions, but I have to say that we on the committee, including the government member, are somewhat frustrated with the way this Government, in particular, has treated our reports and legal advice on pieces of legislation.

I thank members for their time and I commend the report to the Assembly.

MR MOORE (Minister for Health and Community Care): Mr Speaker, I seek leave to make a statement on the report that has just been tabled, for a brief time.

Leave granted.

MR MOORE: Thank you, Mr Speaker, and thank you, members. Mr Speaker, I would encourage members and I would encourage members of the media to read what the legal adviser has provided for the committee rather than take the interpretation that Mr Osborne has put as the issues that arise, particularly on the supervised injecting trial. Let me start by saying that Mr Osborne finished his comments with the notion that government members ignore the scrutiny of Bills committee. That is the furthest thing from the truth. We take it extremely seriously, and we will take the comments on the Supervised Injecting Place Trial Bill extremely seriously, as we do in every other case. Mr Osborne would know that whenever there is a comment made on any of my pieces of legislation I write to him and tell him the response that we have given to them, whether on subordinate pieces of legislation or substantive Bills.

Mr Speaker, the Government does take this committee very seriously, but this committee is to provide advice, not direction, to the Assembly. We have to take that advice and consider it very seriously, and sometimes we take a different perspective.

The person who is providing the legal advice to the scrutiny of Bills committee is a man of some legal standing. There is no doubt about that. We respect that and we respect that legal view. But it is a legal view. So, Mr Speaker, if I give you some examples from the supervised injecting trial comment, I think it would be worth while.

The disappointing part for me is that it is quite clear that the information that I circulated to every member has not been provided to the legal adviser to the scrutiny of Bills committee. For example, taking the last point first, on international treaties, we have a series of legal opinions showing, very clearly, that we will be acting in a way that is consistent with our international treaties.

Mr Osborne: You know they are wrong.

MR MOORE: Your legal adviser does not disagree with that. I know that Mr Osborne has personal separate legal advice to the opposite, but for every piece of legal advice you will almost always find an alternative. I urge members, and I urge members of the media, to read the two or three pages - it is not very much - and look at the issue of civil liberties and treaty obligations. It does not say anywhere here that the legislation is inconsistent. It raises issues about consistency. We have dealt with those issues and, as I say, we will do a proper response to this report.

Mr Osborne's interpretation of what the legal adviser has said is not a sensible way to interpret it. For example, Mr Osborne raised the very first point, the notion of dispensing with the law. The words of the legal adviser to the committee were that the issue for the Assembly is whether displacement is justified in any particular case. I will read this. It says:

> The principle may, of course, be displaced by statute. The issue for the Assembly is whether displacement is justified in any particular case.

That is the very issue that we have not ignored but have debated at some time. Mr Stanhope and I have a disagreement on what is the best way to do that, but it is still, as the legal adviser says, an issue for the Assembly as to whether this displacement is justified in any particular case. What we have said is that it is justifiable to displace it because we are talking about saving lives and because we are talking about the spread of disease. So that is the fundamental issue there.

The legal adviser raises issues that we must consider, many of which we have already considered and will respond to. He talks about the relationship of the legislation with the Director of Public Prosecutions and how we should respond to that. We will debate that further. He also talks about the definition of a drug dependent person and how that might limit the legislation. In fact, Mr Stanhope and I have debated, ourselves, what is the best definition, but because the scrutiny of Bills committee has raised it we will look at it again. I am sure Mr Stanhope would be prepared to look at it again in light of this, but we have been through these issues.

The third point is the issue that Mr Osborne also suggested I ignore, and that is the role of the Australian Federal Police in the way they police both our Act and the Federal Act. Now, we do have a legal opinion. We recently obtained a legal opinion on this very matter, and, of course, as part of our response to the scrutiny of Bills committee's report, we will make that available. I quote from the report:

> A critical issue is how the provisions of this Bill can be adjusted to the duties and functions of a member of the AFP.

We are dealing with this issue. In respect to the fourth point raised by the adviser to the committee, the report said:

> This is, however, a point of some significance, and the matter might be clarified lest misunderstandings arise.

Yes, of course we will look at and clarify those issues. This is not, as Mr Osborne would have you believe, an incredibly damning report of incredibly inadequate legislation. On the contrary, it raises all the issues that we have been dealing with and wrestling with. This is a difficult piece of legislation. Nobody has argued for one minute that it is not a difficult piece of legislation, but these are not damning elements for the legislation at all. Rather, they require some consideration, some explanation and perhaps some minor modifications, none of which are particularly difficult to do.

What I am very pleased about is that the scrutiny of Bills committee is doing its job and is raising these issues with us. We will take them seriously, as we take every scrutiny of Bills committee report seriously, and we will then explain where it is that we have already got answers and where it is that we need to modify things and get our answers.

Finally, I would like to thank the committee for the work they are doing, and particularly for the advice of their legal adviser. But try to keep things in perspective. Try to draw the distinction between Mr Osborne's agenda - I understand that we have opposite stances on this - which is to say, "Woe, doom, the whole thing has gone", and what is actually there in the report which has raised some issues, many of which are already answered in the material that has been circulated to you. Thank you, Mr Speaker, and thank you, members, for the opportunity to make a comment.

MR STANHOPE (Leader of the Opposition): I seek leave to make a short statement on the same matter, Mr Speaker.

Leave granted.

MR STANHOPE: I will make some short comments about the matters raised in the scrutiny of Bills committee's report and referred to by Mr Osborne in his statement and as responded to by Mr Moore. I tend to agree to a significant extent with Mr Moore and his analysis of the committee's report. Before declaring a position on the issues raised in the report, I look forward to the Government's response to each of these matters. I have to say, however, that I share in large measure the view expressed by Mr Moore that

many of the issues raised under the two headings used here by the scrutiny of Bills committee, namely "Dispensing with the law" and "Civil liberties and treaty obligations", have been considered by those of us who have been working on the legislation to establish a drug injecting place. It may be, however, that the scrutiny of Bills committee has raised some interesting issues in relation to the approach. I agree with Mr Moore, in relation to most of the points raised by the scrutiny of Bills committee, that there is almost certainly scope for a little bit of movement at the edges if the Government, in its response to the committee, believes that to be necessary.

The scrutiny of Bills committee does raise some questions about the directions that the Attorney-General will be required, under the legislation, to give to the DPP. I see some strength in some of the suggestions made by the committee, but it seems to me that each of them can be quite easily and adequately dealt with. It seems to me that there is a quite obvious response to many of the points raised by the committee about the nature of the directions that the Attorney-General will be required to give to the DPP. I see nothing in the report that leads me to think that we cannot find some way of clarifying the provisions in the Bill to deal with those issues.

The definition of "drug dependent person" raised questions in the minds of members of the scrutiny of Bills committee, but, when one looks at the report, this is simply a question being raised as to how we deal, as a matter of policy, with first time users. The issue is not so much that we have a problem with the definition of "drug dependent person". There is a policy issue there. The policy issue is: What do we do, in the management of the drug injecting place, about first time users? I raised the same issue in relation to: What do we do, as a community, in relation to under age users? There is a policy issue there which does require some further consideration.

There are some hard questions to be answered in relation to the operation of the drug injecting place. There is no doubt about that. There are some hard policy questions that have to be answered. One of them is: Do we allow first time users to use the drug injecting place, or are we going to insist that only drug dependent people use it? That is a difficult policy issue, as is the question of whether or not a person under the age of 18 is to be permitted to use the drug injecting place and what protocols will apply to that. Those are difficult issues.

Under the amendments which the Labor Party is proposing, a drug injecting place advisory committee, a very broadly based community committee, will advise on the operation of the drug injecting place. Who will use it? Will first time drug users be able to enter the place? How will we deal with children who are drug addicts who seek to use the drug injecting place? Do we exclude people under the age of 18 from the drug injecting place, or do we allow them to use it? Do we consign children to the toilets? These are hard questions and we have proposed establishing a broad-based community advisory committee as a way of dealing with these difficult issues. Really, all that the scrutiny of Bills committee has done in relation to that aspect in its report is say, "Here is an issue that needs to be dealt with", and we can deal with it.

The third point raised in the committee's report is this very difficult issue of the relationship of the police with the operation of a drug injecting place. Once again, there are some practical issues there. I have no doubt that enforcement of our drug laws for the term of the trial will be dealt with in a mature, constructive and cooperative way by the members of the Australian Federal Police. Our police force, one of the best police forces in the world, will join with this community in ensuring that this trial will be allowed to proceed on its merits. It will succeed or fall on the basis of its merits. Once again, that is an issue that can be dealt with quite competently.

The fourth issue that is raised in the committee's report is the nature of the direction that the Attorney-General will be required to give to the DPP. As far as I am concerned, this is just a matter of getting the drafting right. The scrutiny of Bills committee has not raised some damning threshold issue here in relation to the nature of the direction the DPP will be given. It is not a fundamental flaw that is being raised by the scrutiny of Bills committee. This is an issue which I am hoping the Government, through its officials, will be able to deal with quite simply and plainly. There is a drafting issue there to be attended to. There is some tidying up to be done. I simply cannot see any fundamental difficulty in the issues raised by the scrutiny of Bills committee in relation to the powers of the DPP.

The fifth issue raised goes once again to the nature of the direction the Attorney-General would give to the DPP. I simply cannot accept that any of those five issues - they are not even necessarily criticisms - raised by the scrutiny of Bills committee in relation to dispensing with the law raises fundamental problems. It is within our wit and our power to deal with each of them in a quite straightforward way. I have no doubt that the Parliamentary Counsel, when asked to do so, will be able to address each of those issues in a way that will satisfy the scrutiny of Bills committee.

I now wish to refer to the last two issues raised by the scrutiny of Bills committee, namely, civil liberties and treaty obligations. The scrutiny of Bills committee simply says:

> The regulation of drugs does raise issues of civil liberties.

That is simply a statement. We all know that. There is no threat in that. Issues of civil liberties are raised in just about every piece of legislation that this place deals with every time it sits and, as a parliament, we deal with those. We are constantly, as a parliament, seeking to balance the rights of citizens, one against the other and as individuals. There is nothing new in that and, once again, it is an issue that we can deal with here. People suffering from drug addiction have a right to be dealt with in a certain way. This community has to show some concern for keeping them alive and some concern for their health status. The scrutiny of Bills committee says this in relation to treaty obligations:

> It is also an area -

this is the regulation of drugs -

where it may be argued that international law has a bearing.

It certainly may be.

Mr Moore: In fact, it is.

MR STANHOPE: And it is. That is right. It seems to me it not only may be an area where international law has a bearing; international law certainly has a bearing and we have considered it. Each of us has considered the extent to which international law does have a bearing. There is no doubt about that.

Mr Osborne: And you disregarded it.

MR STANHOPE: We have not disregarded it.

Mr Osborne: Yes, you have.

MR STANHOPE: We have not disregarded it. We have thought seriously about the implications of Australia's international obligations.

Mr Moore: As they have in New South Wales.

MR STANHOPE: As the Minister says, just as the Victorian Government and just as the New South Wales Government have considered the issue of our international obligations, so have we here in the ACT. It is certain, Mr Osborne, that you and I and others in this place will interpret these obligations in varying ways. The scrutiny of Bills committee draws no conclusions. It simply draws the Assembly's attention to the fact that there are international treaty obligations that need to be taken into account. The committee does not then make a recommendation or draw any conclusions about those obligations. It simply draws attention to the fact that we are dealing with the 1961 Single Convention on Narcotic Drugs and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. As everybody says, and as the scrutiny of Bills committee's report notes, these conventions essentially commit Australia to prohibiting the possession, use, supply and so on of illicit drugs.

However, in relation to medically supervised injecting rooms such as the one that we are proposing here, it seems to me that there are avenues within those conventions that allow us to proceed with a trial of a drug injecting place without breaching compliance with our international obligations. I think it is quite clearly established that there are avenues within those treaties that allow us to proceed with this trial without fear of breaching our obligations. We can argue about it. We can say, "On the one hand, this; and on the other hand, that", but we can draw different conclusions. I am quite satisfied that the outs, if I might call them that, in those treaties do allow us as a community to proceed with the trial.

I have no doubt that the 1961 Single Convention on Narcotic Drugs does allow the use and possession of illicit drugs for medical and scientific research purposes. It says that. It says quite explicitly that there is room for the use and possession of illicit drugs for medical and scientific research purposes, including controlled clinical trials. The establishment of the facility proposed here is simply for that purpose. It is a clinical trial.

Mr Osborne: What is controlled about it? What is going into the needle?

MR STANHOPE: It will be rigorously evaluated. It will be medically supervised. There is no doubt, when one looks at the legislation that is being contemplated here, that it is to be medically supervised. It is to be accompanied by rigorous and systematic monitoring and evaluation of the impacts of allowing the injection of illicit drugs within a controlled environment.

There is also no doubt that the 1961 Single Convention allows a departure from a total prohibition in situations where the prevailing conditions in a country render total prohibition not necessarily the most appropriate means of protecting the public health and welfare of the community. I do not think there is anybody in this community who thinks that the system that we currently have, or the non-system that we currently have, is an enhancement of the public health and welfare of the citizens of this city or of this country. For anybody to argue that the prevailing approach to drug abuse is in the interests - - -

MR SPEAKER: Order! Mr Stanhope, please do not debate the Bill. To date the debate has been good.

MR STANHOPE: I take the point, Mr Speaker. I will conclude with that remark. I could continue. All I am saying in relation to this report is that I do not believe that the scrutiny of Bills committee has raised any issue that, on a first reading by me, indicates to me that we have a fundamental difficulty with this Bill.

I will await with interest the Government's response to each of the issues that are raised. I believe that each of the issues raised in the first part of the report of the scrutiny of Bills committee can be quite competently dealt with by the Office of Parliamentary Counsel. They are not beyond the wit of the Government. I hope that the Government will look positively at the suggestions or the issues raised and that it will respond in a constructive way so that we can deal with each of the five points made by the scrutiny of Bills committee.

As for the second part of the report of the scrutiny of Bills committee, to the extent that it says that there may be some international treaty or convention obligations that we need to address, there is nothing in the report that frightens me at all in relation to that. I am quite relaxed on my interpretations and I have looked at the matter closely. I have looked at our international conventions. I have no dread fear in my heart that by engaging in a scientific, controlled, medically supervised drug injecting trial we will in some way be breaching our international conventions. I simply do not believe it.

However, once again, if there is anything that the Government would like to add to that issue in its response to the scrutiny of Bills committee, the Labor Party will look at it on its merits and in depth, recognising the significance of this issue to all of us.

MR KAINE: Mr Speaker, I seek leave to make a short statement in connection with this report.

Leave granted.

Mr Osborne: Don't come to us on process ever again, Jon. Don't waste our time on process.

Mr Stanhope: Rubbish, Paul. Rubbish.

Mr Osborne: True. Don't come round here and speak to us about the Government not following due process again.

MR SPEAKER: Order! Mr Kaine has the floor.

MR KAINE: Thank you, Mr Speaker. It seems that people are anxious and ready to debate the Bill this morning, but I do not think this is the time for it. I am amazed at how far the debate has gone already. I do not intend to debate the Bill. The time will come for that.

However, I must say, Mr Speaker, that I am exceedingly concerned, and the general public ought to be also. Setting aside the international treaty bit, which everybody seems to be able to say you can shrug off without any concern at all, there are five significant issues that the scrutiny of Bills committee has raised in connection with this proposed legislation in the report which has been tabled. The Leader of the Opposition just spent a considerable amount of his time agreeing that they were significant. What else did he say? He said he is full of fond hope that these issues can be dealt with. Well, Mr Speaker, we are being asked, according to this week's program, to debate this Bill the day after tomorrow. If these issues can be addressed, why are not solutions on the table now so that we can consider them?

Mr Moore: They are.

MR KAINE: They are not, Mr Moore.

Mr Moore: They are. Look in your folder.

MR KAINE: You have had your say. You can have another say on Thursday. The solutions to these problems raised by this report are not on the table. Mr Stanhope says there is some question about the kinds of issues that the DPP can issue directions about. He said, "They can be resolved". I would like to know how. How are they going to be resolved? It is no good telling me that they can be resolved after we have got the

legislation on the table. I would prefer to have the answers to these questions before we pass the legislation. He raised the question, "What do we do if a juvenile turns up and wants to be dealt with in this program?". He posed the question but he did not give the answer.

Mr Stanhope: I do. Read the Bill, Trevor. Read my amendments, which you have had for months.

MR SPEAKER: Order! We are not debating the Bill.

MR KAINE: Exactly, Mr Speaker. We should not be, and I am making the point that there are real questions still about this legislation, legal questions that the proponents of this Bill are prepared to sweep under the carpet as though they do not exist. "We will deal with them later", we are told. Well, Mr Speaker, on an issue like this, when there are very strong opinions in the public and in this place about them, it is not good enough to say, "Just pass the legislation on Thursday. Trust us, and we will tidy up these minor details later".

We are told by the Leader of the Opposition that the AFP will deal with this matter in a responsible way.

Mr Stanhope: They will.

MR KAINE: In accordance with what directions and guidelines are they going to deal with it in a responsible way? I have not yet seen the guidelines directing the AFP as to how they are to act, Mr Stanhope. Are you going to put them on the table before Thursday? Have you come to some agreement with the DPP about what sorts of directions he is going to accept? Have you spoken to the Attorney-General as to the kinds of directions he might give the DPP? I submit that you have not, and yet you are saying to us, "Just do not worry about the report of the scrutiny of Bills committee; it really is unimportant".

I think this place has a decision to make, Mr Speaker, about whether the scrutiny of Bills process in this place is going to have any significance or not. If it is not, do away with the committee. Stop wasting our time. We do not sit as a committee and consider these matters and come down here and raise with you important issues that your legislation raises only to be told, "It's no great deal. Go away. We will fix it all afterwards". Mr Speaker, I do not accept that, and I expect the proponents of this Bill, when we debate it, to answer all the questions and not simply say, "Well, there are some minor problems but we will fix them up afterwards". That is not good enough. They had better be fixed before we pass the legislation and not afterwards.

MR MOORE (Minister for Health and Community Care): Mr Speaker, I have the right, under standing order 47, to explain where I have been misquoted or misunderstood. Mr Kaine indicates, I think, that he misunderstood. What I did say was that we would take this seriously. We will respond properly and as quickly as possible so that members can see that response. That is not difficult for us because we have already prepared

responses to the issues raised here. We do take it seriously and we will respond accordingly. It is not a problem because we have already considered all the issues.

MR SPEAKER: Order! Mr Moore, you did that with the indulgence of the house because there is no question before us at the moment.

MR OSBORNE: I seek leave as well, Mr Speaker, to respond to a couple of issues.

MR SPEAKER: Do you seek the indulgence as well, Mr Osborne?

MR OSBORNE: I do, Mr Speaker.

MR SPEAKER: Proceed.

MR OSBORNE: I found it interesting to be accused of putting a spin on this. Coming from the sheik of tweak, the Shane Warne of this Assembly, the master of spin, Mr Moore, I took it as a compliment, Mr Speaker. When it comes to putting spin on things in this place, he has no peer.

This is about the process, Mr Speaker. We all have different views. I accept that this legislation will pass at some stage. But, Mr Speaker, in the last few months the Labor Party has been over to this side of the chamber and has been to my office talking about no-confidence motions because this Government has not followed due process on different things. The Chief Minister on Bruce Stadium, for example; they did not follow due process.

Here we are faced with the situation where the scrutiny of Bills committee has placed a report on the table. There are some significant issues in there. Mr Stanhope and Mr Warne may disagree with some of the issues, Mr Speaker. That is fine.

MR SPEAKER: Ministers should be addressed by their proper title, Mr Osborne.

MR OSBORNE: I am sorry; Mr Moore. Mr Speaker, this committee has identified a number of problems. It was only a fortnight ago that the Labor Party members were speaking to me and to Mr Rugendyke about the road transport legislation because the scrutiny of Bills committee highlighted a number of problems with that. I had the same conversation with Mr Smyth as I have had or we have had with Mr Moore in this chamber. Mr Smyth came and said, "Look, they are not a problem. We have got it answered here. We have got it answered there". The Labor Party members were around here saying to me, "We haven't had enough time; there are issues here", and we adjourned it, Mr Speaker. We have set a precedent. But because there is a desire on the part of Mr Stanhope, who really does not know what he wants on this issue, to get this thing off the table today and because Mr Moore wants to beat New South Wales, we are rushing through and we are just completely ignoring the proper process.

Mr Speaker, as I said, the Labor Party members were speaking to us last week - we get a nod from Mr Hargreaves - because of significant issues which we raised about the legislation, which I heard from the Government were only minor, but we adjourned it. So, if we want to be consistent in this place, if we want to respect the role that the scrutiny of Bills committee plays, I think the only fair thing to do - I point out that we have a lot on the agenda this week - is for the Government to go away and for Mr Stanhope to go away and then get back to us after we have had time to digest this report. If they do not, Mr Speaker, it makes a complete mockery of the Labor Party's claim that they are all about following the proper process. Here is a perfect opportunity for them to do so.

MR HARGREAVES: I seek leave to speak to the report. I am a member of the committee.

Leave granted.

MR HARGREAVES: Thank you, members, and thank you, Mr Speaker. I would like to address a couple of things on this. Firstly, this accusation about not being consistent in terms of process is nothing short of absolute garbage. Mr Osborne well knows that the issue regarding process that the Labor Party has been about in recent times has been the use of the administrative process and style. He is just twisting it around, turning it around to make it suit his own ends because he wants to get his own agenda up. Let us just be quite clear about that.

Mr Osborne: I take a point of order, Mr Speaker. This is not the John Hargreaves who was at the committee this morning. Could you ask the Labor Party to produce him, because he is clearly contradicting what he said this morning?

MR SPEAKER: There is no point of order, Mr Osborne.

Mr Osborne: Where is he?

MR SPEAKER: There is no point of order.

Mr Osborne: Where is he?

MR HARGREAVES: Would you ask him to resume his seat, please, Mr Speaker?

MR SPEAKER: There is no point of order, Mr Osborne.

MR HARGREAVES: If Mr Osborne would stop getting exited and stop jumping up and down like a toad on a toadstool he could listen to what I have to say.

Mr Osborne: I did this morning. I listened to you this morning in the committee.

MR HARGREAVES: Mr Speaker, could I please beg your protection from that big bully?

MR SPEAKER: If you stick to the matter before the house you will receive it.

MR HARGREAVES: Thank you. I am trying my best to do that, Mr Speaker, but Mr Osborne is ceaseless in his interjections. He is just making a bigger fool of himself. If he would only be quiet he might learn something for once in his silly life. What I was about to say, Mr Speaker, is that I happen to agree with some of the things that Mr Osborne said this morning.

Mr Osborne: Oh, I will be quiet.

MR HARGREAVES: Right. How about you just shut up for a second and listen? Mr Speaker, the committee voiced its concern about the extent to which it gets ignored when it puts forward significant concerns about legislation that is put forward. Mr Kaine put it quite well this morning. If there is a recurrent theme running through the reports coming out of the scrutiny of Bills committee it is that it is pointing out things such as inappropriate taxation through subordinate legislation. We keep saying, "These are our concerns. Will you do something about it?", and the same things keep coming up. The extent to which reports on specific issues or legislation which has been presented are either ignored or just rebutted without any reasonable explanation is incredible.

With respect to the issue before us this morning, I have to urge caution. We have had concern expressed by the legal adviser. This legal adviser does not have a barrow to push. He does not put his own particular spin on anything. He just says, "This is the difficulty with the law as I see it". We did discuss this matter in our committee today and we did say that there is sufficient concern to say, "Stop for a second". Now, let us be absolutely fair about this. Often in this place the scrutiny of Bills committee has put forward a report and we have been asked to debate the matter before the government response has been put forward, and we on this side of the chamber have complained about that. What we are seeing here is an offer from the Minister for Health to get his officers working furiously and to come up with a government response. So, whilst I am urging caution on the part of those people who want to push the Bill forward to listen to that response, I also urge caution on the part of those people who are going to receive the government response.

It seems to me that people are pulling and pushing in both directions and getting absolutely nowhere. What this Assembly ought to be doing is saying, "Thank you very much for working so hard, Mr Moore, but if we do not agree with what you provide to us in 24 hours, well, that's your bad luck and we will not be proceeding with it". We are not saying, "Let's pass this legislation on Thursday". We are saying, "Let's debate it". If Mr Moore comes up with unsubstantiated responses, then bad luck. What we cannot have is anybody saying that the process is flawed.

Quite frankly, I think Mr Osborne's outburst this morning was inappropriate. It was not appropriate for a chair of a committee to run the line that he did. He took longer to talk about this than the committee did to discuss it. However, I must reiterate my agreement with him that we need to have that response. If we get that response we need to consider it in this Assembly. I am a little bit concerned, and I want my concern on the record, that we will not have had an opportunity as a committee to consider the response as a group; but, if that is the will of the Assembly, so be it.

MR STANHOPE (Leader of the Opposition): Pursuant to standing order 47 - - -

MR SPEAKER: No, members are speaking with the indulgence of the Assembly. I remind members that there is no question before the house.

MR STANHOPE: Well, with your indulgence, Mr Speaker. I wish to speak again, very shortly.

MR SPEAKER: Proceed.

MR STANHOPE: I think one of the unfortunate aspects of the report of the scrutiny of Bills committee is that it does not report on the extensive amendments which I will be moving to the Bill, hence my retort to Mr Kaine in relation to some of these issues. Many of these issues have been dealt with in extensive amendments. I think there are seven or eight pages of amendments to be moved to this Bill. They have been circulated and they go to some of the issues of concern. I need to say that in order to clarify some of the points Mr Kaine made. It is, perhaps, an unfortunate aspect of the way in which the scrutiny of Bills committee has reported on this issue that none of the amendments have been reported on.

Mr Moore: We need to change the standing orders actually.

MR STANHOPE: Yes, that is right.

Mr Kaine: Have the amendments been circulated? I have not seen them.

Mr Hird: No. So there is a good enough reason to have it adjourned.

MR STANHOPE: They certainly have been circulated. I just want to make the point that some of these issues have been dealt with. I need to respond to Mr Kaine and Mr Osborne in relation to the dramatic import which they give to these five points raised by the scrutiny of Bills committee. I have just been through each of them. Quite frankly and honestly, there is simply nothing in them. They are almost of no substance.

Mr Moore: They are worth considering because we need some minor modifications.

MR STANHOPE: They are certainly worth considering. They must be considered, but I think they will occupy about half-an-hour of the department's time and half-an-hour of the Parliamentary Counsel's time. I just cannot get excited about them. One of the questions posed is: Should the direction to be given by Mr Humphries to the DPP extend to whether or not a seller of drugs is to be absolved or excluded? The answer quite clearly is no. Sellers and pushers of drugs are to be pursued with the full force of the law. It is a rhetorical question asked by the scrutiny of Bills committee. I can tell the scrutiny of Bills committee the answer to that question now. It is no. Pushers of drugs, sellers of drugs, are not to be excused in any circumstances. So I can dispose of point No. 1 simply. No.

The second point goes to this question of who shall use the facility. The amendments provide a whole regime requiring that there be detailed protocols. The answer is simple.

Mr Kaine: I take a point of order, Mr Speaker. I think the Leader of the Opposition is merely reiterating what he said before. I do not think he is adding much to the debate, and I am wondering how much latitude you are going to give him. As for expressions of opinion, he says we are going to deal with these matters, but he is still not giving the solution as to how he is going to do so, and I do not think it adds anything to the debate.

MR SPEAKER: Members, I would remind you all that there is still no question before the chair. We have, however, spent something like an hour-and-a-quarter on this matter. I have no particular problem about how long we propose to stay here tonight or tomorrow morning, but others might like to consider it.

MR STANHOPE: Well, I will conclude shortly. Turning to point No. 4 and point No. 5 of the scrutiny of Bills committee's report, I will read out the concluding remark of the committee in relation to their fourth point of concern. The committee referred to the interrelationship between the Attorney-General's powers under section 20 of the Director of Public Prosecutions Act to issue a direction and the way in which it is proposed the direction be issued in this particular instance. What did the committee say about this interrelationship? This is whether or not it is a generic direction or a specific direction. I had always anticipated that it would be a generic description of the class of people against whom the DPP is not to proceed. The point is that the committee simply says:

> This is, however, a point of some significance, and the matter might be clarified lest misunderstandings arise.

Let us clarify it so that misunderstanding does not arise. It is simple. The Office of Parliamentary Counsel, I think, can do it in five minutes. Perhaps I am doing them a disservice. They can do it in a minute. It is nothing. It is of no moment.

The final point that the committee makes goes once again to the nature of the Attorney-General's powers in relation to the issuing of directions. These are just non-issues. That is the point I make. I just think these things should be put in some context. People concerned about this simply need to read the scrutiny of Bills

committee's report and then go back to the Bill and to the amendments. If they do that I think they will have revealed to them the fact that this is nothing. It is just puffery, but we do take the scrutiny of Bills committee seriously. The report does need to be considered seriously. The Government must respond seriously, and we will consider the Government's response to these issues seriously.

MR SMYTH (Minister for Urban Services): Mr Speaker, I seek leave to make a short statement.

Leave granted.

MR SMYTH: Mr Speaker, that the scrutiny of Bills committee has presented the report is a good thing. The quick analysis made on this side is that much of what has been raised has been addressed in the amendments, and it is a shame that the committee does not look at the amendments. Mr Moore has said there are a few points there that are worth considering, and I am sure all of us will consider this report as needs be.

I think the important thing is that the Minister for Health tells me there have been something like 16 drug overdoses in the last 18 months in Canberra. That is almost one a month. Putting this off, delaying this until February or March next year and then pushing back the implementation date another three months or so, means that we put at risk another seven lives. I think the Assembly should do the right thing and look at this quickly and constructively, and if we are in a position to pass this legislation on Thursday we should do so.

MR HIRD: Mr Speaker, I seek leave, as a member of the committee, to make a short statement.

Leave granted.

MR HIRD: Mr Speaker, after listening to the discussion about this report, the Leader of the Opposition should adjourn this matter because there is no mechanism for the scrutiny of Bills committee to analyse and look at those amendments. The amendments have not been moved. Until such time as those amendments are moved, a committee of this parliament could not legitimately look at them and analyse them. On his own submission this morning and on this report alone, the scrutiny of Bills committee should have the opportunity to analyse those amendments.

It sounds as though there are quite important amendments to very important legislation. I urge members to consider that the independent legal adviser to this committee has made some very damning arguments, and he has no axe to grind or barrow to push. When this matter comes before the house on Thursday, as I understand, I urge members, including the Leader of the Opposition, to have it adjourned and perhaps referred back to the committee so that it can analyse the amendments that are going to be moved by the members in this place.

JUSTICE AND COMMUNITY SAFETY - STANDING COMMITTEE
Report on Agents (Amendment) Bill 1998

MR OSBORNE (11.48): Mr Speaker, I present Report No. 6 of the Standing Committee on Justice and Community Safety, entitled "The Agents Bill 1998", including a dissenting report, together with a copy of the extracts of the minutes of proceedings. I move:

That the report be noted.

Mr Speaker, members will be aware that in June this year Mr Berry's amendment to the Agents Act 1968 was referred to the Justice and Community Safety Committee for consideration. The Agents Act regulates various categories of agents, such as real estate, stock and station, travel and business agents. It does so through an Agents Board and a Registrar, licences, inspectors, required qualifications, codes of practice and complaint procedures. Mr Berry's legislation adds employment agents to this list of agent-related industries.

The majority of the committee, after considering the arguments put forward by Mr Berry, found them convincing. There is now an identified need for regulation of this industry, partly due to changes introduced by the Howard Commonwealth Government. These changes include job cuts to the Commonwealth Public Service, leading to significant numbers of unemployed people looking for jobs in the ACT. Further changes require the unemployed to access private employment agents rather than, as under the old system, register with the CES. These changes mean that the market in which employment agents operate has changed significantly over the past few years.

Mr Berry highlighted the lack of regulation in the ACT to ensure the unemployed are not exploited. He stated the that, while employment agents on the whole would be good operators who would care about their clients, this is an area ripe for exploitation; it is an area where people who are at their weakest point can be exploited by unscrupulous operators. Mr Berry made the point that the types of workers who might be affected by this legislation include aged blue-collar workers, women seeking to re-enter the work force after some years of absence to raise children, part-time workers, students, and new migrants who are barred from receiving social security benefits for their first two years in Australia.

I would like to point out that the committee did not receive specific complaints about the behaviour of employment agents in the ACT. However, we did hear anecdotal evidence of complaints about the behaviour of employment agents across Australia. On balance, the majority of the committee became convinced of the need for this type of legislation and have recommended accordingly.

It is of note that the government member on the committee, Mr Hird, has dissented from all of the committee's recommendations. The Government made it clear during the inquiry that they would not support Mr Berry's Bill in any form, and I am sure that that is why Mr Hird will shortly rise to his feet and explain his reasoning.

The Government has particularly taken issue with recommendation 6 of the report, which addresses the issue of funding a regulatory scheme. The Government has estimated the annual cost of the legislation to be in the vicinity of $100,000, which, if applied in full to the employment agent industry, would be an impost of over $1,000 for each agent.

The committee did not formally dispute the Government's costing. However, we have noted our surprise at the suggested high costs for the administration of this legislation. The Government does not seem to have made much allowance for economies of scale, which could be expected, given that the Agents Board already operates successfully. However, the committee did agree that a $1,000 annual fee imposed by the Government would be unjustifiable and have recommended a $100 registration fee and an annual fee of $100, as is the case for similar schemes which operate in New South Wales. Since these fee levels would not enable self-funding, the Government will need to make an annual funding commitment to the scheme. While the Government believes that the scheme as a whole would be a waste of money, the committee does not.

Personally, during this inquiry, I found the use of the term "generally unemployed" rather odd. I am sure that those who use this term in a derogatory sense have themselves never been unemployed. Unemployment, for most people, is nothing less than a demeaning experience, as personal self-confidence is under threat. Household bills are not paid, and families are put under extreme stress. The unemployed are at a vulnerable point in their lives. This legislation provides for a scheme that would give them protection from potential exploitation as they seek to re-establish their lives.

The majority of the committee believes that this is a worthy piece of legislation that should be supported.

MR HIRD (11.52): On this occasion, rare as it may be, I will be dissenting from my colleagues on the committee. The committee does a lot of fine work. The best we can say is that we try to get agreement, but on this issue I could not reach an agreement with my colleagues. The Agents Act 1968 currently provides for the licensing and supervision of real estate, stock and station, travel and business agents in the Territory. It provides for the definition, required qualifications and provision of licences to agents; for the establishment of an Agents Board, a Registrar and inspectors; for the keeping of records; for procedures for investigation of complaints against agents; for the surrender of licences; and for inquiries by the Agents Board.

The committee's inquiry was advertised in the local media in September of this year, and the committee also directly invited relevant organisations to make submissions. The Department of Justice and Community Safety also wrote directly to each of the 73 employment agencies in the Territory advising them of the inquiry and inviting them to make submissions. Unfortunately, only three submissions were received - one from a community-based employment agency; one from ACTCOSS, who strongly supported the Bill; and one from the Government, who strongly opposed the Bill. The committee

decided that, given the low level of public interest, it was not necessary to hold public hearings on the Bill.

In my dissenting report, as our chairman indicated, I dissented from all recommendations in the majority report. The majority of the committee has accepted that the Berry Bill should be supported, with amendments which will simply add to the complexity of the scheme as it applies to employment agencies. The primary reason for my dissent from these recommendations is that I do not believe the cost of implementation justifies the regulation of agents in the manner prescribed. The Government presented a very strong submission which indicated that the cost of this scheme would be in the order of $100,000 and that this cost would have to be passed on to agencies affected and ultimately to the clients, to the consumers. No cost-benefit analysis was undertaken by the committee.

Of serious concern is that the majority of the committee supported a fee pegged at $100 for registration per client and a $100 annual fee per client. The revenue raised from such a fee could not possibly cover the cost of introducing this expensive regulatory regime. The committee's majority recommendation 6 is obviously defective and will lead to an impost on ratepayers to support a scheme for which no justifiable case has been presented.

However, I would like to thank my colleagues on the committee. As I said in my opening remarks, on this occasion I do not agree with them but I thank them. I would also like to thank the three submitters of written submissions to the committee and also our secretary, Fiona Patten.

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

JUSTICE AND COMMUNITY SAFETY - STANDING COMMITTEE
Report on Emergency Management Bill 1998
Government Response

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety): Mr Speaker, I present, for the information of members, the Government's response to the Standing Committee on Justice and Community Safety Report No. 5, entitled "The Emergency Management Bill 1998". The report was presented to the Assembly on 16 November 1999.

PERSONAL EXPLANATION

MR HIRD: Mr Speaker, I seek leave to correct something I said in my remarks on the report on the Agents (Amendment) Bill. I thank the Leader of the House for pointing out to me that I said Fiona Patten when in fact our secretary is Fiona Clapin. I apologise to the house.

EMERGENCY MANAGEMENT BILL 1998

Debate resumed from 10 December 1998, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

MR HARGREAVES (11.58): Mr Speaker, this Bill provides the ACT with a formal structure for emergency management in the context of a declared emergency. The object of the Bill is to ensure that a comprehensive plan exists which involves the relevant organisations and departments, not to mention all emergency services. The philosophy behind this Bill is an excellent one. The ACT needs a plan that kicks in as soon as possible when an emergency is declared. We need a plan that allows for preparedness, a flexible response and ultimately an efficient recovery. This is what this Bill is attempting to do.

The Justice and Community Safety Committee was able to consult the major stakeholders who were dissatisfied with the Bill. The committee was concerned that it was not a good start to effective emergency management when the people who would be working under the legislation had such problems. It may have taken longer than the Government's preferred timetable before we came up with an agreeable piece of legislation, but surely legislation which has support right across the board should be our goal. Not taking time to listen to concerns can only lead to a risk of perpetuating problems and in some cases can create animosity amongst the services. An emergency is the one time we will need all the services to work as a united team. That said, I acknowledge the work of the Emergency Services Bureau in bringing together the various firefighting agencies within its structure.

I do not believe that we should let this Bill slip through to the keeper. It would be irresponsible of the Assembly to allow such an enormous change to go through without fully exploring all areas of concern or taking on board the expert advice available.

Some of the problems identified have been dealt with by the Minister. I would like to congratulate the Government on the amendments they are bringing forward. I think they address most of the concerns that have been expressed by the various players, by the committee and by us. I thank the Government for doing that. I flag that we will be supporting their amendments, so we can dispense with this legislation rather quickly.

The Minister has dealt with the appointment of the Territory Controller, which is great. In the original draft there was a duplication of roles between the Emergency Management Committee and the management executive. I am pleased to see that that will not now be the case.

The ALP will move an amendment relating to the Ambulance Service. The inclusion of the Ambulance Service in this Bill raises concerns that this is the beginning of bringing all services under the one Act. There is no secret about that. Indeed, I am grateful to the Government for being so open about it, because it allows us to debate the matter in the

public arena. We will see what comes out of that. I know it is the Government's aim to collapse the entire emergency service legislation into one Act, but we do not want that to happen.

The standing committee was able to examine legislation from other States and to consult with Australian emergency management experts and other affected stakeholders such as unions, the non-government sector and public service departments. This will ensure that Canberra has the best possible emergency legislation. It is during an emergency when time is of the essence. Any complication, even a minor one, could result in the loss of a life or a person sustaining serious injury. We do not want to allow that to occur. The onus is on members of the Assembly to ensure that the most effective and efficient legislation is in place for our services.

I will now briefly discuss the uniqueness of the Ambulance Service. The ALP believes that the Ambulance Service ought to be a unique service, in much the same way as the Fire Brigade is a unique service. Even our police force is a unique service. I see those entities existing in structures which acknowledge their uniqueness. They are services which have a particular technical uniqueness. They have to operate within a military model, and I believe that they ought to have their own piece of legislation.

That is not to say that they necessarily have to be within administrative arrangements which do not engender a closeness between the services. It does not necessarily mean that we have to have service A under this department and service B under that department. There is nothing wrong with them operating under the same infrastructure, provided that infrastructure is working. There is some argument that the Ambulance Service is part of the health service, or should be, and not part of the emergency services; it is more closely allied with that set of professional disciplines.

There have been changes over time. The Ambulance Service has been part of various departments over its life, and no doubt things will change again in the future. The Ambulance Service having its own piece of legislation is no impediment to the bringing together of emergency services to work in a close-knit jigsaw.

I foreshadow that we have some amendments and that I am predominantly supporting the Government's amendments.

MS TUCKER (12.04): I have examined the detail of this Bill, the report of the Standing Committee on Justice and Community and Safety on the Bill and the Government's response to that report. From this consideration, the Greens have decided to support the Bill in principle and also the recommendations of the Justice and Community Safety Committee report. I will also be supporting most of the Government's amendments, which basically reflect the recommendations of the committee. However, we have some concerns with the Government's response in relation to the Ambulance Service.

The Greens agree with the principle that individual agencies involved in emergency services should be integrated into an overall emergency management framework. When emergencies arise, it is important that all relevant services such as the Fire Brigade, the Ambulance Service, the police and Emergency Services work cooperatively to effectively address the emergency. Ideally, the means of cooperation between the agencies and the lines of command should be worked out before the emergency occurs. The introduction of the Bill to provide a comprehensive approach to emergency management is, therefore, welcomed.

The committee's recommendations to clarify the position of Territory Controller and the role of the Emergency Management Committee seem quite sensible, and I note that the Government has supported those recommendations. I accept also the Government's view that delegation of the Territory Controller's power should only be done with the concurrence of the Minister, so that ministerial responsibility is maintained.

I have concerns about the part of the legislation covering the ACT Ambulance Service. I note the Government's argument that this Bill is about integrating similar functions into a single piece of legislation. I believe, however, that this approach is not an absolute rule. At the moment the existing Motor Traffic Act is being broken up into four separate Acts. I believe that some flexibility needs to be allowed in the structure of legislation to match the complexities of the issue being covered.

I can accept that the operations of the Ambulance Service could be included in the Bill on the grounds that it is also an emergency service, but it concerns me that the Bill also contains details of the ambulance levy, which is basically a tax imposed by the Government on health benefits organisations. The details of this levy are not really related to emergency management. I am, therefore, not convinced that the levy needs to be included in this Bill. I would prefer the existing legislation covering the levy, the Ambulance Service Levy Act, to be kept in place. I note that Mr Hargreaves will be moving an amendment to delete the Ambulance Service levy from this Bill. I will be supporting that amendment.

I am concerned that the clauses on the Ambulance Service have been written in line with competition policy principles. That opens up the Ambulance Service to contestability, with the possibility of private ambulance services being given approval to operate. I note that the Government is proposing to amend the Bill to include a public benefit test on approvals of private ambulance services and that further details are to be included in the regulations. However, I believe it would be much better if the Assembly were given the opportunity to scrutinise this proposal more thoroughly through a separate Bill on the Ambulance Service.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (12.08), in reply: Mr Speaker, I thank members for their support for this legislation. It is very important legislation. We are one of only a couple of jurisdictions that have not enacted comprehensive emergency services legislation to ensure that, as much as possible, there is a seamless response across agencies, across services, to crises and problems that face our community. That is a desirable transition

for a community like this to make. We are a small community. It takes a few minutes, by car, to cross from one side of the city to the other.

Mr Smyth: Not since speed cameras.

MR HUMPHRIES: Not quite as quickly as was the case before Mr Smyth's speed cameras, but certainly it can be done fairly quickly. The community is a young community. There is not a long history of entrenched organisational structures which need to be uprooted so that we can effect appropriate change. So it is surprising perhaps that the ACT has been slower than other places in Australia to put in place comprehensive emergency management legislation. It is, however, absolutely vital that we carry this process forward.

I have noted the comments of Mr Hargreaves about the Government's plans to have all services under one Act and Ms Tucker's comments about wanting to make services come together in a way which may not be appropriate for those particular services in some cases. I would identify the single most serious issue facing the provision of emergency services in this Territory, in my time as Minister for emergency services, as the slowness we experience in bringing services into a position where they work together effectively. The lack of that synchronisation of the services, to the extent that it is still an issue - and it is less of an issue today than it was a few years ago - is a serious problem facing our community and one which we need to address in this Assembly.

Only a couple of years ago the Government proposed the co-location of the ACT Emergency Service with the ACT bush fire brigades and some reorganisation to bring those two organisations close together without formally amalgamating them. At the time, there was an enormous hue and cry about that. There were claims that this was going to destroy the bush fire brigades or, alternatively, the emergency service brigades; that people would defect in droves; that morale would fall; that there would be all sorts of problems. That moving together of those two services - it is not really an amalgamation - on the one base has occurred, and I believe that today both those services are stronger than ever as a result of that change.

Those two services are not the key services providing emergency services in the ACT. The three services which are key to the provision of emergency responses are the Australian Federal Police, the ACT Fire Brigade and the ACT Ambulance Service, and it is vital that we continue to push to bring those services to work better with each other and to understand each other better.

Mr Hargreaves suggested the Government's plan was to have all those services under the one Act. He is basically right about that, but I would qualify that by saying that it is not the Government's intention - and I do not foresee a situation where it would happen - to bring the AFP under that legislation. Perhaps after a very long period of time it might be appropriate to do that. I do not foresee that being the case. The other services have a focus on emergency response. The Federal Police have other objectives as well, and it is not appropriate to treat the AFP purely as an emergency response agency. This Bill is principally about other services, although the AFP plays a role, and

it is absolutely important that we continue to bring those services together through this process.

When we established the joint emergency services centre at Gungahlin, there was considerable resistance from the ambulance and the fire service and, to some extent, from the Federal Police to coming together and working from the one operational base. I have to say quite bluntly that I consider that objections being raised at the time were nothing more or less than protecting turf. They were not about enhancing services to the people of the ACT; they were about protecting positions and entitlements which some members of the services saw as accruing to them and which they did not believe they ought to give away merely for the sake of making operational responses more effective and more efficient. We resisted that sentiment, and the result is a very good joint emergency services centre in Gungahlin, a model for other joint emergency service centres elsewhere in the ACT. One is about to be constructed at Woden.

In a similar vein, it was only a few years ago that we had quite serious flare-ups between members of the Fire Brigade and members of the Australian Federal Police when they were attending road accidents in the ACT. Mr Rugendyke probably recalls some of those incidents. Whatever you might think about who was right and wrong in that kind of conflict, it was absolutely and utterly inappropriate that ACT citizens should have any question mark put over the quality of their services because members of agencies disagreed with the entitlements and rights of some other agencies to come in and deal with an emergency in a particular way.

We have to continue the process of bringing those agencies into a position where they understand what the work of the others is and work to make the services seamless and effective in all respects. I see the Emergency Management Bill before the Assembly today as very much part of that process. I have referred before to the need to have this legislation in place to deal with any potential problems that may arise from the year 2000 problem. I do not believe that is going to be a serious issue for this community, but it is better to be safe rather than sorry.

I understand, although I cannot fully agree with it, the view of the Justice and Community Safety Committee that we should make the Territory Controller, at least in a default sense, the Chief Police Officer. I put on record the Government's concern about that. The Chief Police Officer is at the moment and, as far as I can tell, for the foreseeable future an officer of the Commonwealth. I think it would be more appropriate to have an officer of the ACT in charge of our emergency response, but I accept that that is not the view of the committee. The Government accedes to the view of the committee, and the amendments I will put before the Assembly today provide for the Territory Controller to be, in a default sense at least, the Chief Police Officer.

I thank members for their support. I will not comment on the amendments until we reach them. I hope this legislation is as effective as we expect it will be in providing for a seamless service to the people of the ACT.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1 agreed to.

Clause 2

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (12.16): Mr Speaker, I move:

> Page 1, line 7, subclause (1), omit the subclause, substitute the following subclause:
>
> "**(1)** Sections 1, 2 and 81 commence on the day on which this Act is notified in the Gazette.".

I also present a supplementary explanatory memorandum which relates to this amendment and the other amendments I will be moving today.

As I think Ms Tucker suggested, many of the amendments being put before the Assembly are designed to pick up the recommendations of the Justice and Community Safety Committee. Members will recall that this whole process has taken a very long time to bring to this point. The Government's exposure draft of this legislation was put on the table in December 1997, so this issue is almost exactly two years old, and I think it is time that we addressed it, as the Assembly obviously proposes to do today. The amendments deal with a range of recommendations made by the Justice Committee. I believe that they also appropriately address other issues which agencies have raised in respect of putting this particular legislation in place. I thank the Labor Party and others for their support for the Government's amendments.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 3

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

> Page 2, line 4, subclause (1), insert the following definition:
>
> " 'alternate controller' means the alternate controller provided for under section 23;".

MR HARGREAVES (12.19): I move:

> Page 2, line 5, subclause (1), definition of "Ambulance Service", omit the definition.

Mr Speaker, the Opposition opposes the inclusion of the Ambulance Service in this legislation. It supports ambulance legislation in the form we see here but not within this legislation. This amendment removes reference to the Ambulance Service fairly early in the piece. We will address this matter in more detail later. Essentially, the Opposition opposes any references to the Ambulance Service as a service within the context of this legislation.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (12.20): Mr Speaker, I rise to oppose this amendment. I assume Mr Hargreaves is going to treat his first amendment as an indication of whether the Assembly will support or oppose his amendments generally to do with the Ambulance Service being excised from the emergency management legislation. On that basis, let me say very clearly that there has to be a strong reason not to include in emergency management legislation a critical agency that delivers emergency services in the ACT.

When people think about emergencies in the ACT, they instinctively think about the Ambulance Service. It responds to more emergencies, in the sense of someone facing a crisis other than a crisis to do with a breach of the law, in the non-police sense, than does any other agency in the ACT. Yet we are being asked here to remove them from the Emergency Management Bill.

I heard Ms Tucker say she supported the Labor Party amendments on this score. She has not discussed that with me. I would ask her to consider the logic of saying we should remove from the legislation an agency which is critical to delivery of emergency services in the ACT. It is very hard to imagine why you would not have an agency like the Ambulance Service in this legislation.

Mr Hargreaves says that it is inappropriate to have the Ambulance Service in this legislation; that they should be in a separate Act. With great respect to him, he has not made that case at all. Why should it be in a separate Act? Why can it not be in the Emergency Management Act, where people naturally would look to find what provisions govern the treatment of emergencies in the ACT? This approach is the one that is going to be picked up in most, if not all, other jurisdictions in Australia. Why would we be different in the ACT?

The second concern is that I know this move is not supported by the Ambulance Service itself. I understand - I cannot say that I have actually spoken to him - that the head of the Transport Workers Union in the ACT, which covers ambulance workers, has not indicated, publicly at least, any support for the proposal Mr Hargreaves is making. Why are we doing this? Why are we taking these provisions out of the legislation? If we do not have the Ambulance Service in the legislation, presumably in due course we will not

have the fire service in the legislation either. What is the emergency management legislation without those services covered by it?

I come back to the comments I made before. This is about seamless delivery of services to the people of the ACT. It is about getting a high-quality service. In that process there has been an absolutely clear level of resistance from some members of some agencies to the idea of having to work more closely with other agencies. That is basically about protecting turf. Now we are being told by some here that we should ensure the continuation of those turf wars - or those turf rivalries, if I can put it in a more neutral way - by excising key emergency response agencies from the legislation.

A few years ago I remember being lobbied by my predecessor, Mr Connolly, about the changes that were being made at that stage to transfer responsibility for road accident responses from the Australian Federal Police to the Fire Brigade. Mr Connolly made an argument for that to happen. He persuaded me that once the decision had been implemented we should not reverse it as we at one stage indicted that we would. He persuaded me on the basis that it is a step towards making sure that we put agencies in charge of things which are most appropriately under their control and that we persuade agencies to start to work together in a more effective way. Without taking his name in vain, I think that when he was Minister he shared the objective of trying to make agencies work together and trying to reduce the extent of these two flaws.

Since becoming Minister, I have understood that objective much more clearly, and I think we have to support it. I appeal to Ms Tucker to ask herself why she would guarantee these sorts of turf rivalries. I know of no reason why we should be doing that. This is about making sure our services operate under the same rules. We can do that only by having them under the same piece of legislation. What conceivable reason is there not to have the Ambulance Service part of an emergency management response in this legislation?

MR KAINE (12.26): In the committee we did look at whether the arrangements the Government proposed for the Ambulance Service were appropriate, and some of us had the view that it could have been done differently. There is some question in my mind about whether it might have been better done some other way. But given the point that we have reached, where the Bill is now being debated, I am prepared to accept the Government's position on this for the time being. This is the sort of Bill which I think we all should keep under review to see how it is working. It is an important piece of legislation and one that will impact significantly on the community when an emergency arises. I think we should review it frequently to make sure it is working well.

My only real objection to the Government's proposals was the inclusion in a Bill such as this of the provision for the collection of the emergency services levy. It seems to me that this is a strange piece of legislation to contain a specific provision for a tax such as that - the Government chooses to call it a levy - and the collection of that tax. Some other head of legislation might have been more appropriate. But there is no amendment before the Assembly to change that arrangement, to excise that particular provision from

the Bill, so I am prepared to go along with the Government's Bill and its amendments at this stage and review the legislation from time to time to see whether it is working right.

MR TUCKER (12.28): I will briefly respond to Mr Humphries' concerns. I think I did make it clear in my speech that in principle we could not see a reason not to have the Ambulance Service in the legislation. But, like Mr Kaine, we have concerns about the fact that the levy has been integrated into the Emergency Management Bill and also about the issues of competition policy. I raised concerns about the fact that the Government, by regulation later, will deal with public benefit tests and so on. We are concerned that there should be full scrutiny of this particular aspect. The Government has chosen to take this line. The Greens are expressing a note of caution, saying that we would like the opportunity to look at the implications of this first. The committee did not address it in any great detail, so there is a place for this scrutiny to occur. That is why at this point we think it is better to remove this subclause and look at these important aspects.

The Government is welcome to make some amendments themselves, or we can look at this again once those issues have been addressed. We would be much more willing then to include the ambulance. It is sensible on one level to do that, but unfortunately the Government have chosen to complicate the matter in the way that it has.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (12.29): I want to respond briefly to the points made by Ms Tucker. She suggested that the Greens need more time to consider the idea of putting the - - -

Ms Tucker: No, we want to see your regulations. You said you were going to give us regulations. We would like to see them.

MR HUMPHRIES: With great respect, I have not been asked for the regulations before now. The legislation has been on the table now, in one form or another, for two years. I am asking the Assembly, after two years, to consider passing legislation which virtually every other State has now passed and which I would regard as quite urgent and important. To come back out of the blue, at the eleventh hour and fifty-ninth minute, and say, "I want to see your regulations before we will include the Ambulance Service in the Emergency Management Act" is unfair.

We have had the Ambulance Service in the Bill since day one, back in December 1997, in the last Assembly, when we put this legislation on the table in the first place. If Ms Tucker has further questions about it or does not understand what we are trying to do or wants to see the regulations, she should have come and asked me or someone in my department for that information.

Ms Tucker: So you have the regulations? You can show us?

MR HUMPHRIES: No, I do not. The Government does not normally make regulations until a Bill is passed. If the Legislative Assembly changed the Bill, as is its entitlement, then the regulations would need to change. A lot of effort would be wasted in drafting regulations which may not be necessary or may have to be changed substantially.

Ms Tucker: But you can talk about the intent of the regulation and what you are trying to do.

MR HUMPHRIES: I am happy to do that, but you have not told me before just this moment, after you have announced your intention to oppose provisions in the legislation, that you want me to do that. For a person who complains about process quite a lot, it is not a particularly good process, is it?

MR RUGENDYKE (12.31): It had not occurred to me until Mr Hargreaves' amendments were tabled this morning that there was some discussion as to whether or not the Ambulance Service ought to be included under the umbrella of the Emergency Management Bill. Throughout the process of developing this Bill it struck me as being logical that all relevant services be included in the legislation. I recognise the difficulty that presents, as far as the AFP goes, in that the Chief Police Officer of the ACT is responsible to the Commonwealth.

As the committee has recommended and as the amendments signify, it is important that the Chief Police Officer be the controller. So I remain with my original thought that the Ambulance Service ought to be covered by this legislation. I therefore will not be supporting the amendments that seek to separate it from the Emergency Management Bill.

Amendment negatived.

MR SPEAKER: Order! It being 12.33 pm, the debate is interrupted, in accordance with standing order 74.

Sitting suspended from 12.33 to 2.30 pm.

QUESTIONS WITHOUT NOTICE

Temporary Accommodation Allowance

MR STANHOPE: Mr Speaker, my question is to the Chief Minister. The Chief Minister, in her response of 9 October to question on notice No. 193 from Mr Corbell, stated that ACT Public Service executives continued to receive temporary accommodation allowance in accordance with the provisions of their contracts, yet subsequently on ABC radio she stated:

> These entitlements aren't part of their contracts at all.

Can the Chief Minister explain to the Assembly where, in fact, the authority for executive TAA payments lies - in the contracts or elsewhere?

MS CARNELL: It is unusual, I would have thought, for somebody who has a legal background not to understand that, but I will take it very - - -

Mr Quinlan: It is that bad, is it?

MS CARNELL: Actually, it is really simple. Mr Speaker, the employing authority is the Public Sector Management Act. We all know that because in 1994 that Act was passed in this chamber. It refers, of course, to the contract as governing employment. The contract, in turn, refers to other sources of entitlements, such as the Remuneration Tribunal determinations and the public sector management standards. It is correct to say that these are contractual entitlements. It is also correct to say that the source of the entitlement is not found in the written contract itself. The issue that was raised in Mr Corbell's media release of, I think, 2 December 1999 is simply a matter of terminology.

Mr Stanhope: That is what Bjelke-Petersen would say. The hospital did not blow up; it is just terminology.

MR SPEAKER: Order! The Chief Minister is answering your question, Mr Stanhope. The least you can do is show her the courtesy of being silent.

MS CARNELL: Mr Speaker, in the written contracts there are no referrals to the actual allowances involved because the public sector management standards run under the contracts and they are all in line with the Act. That is quite simple. It is the way that employment contracts work all the time. The contracts do not say that Joe Blow is getting $X as a relocation allowance. The fact is that somebody who signs a contract must be employed under the Public Sector Management Act as passed by this place and also must be employed under the public sector management standards and more recently - for contracts signed after, I think, April 1998 - under the provisions of the Remuneration Tribunal. But none of those things is actually spelt out in the contract, which I think is the normal or standard approach to employment contracts. Employment contracts do not spell out, say, the whole of the legislation, industrial relations agreement or whatever that the contracts are written against, simply because it is taken as read that an employment contract must be in line with the Public Sector Management Act, the standards and the Remuneration Tribunal. It is quite simple.

MR SPEAKER: Do you have a supplementary question, Mr Stanhope?

MR STANHOPE: Yes, thank you, Mr Speaker. I thank the Chief Minister for that quite simple answer. The Chief Minister, in her rebuttal in the *Canberra Times* of 2 December, stated that "the staff were entitled to the payments under public-sector guidelines put in place by the former Labor government in 1994". The guidelines that applied in 1994 provide for TAA to be paid for a maximum of three years, with an extension only in special circumstances. Four of the seven executives named in the

Canberra Times of 1 December have been receiving the allowance for in excess of three years. Will the Chief Minister explain to the Assembly what were the special circumstances - the special circumstances - approved by her Government that allow for these executives to receive the TAA beyond the three years?

MS CARNELL: Mr Speaker, I think that that is actually a second question, but I am happy to answer it. I am very happy to answer it because it shows again a fundamental misunderstanding of the public sector and the Act that was passed in this place. I think that Mr Stanhope should be really embarrassed. Maybe we should get a full briefing for him on how the Public Service works.

Mr Stanhope: I think that might be a good idea. Tell the Auditor-General.

MR SPEAKER: Order, please! You asked a pertinent question. The Chief Minister is prepared to answer it. Please allow her to do so.

MS CARNELL: Mr Stanhope asked about the special circumstances of the approval by my Government. If he knows anything, he would know that issues like this are handled by the Public Service commissioner and come nowhere near the Government; they come nowhere near the Government.

Mr Corbell: Why did you extend it for three years?

MR SPEAKER: Order, Mr Corbell! You did not ask the question.

MS CARNELL: Mr Corbell asks why we extended it. The fact is that we did not extend it, Mr Speaker.

Mr Kaine: I take a point of order, Mr Speaker. Is the Chief Minister bagging her public servants and saying that they are responsible?

MR SPEAKER: There is no point of order, Mr Kaine.

MS CARNELL: For the information of members, I will table a document that Mr Gilmour sent to me this morning with regard to this issue where he makes it quite clear that he could not identify any decision along these lines where a ministerial or government agreement had actually been sought, nor would it be. I table the document for the information of members. We have a Public Service commissioner to make a whole lot of decisions under the Act at arms length from government. That is what we have one for. If members do not believe that we should have a commissioner that is at arms length from the Public Service and from the Executive, they should change the legislation. Unfortunately, the legislation that we are talking about is their legislation. It is not ours at all. The legislation that sets up this system was put in place in 1994 by the previous Labor Government under Rosemary Follett and Wayne Berry.

Mr Corbell: Why were they extended beyond three years? It is a simple question. Answer the question.

MR SPEAKER: Be quiet, Mr Corbell, otherwise you may not have a chance to ask a question today.

MS CARNELL: Why were these contracts extended beyond three years? Not why did we extend them, but why were they extended? I understand that the 1994 standard provides for TAA to be up to three years, with extensions in special circumstances by chief executives. It is understood that during 1996 the Chief Minister's Department acceded to the requests of a number of executives to extend the entitlement to the term of the contract. The Commissioner for Public Administration, exercising chief executive powers provided under section 20 of the Public Sector Management Act passed by members opposite, signed an instrument in August 1996 extending these allowances to five years. I can provide that document to members of the Assembly if they want it.

What we have established here is that the public sector commissioner did that under an Act passed by them; that he did not come to the Government or to the Minister because, quite simply, he did not have to. If those opposite want to question the public sector commissioner set up by their legislation, let them do so; but that is not what you do in question time.

Art Class for Disabled Persons

MR WOOD: My question is to the Chief Minister. I believe that it is properly directed to her. I refer to the decision to close down an art class for the disabled at the CIT. This decision follows earlier decisions of your Government to remove disabled workers from their jobs. Whilst events consistently demonstrate that this Government is not the caring government that it claims to be, is there any chance that it will put its money where its mouth is and find the resources to allow this important and necessary program to continue?

MS CARNELL: Mr Speaker, this Government's commitment to people with disabilities has been so significantly greater than the previous Labor Government's that this question is simply ridiculous. In fact, even in the area of CityScape, on which those opposite have made comments in the past, the percentage of people with disabilities is now higher than it was under Labor. This Government has increased the amount of money it spends on disabilities quite significantly over the five years it has been in government. I think that the increase has been something like 30 per cent.

Mr Moore: Six months ago, we put in an extra $1m.

MS CARNELL: This year, as Mr Moore just said, we put in an extra $1m to help people with disabilities. According to the statistics, the ACT is one of probably only two governments in Australia - it may be the only one - that have actually significantly increased the funding for people with disabilities over the last few years. It has not been the Labor governments, Mr Speaker; this Government has been the government that has

significantly increased funding. In fact, over 80 per cent of the funding for people with disabilities comes from this Government and less than 20 per cent from the Federal Government.

Mr Stanhope: Have you told Mr Howard that? Have you told your Liberal mates that?

MS CARNELL: Regularly and often, and so has Mr Moore. Nobody can argue that the commitment of this Government to people with disabilities is not the best in Australia. I would have to say that the groups representing people with disabilities would agree with that. They would like more, but they would agree that our commitment has been better than that of other governments, particularly the Labor Government over the border.

With regard to funding the arts for people with disabilities, a number of programs are funded directly, as Mr Wood would be aware. I would have to say that those programs are going from strength to strength. I do not know about the one at CIT. I am happy to take the question on notice. I will find out. But just remember that we put in an extra $1m this year to ensure that the level of disadvantage of people with disabilities was reduced. In terms of the arts, we fund an arts officer in the area of disability. We fund a number of other programs. I am very happy to make that information available to members.

MR WOOD: I wish to ask a supplementary question, Mr Speaker, as the answer was extremely disappointing.

MR SPEAKER: The Chief Minister has taken the question on notice.

MR WOOD: The program operates for, I think, a couple of hours a week and we cannot find some funds for that. That is outrageous.

Mr Humphries: Mr Speaker, is that a preamble to the question?

MR WOOD: What do you think about that, Mr Humphries? Do you support it?

MR SPEAKER: Is that your second question? Very well. Mr Humphries, would you like to answer the second question?

Mr Humphries: Yes, I would, Mr Speaker. I thank Mr Wood for the supplementary question. Mr Speaker, I think it would be better if Mr Wood were to resume his seat while I am answering his supplementary question.

MR WOOD: Wait until I sit down, Mr Humphries.

MR SPEAKER: I am sorry, but you asked a question and Mr Humphries is answering it.

MR WOOD: I am still on my feet, Mr Speaker. If Mr Humphries does want to answer it, he might encompass this - - -

MR SPEAKER: Do not ask rhetorical questions, otherwise I will pull you up**.**

MR WOOD: He or the Chief Minister, Mr Stefaniak, Mr Moore or Mr Smyth might want to encompass this in their answer - - -

MR SPEAKER: Would you mind getting to your question without a preamble.

Mr Moore: The Deputy Speaker knows the standing orders - or should.

MR WOOD: Do not tell me about taking up too much time of the Assembly in talking, Mr Moore. Do not tell me that.

MR SPEAKER: Can we have a question from you, please, Mr Wood?

Mr Smyth: I take a point of order, Mr Speaker. For the information of the Deputy Speaker, standing order 117 says that a general rule that shall apply to questions is that they shall be brief and relate to a single issue. Would he like to raise the issue or would he like to sit down?

MR SPEAKER: There is no point of order.

MR WOOD: Mr Speaker, it is to whichever Minister wants to reply. A spokesman expressed Mr Stefaniak's views that, to quote from the *Canberra Times*, "the disabled design course had no tangible outcomes in terms of education". Ministers, what kind and caring criteria were used for making this judgment?

MR STEFANIAK: I will answer that, Mr Speaker. You have covered the whole gamut, Mr Wood. You have had Gary get up and you have had Brendan get up. You have done well, really. Maybe Michael should get up; he has only interjected so far. The CIT delivers certain services.

Mr Kaine: I rise to a point of order, Mr Speaker. I do not think that the question was actually addressed to Mr Stefaniak. Is he acting as a delegate of the Chief Minister in this matter?

Ms Carnell: I am very happy to delegate at any time.

MR SPEAKER: The Chief Minister has generously given Mr Stefaniak a shot.

MR STEFANIAK: If Mr Wood had read the whole article and, indeed, had listened to ABC radio on, I think, the 9 o'clock show to a lady who was involved in the program, he would be well aware that a non-government agency runs a very simple program for $10 a session, which the mother of one of the people concerned thought was quite fair.

As the Chief Minister has indicated, this Government takes very seriously its commitment to the disabled. That is why we spend 30 per cent more on them. That is why in education we spend 10 per cent more than any other State or Territory. That is why the CIT is at this moment attempting to increase from, I think, about 3 per cent or 3½ per cent to 6 per cent or more the number of disabled persons doing courses which lead to an educational outcome. Hopefully, that is something that other States will be doing, too.

The CIT is looking after the disabled in terms of providing courses and delivering good educational outcomes that can get them into jobs. Might I say that surveys indicate that those in jobs are among the best employees you can have. They have a very fine record.

How that should be funded is another thing. Mr Wood would be well aware, having been an arts Minister, that there may well be some possibilities in the arts and other areas. For example, my colleague Mr Moore, whose portfolio covers disabilities, may well be able to do something in relation to assistance.

Mr Wood: Wash your hands of it, say that it is not your responsibility.

MR STEFANIAK: No, far from it; see what can be done to assist. The program obviously is one which people enjoy. It is a creative program. There are possibilities. The Chief Minister said that she would have to take that on notice. I will too, Mr Wood, because I think there are a number of areas in government, the arts and health where there may well be some ability to continue this course in some form. I do stress that there is, I think, a Barnardos program which is very similar and which may well be the answer. That is certainly something that we will look at, Mr Wood, but the CIT does have to manage its courses.

This program is not one which delivers, as such, the normal educational outcomes that we would expect of an institution like the CIT. It may well be a program that can be taken up elsewhere. There is a very similar program being run by a non-government organisation. Since the point has been raised, there are a number of things that this Government will look at and then take whatever action is appropriate. But I think it is rather bad to bag the CIT in terms of this matter as they have a very fine record and are actively taking steps to increase the number of disabled persons involved in education programs which will actually move them into meaningful jobs. I reiterate for the members present that recent surveys show that they are excellent employees who are highly valued by their employers.

Public Transport

MS TUCKER: My question is directed to the Minister for Urban Services and relates to his proposal to corporatise ACTION and set up a new regulatory framework for public transport in the ACT. Minister, in the last sitting week, you released a discussion paper on the proposed content of the public passenger transport regulations and standards, with a closing date for public comment of 3 January 2000. Why are you

seeking public comment over Christmas on bus regulation, which is clearly against the Government's consultation protocol? The protocol states on page 5 that an important aspect to consider is whether there is sufficient time to commence the consultation process and that choosing a time which limits people's ability to respond, such as the Christmas period, should also be avoided. Will you reconsider this timeframe and actually grant an extension of time so that the community will have a realistic opportunity to give your Government feedback?

MR SMYTH: Mr Speaker, it has not been raised with me by any group that they are concerned with the timeframe. Like all consultation, if we find as the period closes that we do need extra time, of course we will extend. But at this stage I have not been approached by any group, as far as I am aware, that would like to see it extended.

MS TUCKER: This is a protocol of the Government. You seem to be saying that you do not need to observe it or have regard for it. Could you tell the Assembly the consultation process that you are planning? Will it involve an opportunity for people who use buses on a regular basis to give feedback to your Government - for example, young people, elderly people, people without access to private cars? How do you plan to run this consultation process?

MR SMYTH: The Government is always happy to consult. We pride ourselves on our ability to get out there and talk with the community. We do it often, we do it widely and we actually do it well. This procedure will be advertised, the department will run the consultation and it will make sure that it gets in touch with all the groups that have an interest. But, on the other side, it is also up to all those with an interest to make sure that they avail themselves of that opportunity. I would encourage all Canberrans who have an interest in this matter to avail themselves of the consultation period.

ACTEW

MR QUINLAN: Mr Speaker, out of consideration for you, I was tempted to ask by what stroke of managerial genius are we here this afternoon when Sachin Tendulkar and India are chasing 330-plus at Manuka Oval. However, I have overcome the temptation.

MR SPEAKER: I would be quite prepared to answer the question.

MR QUINLAN: I just said that I was tempted to ask it. My actual question is a softie. It is to the Chief Minister or the Treasurer. In your Government's call for expressions of interest for ACTEW you advertised back in April, one of the criteria listed was that any proposal should maintain effective ACT government control of the core services of ACTEW Corporation. I might add that we still have not seen the assessment of the expressions of interest which was to be conducted jointly by the Government and their array of almost permanent consultants. In fact, we have no evidence whatsoever that the assessment of the expressions of interest has been completed. I trust that at some point the Chief Minister will consider it appropriate to provide this Assembly with the evaluation report, which must exist, given the statements made in the last couple of days. With respect to the latest proposal on the merger of ACTEW and AGL, we appear

to be contemplating privatisation of 50 per cent of our electricity distribution business and, quite obviously, that is core business. Can you assure this Assembly that an arrangement which had its genesis in a restricted call for expressions of interest would stand up to independent scrutiny? Can we be assured that no organisation, dissuaded from expressing interest by the control requirements in the advertisement, could now claim that the pseudo tender process was not completely open?

MS CARNELL: I can tell you that of the 29 proposals that came forth we had everything from worm farms through to straight sales of ACTEW, so I do not think that there was a very narrow process, to put it mildly.

Mr Humphries: Restricted.

MS CARNELL: Or a restricted process. In fact, there were many permutations and combinations, I am told - everything you could possibly think of - with regard to the future of ACTEW. As to the proposal, a strategic partnership is what those opposite have told us we should have; so the work on a possible strategic partnership with AGL that is now under way is something that I would have thought those opposite would have been very positive about. I have to say that at least some of the crossbenchers have been. We are very positive about that whole approach.

In terms of due process, as I know we announced yesterday, it is the ACTEW board that has proposed that the AGL strategic partnership is the best of the group of 29 proposals that were put forward. They have looked at them all in depth and believe that this is the one that has the most legs, taking into account comments made by members of this place and comments made by the Canberra community generally. I think that members would agree that a strategic partnership with a company of the strength of AGL, not just in the ACT but in Australia, bringing together the management of gas, electricity, water and sewerage - even though, of course, the ownership of water and sewerage stays with solely the ACT Government - as a multi-utility is something that is pretty exciting for Canberra. But it is something where the process has to be followed.

We have to make sure from a shareholder perspective and from an Assembly perspective that this really does stack up as being in the best interests, not just of ACTEW or AGL, but of the people of Canberra. That is what we will be doing. I understand that Mr Humphries will be releasing a rundown of the other proposals, but it was not the Government or the shareholders that assessed AGL to be the best of the proposals. It was, appropriately, the ACTEW board.

MR QUINLAN: I might remind you that you told this Assembly that the expressions of interest would be evaluated with the GSE merger. I might also add, just in response to what you have said, that, in fact, we do feel quite positive - - -

MR SPEAKER: Do not give a preamble.

MR QUINLAN: It is just a point of clarification, Mr Speaker. We do feel quite positive, as long as you do it the right way.

Ms Carnell: Tell us what is the right way.

MR QUINLAN: We are here to help. A sweetener in the AGL deal is the possible construction of one or more gas turbine electricity generation stations. Was this proposition part of an original expression of interest, or is it a further departure from a pseudo tender process? If you could, you might advise of any significant change that has occurred since gas generation of electricity was last evaluated and rejected as uneconomic. We trust that it is not just a bit of chicanery to help gain support for the merger, and the cash bonanza that might follow, and that there is genuine commitment to the construction of that generation station or those generation stations.

MS CARNELL: That was a very long supplementary of many parts.

Mr Quinlan: I got away with it, though.

MS CARNELL: You did get away with it; that is true. First and foremost, with regard to the comments about us assessing the 29 proposals with Great Southern, there was not much point in that after the New South Wales Government pulled out. We could have done the assessment and decided that GSE was the best, but we could not go ahead, so we would have had to look back to the 29. We decided that that would not be a very positive way to go, so the board of ACTEW had a look at the 29 proposals and came forward with the AGL proposal.

It is my understanding that it was not in a pseudo tender approach, but in an expression of interest approach, which is very different from a tender. A tender document is something that has in-depth figures and all of the details. An expression of interest, as members will know, is a much broader based approach to expressing interest along particular broad guidelines. It is my understanding that a gas-fired power station was part of that initial expression of interest. It is certainly something that AGL is very interested in doing.

What has changed between this time and last time? I would have to say a whole electricity and gas market and also a pipeline coming in fairly close to the ACT. A whole raft of things have changed quite fundamentally in the marketplace. You have only to look at the $1.6 billion that electricity retailers in Queensland and New South Wales have lost over the last two years to see that this market is incredibly volatile. Add to that the fact that 400,000 consumers were without electricity in South Australia just last week and you can see that this industry is one that we have to ensure we get right.

Mr Berry: Ours has not. We still own it; that is why.

MS CARNELL: Mr Berry interjects. In Labor Queensland, one of the state-run electricity distributors has lost $575m in the last six months. In fact, all of the government equity in that particular entity was lost in a very short period of time. Mr Speaker, that is the sort of risk that this market brings.

Mr Berry: I would not criticise them when you have got Bruce in your background.

MS CARNELL: Mr Berry again makes an interesting interjection. Mr Speaker, you have to look at this. This is money straight off the bottom line. No new assets are involved. It is just money lost to taxpayers. Mr Speaker, we talk a lot about ministerial responsibility and the responsibility of people in this place. That is the sort of risk that we are facing. We know that we are facing it. We have been told by Labor governments, by analysts, by newspapers, by everybody that we are facing enormous risks. It is happening in other places. If we ignore that now, I would have to say, it is not just ministerial responsibility; it is Assembly responsibility. The people of Canberra could rightly hold every member of this place responsible for losing our major asset.

Mr Quinlan: Are you going to do it right this time?

MS CARNELL: Tell us what is right and we will do it.

Speedrail Project

MR KAINE: Mr Speaker, my question, through you, is to the Chief Minister and it has to do with the risk of public money that she was talking about a minute ago. Chief Minister, you will be aware, I am sure, that three weeks ago, give or take a day or two, the Speedrail group lodged its final submission to construct and operate a high-speed rail link between Canberra and Sydney, the so-called proving-up period is over. I am sure that you will also be aware that the national media is now reporting that the Speedrail proposal has been stopped dead in its tracks, to coin a phrase, because of insurmountable financial difficulties. Apparently, one senior Commonwealth Government official has described the Speedrail bid as "stone dead". Chief Minister, given that the Speedrail consortium is asking for a $1 billion handout in the form of tax breaks and special funding, what chance do you give the project of proceeding at the moment?

MS CARNELL: Mr Speaker, I would have to say that that is an absolutely hypothetical question because the process - and I know that Mr Kaine cares deeply about process - is that the proving-up proposal from Speedrail has been given to a working party comprising the Federal Government, the New South Wales Government and the ACT. That entity is now working through that proposal and will make recommendations early in the new year. That is the process and we always want to stick with process.

MR KAINE: I have a supplementary question, Mr Speaker. I am sure that the Chief Minister is always interested in process, but she just made the point that the recommendation will eventually come to her and two other people. Having that in mind, Chief Minister, will you give an unequivocal, and I mean unequivocal, undertaking not only to this place but also to the people of Canberra that the ACT Government will participate in the very high speed train project only on the originally agreed basis, that is, no net cost to government, which means no cost to the ACT taxpayer?

MS CARNELL: Mr Speaker, no net cost to government does not mean no cost to the ACT taxpayer. It means no net cost to government. No net cost to government, quite clearly, has been defined as meaning no total cost after you take into account economic benefits, improved tourism and improved land values - all of those things. That means that there could be some dollars out of government budgets, just like there are out of the Northern Territory and South Australia for the Darwin to Adelaide route; but, overall, there must be no net cost. In other words, those costs must be outweighed by the benefits to the community generally. I certainly will stick by that, Mr Speaker. I would have to say that, boy, the costs to the taxpayer would have to be huge to outweigh the enormous benefit that Speedrail would bring to Canberra.

Mr Stanhope: Give us a hint.

Mr Berry: Is this the yes factor?

MS CARNELL: If people in this house disagree with that, let them get up and say it, Mr Speaker.

Temporary Accommodation Allowance

MR CORBELL: My question is to the Chief Minister. Chief Minister, you stated in the *Canberra Times* of 2 December this year in relation to temporary accommodation allowance for senior public servants that "the staff were entitled to the payments under public-sector guidelines put in place by the former Labor government in 1994". Chief Minister, under those guidelines, Chapter 6, Part C, Guideline 8 indicates that "staff receiving TAA normally pay an officer contribution as prescribed in the relevant Schedules". Chief Minister, what officer contributions have been received by the Carnell Government from the executives named in the response to my question on notice No. 193 as receiving temporary accommodation allowance?

MS CARNELL: Mr Speaker, may I state again, because those opposite probably were not listening or did not pay any attention to the fact, that I actually tabled the note from Mr Gilmour. Mr Speaker, it is not a matter for government. The Public Sector Management Act and the Public Service standards are implemented and run by the commissioner and chief executive officers. Obviously, I would not know the answer to the question about who has paid what. Nor should I, Mr Speaker, and nor should those opposite. What we need to be confident of is that the Act, the guidelines and the Remuneration Tribunal findings are being implemented appropriately. It is the responsibility of this side of the house to ensure that legislation and guidelines are being implemented properly. We have certainly asked on, I would have to say, many occasions to ensure that that is the case.

I am very happy to take that question on notice, but it is a stupid question, Mr Speaker. Yet again, it shows no understanding of how the Public Service works. The Government and the Executive do not and should not manage the Public Service on a day-to-day basis. Those opposite passed legislation in 1994 to ensure that that was not the case and

now, because they think it is politically expedient to bash public servants around the head, they appear to be going in a different direction.

MR SPEAKER: Do you have a supplementary question, Mr Corbell?

MR CORBELL: Yes, Mr Speaker. I thought the Chief Minister was the Minister responsible for public administration. Can I just get on the phone to the Public Service commissioner? Would that be easier?

Mr Stanhope: Yes, you can.

MR CORBELL: It sounds like I can and I will.

MR SPEAKER: No preamble.

MR CORBELL: Since the Government's review of the status of four of the seven executives receiving temporary accommodation allowance to extend the payment beyond the three-year threshold provided for in the guidelines, what officer contributions have been sought from them?

MS CARNELL: Mr Speaker, I just said that I would take it on notice.

St John the Apostle Primary School

MR RUGENDYKE: My question is to the Treasurer, Mr Humphries. Could the Treasurer advise the Assembly what provisions have been made for car parking to accommodate St John the Apostle Primary School students and their parents after the impending sale of blocks 15 to 19 of section 98, directly across the road from their school in Florey?

MR HUMPHRIES: I thank Mr Rugendyke for the question. Mr Rugendyke has spoken to me before about this issue and, no doubt, other members of the Assembly have had representations from the St John the Apostle Primary School. I know that Mr Hird has expressed concern about the possibility that some car parking space for the St John the Apostle Primary School would be lost, with the sale of a number of blocks opposite the school on Pawsey Circuit, a sale proposed for this December.

I visited the school a few weeks ago and had discussions with the principal. I have also discussed the matter with my colleague the Minister for Urban Services. I can advise the Assembly that we believe that we have reached a satisfactory resolution of the problem which involves the creation of a new bus bay on Barnard Circuit, the establishment of some new footpaths to join that bus bay with St John the Apostle Primary School, the conversion of the present bus turning circle on Pawsey Circuit into a parking area for staff at the school and the conversion of the present car park for staff and other space next to that into general car parking for parents and visitors to the school.

Mr Speaker, this proposal has been discussed with the school. I understand that it is an acceptable compromise. The one remaining issue in all of this is how to ensure that these works are completed before the land on Pawsey Circuit that is to be auctioned becomes unavailable by reason of the sale. I am advised that, if the auction proceeds on 16 December, settlement would be expected by about mid-February. The DA approval would be about another six to nine weeks after that. There would then be a BA application for the building itself, which would take another four weeks, approximately.

It is extremely unlikely that there would be any building on that site before the end of April in the coming year. However, just to be on the safe side, the Government proposes to include a condition in the sale that the new lessee of block 19, the largest of those blocks, the multi-site block, be required to liaise with both the school and the roads and traffic area in the Department of Urban Services to allow parking on the lease pending completion of the permanent additional car park work to be undertaken by the Department of Urban Services. I believe that this represents a satisfactory solution to this problem. I table the plans as they stand at this point of the works to be completed to accommodate those changes.

MR RUGENDYKE: I thank the Minister for that answer and I think he has covered the supplementary question I had, Mr Speaker. I take it that parents of the students will be able to use block 19 in the event that the new car park is not completed before the commencement of the next school year.

MR HUMPHRIES: Yes. I understand that it would be possible to continue to use a part or all of the present car parking space on Pawsey Circuit - unofficial car parking space, I might say - until the point where the new owners need to take it up to be able to develop it, but that should be, on these estimates, long after the point where the new accommodation for cars is finished on the school side.

School Mergers

MR HIRD: My question is to the Minister for Education, Mr Stefaniak, and relates to the issue of school mergers. Mr Stefaniak, can you inform the parliament whether any schools have considered amalgamation or taken any steps to pursue that option as a means of addressing the changing demographics of the Canberra school community?

MR STEFANIAK: I thank Mr Hird for the question. It is a timely one because there has been a very recent development on this issue. Just this morning my department received advice from the school boards of Wanniassa High School and Wanniassa Primary School that those two schools intend to merge. The decision was prompted by the impending retirement of the Wanniassa High School principal. The school community saw the opportunity to form a single community kindergarten to Year 10 school, with a shared principal and administration and maintaining the current two campuses, which are situated on bordering properties.

Mr Berry: You are only giving them the savings for two years, you mean-spirited Minister.

MR STEFANIAK: If you shut up, Wayne, you might learn about it. I am coming to that. Mr Speaker, this is a great result and one wholeheartedly endorsed by the school community in a ballot of parents.

Mr Berry: No, I will not shut up, mean-spirited Bill.

MR SPEAKER: Order! You will.

MR STEFANIAK: I will say that again for those opposite. It is one wholeheartedly endorsed by the school community in a ballot of parents. I am advised that about 67 per cent of the parents who responded to the vote agreed that an amalgamation would best serve the educational interests of their children now and into the twenty-first century. Two-thirds of the parents supported this move. Without a shadow of doubt, the result was one that the community wanted. There was a very encouraging response to the ballot from parents, demonstrating a healthy interest in local education by the school communities involved.

What is more, the voting was not confined to the two schools directly involved in the merger. The parents from two feeder primary schools - Wanniassa Hills and Monash - were also invited to vote. After all, those parents also deserved a say in the future of their local high school. Mr Speaker, the parents have had their say and they have said it loud and clear. Overwhelmingly, they voted to form a single community kindergarten to Year 10 school.

At this point, it might be appropriate to quote a few lines from a joint media statement issued today by the two school boards. It is appropriate to hear exactly why those two schools wanted to merge. I quote:

> This is a clear endorsement of the proposal and a recognition of the willingness of the community to embrace the existing and dynamic possibilities presented by a school of this type.
>
> This decision is about the school communities seizing an opportunity to improve the educational outcome for our kids - it is about putting in place something new and innovative that will build on the real strengths we already have in both schools.

The school boards and the parents of students at both schools are to be congratulated on their creative and flexible thinking. The individuals involved here have been willing to think outside the square to find the best solution to the future educational needs of their children. Mr Speaker, I wish I could say the same about those opposite who have blindly ridiculed the efforts of my department to foster community debate on this issue.

There is no doubt that Canberra's population has changed fundamentally over the last 10 to 20 years. The changes expected in the next decade will be just as radical. The most recent enrolment forecasts suggest that our school-age population will fall by a massive

750 students in the next five years alone. That is equivalent to approximately three normal primary schools. Based on current enrolments, that is equivalent to about six or seven of our smaller primary schools, because we do have a handful of schools with enrolments slipping under the 100 students mark, which by anyone's definition must be getting close to critical mass.

Mr Speaker, the issue of Canberra's changing demographics is one that cannot be ignored. Those opposite, especially Mr Berry, would like us to believe that it can be ignored. I do not think it can be. We do need to look at it and we do need to think outside the square, as the Wanniassa community has done. The problems with our declining enrolments will not just go away. They have to be addressed. Ideally, they have to be addressed with creative, flexible and constructive solutions. Our approach to education in the next millennium must not be dictated by outdated traditions of the past; it must be inspired by the demands of tomorrow. That is exactly what the parents and citizens in the Wanniassa community have done. They have looked into the future and developed a workable option today.

Mr Berry has accused this Government of trying to bribe school communities into considering amalgamations. For his benefit, let me quote again the words of the school board chairs of Wanniassa:

> ... this has not come about because of declining enrolments or pressure from government.

Let me reiterate, Mr Berry, that in the words of those two school board chairs there has been no pressure from government. Obviously, Mr Berry is so far out of touch with Canberra's school community that he has failed to notice that school boards generally are discussing these issues, and are doing it independently of government. They are certainly not subject to any bribes or pressure, as Mr Berry has suggested in the past. The school communities can see the facts for themselves and can make their own forecasts as to future viability and what is in the best interests of their students. Mr Berry is trapped in the halcyon days of old when every school community had a primary school and a high school, every school was full, the schooling was very traditional and there was no need to think outside the square. Unfortunately for him, times have changed.

Today's announcement makes a mockery of claims by the ACT Council of Parents and Citizens Associations that no Canberra school was seriously considering amalgamations and that the Government should drop the issue. How wrong that comment was. Today's announcement vindicates our efforts to foster community debate. It is something that is essential and it is terribly important, I say again, for people to look at solutions that best suit the educational needs of their children and to think outside the square.

The decision to create a single community kindergarten to Year 10 school at Wanniassa will not save buckets of money. But, Mr Berry, it is a community decision based on a quest for quality education rather than financial savings. Any savings will be returned to the new Wanniassa school for a transition period of two years. That is very much in

line with the offer we put on the table in April for schools, especially primary schools, considering amalgamating sites. I will say that again. They will keep any savings they make for two years. After that, any savings will be put towards the ongoing provision of quality education throughout the ACT government school system.

Mr Speaker, today is a very positive day for the children of Wanniassa Primary School and Wanniassa High School, their teachers and their parents. The decision to amalgamate into a single community school was very much a visionary one. It was taken after extensive consultation - very proper consultation - with not only the school community but also any other affected schools. It is a decision that will guarantee continuity of education for those children and a smooth transition from primary to high school at a very fragile developmental period in a child's life. I think that will be one of the big pluses that will come from such a decision. I would like to congratulate Wanniassa High School and Wanniassa Primary School. I think that they have made a commendable move. It is one that is wholeheartedly endorsed by the ACT Education Department, the ACT Government and, I would hope, the whole ACT Assembly.

MR HIRD: I have a supplementary question, Mr Speaker.

Mr Berry: Cut it out.

MR HIRD: Just cool it, Mr Berry. I would like to have the opportunity to ask a supplementary question. Minister, was the decision taken by the parents in the knowledge that they would be giving a better opportunity to their children, without pressure from the Government and of their own choosing?

MR STEFANIAK: The answer to all of those questions is yes.

New Year's Eve Celebrations

MR HARGREAVES: My question is to the Minister for Urban Services and is in respect of the New Year's Eve celebrations down by Lake Burley Griffin. It is anticipated that up to 200,000 people will be participating in the day's events. I am aware that a special events forum is managing the event and reporting to the Minister. Having regard to the spectacular nature of the activities, the crowd size and the lateness of the hour, has any risk assessment, other than Y2K failure, been undertaken?

MR SMYTH: Mr Speaker, I am pleased that Mr Hargreaves is continuing to show his interest in this matter, given that members opposite have done nothing from the very beginning but grizzle about the whole event. If Mr Hargreaves had come to the meeting about the estimates on Friday, he would have heard Mr Berry ask a similar question. Mr Berry was given a run through. It is there in the record that there is a forum which is meeting and that it involves all the stakeholders to make sure that we discuss all the issues. They are reporting to me. They have reported to me previously and they will be reporting now every week until the event to make sure that we have covered all the risks that may occur. Events like this are not without some risk, but they have been safely

managed in Canberra. SkyFire has been managed very well in Canberra for many years, and we will continue to do so.

MR HARGREAVES: Mr Speaker, I wish to ask a supplementary question because the Minister did not answer a simple question about whether the Government has done a risk assessment. My question is: If you have not done an assessment, why have you not done one? If you have done an assessment, when was it done, what technical qualifications did the assessor have and will you table a copy of that assessment by the close of business today?

MR SMYTH: Mr Hargreaves put out a press release yesterday saying that I should not resort to things like name calling. It is curious that scrooge over there has been against this right from the start. We are yet to hear a positive word from the Labor Party about this event. This is the man who hates Christmas. These are the people who gripe, whinge, bellyache, carp and carry on about everything that this Government does and they are willing for their own political ends to put at risk everything that we do to try to build up the Canberra economy.

Mr Quinlan: With justification.

MR SPEAKER: Order! Settle down over there.

MR SMYTH: Every time we put on an event that benefits the people of Canberra - - -

Mr Hargreaves: You would have said exactly the same thing about the Canberra Hospital implosion.

MR SPEAKER: Order! I know that we are all looking forward to holidays, children, but let us just behave ourselves for a few more days.

MR SMYTH: Mr Speaker, we have looked at the risks involved in this function. We have a forum that draws together everything from the police to the NCA. Emergency Services have been involved. We have looked at the things that might go wrong because that is what one does when one plans such an event. We have a forum that is meeting regularly to make sure that it goes on. What we do not have here is support from the Labor Party to do a great thing for the people of Canberra. We have the support of the people of Canberra. They all think that it is great that we are providing them with the opportunity as a community to go there to celebrate New Year's Eve. Why wouldn't you?

Their Labor colleagues in New South Wales do not. A recent survey published in last Sunday's *Sun-Herald* said that 43 per cent of Sydneysiders will be staying away from the events in Sydney because they are badly organised. Previous articles actually gave us a write-up, saying that perhaps the best organised event in the country will be held in Canberra. But what do we get from those opposite? We get complaints, we get grumbles, we get moans and we get groans. That is all we have had for the last two years.

All they want to do is to tear down Canberra. All they want to do is to stand in the way of everything that this Government does to build up community strength. Why? It is because they will say and do anything to stand in the way of this Government achieving its outcomes in looking after the people of Canberra. This is building up an opportunity for all of us to be there for that great event when 1999 becomes 2000. Lots of people are saying that they are coming. The estimates are somewhere between 60,000 and 130,000 people. I hope that they all turn up because it will be a wonderful opportunity for us all to celebrate the great place we live in. Even members of the Labor Party are invited and I hope they will come.

V8 Supercar Race

MR OSBORNE: My question is to the Treasurer, but the Chief Minister may want to answer it. I am not sure who is handling this matter. Mr Humphries, I noticed on the front page of this morning's *Canberra Times* an interesting article entitled "Senate green light for V8s". My attention was drawn to the following paragraph midway through the article:

> Canberra Tourism says it will cost $13m in the first year, $7m direct from the Government and $6m expected from sponsorships, ticket sales, and other revenue-raising.

My recollection is that that is the first time that this figure has been mentioned, but I may be corrected. I do not know whether it was mentioned in the debate; perhaps the Minister will clarify that. Nevertheless, does that mean that the race is to be underwritten to the value of $13m by the ACT taxpayer? What will happen if the expected $6m in sponsorship is not forthcoming?

MS CARNELL: No, it is not the first time that those figures have been spoken about. They have been spoken about quite regularly. As we know, a large amount of the $7m will be one-off. The ongoing yearly cost of the V8s is $2.5m. With regard to the underwriting as such, no, we have done an in-depth business plan which has been distributed to the members of the Assembly who asked for it, and others as well. If absolutely nobody turned up, certainly it would mean that it was not a big success and there could be extra economic downsides for the ACT Government. But the fact is that something like 13 tickets were sold on the first afternoon that the tickets went on sale. It certainly looks like it is going to be a great event, Mr Speaker.

Mr Berry: Is it being underwritten or is it not?

MR OSBORNE: I think it is, from that answer. How much is guaranteed to be paid to the promoter of this event, Chief Minister?

MS CARNELL: Mr Speaker, the amount that has been guaranteed is the amount that was appropriated in this Assembly. We gave members of the Assembly quite full rundowns of the information, if you remember, right down to quite significant detail on where the money was going to. It was appropriated.

Mr Osborne: Sorry, I just wanted the figure. It has been a long day, Mr Speaker, and I have forgotten exactly what it was that the Chief Minister provided. It was just the figure I was after. I did not need the smart-arsed answer, Mr Speaker.

Mr Quinlan: I take a point of order, Mr Speaker. On a point of clarification, did the Chief Minister say an in-depth study or an inept study in response to the first question?

MR SPEAKER: There is no point of order.

MS CARNELL: Mr Speaker, I am very happy to circulate the paper that we distributed when we debated it last time, which does spell out where the money is going.

WorkCover

MR BERRY: My question is to the Minister for Urban Services. Minister, this morning on ABC radio you said:

> ... we see that what we need to do is make sure that they -

WorkCover -

> have the resources and the number of inspectors has gone from something like 18 to 43 over the last couple of years as we've rolled other functions into WorkCover ...

Last week the Minister told the Urban Services Committee that the WorkCover inspectors had gone from eight to 16. Was the Minister wrong and misleading the community this morning or was he wrong and misleading the Urban Services Committee last week?

MR SMYTH: Mr Berry has asked this question once before, I think, in estimates and again recently at the Estimates Committee and Ms Plovits ran through it and outlined where the staff had grown from 18 to 43. We have moved things like the dangerous goods and gas regulations into the area. The figures I quoted were the figures that were presented to him in estimates last week.

MR BERRY: Mr Speaker, will the Minister apologise to the community on ABC radio or to the Urban Services Committee about his misleading remarks?

MR SMYTH: No, Mr Speaker. Ms Plovits ran Mr Berry through these figures and I made it quite clear when I continued on that we had rolled in other functions and in the figure of 43 were other functions, including things such as the dangerous goods unit.

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

Marketing Expenditure

MS CARNELL: Mr Speaker, during question time on 21 October, Mr Wood asked two questions relating to information shown in the 1999 financial statements of the Chief Minister's Department. The first question was in regard to the department's marketing activities. The second was about departmental donations, sponsorships and contributions. I circulated the answers out of session - in fact, quite a while ago - but I now ask for leave to have the answers incorporated in *Hansard*.

Leave granted.

The answers read as follows:

CHIEF MINISTER FOR THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY QUESTION
Question Without Notice Taken on Notice

Mr Bill Wood MLA - asked the Chief Minister on 21 October 1999:

Mr Speaker, my question is to the Chief Minister. The Consolidated Accounts on the Chief Minister's Department Financial Statements indicate the expenditure last year of $1.594m on marketing. Given that $946,000 of that amount went to pay the failed Bruce Stadium marketing consortium, can you tell us the detail of the Department's marketing expenditure of the remaining $655,000.

Ms Carnell - The answer to the Member's question is as follows:

MARKETING ACTIVITIES

Expenditure on marketing activities for CMD was $654,795 in the last financial year. (refer to Attachment A).

Marketing covered a range of activities including direct marketing programs, printing, editorial supplements, advertising, international support activities, multimedia, promotional gifts and other miscellaneous marketing activities such as Magic Millions.

Marketing initiatives centred on:

- development and implementation of a direct marketing program targeting up to 5,000 businesses considered to have the potential to relocate in the ACT. The program focuses on smart, global industries that may be attracted by the ACT's natural competitive advantages;

- multimedia initiatives such as the CD-ROM 'Canberra City of the Future' and development of a web-based photo-library;

development of a suite of marketing publications; and

- participation in a range of international development activities focusing on overseas markets, particularly China, Japan, South Africa and Taiwan; and activities relating to Canberra-Nara Sister City relationship.

The Government continued to use the 'Feel the Power of Canberra' campaign and the concepts behind the slogan, particularly in relation to business publications and the CD-ROM.

———

Attachment A

Breakdown of Marketing Budget for 1998/1999

Publications and hospitality	$ 7,099
Direct marketing program	$123,582
Print work, design and production	$179,514
Advertising	$ 59,450
International Support Activities	$ 21,641
Multimedia	$149,332
Promotional gifts	$ 22,128
Other marketing activities (i.e. Awards, etc.)	$ 92,049
Total	$654,795

Specific Initiatives:

CD-ROM 'Canberra City of the Future - included under Multimedia.	$91,796
Magic Millions - included under Other Marketing Activities.	$25,000
International Support Activities	$21,641
Direct Marketing Program	$123,581

CHIEF MINISTER FOR THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY QUESTION
Question Without Notice Taken on Notice

Mr Bill Wood MLA - asked the Chief Minister on 21 October 1999:

The Chief Minister indicated she would give us a breakdown of that figure, and I would appreciate that, and she might do the same to these other items I mention. Can you tell us, at least in broad terms again, the nature of expenditure in the Department's financial statements, specifically the $596,000 spent on donations, sponsorships and contributions and the $47 1,000 spent on a payment to SOCOG?

Ms Carnell - The answer to the Member's question is as follows:

DONATIONS, SPONSORSHIPS & CONTRIBUTIONS

Expenditure on Donations, Sponsorships and Contributions for CMD was $596,277 in the last financial year (refer Attachment A).

Donations, Sponsorships and Contributions contributed to the advancement of Canberra as a place where business and events would be attracted because of the existence of a highly skilled workforce and an international outlook. Other donations were made to support community and national initiatives.

The major initiatives fostered through donations, sponsorships and contributions were:

- A license fee of $200,000 was paid to the Confederation of Australian Sport in May this year. The payment of this fee was a pre-condition for Canberra to gain the right to host the Australian Masters Games in 2003. The Australian Masters Games is held every two years and was last held in Canberra in 1997.

- An amount of $90,000 was paid to the Australian Capital Region Development Council (ACRDC) in the year ended 30 June 1999. The ACRDC is an independent body jointly funded by the ACT and NSW governments to promote industry development in South East NSW and the ACT.

- The organisers of the 10th Anniversary of Self Government events were paid $73,052 to defray their costs.

PAYMENT TO SOCOG

As specified in the Memorandum of Understanding between the ACT Government and SOCOG, $471,000 was paid as part of the 'fee', payable over three years, for support services provided by SOCOG to the Territory.

———

Attachment A

Donations, Sponsorships & Contributions

Katie Bender Memorial	20,950
Festival Banners	6,224
NAATI Contribution	6,800
Grant for 1999-2000 Financial Support of the Constitutional Centre	6,000
Journey of Healing Network - to cover the costs of meeting local indigenous workers	400
Australian Capital Region Development Council	90,000
State/Territory Funding Regional Walks	660
Contribution to the Australian Accounting Research Foundation	6,000
Contribution for Intra-Jurisdictional Benchmarking 1998	5,000
ACT Contribution to National Office Australian Electronic Network	28,164
10th Anniversary Self Government Celebrations	73,052
Evaluation Costs of the Canberra Business Development Fund	2,100
Contribution to Canberra District Wineries re participation in the Festival at the Rocks	2,500
CanTrade sponsorship industrial design and travel grant	1,000
Contribution to the costs of travel to Nara Japan to attend the Canberra Celebration	1,000
1999 ACT & Regional Export Awards	10,000
ASOCIO 99 Sponsorship	20,782
Sponsorship 99 Canberra Region Tourism Awards	10,000
Sponsorship New Year Festivities Civic	25,000
First Instalment ACT Sponsorship of Business Club Australia Project	35,000
Australian Masters Games License	200,000
Olympics Sponsorship	15,000
Quality Assurance Awareness Seminar	1,500
Silver Sponsorship Engineering Excellence Awards	5,000
Organization Reform contributions and publications	13,989
E Team participation and contribution	1,500
Other Contributions	8,656
	596,277

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Canberra Hospital - Medical Imaging

MR MOORE: Mr Speaker, it is a shame that Mr Osborne is not here as I would like to add to a question I responded to in a previous sitting when he raised the issue of medical imaging and CT scans for children. I would like to say that the hospital has responded to his raising of the issue in a positive way. His concern at the time was that young children were being asked to fast for long periods because of the scheduling of the procedures. The schedules have now been able to be changed. Two sessions per month are conducted in the imaging department of the Canberra Hospital with children who require general anaesthetic to have MRI or CT scans. These sessions are presently held in the afternoon. Professor David Elward, the Deputy Chief Executive, Clinical, said in a press release yesterday that the hospital had been able to review scheduling within the medical imaging department and make changes that will benefit these young patients without disadvantaging any of the other patients. I would like to share that good news with members.

Art Class for Disabled Persons

MR STEFANIAK: Mr Speaker, apparently in answer to Mr Wood, I said that a program was run by Barnardos. I am advised that the program to which I was referring is run by Marymead, not Barnardos. I just make that correction.

Public Transport

MR SMYTH: Further to the answer I gave Ms Tucker at question time on public consultation, I have since been advised that we have had some difficulty in getting the draft document up onto the website and that, in fact, it will not be available tomorrow. With that in mind, given that we have not fulfilled what we had said, I will extend the consultation period to 28 January 2000.

PERSONAL EXPLANATION

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

MR SPEAKER: Proceed.

MR BERRY: Mr Speaker, I have been Gary-ed by Mr Stefaniak. I have been misrepresented. Mr Stefaniak heaped derision on me about what my attitude might be in relation to the Wanniassa merger. Mr Stefaniak has misrepresented me on that score. I do not have any difficulty at all with the Wanniassa merger provided that the people involved in the process have been satisfied with the processes that have been followed. Mr Speaker, I note that no school has been closed at Wanniassa.

I have said that I think the Government is pretty miserable about not allowing those savings from the merger to flow to the schools well into the future. Mr Speaker, I have also been misrepresented – Gary-ed, in effect - by Mr Smyth. Mr Smyth said that I had never said anything positive - - -

Mr Humphries: Mr Speaker, I rise on a point of order. I think the tradition is that the personal explanation under standing order 46 is conducted without throwing out barbs at other people. Mr Berry has descended into that, and I think that is a matter that should not intrude into his explanation under standing order 46.

MR BERRY: Which bit is he worried about? Is he worried about Gary-ed.?

MR SPEAKER: If you used the word, yes.

MR BERRY: Yes. Well, I suppose it is one way of saying that I have been misrepresented, it is just an economic use of the English language.

Mr Humphries: Mr Speaker, once again we have got here abuse of standing order 46.

MR SPEAKER: Indeed.

Mr Humphries: If Mr Berry has nothing further to say he should sit down.

MR SPEAKER: Sit down, I think you have given your- - -

MR BERRY: No. I have got one matter to finish, Mr Speaker; it will not be harmful.

MR SPEAKER: Then withdraw what you said earlier.

MR BERRY: Well, I will not use the term again.

MR SPEAKER: Withdraw the word.

MR BERRY: I withdraw "Gary".

MR SPEAKER: Thank you.

Mr Stanhope: You were Gary-ed though.

MR BERRY: I was.

MR SPEAKER: We could be here a long time.

Mr Humphries: Mr Speaker, on the point of order: I have to insist here. Mr Berry has again repeated, in response to an interjection from Mr Stanhope - - -

MR BERRY: I never said a word.

MR SPEAKER: Then withdraw it.

MR BERRY: I said nothing.

Mr Humphries: It is not a withdrawal I am after, Mr Speaker. I think it is an end of his privilege under standing order 46 to make a statement.

MR BERRY: No, no. Come, come.

MR SPEAKER: I am getting very tired of this.

Mr Humphries: If he continues to use it as an opportunity to hurl abuse at other members. It is not the basis on which standing order 46 statements are made.

MR BERRY: Mr Smyth said that we had never said anything positive about the new year holiday celebrations which were going to be organised by the Government. Mr Speaker, it is quite the contrary. We provided for a holiday for the workers so they could go. Mr Smyth opposed that.

TERRITORY OWNED CORPORATIONS ACT
Papers

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety): For the information of members, I present, pursuant to subsection 19(3) of the Territory Owned Corporations Act 1999, the statement of corporate intent for Totalcare Industries Ltd for 1 July 1999 to 30 June 2003 and ACTEW Corporation Ltd's constitution.

FINANCIAL MANAGEMENT ACT – TRANSFER OF FUNDS
Paper and Ministerial Statement

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety): Pursuant to section 14 of the Financial Management Act 1996, I present an instrument directing a transfer of funds between appropriations, and a statement of reasons, and I ask for leave to make a brief statement relating to the transfer of funds.

Leave granted.

MR HUMPHRIES: Thank you, members. As required under the Financial Management Act 1996, I have tabled an instrument issued under section 14 of the Act, and a statement of the reasons for the transfer of funds between appropriations by direction of the Executive. The transfers under the Financial Management Act 1996 allow for changes to appropriations throughout the year within the appropriation limit passed by the Assembly. This instrument relates to the 1999-2000 financial year and is

tabled in the Assembly within three sitting days of the authorisations as required by the Act.

This instrument provides for the transfer of funds for the amount of $200,000 from the Department of Education and Community Services to the Office of Asset Management. This appropriation was originally provided to the Department of Education and Community Services for the refurbishment of ACT Sport House. As the building is owned by the Office of Asset Management it is appropriate that funds be transferred from Education to Asset Management.

LANDFILL SITES – ENVIRONMENTAL MANAGEMENT PROCEDURES
Paper and Ministerial Statement

MR SMYTH (Minister for Urban Services) (3:40): Mr Speaker, I ask for leave of the Assembly to make a ministerial statement on environmental management procedures at landfill sites.

Leave granted.

MR SMYTH: Mr Speaker, I move:

> That the Assembly takes note of the papers.

Mr Speaker, on 12 October this Assembly resolved that I should provide a report on proposals to improve the environmental management procedures at the West Belconnen landfill, and on procedures for checking the acceptability of waste delivered to the site. Members will recall that this matter arose when concerns were raised regarding the disposal of metal floc at the West Belconnen landfill. There has been an extensive review process undertaken since 12 October, but firstly we need to consider the outcome of the report in the broader waste management strategic context.

Mr Speaker, the no waste by 2010 strategy will mean that increasingly the ACT will need to deal with a higher percentage of more hazardous wastes going to landfill as the less innocuous wastes are gradually removed from the waste stream through increased resource recovery efforts. Over the past five years, waste to landfill has been reduced by 40 per cent and resource recovery has more than doubled. It is the goal of the no waste strategy that the waste stream will gradually diminish over the next few years, and industrial wastes are likely to be the hardest wastes to deal with effectively and will therefore be concentrated in the waste stream.

My department is working cooperatively with the private sector to help reduce the levels of commercial and industrial wastes going to landfill. For example, the development control code for best practice waste management in the ACT was recently introduced. This document provides assistance with waste planning to developers in an effort to reduce the amount of building and demolition waste going to landfill. We must continue to improve our waste management strategies in recognition of changes in environmental management procedures. The review that was commissioned in October will contribute to the refinement of our strategies.

To provide an independent opinion, consultants Sinclair Knight Merz, were engaged to conduct a review. Sinclair Knight Merz is a leading independent multi-disciplinary firm of consulting engineers, planners, scientists, economists, and project managers. Dr Ian Swane (CP Eng), who conducted the review, is the contaminated sites and waste management group manager, and is an accredited site auditor with the New South Wales and Victorian EPAs. The review was carried out with regard to the current environmental authorisation for the landfills, and the consultants were required to liaise with key stakeholders including Environment ACT, ACT Workcover, Totalcare Industries Ltd, CFMEU and the ACT Department of Health and Community Care.

The Assembly will be pleased to note that the report found no fundamental deficiencies in the management of landfill operations. However, there is room for improvement. The review found that the West Belconnen landfill is a generally well run facility that plays an important role in waste management in the ACT. The facility is achieving substantial compliance with its environmental authorisation issued by Environment ACT.

The review also considered OH&S concerns on the site. Data provided by ACT WorkCover indicate that a relatively high level of safety has been achieved and maintained by ACT Waste at the two landfill sites. Information on ACT Waste's workers compensation history shows that, between March 1996 and October 1999, the type and level of injuries reported by workers have been relatively low and consistent with other forms of earthmoving types of work. This OH&S data indicate no reported cases of injury caused by acute (ie., short-term) exposure to hazardous chemicals or dusts.

The Sinclair Knight Merz report also benchmarks best practice environmental management at Sydney, Brisbane and Melbourne landfills. The report compares the current procedures at ACT landfills with those benchmarked at other landfills, and makes a series of recommendations to improve the procedures at ACT landfills. The best practice benchmarking and some of the resulting recommendations need to be considered in the local context. The report indicates that the much lower amount of special, chemical and industrial waste received at ACT landfills means that the potential environmental impacts are lower compared with landfills in Sydney, Melbourne and Brisbane.

To achieve best practice environmental management, relevant to this region, we will need to use a more flexible approach to screening waste received at ACT landfills. Our policies should continue our waste minimisation effort to direct waste streams to recycling; detect large volumes of incorrectly classified waste; detect incorrectly classified waste generated outside the ACT; use handling methods that protect the health of landfill workers and the public using the landfill; and encourage residents of the ACT to properly manage and dispose of waste.

The majority of recommended improvements to the environmental operation of the West Belconnen landfill are in the area of waste management practices. Waste management practices can be improved in terms of organisational structure, allocation of responsibilities, waste classification, waste tracking, screening of waste and compliance auditing.

Further recommendations are made regarding the implementation of a quality control system and a fully structured and documented system for staff training, particularly in relation to work practices and OH&S procedures. A clear communication protocol with external government agencies in matters of public importance will be established as a central component of the emergency procedures.

I will table the full report, but I will summarise the proposed improvements. The roles and responsibilities of the landfill "operator" and landfill "owner" are in the process of being reviewed and more clearly defined following the separation of the landfill unit from ACT Waste in July 1999. Operations at the landfill were spread and the chain of responsibility unclear. The review will be completed as soon as practicable.

Formal contractual relationships will be established between the main agencies responsible for operations at the landfill, ie., ACT Waste, the City Operations landfill unit and Totalcare Industries Ltd. A system of overlapping responsibilities between the waste generator, transporter, and landfill operator will be established, with the waste generator to be primarily responsible for the correct disposal of the waste. The current system relies on a level of trust between the ACT Government and the waste generators and transporters. However, recent events at the West Belconnen landfill have shown that such an approach is open to abuse and can lead to problems with the receipt of incorrectly classified waste.

The waste classification system used in the ACT will be reviewed to see whether "miscellaneous" wastes can be renamed. This will ensure that the hazards posed by these wastes are more readily recognised, and that more attention is given to the manner in which they are received, inspected, and approved for disposal at the landfill. Waste generators who dispose of "miscellaneous" waste at the West Belconnen landfill will be required to retest the waste on a regular basis in order to confirm that the contaminant concentrations remain within allowable limits.

Environment ACT will be given responsibility for issuing all approvals for the transport and acceptance of waste to landfill for wastes other than "inert", "municipal waste", "food waste", and "vegetative waste from agriculture or horticulture" as well as for developing procedures for waste classification. Waste generators would then need to apply directly to Environment ACT for these waste approvals.

The current waste tracking system will be expanded to provide true "chain of custody" security for wastes other than "inert", and provide whole-of-life control. A screening system will be established to provide an appropriate level of confidence that an unacceptable quantity of waste is not being incorrectly disposed at the landfill. The system will involve the erection of signs and viewing platforms, random inspections of loads, establishment of a quarantine area, development of a computer database, and

random sampling and testing of waste. Workers will be given the authority to inspect loads.

A formal compliance auditing system will be established which involves the random but regular testing of wastes received at the landfill, particularly "solid" wastes and special burials that are received in large quantities, or are regularly disposed at the landfill under the "miscellaneous" waste category. It is proposed that the Environment Protection Act 1997 be amended to limit chemical testing of waste samples to only suitably accredited laboratories.

Mr Speaker, the Government accepts these recommendations. The regulation of waste transportation and disposal involves the preparation of regulations under the Environment Protection Act. This work is now under way. The proposal to limit the testing to accredited laboratories does not require further provision as the Environment Protection Regulations already include this requirement.

I now wish to refer to the metal floc currently contained at the Belconnen landfill. Negotiations are currently ongoing with the waste generator, Metalcorp, with regards to the final disposal of the floc. Environment ACT has engaged an independent expert, Golder Associates Pty Ltd, on the matter. Golder Associates Pty Ltd is an international consultancy company with many years of experience in assessing contaminated sites, solid waste disposal, and environmental management. The final outcome regarding dealing with the floc will be based on the advice of the consultant and the regulatory requirements of relevant jurisdictions, and will address all criteria concerning public and staff safety as well as the environment.

The main concern with lead in the floc was inhalation or ingestion of the contaminants. In the short term, safety at Belconnen landfill has been addressed by covering and fencing off the material. Air monitoring was carried out at the time the floc was covered, which indicated airborne levels of contaminants were below detectable levels. Further, the tip is lined and the leachate control system is monitored. Standard monitoring of the leachate control system occurs every six months. Additionally, a new tip face has been established away from the covered material to increase public and staff safety.

Landfill staff were offered blood testing by their own doctors. Whilst complete results are not available, all results forwarded to ACT Health Protection Services are below levels of concern. Some staff have chosen not to forward their results to ACT Health Protection Services. As the metal floc does not present an immediate risk to public health, Environment ACT is collecting all the information necessary to make sure that any decision the Government makes is the most appropriate from an environmental, public health and occupational health and safety point of view. With the implementation of the Sinclair Knight Merz proposals and recommendations, Canberra residents can be assured that the management of waste in the ACT will be in line with best practice.

Debate (on motion by **Ms Tucker**) adjourned.

EMERGENCY MANAGEMENT BILL 1998

Detail Stage

Clause 3, as amended

Debate resumed.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (3.53): Mr Speaker, I think I am due to move another amendment, am I not? I understand that the Opposition is now not proceeding with any of its white amendments.

MR SPEAKER: That is correct.

MR HUMPHRIES: It is only the pink amendments. In that case, Mr Speaker, I seek leave to move amendments Nos 3 and 4 circulated in my name together.

Leave granted.

MR HUMPHRIES: I move my amendments Nos 3 and 4, which read:

> Line 24, definition of "Chief Police Officer", omit the definition.
> Line 37, definition of "Controller", omit the definition, substitute the following definition:
> " 'controller'—
>
> (a) in relation to a provision the functions and powers of which are the subject of an assignment under subsection 22(2)—means the chief police officer and includes the alternate controller; or
>
> (b) in relation to any other provision—means the Minister;".

Amendments agreed to.

Clause, as amended, agreed to.

Remainder of Bill, by leave, taken as a whole.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (3.55): Mr Speaker, I seek leave to move the remainder of the amendments I have circulated together.

Leave granted.

MR HUMPHRIES: I move:

Clause 7, page 6, line 22, paragraph 2 (b), omit the paragraph.

Clause 9, page 7, line 10, omit the clause, substitute the following clause:

"**9. Chairperson**

(1) The chief police officer is the chairperson of the management committee but in the absence of the chief police officer the executive director is the chairperson.

(2) However, in the absence of the chief police officer and the executive director, the members present must elect a chairperson from among their number.".

Clauses 22 and 23, page 11, line 10, omit the clauses, substitute the following clauses:

"**22. Territory controller**

(1) Subject to subsection (2), the chief police officer is the controller.

(2) In relation to a declared emergency, the chief police officer may only exercise the functions and powers of the controller that the Minister assigns.

(3) In this Act, a reference to the functions or powers of the controller in relation to a declared emergency is a reference to the functions or powers for the time being assigned to the controller for the emergency.

23. Alternate Controller

(1) The controller, with the approval of the Minister, may appoint a public servant or statutory office holder to be the alternate controller.

(2) In relation to a declared emergency, the alternate controller may exercise the functions and powers for the time being assigned to the controller.".

Clause 25, page 12, line 28, subclauses (1) and (2), omit the subclauses, substitute the following subclauses:

"**(1)** As soon as practicable after an emergency is declared under section 20, the controller must establish a management executive for the emergency to provide support to the controller in the exercise of his or her functions and powers.

(2) The management executive consists of—

(a) the persons constituting the emergency management committee; and

(b) such other persons as the controller considers to be appropriate to assist in management of the emergency.".

Clause 27, page 15, line 5, subclause (11), omit the penalty, substitute the following penalty:

"Maximum penalty: 50 penalty units.".

Clause 28, page 15, line 16, omit the penalty, substitute the following penalty:

"Maximum penalty: 2,000 penalty units, imprisonment for 1 year or both.".

Clause 36, page 17, line 18, subparagraphs (c) (i) and (ii), omit "city".

Clause 53 –

Page 21, line 24, subclause (1), definition of "ambulance services", omit the definition, substitute the following definition:

" 'ambulance services' means the provision of medical treatment and pre-hospital patient care to a patient and includes the transport by ambulance of a patient;".

Page 22 –

Line 9, subclause (1), definition of "exempt contributions", omit the definition, substitute the following definition:

" 'exempt contributions' has the meaning given by subsection 53A (1) or (2);".

Line 12, subclause (1), insert the following definition:

" 'family rate', in relation to a contributor, means a contributor who is not a contributor at the single rate;".

Line 28, subclause (1), insert the following definition:

" 'patient' means a person who is injured or otherwise suffering from a medical condition;".

Line 32, subclause (1), insert the following definition:

" 'single rate', in relation to a contributor, means a person who is a contributor only in respect of himself or herself.".

New clause –

Division 1 of Part VI of the Bill: Page 23, line 4:

"**53A. Meaning of exempt contributions**

(1) Contributions are exempt contributions where they are paid into a health benefits fund conducted by a health benefits organisation, by contributors included in a prescribed class of persons for the purpose of securing entitlement to basic health benefits.

(2) Contributions are also exempt contributions where—

(a) the contributions are paid into a health benefits fund conducted by a health benefits organisation for the purpose of securing entitlement to basic health benefits; and

(b) the contributions—

(i) if paid at the single rate—are paid while the contributor is absent from Australia for the prescribed period; or

(ii) if paid at the family rate—are paid while all of the contributors are absent from Australia for the prescribed period.

(3) In subsection (2)—

prescribed period means a continuous period that is not less than the period prescribed for the purposes of this section.".

Amendments -

Clause 54, page 23, line 8, after subclause (1), insert the following new subclause:

"**(1A)** The ambulance service is taken to be the successor of the ambulance service established and conducted under the *Ambulance Service Levy Act 1990*.".

Clause 57, page 23 –

Line 26, paragraph (a), at the end insert "and".

Line 29, paragraph (b), omit "; and".

Line 30, paragraph (c), omit the paragraph.

Clause 60, page 24 –

Line 29, heading, omit "**(Administration)**", substitute "**Administration**".

Line 30, omit "*Taxation (Administration) Act 1987*", substitute "*Taxation Administration Act 1999*".

Clause 63, page 25 –

Line 17, omit the subclause, substitute the following subclause:

"**(2)** For subsection (1), where a person is paying contributions at the family rate and only 1 of the persons on whose behalf those contributions are being paid is resident in Australia, the person paying the contributions is taken to be contributing at the single rate.".

Line 27, subclauses (4), (5) and (6), omit the subclauses, substitute the following subclause:

"**(4)** In this section—

relevant amount means—

(a) such amount as the Minister from time to time determines under section 139 of the *Taxation Administration Act 1999* for this section; or

(b) where no such amount is determined—83 cents.".

Clause 64, page 26, line 7, subclause (2), omit the subclause, substitute the following subclauses:

"**(2)** A return must be in writing in a form approved by the commissioner and must specify, in relation to the reference month to which the return relates—

(a) the number of contributors who are contributors at the single rate; and

(b) the number of contributors at the family rate; and

(c) the number of days in the reference month.

(3) Where a person contributing at the family rate is, by virtue of subsection 63 (2), taken to be contributing at the single rate in relation to the reference month, that contributor is to be included in the number referred to in paragraph (2) (a).".

Clause 71 –

Page 28, line 14, subclauses (1) and (2), omit the subclauses, substitute the following subclauses:

"**(1)** A person must not, without the approval of the Minister, provide ambulance services.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) Subject to the regulations, in considering an application for approval, the Minister must have regard to—

(a) the public benefit; and

(b) the impact that approval of the application would have on the health and safety of the community.".

Page 28, line 31, subclause (7), omit the subclause, substitute the following subclause:

"**(7)** Subsection (1) does not apply—

(a) to a doctor who provides medical treatment, or pre-hospital patient care to a patient, in the course of, or as an incident of, conducting his or her medical practice; or

(b) to an organisation in respect of first aid rendered by a member of the organisation in the course of his or her duties as such a member; or

(c) to any other person who renders first aid.".

Page 29, line 3, subclause (8), definition of "medical practitioner", omit the definition.

Clause 75, page 31, line 24, subclause (1), omit the penalty, substitute the following penalty:

"Maximum penalty: 50 penalty units, imprisonment for 6 months or both.".

Clauses 80 and 81, page 32, line 35, omit the clauses, substitute the following clauses:

"**80. Transitional**

(1) NIB Health Funds Limited is taken to have been approved under section 68.

(2) This section expired 3 months after it commences.

81. Consequential amendments and repeals

(1) The *Ambulance Service Levy Act 1990* is amended on the commencement of Division 2 of Part VI by omitting the definition of ***ACT Ambulance Service*** in subsection 4 (1) and substituting the following definition:

"***ACT ambulance service*** means the ACT Ambulance Service provided for under subsection 54 (1) of the *Emergency Management Act 1999*.".

(2) Section 6 of the *Ambulance Service Levy Act 1990* is repealed on the commencement of Division 2 of Part VI.

(3) Sections 3, 5 and 7 to 11 of the *Ambulance Service Levy Act 1990* are repealed on the commencement of Division 3 of Part VI.

(4) Section 11A of the *Ambulance Service Levy Act 1990* is repealed on the commencement of section 78.

(5) Section 12 of the *Ambulance Service Levy Act 1990* is repealed on the commencement of section 67.

(6) Section 13 of the *Ambulance Service Levy Act 1990* is repealed on the commencement of section 79.

(7) The *Taxation Administration Act 1999* is amended on the commencement of Division 3 of Part VI—

(a) by omitting paragraphs 4 (b), (c), (d) and (e) and substituting the following paragraphs:

'(b) the *Debits Tax Act 1997*;

(c) the *Duties Act 1999*;

(d) Division 3 of Part VI of the *Emergency Management Act 1999*;'; and

(b) by omitting paragraph 139 (1) (h) and substituting the following paragraph:

'(h) an amount for section 63 of the *Emergency Management Act 1999*.'.

(8) On the day after the commencement of the last of the provision of this Act mentioned in subsections (1) to (6)—

(a) the following Acts are repealed:

- *Ambulance Service Levy Act 1990* No 7
- *Ambulance Service Levy (Amendment) Act 1992* No 79
- *Ambulance Service Levy (Amendment) Act 1999* No 37; and

(b) this section expires.".

Amendments agreed to.

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

Motion (by **Mr Hargreaves**) agreed to:

That, pursuant to standing order 187, clauses 2, 60 to 66, and 80, as amended, be reconsidered.

Clause 2, as amended

MR HARGREAVES (3.56): Mr Speaker, I move:

Page 1, line 7, subclause (1), omit the subclause, substitute the following subclause:

"**(1)** Sections 1, 2 and 80 commence on the day on which this Act is notified in the *Gazette*.".

This amendment and other amendments on the pink sheet seek to remove from this Bill references to the ambulance service levy. It is quite inappropriate that such machinery provisions be included in legislation which essentially directs the service provision part of the Emergency Management Bill. The scrutiny of Bills committee looked at the Bill

and recommended that levy provisions be taken out and put into more appropriate legislation. We believe that the levy is a finance matter and ought to remain where it is. The Government have said on a number of occasions that there is not a specific relationship between the collection of moneys and a particular program, so we do not see the relevancy of the levy in this legislation.

The Opposition is not happy about the Ambulance Service not having its own piece of legislation, because of the uniqueness of that service. Provisions such as this which are essentially tied up with how much it costs to run the service ought to be elsewhere. We do not wish to record our objection to the levy at this point. That can be done at some other stage. We do not want to argue that at this point. We only suggest that it is inappropriately placed in this legislation. We are not seeking to repeal that whole levy system. The levy is currently in the Ambulance Service Levy Act 1990, and we seek to keep it there. This amendment starts that process. The guts of the argument comes up in Division 3 of Part VI, where we talk about the levy itself. I do not believe that a piece of arithmetic ought to be in this Bill.

MS TUCKER (3.58): I have already addressed this matter to some extent, but I would like to pick it up again. I should respond to a few comments from Mr Humphries and Mr Rugendyke, who seemed totally surprised by this amendment by Mr Hargreaves. They do not appear to be aware of the committee report which came out in November of this year. On the committee were Paul Osborne, John Hargreaves, Harold Hird and Trevor Kaine. It was only Mr Hird who did not support the recommendation that the Government introduce separate Ambulance Service legislation.

The report is the reason why the Greens have taken an interest in this issue. Among the key points the committee made were the issues around competition policy which I raised in my speech at the in-principle stage. The committee said:

> The committee did not receive a detailed response to these issues from the Government. The Government did, however, advise that the details of the contestability arrangements would be included in regulations to be developed at a later stage.

I made that point, too. The committee report went on:

> The committee found that this proposal was not satisfactory. It does not allow the committee to scrutinise this aspect of the legislation before it is presented in the Legislative Assembly.

Mr Humphries put up an argument that that was not appropriate, but that view was obviously not shared by three members of the committee. Paragraph 66 of the report states:

> … the committee concluded that the arguments put forward by the Government in favour of incorporating ambulance service legislation into general emergency services legislation were not compelling enough to justify this move.

I refer members to that committee report. Clearly, the Government has a different view, which has been put, but it is important to get on the record that this matter was raised in the committee by the majority of members of that committee.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (4.00): We are opposed to the amendment. I want to throw the question back to other members of the Assembly. I have looked at the report that Ms Tucker has just referred to, which argues at length about the inclusion of the Ambulance Service in the legislation. There is comment by the committee about whether it is appropriate to have the Ambulance Service integrated into the legislation. There is also argument about whether it is appropriate to have national competition policy provisions in the emergency management legislation.

I will repeat that to make sure I got it right, Mr Speaker. There is an argument about whether the Ambulance Service should integrate into the emergency management legislation and about whether competition policy principles should be built into the legislation for the potential outsourcing of services in the future. In the body of the report there is very little discussion about the ambulance levy. I have only skimmed through this in the last few minutes to refresh my memory, but I cannot see any reference at all - perhaps someone can find it for me - - -

Mr Hargreaves: Page 17, paragraph 66.

MR HUMPHRIES: Paragraph 66 states:

> … the committee was of a view that there was no logic in including information about the ambulance levy … in general emergency services legislation. The concerns raised about the lack of detail of regulatory arrangements covering the contestability of ambulance services provide further justification for not …

There is only one sentence there about the ambulance levy. Mr Hargreaves made a comment about the Opposition reserving its views about the levy. Let me remind Mr Hargreaves that the levy is not the levy on insurance we were talking about a couple of years ago. This is the ambulance levy. It has been in place for a number of years. I think it may have been put in place by the former Labor Government, but I cannot be certain about that. Anyway, it has been a longstanding levy supported by both sides of the chamber. As far as I can tell, it is a very appropriate levy to be charging in the ACT.

We have one line of argument in the report of the committee saying that we should not have the levy in this legislation. They say that they do not believe it is logical, but they give no explanation of why it is not logical. Mr Hargreaves and Ms Tucker, apart from citing the committee report, have not indicated any reason why it is not logical to have it in the legislation.

What is the objection to having it in the legislation? First of all, it is a cross-reference, in effect, to other legislation, so that one can see how the legislation is constructed to pick up provisions in the Taxation Administration Act 1987 that also allow for the collection

of levies of this kind. As I understand it, it also picks up the legislation that this Bill repeals, which also has references in it to the ambulance levy. We are not changing anything. We are doing what has been the case for some time, simply picking it up and running it forward into this new legislation.

We have heard the argument that we should not have reference to the ambulance levy in the new Emergency Management Act because it is somehow inappropriate. There are at least half a dozen other pieces of legislation my officers have been able to identify in the last day or so which have similar levies contained within them, or charges of the same kind as that contained in this Bill. They are the Casino Control Act 1988, section 16; the Gaming Machine Act 1987, section 58; the Interactive Gambling Act 1998, section 84, only recently passed by this Assembly; the Liquor Act 1975; the Legal Practitioners Act 1970, section 132; the Stock Act 1991; the Bookmakers Act 1985; and possibly the Gas Supply Act, only recently passed by the Assembly, in 1998. In all those pieces of legislation there are provisions for levies of the same kind.

If we are now espousing a principle that substantive legislation affecting a particular area should not include any levies that are associated with that particular area of regulation, I have two questions. First of all, where should the levy go? Secondly, if the levy should be somewhere else, such as in separate free-standing legislation - I presume we would have an Emergency Management (Ambulance Levy) Act - - -

Mr Hargreaves: It is already there.

MR HUMPHRIES: No. At the moment it is in the present Bill. We want to keep it in this Bill.

Mr Hargreaves: It is in another Act.

MR HUMPHRIES: It is in another Act. We are proposing to carry it over into what will be the Emergency Management Act. If we want to have a separate Act or have this rolled into some other piece of legislation - I do not know which legislation; no-one has told me yet - then why are we now espousing this new policy? We have not done it for other pieces of legislation, some of which have been passed by the Assembly only in the last 12 or 18 months.

I do not understand this principle that has suddenly been raised. Why can the levy not be in the Emergency Management Act? It is a levy which funds the Ambulance Service, which now, pursuant to the decision of the Assembly, is part of the Emergency Management Bill. Why should it not be part of the one document? Perhaps Mr Hargreaves or someone else can explain where these provisions should be if they are not here and why this principle has not been applied in other legislation the Assembly has passed.

MR HARGREAVES (4.08): I rise again to explain some of the issues. The committee said, as the Minister read out, that it was of the view that there was no logic in including the information and that the Minister had not given any logic for it. Furthermore, in his response to this report, the Ministers talked about recommendation 6, which is that the levy not be included. His response said, "See recommendation 5". Recommendation 5 is

about whether the Ambulance Service ought to be a stand-alone service or whether it should be included in the Emergency Management Bill. I disagree with what the Minister has said about the Ambulance Service being incorporated in the Emergency Management Bill.

However, there is nothing at all in the Government's response about the levy. There is at least a sentence about it in the report which says there is no logic to it. What more can you say, except that there is no logic. No logic for it being in there was advanced during the public hearings.

The Minister said, "Where would you put it if you did not have it here?". We would suggest that the Ambulance Service Levy Act 1990 remain as is - no change. It would still function in exactly the same way it has to date. It is already there. There is no need to repeal it as clause 80 of this Bill seeks to do. Clause 80 reads:

> The *Ambulance Service Levy Act 1990* and the *Ambulance Service Levy (Amendment) Act 1992* are repealed.

We already have legislation in place. We are already collecting this levy. We are already applying it, if what the Minister says is right. Why therefore do we need to have it in this Bill? There is no need for it. It is inconsistent. The Minister trotted out four or five pieces of similar legislation. Why did he not do that when the committee put its report down? Why did he not do that in the Government's response to the committee?

The Opposition would like to achieve recognition that this is a piece of money legislation. The Emergency Management Bill addresses preparedness to respond to a declared emergency. We want to keep the two separate. We do not want to have to keep coming back and tackling the Emergency Management Act if we do not have to. I would urge the crossbenches to think about the logic of having a money Bill stuck in the middle of the Emergency Management Bill. We are not saying, "Let us repeal it. Let us get rid of it". We are saying that legislation already in force is working. If it ain't broke, why change it?

MR OSBORNE (4.11): I must admit to being somewhat confused about what Mr Hargreaves is attempting to achieve here. I do not have a copy of the report in front of me, but my recollection is that the committee generally agreed that what Mr Hargreaves was proposing was a good idea. I stand to be corrected by the members of the committee, but my understanding is that we had not gone to the lengths of actually proposing amendments or a new piece of legislation.

I am unsure whether supporting this amendment is the right thing to do. Perhaps Mr Kaine could come to my assistance on this issue. I do recall that all of us on the committee felt that the ambulance levy was - - -

Mr Hargreaves: Look at page 18.

MR OSBORNE: I have seen the recommendation, Mr Hargreaves. I recall, though, that it was not an issue that was going to be finalised today. My understanding is that there was some confusion within the committee as to why the levy was in the Bill. We felt that perhaps there would be a good reason for it being in the Bill, but I do not recall one being before the committee when we discussed this issue.

Mr Kaine has just joined us. Perhaps he could give us his understanding of Mr Hargreaves' amendment. To reiterate, my understanding is that this issue was not to be finalised now. We generally felt that at some stage down the track there should be separate ambulance legislation. I am looking for some guidance from other committee members on this issue.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (4.14): Mr Speaker, could I try to clarify the situation? I do not think Mr Stanhope's amendment will be effective.

Mr Hargreaves: It is mine.

MR HUMPHRIES: I beg your pardon. I apologise for the insult. I want to draw to Mr Hargreaves' attention the reason why his amendment will not work.

Ms Tucker: I raise a point of order, Mr Speaker. I have just had to sit through a really tedious debate about people impugning other people in the Assembly. It was about Gary-ing. Mr Humphries has now said it is an insult to call Mr Hargreaves Mr Stanhope. Can you be consistent in your rulings, please?

MR SPEAKER: I would be happy to uphold your point of order, Ms Tucker.

MR HUMPHRIES: I draw Mr Hargreaves' attention to why. I hope he is listening to this, because it explains why his amendment will not work.

Mr Hargreaves: I am listening to you. It is very difficult not to.

MR HUMPHRIES: I am pleased to hear that. I draw your attention to the very last page of the government amendments we have just passed, to new subclause 81(8). You want to put the Ambulance Service levy into the Ambulance Service Levy Act 1990, do you not, Mr Hargreaves?

Mr Hargreaves: No, I want it to remain there.

MR HUMPHRIES: I draw you attention to new subclause 81(8), which says, in part:

> … the following acts are repealed:
>
> - *Ambulance Service Levy Act 1990* No 79 …

We cannot put the ambulance levy in an Act which has been repealed.

MR OSBORNE (4.16): I have sought advice from the senior statesman on our committee, Mr Kaine, and I think that both his understanding of this issue and mine are as one. We feel that this issue should be looked at further down the track. I certainly do not feel that I am in a position to support what Mr Hargreaves is proposing at this stage. We threw it back to the Government. They have said no. I think the committee's attitude was that we would monitor it and have a look at it further down the track.

I do remember saying that there was probably a reason for the levy. Mr Humphries has answered some of the questions Mr Kaine and I had in relation to the levy. It is something that perhaps the committee can look at in the new year.

MS TUCKER (4.17): I want to comment on Mr Osborne's comments. The committee said:

> The committee does not disagree that the Minister for Emergency Services could administer ambulance services, but does not agree that the provision of ambulance services should be governed by the Emergency Management Bill 1998.

Then there is a recommendation which says:

> The committee recommends that the Government introduce separate ambulance service legislation.

I am confused about what we are meant to understand from this committee report. Now I am hearing Mr Osborne say that he and Mr Kaine agree that they did not actually mean that; they just meant that maybe it is something that should be looked at. I have to accept that, but if you read this recommendation and what precedes it, you can only assume that the committee does not want it. The committee said:

> The committee recommends that the Government introduce separate ambulance service legislation.

Now we are hearing that it is different. I am listening to the arguments, but there are not a lot of arguments either.

MR KAINE (4.18) Mr Speaker, we are bogging down in a quagmire here. I have already spoken to this Bill. I addressed this very question of whether or not at this stage we should be seeking to have separate legislation for the Ambulance Service. I have already explained that, while we made that recommendation, the Government has not picked up that recommendation and the legislation, which does not provide for separate Ambulance Service legislation, is what we are considering today.

Unless somebody is going to move that we table right now another Bill to provide for the administration of ambulance services, I suggest that we can continue arguing for the rest of the week and it is not going to get us anywhere. The fact is that the Government has a Bill. They set aside our recommendation. That is their prerogative. I do not agree

with them. But their legislation is here now for debate and there is no amendment to change that.

The only point at issue now seems to be the ambulance levy. I pointed out earlier that I would seek to have the legislation reviewed to make sure that it was still working and that, if it was not, I would seek to change it. The levy is part of the Government's ambulance services legislation. As the Minister has pointed out, it always has been. By adopting his legislation today, we are not changing what has been in place for some time. I am not for a moment going to support a notion that we should somehow set up a special piece of legislation to deal with the levy. That would be an even worse offence, in my view, than accepting the Minister's recommendation that it stay in this Bill.

We had a view. That view is history. It was not accepted by the Government, and it apparently has not been accepted by the Assembly either, because we are almost on the point of adopting the Government's Bill as it stands. So what are we arguing about?

I come back to what I said two or three hours ago on this matter. I think we have reached the point where we adopt the Government's legislation, even though there are some aspects of it that we do not wholeheartedly support. If when we review it in six or 12 months' time we still do not agree with it, we can seek to change it then. That includes changing the method by which the levy is provided for and collected.

Amendment negatived.

MR SPEAKER: Mr Hargreaves, are the other amendments you are proposing on this reconsideration conditional upon the passage of your amendment No. 1?

MR HARGREAVES (4.21): Mr Speaker, it seems to be the will of the Assembly, if I read Mr Kaine correctly, that for the time being the totality of the Government's view on the Ambulance Service be included in the Emergency Management Bill and subsequent Act. The Opposition will not pursue a pointless exercise. I must express my disappointment in Mr Osborne, who did indicate what he felt about the levy in the context of the committee. I am sorry he did not have the courage to carry it out. But I am also not so stupid as to pursue a course which is not going to succeed. In that case we will not pursue our other amendments.

MR OSBORNE (4.22): I cannot let that go through to the keeper. I always find it interesting when Mr Hargreaves uses the word "courage".

Mr Hargreaves: You are voting against your own recommendation.

MR OSBORNE: No, that is not correct. Mr Hargreaves says I am voting against my own recommendation. I think Mr Kaine made it very clear that this issue is not finished, as far as the committee is concerned. But you cannot just do what Mr Hargreaves is proposing - throw up an amendment, take it out of the Bill and just let it sit there in limbo. Mr Kaine and I have both said that we are prepared to look at separate ambulance legislation further down the track. Mr Hargreaves wants to try to play some silly politics on this issue. I would argue that if what he is proposing were to get up it would look ridiculous.

I need to make the point that the committee still thinks this issue must be looked at. As Mr Kaine said, we threw it back to the Government. They said no. As far as we are concerned, it is not the end of the debate. If Mr Hargreaves wants to move stupid amendments, that is fine, but he will lose as he normally does when he does silly things.

Clause, as amended, agreed to.

Clauses 60 to 66, as amended, by leave, taken together and agreed to.

Clause 80, as amended, agreed to.

Bill, as amended, agreed to.

ROAD TRANSPORT (GENERAL) BILL 1999

Detail Stage

Debate resumed from 25 November 1999.

Clause 1 agreed to.

Clause 2

MR SMYTH (Minister for Urban Services) (4.24): The commencement date of the Bill has been changed from 1 December 1999 to a date to be consented. The reasons for delaying the implementation are, firstly, we have not passed it now, and it is impossible to start on 1 December; and, secondly, we will have to now put in place the system. I move:

> Page 2, line 10, omit the clause, substitute the following clause:
> "**2 Commencement**
> **(1)** Section 1 and this section commence on the day this Act is notified in the Gazette.
> **(2)** The remaining provisions commence on a day fixed by the Minister by notice in the Gazette.
> **(3)** However, if a provision has not commenced within 6 months after the day mentioned in subsection (1), it commences on the first day after that period.".

I present a supplementary explanatory memorandum.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 3 to 8, by leave, taken together and agreed to.

Clause 9

MR SMYTH (Minister for Urban Services) (4.25): I ask for leave to move amendments Nos 2 and 3 circulated in my name together.

Leave granted.

MR SMYTH: I move:

> Page 5 –
>
> Line 21, subclause (1), omit ", except as provided under subsection (2)".
>
> Line 32, after subclause (2), insert the following subclauses:
>
> "**(3)** A regulation made under subsection (2) expires 6 months after it commences.
>
> **(4)** Subsections (2), (3) and this subsection expire 2 years after they commence.".

These amendments provide sunset provisions. The amendments will cause a regulation made under clause 9 to expire six months after it commences, and the clause itself to expire two years after commencement. The scrutiny of Bills report indicated they were worried about the expansive nature of the clause. This way, any regulations made have to be turned into law within six months or they will lapse, and the clause itself just disappears in two years.

Amendments agreed to.

Clause, as amended, agreed to.

Clauses 10 to 18, by leave, taken together and agreed to.

Clause 19

MR SMYTH (Minister for Urban Services) (4.27): I move:

> Page 9, line 24, after subclause (2), insert the following subclause:
>
> "**(3)** A person must not be authorised under subsection (1) unless—
>
> (a) the person is an Australian citizen or a permanent resident of Australia; and
>
> (b) the road transport authority has certified in writing that, after appropriate inquiry, the authority is satisfied that the person is a suitable person to be authorised, having regard in particular to—
>
> (i) whether the person has any criminal convictions; and
>
> (ii) the person's employment record; and

(c) the person has satisfactorily completed adequate training to exercise the powers of an authorised person proposed to be given to the person.".

The amendment is to provide that the authority require a person actually to have specified criteria before appointment as an authorised person.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 20 to 44, by leave, taken together and agreed to.

Clause 45

MR MOORE (Minister for Health and Community Care) (4.28): I move:

Page 28, line 19, subclause (3), omit the subclause.

I speak in a general context to the amendments that I have circulated, to save time, so that members can understand that the objective of the amendments is not to weaken the effect of the proposed laws dealing with drivers who commit offences. Nor is it intended to limit the options available to courts. It is to do the opposite. These amendments are entirely designed to protect freedom of the courts to dispense justice in individual cases. The amendments do nothing more than move a small number of provisions in the proposed laws that limit the power of the courts and access by people to the courts.

I believe it is a fundamental right in democracy that people have access to the courts where every individual can test legislation. It is a fundamental right that goes to the separation of powers and our understanding of the separation of powers. The Bill inappropriately overrules aspects of judicial decision-making. The Bill proposes minimum and mandatory forms of punishment in places where the proper approach is to allow the courts to determine the punishment of individual offenders.

As a matter of principle, all forms of minimum or mandatory sentencing or sentencing which is, in effect, determined by the legislature or by the Executive, should be opposed. I argued this at length some two years ago on similar amendments to road traffic legislation.

I also wish to remove clauses that deny citizens the capacity to even apply to a court for a restricted licence. Under the new law, the restricted licence is a special gift of the courts, granted only if a court decides it is appropriate, and always granted on strict conditions. As the restricted licence is a special document granted by the courts, the right to apply for one should not be denied by legislation. That is the court's decision. The Bill contemplates that the courts have the capacity to relieve a disqualification period if they are convinced that the circumstances of an offender have changed. This relief is unlikely ever to be granted lightly.

However, if disqualified drivers are denied the opportunity even to apply, then the provisions are pointless. The philosophy of these amendments is, therefore, that whatever the circumstances; whatever their misdeeds; all person should be free to approach the court. And the courts should be free to determine a just response to every individual case.

This does not prevent us giving to the courts a very clear indication of the seriousness of the matters we are considering. Indeed, we have a responsibility to give a clear indication to the courts. But the notion of mandating a punishment by the Assembly undermines the court. It undermines the separation of powers. Like all undermining of such fundamental democratic principles, they start in small ways and slowly whittle away at individual rights.

Mr Berry: A slippery slope.

MR MOORE: I take my close colleague Mr Berry's comment. This is the slippery slope. What we need to do is ensure that each action we take respects these fundamental rights. It may be apparent to some members that I am not speaking as a member of the Government. Rather, I am exercising my prerogative as an Independent who separated myself from the Government on issues of civil liberties. I consider this a fundamental issue of how the legislature works and how it should work in relationship with the courts. It is the role of the legislature to put the legislation in place in the broad; it is the role of the courts to apply it to the individual.

MR KAINE (4.33): I do not agree with Mr Moore on this issue. The purpose of this legislation is to make our roads safer for the majority of road users. Sometimes you have got to be a bit rigid with those few people on the road who are irresponsible, careless or just plain foolhardy. I might accept Mr Moore's argument if this were not the end of a process; if it were just the beginning of a process. But if Mr Moore reads Division 3.4, of which subclause 45(3) is only a part, there is a process.

This action only results after a process where an infringement notice and a reminder notice have been served; the infringement notice has not been withdrawn; the infringement notice penalty has not been paid; indeed, a notice disputing liability has not been given. In other words, the person to whom the infringement notice has been given has had ample opportunity to clear the record and has chosen not to. If that is the case, then, if the person is the holder of a drivers licence, the road transport authority must suspend the licence. But there is a process before you get to that. Once the RTA gets to that point subclause 45(3) says:

> A person whose driver licence or right to drive ... is suspended ... is not entitled to apply for, or be issued with, a restricted licence ...

I do not think that is in any way draconian. It is perfectly acceptable as an outcome for a person who has been through that process and has opted not to respond; and, having opted not to respond, then fronts up and says, "Well, gee, Mr Magistrate, I'd like an emergency or a special licence". I do not think that person should have the right to do that. The law as proposed by the Minister is valid. It recognises that this is only going

to be an exceptional case. It is a case where the person who has infringed has not been prepared to go through any process at all to have the matter resolved. In this case I support the Minister, it is painful for me to say, and I oppose Mr Moore.

MR STEFANIAK (Minister for Education) (4.35): Mr Deputy Speaker, as no doubt my colleague would say, the Government certainly would be opposing Mr Moore's amendment here. Mandatory penalties are an absolute necessity in a number of areas. There has been, in terms of traffic areas, and especially in relation to things like drink-driving, a lot of precedent going back 15 or 20 years in terms of mandatory penalties. There is a very good reason for it.

As Mr Kaine says, there is a process. There is a process in relation to this particular subclause we are debating. There is a process too in relation to other parts of this particular package of Bills. I note in relation to some of those other parts, for example, people actually have an option of not taking a suspension, but seeking a 12-month good behaviour bond. If they breach that, in the terms of the legislation, further penalties flow.

This legislation seeks consistency across the country. It is essential that people be sent a message, after due process. Mr Kaine is quite right. There is a process that certain behaviour will not be tolerated; that they face a penalty everyone is well aware of, enforced by virtue of the mandatory provisions of this Bill, consistent across the country. It is crucially important when we are dealing with road safety. Mandatory penalties for certain traffic matters have been with us for some 20 years. Interestingly enough, we have seen significant inroads made into the road toll over the past 20 years; greater safety as a result of a more concerted effort and stronger action taken by legislatures in getting serious about motor traffic offences. That has flowed through legislation to the courts.

One of the biggest problems in the ACT over the last 20 years has been in such things as what the court can do for special licences. One of the biggest problems the ACT courts had - often expressed to me when I was a prosecutor - was no real option but to give special licences for certain first offenders and people deemed first offenders in PCA matters. All someone had to do was comply with certain parts of the section and they would get that, even though the courts did not necessarily want it to happen. It is important that legislatures send a message to people who are going to transgress the law, who have had ample opportunity not to do so. That is why we have a process here.

It is eminently fair that there are, where appropriate, mandatory penalties. I completely reject Mr Moore's view. In terms of road safety, it is crucially important that we have uniformity across the country. It would be ludicrous in terms of this general package if the ACT were to be the odd one out in terms of the other States and Territories. This is an important package of legislation. It has been generally well thought through. There is very much a need for mandatory penalties as indicated in this instance and, indeed, in the other Bills where, no doubt, Mr Moore will seek to remove the mandatory penalties.

MR HARGREAVES (4.39): Mr Deputy Speaker, I wish to lend our support to Mr Moore's amendment No.1. There will be certain parts of the listed amendments Mr Moore put down with which we will disagree. But predominantly we agree on the fundamental issue that there are passages in this legislation which deny people the right to appeal to the court against a judgment. That is what it is all about. I was really disappointed to see this sort of legislation put into national transport reforms legislation. That was totally unnecessary and unwarranted.

If we are dealing with national transport reforms we should have stuck with it. Mandatory sentencing is not that, it is an agenda being run by other people. It has found its way in here by stealth. I am not impressed with that. We get back to the situation of denial of rights. It is a denial of rights. If a person has committed all sorts of breaches of the Motor Traffic Act, there are various penalties and guidelines through it. The Government says, "But the courts need guidelines". Well the courts do not need these sorts of guidelines.

This legislation is introduced because somebody has not been happy with some of the sentencing by the courts. They want to stiffen it up; nothing short of that. I hear the Minister for Education saying there is nothing wrong with that. There is nothing wrong with us legislating a harshness on the part of the court. That is a clever piece of work. A clever comment, that is. You go and tell that to the family of a sole income earner who has that income removed. Do you want me to put down one example? I can do that. This does not allow the court to have that kind of discretion. It just removes that discretion entirely. This legislation is peppered with it.

I am surprised that the ever compassionate Mr Stefaniak should make such a comment. I would have expected it from his colleague to his immediate left. But I would never have expected it from him. I considered him a far more compassionate man than that. Clearly, I was wrong.

Mr Deputy Speaker, this subclause denies a person the right to say, "Okay, then, there are extenuating circumstances. There is an avenue for me to appeal to". If those circumstances do not warrant a change to it, then they do not get it. This one says, "A person is not entitled to apply for". It is taking away the people's right to apply to the courts.

Mr Moore was spot-on when he said, "This is an issue of separation of powers". The legislature is not put in place to tell the courts what they cannot do. Put some parameters up, certainly, but do not tell the courts whom they can and cannot allow to have their case judged by. It is not on. Mr Deputy Speaker, we will be seeking to put through a range of amendments which remove from these transport regulations predominantly all the references to that kind of restriction.

MS TUCKER (4.43): I will address the issues of drink-driving. The Greens fully support the objective of deterring drink-driving and irresponsible driving. There is no doubt that drink-driving is a major contributor to road accidents in the ACT and elsewhere. Research has shown that even quite small amounts of alcohol increase the risk of accidents. For drivers with a blood alcohol content between 0.02 and 0.05 the risk of involvement in a serious crash is more than five per cent for that of sober

drivers. Drivers with a blood alcohol content of 0.1 are seven times more likely to have an accident than a sober driver.

Nearly 30 per cent of fatal road accidents in Australia involve drivers within the legal blood alcohol level. It is also interesting to note that half the serious accidents on Thursday, Friday and Saturday nights are alcohol related. There is a responsibility on this Assembly to send a clear message that drink-driving is not acceptable. Not only is drink-driving harmful for the person who drinks, the fact that they are on public roads alongside other drivers means that innocent drivers are under threat from potential injury and death from the reckless behaviour of drunk drivers.

It is clear that, despite an intense effort to combat drink-driving over a number of years, the reduction in alcohol related road trauma has levelled out over the last decade. The Federal Office of Road Safety, in one of their monographs, indicated that there are still some hardcore groups of motorists who have not responded to the community campaign to reduce drink-driving. These are young male motorists, blue collar or unemployed male motorists and middle aged male motorists who appear to be alcohol dependent. While legal penalties have some deterrent value, these findings indicate that there still needs to be a broader range of educational and community awareness-raising strategies and alcohol rehabilitation programs to keep sending the message that drinking and driving are not compatible.

Just disqualifying problem drinkers from driving for a period may get them off the road for a while, but it will not solve the problem in the long run. The existing Motor Traffic Act already contains a range of rules and penalties regarding drink-driving. The Government now proposes to strengthen these rules through new legislation which incorporates the amendments put forward by Paul Osborne. The amendments are basically the same as those put forward by the Government in 1997 that were defeated.

The question that this Assembly must address is how far it should go in penalising drink-drivers. There are different views on this issue within the Assembly. The Greens support the Government's desire to send a strong message to the community that driving while drunk is not acceptable and that offenders will be appropriately penalised. We support the idea of a graduated scale of penalties based on the blood alcohol concentration of the offender, because it is clear that the risk of road accidents increases markedly with increases in blood alcohol concentration.

We also support the initiative in the Bill to provide a 12-month good behaviour period as an alternative to licence suspension for drivers who gain excessive demerit points. While we want to get drink-drivers to sober up or stay off the road, there is a complicating issue raised by the Government's amendments - the role of the Assembly and the courts in setting penalties. We accept that the Assembly's role is to set maximum penalties for particular offences through legislation. But to set minimum penalties interferes with the role of the judiciary in determining the appropriate level of penalty in individual cases, by taking into account all the circumstances of an offence.

The Greens are, therefore, supporting Mr Hargreaves' amendments which have the objective of deleting the minimum period of disqualification included in the Bill. The amendments keep in the Bill clear guidance to the courts over what is regarded as an appropriate period of suspension for an offence. But it gives judges discretion to impose a different suspension period, depending on the individual case.

A related aspect of the licence disqualification issue is the ability of offenders to gain professional - or what is now called a restricted - licence during the suspension period. The Government proposes that, where a licence is suspended for drink-driving offences, and also other dangerous driving offences such as culpable, negligent, serious or reckless driving, the offender should not be able to get a restricted licence. I accept that the ultimate sanction for drivers who break the rules is to prevent them from driving. Fines can be paid relatively easily, but people can be affected much more significantly if their licence to drive is taken away. It is a pity that our society has become so dependent on cars for transport that not being able to use a car is such a great loss. But that is the reality we have to deal with.

This is recognised in the existing provision that allows people to apply for restricted licences, if their normal licence is suspended or cancelled. The Greens are inclined to the view that, if someone drives in such a bad way so as to lose their licence, they should have to accept this penalty. I would prefer to keep irresponsible drivers off the road so that everyone can feel safer, rather than allow these people back on the roads straight away through a restricted licence. On the other hand, I am aware and respectful of Mr Moore's argument that there may be exceptional cases where someone really needs a car for either work or family reasons and that these people should be able to put their case before a magistrate to avoid suffering the double penalty of losing their licence and their ability to get work.

The Government has suggested that it is too easy for offenders to get a special licence. However, they have not provided any statistics on how many people get special licences relative to those who apply. My office contacted the Attorney-General's office last week requesting these statistics. We still await a reply. When this issue was debated last time, an effort was made by the Greens to tighten up the criteria for being able to obtain a restricted licence rather than deleting it altogether.

The current wording in the Motor Traffic Act refers to the court granting a special licence in "exceptional circumstances". It then lists five criteria. They are: Whether the person would suffer unreasonable loss; availability of alternative transport; whether anyone's health would be put at risk; the applicant's infringement history; and the likelihood of the applicant complying with the conditions of the special licence. For re-offenders, the Act refers to the court only granting a special licence in "the most extraordinary circumstances". I would have thought this was pretty clear guidance to the courts that restricted licences should only be given out very rarely to people who really need them. If the Government is concerned that these criteria are not clear enough for the courts, then it should amend the criteria rather than just deleting them.

The issue of mandatory sentencing is one that has come up around Australia quite often in the last few years. It is a very concerning trend to many in the community. Members supporting this are supremely confident of their right to make these sorts of decisions

on behalf of the judiciary. But I am afraid that the confidence they have in themselves is not shared by many in the community. It is certainly not a trend we want to see supported in parliaments around Australia.

MR STANHOPE (Leader of the Opposition) (4.51): Mr Deputy Speaker, I rise to reiterate points made in the debate in relation to this amendment. It applies to some of the amendments that have been foreshadowed in relation to other parts of Division 4. The arguments have been put, but I think it important that we declare the importance of the principle we are debating, about mandatory sentencing. I take the point made by my colleague Mr Hargreaves that this is an inappropriate piece of legislation for us as a parliament to be debating. Mandatory sentencing is a very difficult and complex issue. Mandatory sentencing as a philosophy of punishment and the operation of our justice system are subjects of a most significant debate by any parliament. I regret that, in relation to legislation on road transport, we should be embroiled in a debate about the appropriateness of introducing the concept of mandatory sentencing - something that does not exist.

This is a major departure from the way we, as a community, have dealt with the role and responsibility of the judiciary and the philosophy underlining the criminal justice system. This is an undesirable precedent for us to be setting. I take the point Mr Hargreaves made that it is disappointing - extremely disappointing - that the issue is being discussed in the context of a national scheme for regulating road transport. Debate is being sidetracked by the need for us to digress and stand up and declare a position on the appropriateness or otherwise of mandatory sentencing.

This is the wrong place to introduce this debate into this parliament. It is important that we stand here and declare that, as a matter of principle and philosophy, we will not embrace or introduce into the ACT criminal justice system notions of mandatory sentencing; that we will not entrust to our appointed judicial officers, to our judges and to our magistrates, the right and the discretion to determine on the basis of the facts of individual cases what the appropriate penalty is. It has always been one of the most important aspects of the power of the judiciary that we appoint to those important positions. We entrust in our magistrates, in our judges, in our justice system the power to determine an appropriate penalty on the basis of the facts of individual cases and the facts of the individual circumstances of people that come before the court.

The facts of no two cases are ever the same. We could take any instance of any particular crime. We are talking here about things such as culpable driving. We are talking about drunk driving. We are talking about most serious crimes. But we all know that the circumstances in relation to every offence and to every person who comes before the courts are so dramatically and remarkably different that we cannot afford to simply assume that their circumstances are all the same or that the community interest, the public interest or the interest of individuals is best served by treating them as a job lot. The courts will say, “Right, you committed this particular offence, this is the penalty you as an individual will suffer”, without any regard for any of the potentially extenuating circumstances; without any regard for the impact or the implications for other people within the community dependent for their very survival in some instances

on that person's capacity to continue to care for them or look after them. The obvious sorts of cases relate to situations where there is perhaps a single parent attempting to care for a large number of children - circumstances the courts do, these days, take into account in issuing special licences.

This is in no way to condone the behaviour. This is simply a debate about appropriate ways of enforcing justice; allowing and entrusting in our magistrates and our judges and our court system; trusting them to administer justice in the best interests of the community at large; ensuring that all the facts and factors are taken into account; that justice is served; recognising that justice is not, and will never be, served by simply imposing blanket penalties, irrespective of the circumstances of cases. It is no way to run a justice system. It is a vote of no-confidence in our judiciary and it is quite inappropriate and a dangerous precedent for us to be setting here to head down this sort of path basically in pursuit of some notion that we have got to be tough on all criminals; that we are continuing to pursue, unthinkingly, this sort of law and order agenda in this place; that we are moving constantly to the right; that we are cracking down all the time, more and more for appearances sake rather than actually for any genuine attempt to improve the administration of justice in the ACT.

We, as a community, will be the poorer for this sort of proposal. There will be families, significantly disadvantaged - - -

Mr Berry: Poorer people too.

MR STANHOPE: That is right; no doubt about it. It is the people who cannot afford the big fancy lawyers It is the people who cannot afford to roll up to court day after day to pursue every sort of legal possibility, down every burrow. It is the people who cannot afford high-priced lawyers that will suffer more as a result of this sort of approach to justice. It is the sort of approach that hammers down on the poorer people in the community, people struggling already to access justice. Access to justice is incredibly expensive and difficult. We know who will be least advantaged by these sorts of approaches to the administration of justice. This should not be supported by this Assembly. It should not be embraced.

This is a dramatic departure from accepted approaches in the administration and meting out of justice in this place. It is a dangerous move for us. We should not be doing it in the context of this road transport legislation to start with. We should not be doing it in any event. It demeans what we are seeking to achieve here as part of the national approach to road transport. It is simply inappropriate. I urge all members of this place to think seriously about what it is that we do if we set down on this slippery path.

MR RUGENDYKE (4.58): Mr Deputy Speaker, I will not be supporting this amendment by Mr Moore. As Mr Kaine points out, it is an enforcement procedure that follows a process that the offender, when he fails to pay an infringement notice, has a series of steps to go through. Subclause 45(3) simply stops the revolving door; simply stops people going from one door of the court to another to pick up a special licence. If this section were taken out, who would pay their fine? You would be silly to pay your fine. There would be no consequence. I will not be supporting it.

MR OSBORNE (5.00): I will speak generally to the motion, as most members have. What I think is motivating the majority of members in this place, including Mr Kaine, Mr Rugendyke, members of the Liberal Party and me, is the desire to save lives. It is a desire to send a clear message to people who commit serious offences on the road, the repeat drink drivers, that if they do it they will lose their licence.

At 5.00 pm the debate was interrupted in accordance with standing order 34; the motion for the adjournment of the Assembly having been put and negatived, the debate was resumed.

MR OSBORNE: I think it is the desire of those in this place who intend to support this measure to try to reduce the road toll, to save some lives and to cut down on injuries. When I tabled my Bill in September of this year, I quoted some figures which I would encourage members to have a look at. It was clear to me when I was drafting the legislation and looking at this issue that we needed to send a clearer message. The figures have not got better; in fact, they have got worse in the last few years. We as a legislature had to set guidelines. I had no problem in sending guidelines to the judiciary. It should be a last option, but it is certainly something that we as an Assembly should not shy away from.

As I said, I think members who intend to support this measure are doing it for a very simple reason; that is, they want to save lives. I believe it will do that. The message that this piece of legislation will send in relation to drink-driving is that if you drink and drive there is a very real chance that you will lose your licence. At the moment, that is not the message that is being sent. I have seen ads in the paper recently from legal firms advertising for special licences. "Do you need a special licence? Give me a call". Clearly the water has got muddied. I would like to reiterate that my motivation for this, and I am sure Mr Kaine's and Mr Rugendyke's, is to try to save some lives. So I will be voting against Mr Moore's and Mr Hargreaves' amendments.

MR STEFANIAK (Minister for Education) (5.03): Mr Deputy Speaker, I rise to speak again. Mr Smyth offered me the use of his officials because I wanted to clarify a couple of points. I refer to the drink-driving matters because that is where most citizens will be affected. Currently we have graduated fines and penalties for various types of PCA offences from low range through to high range - for instance, in New South Wales. In the ACT a first offender is someone who goes to court for a first offence, and if they commit another offence within five years they are classed as a second offender. However, if they come back after six or seven years, that five-year period still applies. I assume that is a flow-over from the old offences, where if you were a second offender within five years you had your licence automatically cancelled.

In this new legislation we have four levels of blood alcohol concentration. For someone who is a first offender, a minimum disqualification is one month and the normal default is three months. For level two, the minimum disqualification is two months and six months for the normal default. For level three, the minimum disqualification is three months and 12 months for the normal default. For level four, the highest level, the minimum disqualification is six months and three years for the normal default disqualification.

I am also advised by the officials that there is still provision for section 556A to apply. Section 556A provides that where, because of exceptional circumstances and/or a previous excellent record, the court deems it inappropriate to proceed to conviction, it can either release the person forthwith or discharge them upon entering a bond of good behaviour. This is often the case. If you read the *Canberra Times* you will see a number of people who enter a bond of good behaviour for 12 months, and they may have to pay, as a condition of the bond, $200 to a charity. That is something our courts have been doing fairly frequently. The effect of that is that it is not recorded as a conviction.

If they are charged with a further drink-driving conviction within five years, that is regarded as the second conviction. You cannot keep receiving 556As. They are provided only where exceptional circumstances or an excellent driving record applies. The rule of thumb in the ACT - or the last time I was prosecuting or doing defence work until about 1995 - was that, if you had been driving 20 years without a conviction, there would not be a magistrate in the place who would not give you a 556A. That is fairly common across the border. We all know that ACT courts are notoriously much more lenient than their interstate counterparts, but even in New South Wales that would pretty well apply. So section 556A still applies for exceptional circumstances.

The lawful alcoholic limit for a junior driver is 0.03. For an adult, the minimum is 0.05. Let us say that they have been driving for 10 years and they have received one speeding fine. If they are over 0.05, they would get one month. If that person desperately needs a licence and this is their first offence, there is provision within this Bill for special licences with conditions. Again, that is not terribly different from what we have at present. The mandatory minimum set-up here is not as draconian as those opposite might think. It is very similar to what we currently have in the Territory. You can get a special licence with a minimum disqualification if you absolutely need it and if the court is so satisfied.

I do not know what all the fuss is about. In many ways these provisions are better than what was the case 10 years ago. Back then, if you did not qualify for a 556A, the court would have to suspend your licence for a first offence for three months. As I indicated when I first spoke, you would invariably get a special licence. Some of the magistrates started whingeing about that because they felt they had no discretion to not give a special licence in certain circumstances. They had to suspend for three months, and that was a mandatory minimum. In this legislation there is a little bit more flexibility, if anything. There is a broader range of minimum penalties and default penalties than there was before. If anything, for PCAs and drink-driving offences, there is probably a lot more scope for courts to exercise their own discretion. The officials are nodding, so obviously I have relayed these Bills effectively. I do not see what they are worried about. If anything, there is more flexibility in this legislation than there was in the past.

I will close by reiterating what I said: These are very, very serious offences. From my experience in the ACT courts, they as a matter of course - sometimes too much so - tend to bend over backwards in terms of offenders' circumstances. All in all, this legislation seems to be quite a fair piece of legislation, with graduated scales of penalties, both default disqualifications and minimum mandatory disqualifications.

MR SMYTH (Minister for Urban Services) (5.08): Mr Kaine started by quite eloquently explaining what this legislation was about and where it is coming from. He is entitled to do that. This is basically his legislation from 1997, where the Government and Mr Osborne warned that the issues Magistrate Somers raised about this time last year would actually occur. The Liberal Party and Mr Osborne were right. They said that the watering down of the then legislation by Mr Moore, the Labor Party and the Greens would lead to a situation where, if you asked, you got a special licence. Members might recall Magistrate Somes last December saying that, basically, if somebody asks for a special licence they get one. "I'm obliged to give it to them". In voicing that concern, what we heard from Magistrate Somes is concern about the laxity of the law concerning very serious activity with very serious outcomes.

It is disappointing to hear Mr Stanhope say that this is not the place to make these reforms. This legislation is about road reform, fair and square. This is about all types of road reform. Earlier today we offered Mr Rugendyke the opportunity to include his "burnout" Bill. We have not been able to do that. But this is an opportunity for the Assembly as a whole to put our stamp on road reform to ensure that all road users at all times can feel safe on the road. As Mr Stefaniak has so finely put it, there are provisions that will still allow people in exceptional circumstances to apply for a special licence.

Why do we call it a special licence? It is a special licence because it is something that you should get in exceptional circumstances. It is not something you should get in a lucky dip. You should not break the law and expect to be handed a special licence because you have a story to tell. The crimes to which these provisions apply are some of the most serious crimes on the road - culpable driving, negligent driving causing death, negligent driving causing grievous bodily harm, furious, reckless or dangerous driving, menacing driving, repeat offences of prescribed concentrations of alcohol, DUI, refusing a breath test and refusing a blood test. When looking at that, you have to understand that this is about serious crimes that are committed on our roads. It does not apply to first offences or minor offences.

As Mr Stefaniak has pointed out, even in that situation there is still the ability to ask for a licence. Under section 556A, you can make those representations. That is where the judiciary, with their understanding and application of law, exercise their judgement in relation to exceptional circumstances, unlike now where anybody who asks the magistrate for a special licence is almost obliged to be given one. As a society, we put so much emphasis on and time and effort into educating people to be responsible for their actions on the road. It is ridiculous to then say, even if you do make a mistake, even if something goes wrong, even if you cause an accident, you can apply for a special licence.

Why do we water down people's lives? We hear from the other side that there might be an exceptional circumstance where the family is dependent on having a licence. You should consider that before you drink and drive. You should consider that before you speed, before you cause grievous bodily harm or an offence that causes death. You should consider that before you turn on the ignition in your motor vehicle, because the person you affect does not get a chance to apply for a special life. The person you affect does not get to go to court and apply for a special disability dispensation that relieves

them of the horror and the agony that motor vehicle accidents inflict upon far too many people in our society. They do not get a second chance.

What was done in 1997 has put people back on the road who do not deserve to be there. Under this legislation, in exceptional circumstances you can apply for a special licence, as is appropriate. But what we should not be saying to people is that you can go out, commit a crime and at any time expect to continue to drive. Mr Kaine knows this legislation well; it was his legislation. Mr Osborne last year, in response to what Magistrate Somes was saying, resurrected Mr Kaine's legislation. It is almost word for word the material that Mr Osborne put forward.

Understanding that this was an opportunity to discuss road legislation in the whole, it is appropriate that we do consider this because these are some of the most serious outcomes of any road legislation and any activity on the road - how we judge those who have committed serious crime. I know that the majority of the amendments that will be moved today will relate to these sections of the Bills. The Government will be opposing them all.

My legal adviser has just clarified something. Section 556A means that you keep your licence rather than losing your licence and getting a special licence. For first offenders, they can get a minimum disqualification. If the circumstances warrant it, the law can give them a special licence. This is important; this is serious. Those who are affected, killed or injured never get the opportunity to apply for a special life. Their life is over. Those who are injured, those who carry with them injuries for life, do not get an opportunity to go to a magistrate and seek a special life either. What we should be sending here is a clear message.

Given the concerns raised by the judiciary last year, I believe the inclusion of these sections in this legislation is not only appropriate but also very desirable. I take on board Mr Moore's points about principles, but the reality is that those who commit offences of culpable driving, negligent driving, furious, reckless or dangerous driving, menacing driving and repeat offences choose to do so. We should choose to tell them that they are wrong. The Government will oppose all of these amendments.

To keep the rest of the debate as brief as possible, the Government will oppose any attempt to water down this legislation because we simply believe it is wrong. The Government and Mr Osborne voted against it in 1997. I think history has proven that they are right. It is appropriate that we include these amendments now.

MR MOORE (Minister for Health and Community Care) (5.15): What Mr Smyth has argued is something that we do not particularly disagree with. The power of the legislation, the impact of the legislation, the message it sends us is absolutely critical. I do not think any member is disagreeing with that. That is why we are supporting the main thrust of the legislation. But this small part of the legislation does raise fundamental issues, and that is what we are trying to deal with.

The problem Mr Stefaniak seems to have is that magistrates get it wrong. I imagine there are times when all of us think a magistrate or a judge has got it wrong, from the information that we have received. And, occasionally, no doubt they do. But, if we make

mandatory sentences, it is going to be wrong much more often, because you are not applying the law to individual cases. That is the problem with the legislation which we have in front of us to day. On the one hand, Mr Smyth is saying that we ought to have incorporated Mr Rugendyke's burnout legislation. On the other hand, we have Mr Stefaniak saying, "We have to ensure that our legislation is consistent with the rest of Australia. We cannot do anything that is different from the rest of Australia". The two are inconsistent.

Mr Smyth: Other jurisdictions have burnout legislation.

MR MOORE: Mr Smyth interjects that we are talking about nationally consistent road rules. It may well be. It seems to me that the most important issue is the one that Mr Smyth raised. He said that you can get a special licence but you cannot get a special life. I understand his point of view. He said that the matter had been proved since Mr Somes said that we ought not take this particular stance because he will have to give out restricted licences. I say that is bollocks. The legislation allowed him to apply the law appropriately, and that is what he should have been doing.

What is the result of what happened in 1997 if you are talking about lives? Mr Smyth reminded me a minute ago about the number of deaths in the ACT from road accidents. We have a small number of people, so it is hard to keep these statistics, and they will go up and down, but we have seen a significant drop in road accidents. We cannot tell yet whether that is a trend, but it is worth noting that reduction. We also have the old fallback to the Crimes Act, section 556A. Somebody can appear before the court and say, "We appeal to the court's mercy for 556A". Overall, I do not disagree with that protection. I have to say that this notion of mandatory minimum sentencing, this notion of taking power away from the courts and holding it in the hands of the legislature, is still entirely inappropriate.

Finally, I would like to make a point to the conservatives who think they are going to save lives on this issue. They believe they will save lives by not issuing restrictive licences because people will not drive. Wrong. This is what you need to drive a car - the keys. When people do not receive a restricted licence, what they will do, without any insurance, without all the other support, is get in and drive the car. I think that is a fundamental misunderstanding of what happens in reality. That is always a problem, no matter how you set out this piece of legislation.

I think the debate has been fully had. If this amendment is lost, I will not be putting the other amendments because that would be pointless. They have been circulated, and I think members know that this is an issue right through the Act. I am certainly keen to make sure that we do have a vote on this particular item.

Question put:

> That the amendment (**Mr Moore's**) be agreed to.

The Assembly voted -

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

Question so resolved in the negative.

Amendment negatived.

Clause agreed to.

Clauses 46 to 61, by leave, taken together and agreed to.

Clause 62

MR HARGREAVES(5.25): I seek leave to move together the amendments circulated in my name.

Leave granted.

MR HARGREAVES: I move:

> Line 6, paragraph (1) (a), omit "if the court orders a longer period, the longer period", substitute "if the court orders another period, the other period".
> Line 8, paragraph (1) (b), omit "if the court orders a longer period, the longer period", substitute "if the court orders another period, the other period".

I will be very brief because we have just about exhausted this argument. I merely reiterate that these amendments seek to allow the courts the discretion on the length of time people have to go without their licences. The legislature ought not be restricting the court in any way. These amendments merely seek to allow the court more discretion.

Amendments negatived.

Clause 62 agreed to.

Clause 63

MR HARGREAVES (5.26): I seek leave to move together the amendments circulated in my name.

Leave granted.

MR HARGREAVES: I move:

> Page 39 –
>
> Line 7, paragraph (2) (a), omit "if the court orders a longer period, the longer period", substitute "if the court orders another period, the other period".
>
> Line 9, paragraph (2) (b), omit "if the court orders a longer period, the longer period", substitute "if the court orders another period, the other period".

My aim here is similar to the last one. I will not waste the Assembly's time.

Amendments negatived.

Clause agreed to.

Clause 64 and 65, by leave, taken together and agreed to.

Clause 66

MR SMYTH (Minister for Urban Services) (5.27): I seek leave to move together the amendments circulated in my name.

Leave granted.

MR SMYTH: I move:

> Page 42 –
> Line 14, subclause (6), omit "cannot obtain", insert "is not eligible to apply for, or be issued with,".
> Line 16, subclause (7), omit "cannot obtain", insert "is not eligible to apply for, or be issued with,".

Mr Speaker, subclauses 66(6) and (7) have been revised to clarify that, where a person is disqualified from holding or obtaining a drivers licence, that person is also ineligible to apply for a licence.

Amendments agreed to.

Clause, as amended, agreed to.

Clause 67

MR HARGREAVES (5.28): I move:

> Page 42, line 21, subclauses (1), (2) and (3), omit the subclauses.

We seek to remove subclauses (1), (2) and (3) only. This comes back to the words "Persons not eligible to apply or be issued with a restricted licence". It talks about relevant periods. When we first looked at this, we talked about whether or not it applied to repeat offenders and it looked like a pretty reasonable idea, but it is not necessarily. This takes away any opportunity for a person on the fringes to apply to the courts.

We accept many of the things that have been said in here about those people who are habitual, who will constantly go out there and get themselves tanked and be a danger on the road. We have no difficulty with those sorts of sanctions. But not every person that gets pinged for these sorts of things on a second offence is an habitual criminal on the roads. Occasionally people are just victims; they are being silly or stupid and are only marginally over it. If we take away their right to apply to the court - for the court to say to them, "Well okay, you've been stupid but we won't give you the full weight" - what kind of a society are we?

I have no problems chucking the book at people if they come up with a second culpable driving offence or if they keep coming out with 0.185s. But I have a hell of a lot of problem with chucking the book at someone that has a reading of 0.09, 0.06, or 0.09. These smaller issues need treatment in a different way. What about the person that quite genuinely recognises that he has a drinking problem, who comes up the second time and is prepared to go into rehabilitation?

Mr Rugendyke has an enormous amount of compassion for families and young kids in difficulty and I sincerely applaud that, but I do not see the same compassion here. Mr Osborne runs around the place pontificating about the extent to which he loves his community, and I do not see that same compassion here. What about those people on the edges? What about those people whose lifestyles, like our own, sometimes make us worry a little bit? We say, "Oh, just grab a cab. Go and do this, go and do that". It is not that easy sometimes. Let us look at it on the fringes. We do not have to have a hard and fast rule about this; that is why we have the courts.

If Magistrate Somes is doing his job so badly that he has to get this legislature to do his job, then I suggest he think long and seriously about his career in the courts. We do not have to go to these lengths. We can have the same sorts of sanctions in this legislation. All we have to do is allow someone to apply to the courts to have a look at all the circumstances.

This Act has no way of being able to judge the differences in circumstance. It is a mindless, heartless piece of legislation and it is being supported by mindless, heartless people such as this Minister on the other side who comes up with emotive comments such as: "You don't get a chance for a restricted life". This is the most emotive claptrap I have ever heard, and I hope never to hear it again, but I guess I will: I will be subjected to drivel such as that in my time here. If those opposite cannot run their argument by

substantive logic, they should not introduce such drivel. Those opposite should not make such personal attacks every time they open their mouths. They tempt me to do the same and I try to resist.

This legislation, generally speaking, is good. It is tough and it needs to be. But it does not have to be without compassion. I defy each and every one of us to stand up and say that he or she did not do something stupid between the ages of 18 and 25. We have all done it; we have all run the risk.

This piece of the legislation does not allow people that second chance if they have been stupid. The sanctions contained in here send the message that we are not going to tolerate this sort of behaviour. But we will not stop the kid who is 19; he will do it. We just cannot stop it. I am asking for a little compassion so that these people can have the opportunity to put their case before the courts. I hope that the courts would act with considerably more compassion than I have seen displayed here today. Quite frankly, I feel absolute disgust in the pit of my stomach because of what I have seen and heard here today. I make no apologies for it.

MR RUGENDYKE (5.34): I really cannot let Mr Hargreaves' speech go without comment. He talks about compassion, civil liberties and whatever else he prattled on about. Mr Speaker, we are talking about legislation designed to save lives, as Mr Osborne said. We just need to look at Mr Smyth in a pair of shorts to see what sort of damage drink drivers can do to people. To put on a tirade such as that of Mr Hargreaves totally misses the point. But we all have broad shoulders; we can take it. We know that he is off on a tangent. I will not be supporting Mr Hargreaves' amendment.

MR STANHOPE (Leader of the Opposition) (5.35): I just speak briefly to reiterate the point made about these sorts of provisions, this removal of discretion from the courts. I rise to support the case made by my colleague Mr. Hargreaves. I think those of us who disagree with this approach to the enforcement of the laws need to keep saying that this is unacceptable and wrong as a matter of principle and that we will not support it. It is my position. I do think this, as a matter of principle, is a wrong approach.

I do not believe that it will in any way achieve the outcomes that some claim for it. I do not think that removing a discretion from the courts can in any way be paraded as a component of a road safety strategic plan for reducing the particular incidence of drink-driving. There is a whole range of strategies that we should adopt in relation to that, quite rightly, but I do not think removing discretions from the courts to look at the individual claims of people will in any way achieve the outcomes that are being claimed for it.

In passing, I comment on the suggestion that there are magistrates, apparently in the courts here, who would willingly abandon the discretions that they currently have. It seems to me quite a remarkable approach for a magistrate to take. He says that he does not want a discretion, that he is basically there to perform some rote function, that he has basically become some sort of computer. Section 67 gets punched in and the answer comes out. The magistrate would no longer be required to exercise his mind on the

issue; he would not be asked to assess the individual claims or individual circumstances of particular cases; he would simply be told.

I am concerned that there is perhaps a view within the Magistrates Court that the magistrate wants to be told what to do, that he actually does not want an opportunity to exercise a discretion or any independence. That is a worry for me in terms of the attitude that apparently some of our magistrates are taking to their responsibilities.

It is vital that magistrates exercise their discretion. I would hope that we, in choosing whom to appoint as magistrates, take those sorts of characteristics or strengths into account when selecting whom it is that we appoint. These are people of significant training, with the capacity to exercise judgment, and they are people who will exercise the discretions which traditionally are placed in judicial officers. That is an aspect about this removal of discretion that I do find concerning.

MR SMYTH (Minister for Urban Services) (5.38): Yet again, the Government will oppose the amendment. During the debate and afterwards, Mr. Hargreaves called me a hypocrite, which is a word we do not normally allow in this place. I am not going to ask him to withdraw it.

MR SPEAKER: I am.

MR SMYTH: Well, I actually do not care because - - -

Mr Hargreaves: You ask the Minister to be quiet and I will do just that, Mr Speaker.

MR SPEAKER: Do you withdraw it?

Mr Hargreaves: Unreservedly, because I would never have anybody in the whole world think this Minister was a hypocrite.

MR SPEAKER: Sit down.

MR SMYTH: It would be hypocrisy on my part not to stand up and say that I believe Mr Hargreaves is wrong. He said that the Government does not have a coherent argument. He accuses us of just trotting out drivel. The basis of his argument was that we are uncaring and this is drivel. He said we should not get emotive about this. The reality is we should actually get emotive about this because this is about human life.

I was not going to make reference to a car accident that I had, but Mr Rugendyke brought it up, so I simply say that I was run off the road by a drink-driver. I spent 10 days in intensive care at Mildura Base Hospital. My wife, who was pregnant at that time with twins, had to come down and spend 10 days with me. We were lucky that fairly quickly we knew the outcome would be okay. I then was brought back to Woden Valley Hospital where I spent two months in Ward 3A and then Ward 5B. I then spent some 18 months between physiotherapy at outpatients at Woden Valley Hospital and several gyms around the ACT getting fit - learning how to walk and getting fit again.

Sometimes one has to look at this in an emotional way because what happens on our roads changes people's lives forever. I refer to Mr Rugendyke, Mr Osborne and Mr Hird as former police officers. One can see their zeal and passion for this, because they are the ones that have had to attend motor vehicle wrecks.

Mr Speaker, I have been in a motor vehicle wreck, and I reject the errant nonsense that we get from Mr Hargreaves, because that is all it is. This needs to be tough. We as a society need to send a very serious message to those who will abuse the road rules, and in doing so abuse all of us because they put all our lives at risk. It is not just our lives - every motor vehicle accident has a multiplier effect down the line.

One of the officers from my department attends every motor vehicle accident in the ACT; he goes to every fatality in the ACT. I do not know how that does not have an effect on him. Every motor vehicle accident is attended by police officers, in many cases ambulance officers, the coroners, fire brigade officers, and innocent bystanders, who happen upon that circumstance.

As an Assembly, we need to send a very clear message that we do not want people to abuse the road; we do not want people to put others at risk. We want to send a very clear message that we do not want them on our roads. If they choose to break the law, then they should wear the full force of the law.

What Mr Hargreaves says is just nonsense. This is about human life; it is personal for people, it is emotional for people. The ripple affect in our community is enormous. In dollar terms, the figures I have is that motor vehicle accidents in the ACT cost something like $180m a year, when the costs of emergency services, trauma services at the hospital, rehabilitation, disability, compensation, insurance, and modifying houses are all added up. One only has to go and talk to the residents of the acquired brain injury places. Many of them are there because of motor vehicle accidents. We need to send a very clear message. The message here is clear, it is unambiguous and it should be said.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (5.42): I have a very brief question to ask of the Opposition. I have heard them say that having minimum mandatory sentences unduly cuts across the discretion and judgment of the magistrate or a judge. Can the Opposition explain to me why maximum mandatory sentences, which exist in all our legislation, do not do the same thing?

MR OSBORNE (5.43): I am sure Mr Hargreaves can accuse those of us that want to support this legislation of being too harsh, and perhaps we are being harsh towards drink-drivers. One could argue that, but I think it is very important that we as an Assembly send a clear message to people who take the risk.

I heard Mr Stanhope say that he would like to see our roads safe, and he thinks there are other alternatives. I would like to hear them because I think we have tried most of the alternatives that Mr Stanhope will churn out. Quite frankly, as I said earlier, members just need to go back to my tabling speech from September of this year when I quoted

figures, and clearly the message is stagnating and not getting through. So I make no apologies for wanting to support some legislation that one could argue is harsh, but I think we have an obligation to try to save lives.

I see Mr Hargreaves shaking his head there but, unlike him, Mr Rugendyke and I have some experience in dealing with drink-drivers. Mr Rugendyke spent a number of years in the police force, as did I. I will not be graphical, but it would be fair to say that we have covered all types of outcomes as a result of drink-drivers. It is not an experience that I enjoyed and I am sure it is not one that Mr Rugendyke has enjoyed.

I make no apologies for wanting to try to make life as miserable as possible for people that drink and drive. As Mr Smyth said, the impact on families of victims often is lifelong. We have an obligation as a legislature to send a clear message. And that is what we are doing. Unfortunately Mr Hargreaves has missed the point. We are trying to save lives. We are trying to send a clear message. Quite frankly, I feel a little bit embarrassed for the bloke because he has clearly lost the plot on this issue.

MR HARGREAVES (5.46): Like Mr Rugendyke, I am not one for letting things go through to the keeper. We heard that Constable Osborne over there has actually seen loads of effects of these things, and we have heard tales of the ugliness of the legs of the Minister for Urban Services as a result of these things.

We have had an inference from Mr Osborne that I have not had any experience in this sort of thing at all. Mr Osborne would not know what I have experience in; first, because he has not bothered to ask and, secondly, because he has not bothered to listen when we have talked about these matters before. Five years in charge of rehabilitation at Woden Valley Hospital gives members a fair idea of what happens in these sorts of things. So I do know what it is like. And, in fact, I have not missed the point.

Mr Osborne must have his elbow in his ear because he did not hear when I said that there are huge messages in this legislation which tell people we are not going to tolerate it, and we support all of those. The only thing we do not support in this is the denial of people to go to the courts and say, "Well, maybe things are a bit different". We have supported the sentencing.

Mr Osborne: How are you going to send a message? What do you want to do?

MR HARGREAVES: I am not going to engage in a debate with Mr Osborne across the chamber. I will treat his remarks with the contempt that they are due. We have a totally closed mind across the chamber, very much akin to an empty bucket. There is nothing much in either of them.

MR SPEAKER: I think we might just start debating this and leave the emotions out of it. I am getting tired of it.

MR HARGREAVES: Indeed. What we are saying is that the Bill is fine. We are saying that we do not want to start taking people's rights away for them to go to the court and just say, "Hey, there might be something a bit different here". We have courts to make those sorts of judgments. We are not saying that we do not want to chuck the book at

people. We do not want to say that we do not want to get people off the roads because they are drink-drivers. We do not want to encourage people to break the law; we never have. To take such a stance would be nothing short of irresponsible. I am staggered if those opposite think that we would go an inch down that road.

All we really seek to do is stop the denial of people's access to the courts; it is as simple as that. Anything else trotted out by this pack of people is nothing short of a red herring. To suggest that we are trying to negate the message that the Government is sending out there about drink-driving and misbehaviour on the road is totally untrue. I am merely trying to remove, through this amendment, the fact that a person cannot even apply.

The rest of the provisions in this legislation before us today have significantly greater penalties than before, which is great. It is appalling that the man who sits as Chairman of the Standing Committee on Justice and Community Safety and who is supposed to highlight the protection of civil rights and liberties is prepared to withdraw somebody's right to apply to the court for judgment. I merely ask people to recognise that we are trying to restore this ability to apply to the courts and to uphold the rest of the legislation.

MR SPEAKER: Members, I am not prepared to referee a ping-pong match in this chamber. We are adjourning at six for dinner – on the dot. If you want this piece of legislation finished before then, I suggest you all curb your tongues.

Amendment negatived.

Clause agreed to.

Remainder of Bill, by leave, taken as a whole.

MR SMYTH (Minister for Urban Services) (5.52): Mr Speaker, I ask for leave to move amendments 7 to 13 circulated in my name together.

Leave granted.

MR SMYTH: I move:

> Clause 82, page 49, line 25, subclause (1), after "consent", insert "and without a reasonable excuse".
> Clause 142, page 73, line 23, paragraphs (2) (d), (e), (f) and (g), omit the paragraphs, substitute the following paragraphs:
> "(d) state the proposed bus fares; and
> (e) state the kinds of vehicles proposed to be used; and
> (f) state the proposed maximum speeds for each vehicle proposed to be used; and
> (g) state any other details of the service that the road transport authority requires.".
> Clause 156 –
> Page 76, line 35, subclause (1), after "believes", insert "on reasonable grounds".

Page 77, line 4, subclause (2), after "believes", insert "on reasonable grounds".
Clause 189, page 96, line 1, subclause (6), omit the subclause.
New clause –
Page 104, line 17:
"**212A Guidelines about Minister's powers under division**
(1) The Minister may issue guidelines about the exercise of the Minister's power under this Division.
(2) The Minister must comply with any guidelines applying to the exercise of a power under this Division.
(3) A guideline under subsection (1) is a disallowable instrument for the *Subordinate Laws Act 1989*.
Amendment -
Page 134, line 19, dictionary, definition of "offence of culpable driving", omit the definition, substitute the following definition:
"***offence of culpable driving***, for a person, means—
(a) an offence against section 29 (Culpable driving) of the *Crimes Act 1900*; or
(b) any other offence against the *Crimes Act 1900* where a necessary fact to constitute the offence is that someone dies or is injured because of, or as a result of, the way a person drove a motor vehicle.".

Mr Speaker, the remaining amendments are housekeeping in response to the committee's report. Amendment 7 changes clause 82. It allows for a defence of reasonable excuse. The clause as amended will now allow for a person to use a motor vehicle without the owner's consent, provided that he or she has a reasonable excuse.

In amendment 8, the word "state" has been included in each of the subclauses to overcome a grammatical error. Amendments 9 and 10 are in accordance with the committee's report and require the authority to use its discretion on reasonable grounds.

Amendment 11 is the deletion of clause 189(6), due to the concerns that the provision may in fact deny discovery of evidence or documents. Amendment 12 ensures the requirement of the Minister to comply with guidelines when the Minister's power is exercised under that division. Amendment 13 is a minor revision of the definition of culpable driving.

Amendments agreed to

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

Bill, as amended, agreed to.

Sitting suspended from 5.53 to 7.30 pm

ROAD TRANSPORT (DRIVER LICENSING) BILL 1999

Detail Stage

Debate resumed from 25 November 1999.

Clause 1 agreed to.

Clause 2

MR SMYTH (Minister for Urban Services) (7.33): Mr Speaker, I move:

> Page 2, line 11, omit the clause, substitute the following clause:
> "**2 Commencement**
> This Act commences on the commencement of the *Road Transport (General) Act 1999*.".

I present a supplementary explanatory memorandum on the Government's amendments.

This amendment changes the start of the Bill from 1 December 1999 to the date when it is gazetted.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 3 to 17, by leave, taken together and agreed to.

Clause 18 agreed to.

Clause 19 agreed to.

Clause 20

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

> Page 12, line 21, subclause (3), after "disqualified from", insert "holding or".

Clause, as amended, agreed to.

Clause 21 agreed to.

Clause 22 to 30, by leave, taken together.

MR SMYTH (Minister for Urban Services) (7.35): Mr Speaker, I seek leave to move amendments Nos 3 to 8 circulated in my name together.

Leave granted.

MR SMYTH: I move:

> Clause 24 –
> Page 15, line 16, subclause (2), after "disqualified from", insert "holding or".
> Clause 28 –
> Page 17 –
> Line 25, paragraph (2) (f), after "apply", insert "or, ceases to apply,".
> Line 25, after paragraph (2) (f), insert the following new paragraph:
>
> > "(fa) provide that persons prescribed under the regulations are exempt from this Act or a stated provision of this Act: and".
>
> Line 28, paragraph (2) (g), omit "(f)", substitute "(fa)".
> Page 18 –
> Line 13, paragraph (2) (n), omit "or a varied driver licence", insert "a varied driver licence or an exemption from holding a driver licence".
> Line 14, after paragraph (2) (n), insert the following new paragraph:
>
> > "(na) require the holder of an Australian driver licence issued under the law of another jurisdiction to submit to tests or medical or other examinations to assess the person's fitness to drive in the Territory; and".

Amendment 3 clarifies that where a person is disqualified for a period from obtaining a licence the person is also disqualified from holding a licence for that period. Amendment 4, clause 28 of the Bill, is related to paragraph 31(1)(a) of the Bill, which allows for the holder of an Australian licence to drive in the ACT. Amendment 5, also to clause 28 of the Bill, is related to paragraph 31(1)(b) of the Bill, which allows for a person to be exempted under the regulations from holding an Australian drivers licence.

Amendment 6, to paragraph 28(2)(g) of the Bill, is consequential on the previous two amendments. Amendment 7, to paragraph 28(2)(n) of the Bill, corrects an error. Amendment 8, to clause 28 of the Bill, relates to paragraph 31(1)(a). It allows the holder of an Australian drivers licence to drive in the ACT.

Amendments agreed to.

Clauses, as amended, agreed to.

Clauses 31 and 32, by leave, taken together.

MR HARGREAVES (7.38): I seek leave to move amendments Nos 1 to 3 circulated in my name together.

Leave granted.

MR HARGREAVES: I move:

> Clause 31 –
> Page 20, line 26, subclause (3), omit "if the court orders a longer period, the longer period", substitute "if the court orders another period, the other period".
> Clause 32, page 22 -
> Line 34, paragraph (6) (a), omit "if the court orders a longer period, the longer period", substitute "if the court orders another period, the other period".
> Line 36, paragraph (6) (b), omit "if the court orders a longer period, the longer period", substitute "if the court orders another period, the other period".

Subclause 31(3) states:

> … if the court orders a longer period, the longer period.

My amendment to this subclause and my other amendments seek not to define a period. We say that where the court decides on a period so be it. We do not feel that we need to direct the court to order a longer period.

MR SMYTH (Minister for Urban Services) (7.40): Mr Speaker, the Government will oppose these amendments. We believe the Bill is fine as it is.

Amendments negatived.

Clauses agreed to.

Remainder of Bill, by leave, taken as a whole.

MR SMYTH (Minister for Urban Services) (7.41): Mr Speaker, I move:

> Page 31, line 26, dictionary, definition of ***probationary licence***, paragraph (a), omit the paragraph, substitute the following paragraph:
>
> "(a) a driver licence, other than a learner licence, issued under this Act to a person who applies for a driver licence after a period of disqualification (whether or not by court order) from holding or obtaining an Australian driver licence; or".

This amendment to the definition of "probationary licence" is necessary because the national definition for this type of licence does not recognise the situation where a person is automatically disqualified under the road transport legislation. For example, clause 62 of the Road Transport (General) Bill provides for automatic disqualification for culpable driving. The amendment also recognises that a person who is disqualified for an offence whilst the holder of a learner licence, must be issued with a new learner licence rather than a probationary licence after the disqualification period ends. This is

because the person has not yet passed a driving test demonstrating their ability to drive unaccompanied.

Amendments agreed to.

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

Bill, as amended, agreed to.

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 1999

Detail Stage

Debate resumed from 25 November 1999.

Clause 1 agreed to.

Clause 2

MR SMYTH (Minister for Urban Services) (7.42): I move:

> Page 2, line 3, omit the clause, substitute the following clause:
> "**2 Commencement**
> This Act commences on the commencement of the *Road Transport (General) Act 1999*.".

I present a supplementary explanatory memorandum on the Government's amendments to this Bill.

This amendment changes the commencement date of the Bill from 1 December 1999 to the date when the Road Transport (General) Act commences.

Amendment agreed to.

Clause, as amended, agreed to.

Remainder of Bill, by leave, taken as a whole.

MR SMYTH (Minister for Urban Services) (7.43): Mr Speaker, I seek leave to move amendments 2 to 5 circulated in my name together.

Leave granted.

MR SMYTH: I move:

Schedule 3 –

Page 20, line 25, proposed amendment of subsection 217 (3), *Duties Act 1999*, proposed new subsection 217 (5), omit "on 1 December 2001", substitute "2 years after the commencement of the *Road Transport (General) Act 1999*".

Page 21, line 23, proposed amendment of subsection 221 (3), *Duties Act 1999*, proposed new subsection 221 (5), omit "on 1 December 2001", substitute "2 years after the commencement of the *Road Transport (General) Act 1999*".

Page 22, line 2, after the proposed amendments of the *Duties Act 1999*, insert the following proposed amendment:

"**Emergency Management Act 1999**

Paragraph 67 (4) (b)—

4 Omit the paragraph, substitute the following paragraph:

'(b) Part 10 (Compulsory vehicle insurance) of the *Road Transport (General) Act 1999*.'.".

Page 25, line 5, proposed amendment of Schedule 5, *Land (Planning and Environment) Act 1991*, after the proposed amendment of subsection 256 (4C), insert the following proposed amendment:

"**Schedule 5—**

After item 11, insert the following item:

12	Parking a heavy vehicle on residential land in contravention of a code of practice in relation to the parking of heavy vehicles under the *Road Transport (Safety and Traffic Management) Regulations 1999"*.	20 units	penalty

Amendments 2 and 3 revise the expiry date of consequential amendments to the Duties Act 1999 from 1 December 1999 to two years after the commencement of the Road Transport (General) Act 1999. This is because of the delay in the introduction. Amendment No. 4 is a consequential amendment to the Emergency Management Act 1999 to reflect the transfer of provisions from the Motor Traffic Act 1936 to the Road Transport (General) Act. Amendment 5 inserts a penalty in the Land Act for unlawfully parking a heavy vehicle on residential land.

Amendments agreed to.

MR HARGREAVES (7.44): Mr Speaker, I ask for leave to move amendments Nos 1 to 8 circulated in my name together.

Leave granted.

MR HARGREAVES: I move:

Schedule 3, proposed amendment of sections 32 to 34, *Motor Traffic (Alcohol and Drugs) Act 1977* –

Page 36 –

Line 13, proposed new paragraph 32 (2) (b), omit the paragraph, substitute the following paragraph:

"(b) if the court orders another period of disqualification—the other period.".

Line 23, proposed new paragraph 32 (3) (b), omit the paragraph, substitute the following paragraph:

"(b) if the court orders another period of disqualification—the other period.".

Line 26, proposed new table in section 32, omit column 3 of the table.

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Line 9, proposed new paragraph 33 (2) (b), omit the paragraph, substitute the following paragraph:

"(b) if the court orders another period of disqualification—the other period.".

Line 19, proposed new paragraph 33 (3) (b), omit the paragraph, substitute the following paragraph:

"(b) if the court orders another period of disqualification—the other period.".

Line 22, proposed new table in section 33, omit column 3 of the table.

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Line 1, proposed new paragraph 34 (1) (b), omit the paragraph, substitute the following paragraph:

"(b) if the court orders another period of disqualification—the other period.".

Line 8, proposed new paragraph 34 (2) (b), omit the paragraph, substitute the following paragraph:

"(b) if the court orders another period of disqualification—the other period.".

This side of the house wishes to remove the tightness on the courts. We wish to allow the courts the discretion to decide the extent to which people must pay the penalty when they breach the law. We do not believe that the Assembly is here to do the magistrates' jobs for them. We do not believe that the Assembly is here to join up the judiciary and the Executive. We do not believe that this legislation and its amendments are anything but an assault on the separation of powers.

MR SMYTH (Minister for Urban Services) (7.45): Mr Speaker, the Government believes the Bill is appropriate as it is. We will resist these amendments.

Amendments negatived.

MR SMYTH (Minister for Urban Services) (7.46): Mr Speaker, I ask for leave to move amendments 6 to 8 circulated in my name together.

Leave granted.

MR SMYTH: I move:

> Schedule 3 –
>
> Page 41 –
> Line 7, proposed new section 52, *Motor Traffic (Alcohol and Drugs) Act 1977*, omit "on 1 December 2004", substitute "5 years after the commencement of the *Road Transport (General) Act 1999*".
> Line 13, proposed new subsection 53 (2), *Motor Traffic (Alcohol and Drugs) Act 1977*, omit "on 1 December 2001", substitute "2 years after the commencement of the *Road Transport (General) Act 1999*".
>
> Page 42, line 1, proposed new definition, ***offence of culpable driving***, *Motor Traffic (Alcohol and Drugs) Act 1997*, omit the definition, substitute the following definition:
> "**offence of culpable driving**, for a person, means–
>
> (a) an offence against section 29 (Culpable driving) of the *Crimes Act 1900*; or
>
> (b) any other offence against the *Crimes Act 1900* where a necessary fact to constitute the offence is that someone dies or is injured because of, or as a result of, the way a person drove a motor vehicle.".

Amendment 6 revises the expiry date of a consequential amendment to the Motor Traffic (Alcohol and Drugs) Act 1997 from 1 December 2004 to five years after the commencement of the Road Transport (General) Act 1999. Again, this is a consequence of the delay. Amendment 7 revises the expiry date of a consequential amendment also. Amendment 8 revises the definition of "offence of culpable driving" in the Motor Traffic (Alcohol and Drugs) Act 1997 to be consistent with the definition in the Road Transport (General) Act 1999.

Amendments agreed to.

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

Bill, as amended, agreed to.

ROAD TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) BILL 1999

Detail Stage

Debate resumed from 25 November 1999.

Bill, by leave, taken as a whole.

MR SMYTH (Minister for Urban Services) (7.47): Mr Speaker, I ask for leave to move the three amendments circulated in my name together.

Leave granted.

MR SMYTH: I move:

Clause 2, page 2, line 13, omit the clause, substitute the following clause:

"**2 Commencement**

This Act commences on the commencement of the *Road Transport (General) Act 1999*.".

Clause 42, page 25, line 7 –

Paragraph 42 (1) (j), omit the paragraph, substitute the following paragraph:

"(j) parking vehicles on residential land, including for heavy vehicles—

(i) prescribing the circumstances in which the road transport authority may enter residential land; and

(ii) prescribing the circumstances in which warrants may be issued for residential land; and

(iii) prescribing maximum penalties of not more than 20 penalty units for each day a person contravenes a regulation in relation to the parking of a vehicle on residential land, including the day of a conviction for the contravention or a later day.".

After subclause (1), insert the following proposed new subclause:

"(1A) Without limiting subsection (1), the regulations may make provision for or with respect to the powers that may be exercised by a police officer or an authorised person, who enters land under regulations made for paragraph (1) (j), including for example requiring a person in or on the land—

(a) to give the police officer or authorised person information relevant to the exercise of his or her powers in relation to the land; or

(b) to produce to the police officer or authorised person a document containing information relevant to the exercise of his or her powers in relation to the land.".

I present a supplementary explanatory memorandum on the Government's amendments to this Bill.

Under amendment 1 the commencement date changes from 1 December to the commencement date of the Road Transport (General) Act. Amendment 2 allows for regulations concerning the parking of heavy vehicles on residential land. Amendment 3 allows for regulations concerning the power of entry and inspection by police officers or authorised persons.

Amendments agreed to.

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

Bill, as amended, agree to.

ROAD TRANSPORT (VEHICLE REGISTRATION) BILL 1999

Detail Stage

Debate resumed from 25 November 1999.

Bill, by leave, taken as a whole.

MR SMYTH (Minister for Urban Services) (7.48): I move:

> Clause 2, page 2, line 12, omit the clause, substitute the following clause:
> "**2 Commencement**
> This Act commences on the commencement of the *Road Transport (General) Act 1999*.".

I present a supplementary explanatory memorandum. The amendment changes the commencement date from 1 December to the date when the Road Transport (General) Act 1999 commences.

MR STANHOPE (Leader of the Opposition) (7.49): I think this is about the last amendment, the last stroke, in the debate on this suite of legislation. I reiterate the Labor Party's opposition to this range of measures today that have introduced into the ACT system of justice the concept of minimum mandatory sentencing. I think this is a retrograde move. There are serious philosophical issues of principle involved in this legislation. Before the debate passes, I simply want to restate those issues.

I regret quite seriously that in this suite of legislation today we have taken the first step to introducing a system of minimum mandatory sentencing; that we have removed from our magistrates and our courts a range of discretions which they currently exercise. To that extent, we have rendered our magistrates and our judges ciphers. We have taken

away from them one of the fundamental aspects and one of the fundamental principles that apply to the administration of justice in this Territory, namely, the capacity for our magistrates to exercise and to impose some humanity on, and in relation to, the punishment of offenders within our system. I think it is a vital tenet of the administration of justice. It always has been and is recognised these days by most jurists and by most criminologists.

To render your magistrates simple ciphers, to give them no discretion, not to allow them to look at the facts of individual cases, not to allow them to look at the circumstances of individual perpetrators, to render all perpetrators a simple mass, a simple class of perpetrator, with no distinguishing features, is a regrettable move that I think this community will pay a price for. You cannot lump offenders together as a mass of humanity and regard them as a single unit. We have different circumstances. We have different family circumstances. We have different work capacities.

There are people in this town who, as a result of the passage of this legislation, will lose their jobs. They may have done things that we would have preferred they had not done. They may have committed crimes which we frown upon, crimes which we view seriously. As a result of this legislation they will lose their jobs. People who rely on the capacity to have provided to them a special licence for the purpose of carrying out their everyday work, the work on which they and their families rely for an income to sustain their lives, will lose their jobs. People doing productive things within our community who do transgress, who do break the law, will as a result of these amendments lose their job and their capacity to provide for their families and their children.

This is a serious and retrograde step that we have taken today. Whilst we sit here and accept the passage of these five pieces of legislation, it should not go unrecorded at this final knell that this is a serious backward step that we have taken today in relation to the way in which we as a community view the administration of justice and our attitude to punishment. We have emasculated our magistrates in this way. We no longer allow them to view individual human beings in a human light, taking into account all the factors in their lives that might perhaps have swayed an intelligent, thinking magistrate about an appropriate response to a malefactor's transgressions. We have removed the magistrates' capacity to look at individual transgressors as human beings with human responsibilities. This is bad law that we are passing here tonight. We as a community will suffer as a result of passing bad law.

MR KAINE (7.53): I also would like to make a comment or two at the conclusion of the debate on this package of Bills that have been brought forward by the Government. I regret that I do not share the sentiments of my friend Mr Stanhope. I take a different view. Some years ago the Government began a process of putting into place a set of laws to do with the behaviour of people on our roads which I believed right from the outset was in the public interest. That is our purpose. Our purpose here is to make legislation that is in the public interest. I do not believe that the Government has brought this legislation forward for any other reason, and I have not supported it for any other reason.

I think the legislation is good legislation, because it imposes standards that are required on people who use our roads, people who at the moment put other people's lives at risk. The problem has always been very largely a question of the attitude of people on our roads. It had to be brought home to these people forcefully that attitude is important and that they are not free to do as they wish on our roads. They are not free to put other people's lives at risk. There has been very little curb until now, although this process did start some years ago.

Mr Stanhope says there are people who will lose their jobs. Not if they obey the law, not if they accept the standards, the norms, that we are setting as the community norms of behaviour on our roads. They are at no risk. All they have to do is comply with the rules. If they comply with the rules, they are at no risk whatsoever. But at the same time the rules remove a very serious risk from a lot of other people who share the roads with them.

I do not agree with Mr Stanhope. I believe this is good law. I believe that over time we will see a significant reduction in road trauma, road deaths, road injuries, road accidents and damage to property as our police take their responsibilities seriously and implement this law. I do not see that as a bad thing at all. The majority of Canberrans will benefit materially from it. If the majority of Canberrans benefit materially, how can you say that it is bad law? I do not believe it is.

As I say, this process started a long time ago. We see today the culmination of some years of work in bringing together a package of law that deals with these matters. I was part of that process at one stage. I endorse it. People who think that this legislation is a bit harsh because it places some constraints on them have a duty and a responsibility to look to their attitude when they are in control of a vehicle in a public place. If they do not do that, then perhaps the results that Mr Stanhope has predicted will happen. Maybe the axe will fall. If it does, it is because people refuse to accept their responsibilities to the broader community.

I support this law. I would have thought that everybody in this place would have had the good sense to do so.

MS TUCKER (7.56): I would like to make some closing comments. I particularly want to comment on the debate that has occurred here tonight. I have listened intently to most of the speakers who have supported this piece of legislation of Mr Osborne, now the Liberals. I have not yet heard anyone address concerns about the separation of powers and what we are doing to the system of governance in the ACT. The Labor Party, Michael Moore and I have raised concerns about that issue. No-one has responded. We have responded to the concerns that the members speaking for this proposal have raised. I have made a suggestion that if the criteria are a concern and they need to be tightened then you can look at that. I also raised in my speech statistics and research showing the core group of offenders and the reasons we need to look at other measures to address the issues. The fundamental objection from Michael Moore, the Labor Party and me is about what we are doing to our system of government.

Having listened to Mr Kaine, Mr Osborne and Mr Smyth, I am now waiting to see when one of those members or someone from the Liberal Party - perhaps Mrs Carnell, who supports it - will propose exactly this sort of mandatory minimum sentencing on another issue. Take property crime. In the Northern Territory an Aboriginal person was locked up because he took a towel off a line. It was three strikes and you're out. That was decided. The judiciary had no power to deal with that issue. The social consequences of putting an indigenous person in gaol are of considerable interest to many people in the Australian community.

A precedent has been set here today. I agree with Jon Stanhope that it is absolutely dangerous. I am very nervous about what it will mean to the rest of this Assembly. I hope that in the next Assembly we have people in this place who will not support such a very serious imposition on our system of government.

MR HARGREAVES (7.59): I think I have made my views on mandatory sentencing and the separation powers pretty clear, and I will not go over them again. On behalf of the Opposition, I express appreciation to the departmental officials who have put together this package. As I said earlier today, the national transport and road reform agenda has been a particularly difficult one, one which I know has been tackled with gusto by departmental officers. I single out David Handley and his people for all of the work that they have done. I think they have done a sterling job. That we had to focus on part of the legislation was unfortunate, as far as I am concerned.

I would also like to express the appreciation of the Opposition to John Leahy, the Parliamentary Counsel. He had a very difficult job taking an outdated Motor Traffic Act and turning it into a road transport Act. Those two gentlemen were particularly effective and did a great job. The briefings they gave me and my office and my colleagues were superlative. I wish to have those thoughts recorded.

MR MOORE (Minister for Health and Community Care) (8.00): Mr Speaker, I am quite pleased you called Mr Hargreaves, because I had a made a note following Mr Kaine's speech that no-one had questioned the motives behind what we are trying to achieve here. We are trying to protect lives and to reduce the trauma and so forth of motor accidents. I think all members agree with that. Mr Hargreaves said that he agrees with the vast majority of the legislation that has gone through. That needs to be put on the record. We have to recognise the hard work that has gone into this over many years, not just in the ACT but right across Australia, to get us to this point tonight. The intergovernmental work is always so difficult. I am very pleased that Mr Hargreaves has put that on the record. I would like to reiterate it.

I also emphasise the danger in what we have done tonight with this form of sentencing. I think it is worth remembering that often the very worst decisions are made with very high motives. I think that is the difficulty here. It highlights for us the problem we have. Mr Kaine says he does not want people to be free to do what they like - free to do this and that. None of us do. Nor do we believe that the legislation would allow that to happen.

Mr Kaine then said that it is very easy. All anybody has to do is comply with the rules. If they comply with the rules, there will not be any problem. That highlighted for me the exact problem we are talking about. It is our job in this chamber to set the rules. I have no problem with that. It is the court's role to apply those rules. That is the distinction we are muddying tonight. Not only are we setting the rules but we are also going to apply the rules in this set of cases.

You are breaching a fundamental issue with regard to governance, as Ms Tucker put it. This is fundamentally about the separation of powers. This is the sort of power that can get out of hand and make it awkward. It leads us into a position where a police officer, as happens in some other jurisdictions, effectively becomes the judge and the jury. That is incredibly unfair on the police officer.

There are very good reasons why we have a separation of powers. In this case tonight they are minor. Nobody is debating that this is a very minor situation, but it still highlights how such principles are undermined. It is about the separation of powers. We respect what our colleagues have put up and their motivation. But we are saying to them that we really want them to think seriously about the issue of governance, the separation of powers and where you draw the line. Make the rules tougher and tougher but let the courts apply them. That is basically what we are saying.

MR QUINLAN (8.04): In large part I agree with Mr Moore. I hope he is right in ascribing higher motives for this legislation. I have a personal growing disquiet that this might be part of an agenda based on the John Laws school of logic to appeal to a particular constituency. If we keep going this way, appealing in this manner, I am concerned about where we will be by 2001, by the next election, and where, if this next Assembly is of a similar constitution to this one, we will be by 2004.

I have to lend my full support to Jon Stanhope's observation that this is bad law and to his statement of fact, confirmed by Mr Kaine, that some people will lose their jobs, their earning capacity and their capacity to provide. Some will not. Whether or not they lose their jobs will not be based upon the degree or the heinousness of their crime. It will be based upon their particular employment circumstances, on factors that have nothing to do with the case that they had to answer. This law commits an injustice. In this place today an injustice has been committed. It will be committed again and again in the future while we head towards this increased propensity to mandatory sentencing and the limiting of discretion and justice within our justice system.

MR OSBORNE (8.06): I am trying to get something positive out of what Mr Quinlan just said. I could not find much other than the fact that he finally supports Jon Stanhope on something. I am sure Mr Stanhope is breathing a deep sigh of relief upstairs now that finally Mr Quinlan has come out in support of him. How long that will last, who knows?

I would argue that the injustice in this issue is that people who drink and drive are not being sent a clear enough message. The injustice is that people are putting their lives and the lives of people in the community at risk by drinking and driving, yet they can go before the courts and come away with their licence. That is the injustice.

This issue is about trying to save lives. I have said it twice this evening, and I will say it again. Look at the data from when I tabled my legislation in September on the incidence of drink-driving offences and repeat offenders. It is quite clear that a new approach has to be taken. I have no problems with supporting this legislation. I believe it will send a very clear message to the people who take the risk of drinking and driving.

I fully expect that, as Mr Kaine has said, some people will lose their licence and possibly their job. There will be the odd occasion when that happens. But I would argue that the greater good far outweighs those isolated cases. I would argue that we are creating a tough environment. The odd person, perhaps you could argue, could have been treated differently, but I would suggest that what we are doing for the community as a whole far outweighs the rights of the odd individual.

This is not about moving down the road of the Northern Territory, as Ms Tucker alleged. I have no plans for mandatory sentencing or whatever it was she was talking about. This is about drink-driving. This is about attempting to save lives. Some of the nonsense that has come from those people opposed to this legislation has done nothing to assist the debate. I am pleased that the legislation is going through. I look forward to supporting the Bill when it is finally voted on.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (8.09): One of the Bills we have been debating tonight facilitates the passage of the Australian road rules. The road rules will be a disallowable instrument laid before the Assembly, and they will be accepted or amended, as the case may be, by the Assembly. I simply look at one of these, road rule No. 130, and I think of Mr Lou Westende, a former member of this place, and I think of the legislation he introduced in 1992. It was his very first Bill. It was a Bill to provide that on multi-lane roads where speed limits exceed 80 kilometres per hour people should be required to keep to the left. I remember that Mr Westende was quite crushed when the Assembly did not pass his legislation. He thought it was shocking that he could put forward such a sensible piece of legislation and it was not accepted.

I am very pleased to note that tonight the Assembly facilitates the passage of the Australian road rules and allows the passage, in due course, of road rule 130, which provides for drivers in multi-lane roads where the speed limit exceeds 80 kilometres per hour to keep to the left-hand side. I am sure Mr Westende would be very gratified to learn that this legislation is now in place.

MR STEFANIAK (Minister for Education) (8.11): I listened to the debate with interest. Mr Hargreaves was probably a bit unfair on Michael Somes, the magistrate. Mr Somes is a very experienced magistrate, and I think he has just been saying what a number of magistrates have been saying about what they see as necessary guidance as much as anything else on things like special licences and when they should and should not be granted. This package of legislation certainly assists the court much more than had previously been the case.

On the separation of powers: In my second speech on this matter in the detail stage I went through the history of what had occurred in the courts and showed that this is not something particularly new in motor traffic law. I do not think I need to say anything more in relation to that.

My colleague Michael Moore made a comment about police being judge and jury. That is not so. Quite clearly, if a person is aggrieved and does not think they have committed an offence, they can defend a charge against them. Then it is up to a court to decide whether they are guilty or not guilty. All this legislation does is lay down certain minimum penalties and certain requirements of the court.

With first offenders, someone with an unblemished record, the rule of thumb for 20 years was that they would get a 556A, which means that basically they kept their licence. They might have got a bond; they might have had to pay a small amount of money as part of that bond; they might have had to do nothing. But they basically kept their licence. Even if they are a first offender and they are subject to the minimum mandatory disqualification - be it one month, two months, three months or six months - they still have the option, if the circumstances warrant it, of getting a special licence. I think that is fair enough.

That brings me to the point Mr Kaine made about people being responsible for their actions. I do not think anyone here would begrudge someone who would not qualify for 556A, who would be subject to a fine and, say, a minimum mandatory suspension of licence, getting a special licence if, in the circumstances, it was warranted. I am sure that any reasonable court, not only in the ACT but elsewhere, would give such a person a licence with conditions if it was their first offence.

Where do we draw the line? Where do those opposite want us to draw the line? Why should someone who commits a second, third, fourth, fifth or sixth offence continue to get the benefit of a special licence? That is just crazy. There comes a time when people have to be responsible for their own actions. By all means, we need some provisions in the system to ensure that a first offender, someone who transgresses once, gets the benefit of some doubt; that their family is not penalised; and that the courts exercise leniency. I think there is provision in this legislation for that, just as there was in the previous Acts that governed this area.

Surely, if someone continues to offend, that is not only thumbing their nose at the court; it is thumbing their nose at the system; it is thumbing their nose at their fellow citizens. There does come a time when people need to be responsible and to be held responsible for their actions. I wholeheartedly endorse the comments that Mr Kaine made in that regard.

We have a responsibility to the community. What does the community expect us to do? The tightening up over the 20 years or so of road traffic rules, especially rules relating to drink-driving and the more serious aspects of dangerous driving, has been largely endorsed by the Australian community. Mr and Mrs Average Australia expect legislation like this to be passed on a national scale, and Mr and Mrs Average Canberra

expect this Assembly to pass this legislation. I am delighted to see that a majority of members are going to do so.

Some of the comments by some of those opposite, whilst well meaning, are very much a smokescreen. I do not think those members appreciate how serious this is, what actually occurs in court and how much latitude the courts have given to people in the past and will continue to give to them in accordance with this legislation. This legislation tightens up a lot of problems that have occurred in the past. It gives courts necessary guidance. They still have discretion. Some of the comments from those opposite miss the mark.

MR SMYTH (Minister for Urban Services) (8.15): I thank the Assembly for their in-principle support of this legislation. It is a large piece of legislation. The fine prints cover a range of the operations of road safety and the management of our road system in the ACT. Bar perhaps the one point on minimum sentencing, we have agreement that this is a good thing. That is an indication that the Assembly can work well together.

On minimum sentencing, it is clear we have a divergence of views. I believe the position that the Government has put forward over a period of time, starting in 1997, then with the support of Mr Osborne's Bill in 1999 and culminating here today, is an indication that we take road safety very seriously and that we send the strongest message that we can to those who continue to drink and drive. It is very important that they not be allowed to get away with the damage they do to other lives. That they damage their own lives is true, but all too often it would seem that the pain, the agony and the suffering are inflicted on other families. There are times when it is very important to send a clear, concise message in the strongest possible way. That is something that the Assembly should do. We do it today, with the majority support of the Assembly. I thank those who support this legislation.

Mr Speaker, this package was put together very quickly. There are two important groups that need to be thanked. I thank Mr Hargreaves of the Labor Party, Mr Moore and others who have acknowledged the hard work of the staff from my department and the staff of the Parliamentary Counsel. I particularly acknowledge David Handley, Matt Gamble, Eva Capeder, Wayne Daly, Steve Crofts and Steve Blair from my department. I apologise to anybody I have forgotten. Most of them are here with us this evening. We thank them for the work that they have done in putting together a very sound package. For the size of the package, the number of amendments would indicate that they got it pretty right. We congratulate you for the work that you have done.

John Leahy and the staff from Parliamentary Counsel are always behind the work the Assembly does. We cannot survive without them. For a very extensive package, you are worthy of our praise for the work that you do, getting amendments for the Labor Party, for Mr Rugendyke and for the Government. We need to acknowledge that these people work with great skill and great dedication. They give of their knowledge and allow us as MLAs to do our job better. We thank them all for that.

This legislation is a comprehensive reform of transport in the ACT. It allows for the implementation of the national road rules in Australia. That is a tremendous achievement for Australia as a nation. The first gift to the nation in the year 2000 is that

we will all drive on our roads in the same way. It is very pleasing that we will have these road rules up and running by February or March. Western Australia intends to have their national road rules implemented by March. I think Tasmania is lagging a little bit but intends to have them in place by October. But what an extraordinary achievement it is that nationwide we will at last all drive our cars in the same way. I do not think we can ever say enough about that.

Mr Humphries: In theory.

MR SMYTH: Yes, in theory we will all drive in the same way. There are some local variations, but no matter where you go you can expect to drive the same as everybody else will drive. That must add something to reducing the road toll. That is very important. If it saves one life in having the national road rules, then that is an outstanding achievement for the country. Hopefully it will save more.

Mr Speaker, I commend the Bill to the Assembly. I thank members for their assistance in progressing it quickly. I thank the Assembly for their support.

Amendment agreed to.

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

Bill, as amended, agreed to.

CONSIDERATION OF PRIVATE MEMBERS BUSINESS

Suspension of Standing Orders

MR BERRY (8.20): I move:

> That so much of the standing and temporary orders be suspended as would prevent order of the day No. 15, private Members' business, relating to the Occupational Health and Safety (Amendment) Bill (No. 2) 1999, being called on immediately after the resolution of any question relating to the conclusion of consideration of order of the day No. 7, Executive business, relating to the WorkCover Authority Bill 1999.

Mr Speaker, the motion is a mere matter of expediency to save some of the time of the Assembly. The private members business I refer to in my motion is a matter which has been in this place since 30 June and concerns itself with matters similar to the WorkCover Authority Bill. In my view, one or the other should survive this debate, so it seems sensible to debate both of them at the one time.

Question resolved in the affirmative, with the concurrence of an absolute majority.

WORKCOVER AUTHORITY BILL 1999

[COGNATE BILL:

OCCUPATIONAL HEALTH AND SAFETY (AMENDMENT) BILL (No. 2) 1999]

Debate resumed from 16 November 1999, on motion by **Mr Smyth**:

That this Bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Occupational Health and Safety (Amendment) Bill (No. 2) 1999? There being no objection, that course will be followed. I remind members that in debating order of the day No. 7 they may also address their remarks to private members business order of the day No. 15.

MR BERRY (8.21): Mr Speaker, what I am going to set out to do, first of all, is to demonstrate the frailties of the Government's approach in relation to this matter. I will then demonstrate the inappropriate nature of the Government's legislation, the WorkCover Authority Bill. Throughout the speech members will come to the conclusion, I am sure, that there needs to be a reinforcement of the independence of those people who have to deal with occupational health and safety in the ACT. Mr Speaker, in the course of the debate, I will deal briefly with the history of the development of these pieces of legislation as I see it - the Government's Bill and the Bill that I introduced on 30 June - and I will foreshadow some amendments in relation to my Bill which accommodate more contemporaneous matters.

The Government's Bill was born out of the coroner's report on the inquiry into the death of Katie Bender. Members will recall that evidence was laid before the coroner in relation to potential interference with inspectors from WorkCover in the performance of their duties at the hospital site. The coroner was unkind to the Government, pointing to many failures, and recommended, amongst other things, that there be changes to WorkCover. I will come back to that a little later. The Bill I have introduced was born out of interference in the practical operations of WorkCover at a job site in the ACT. The interference was directed from a Minister's office in that a political staffer was despatched to and actively participated in an investigation which was being conducted by WorkCover inspectors, impeding their progress in relation to that matter.

I turn to the Government's Bill. Mr Speaker, when this Bill was introduced the steam was still coming off it and it has all the hallmarks of a rush job. The coroner reported on 4 November and this Bill was introduced by the Government on the 16th. Nothing demonstrates better how hasty the preparation of this Bill has been than the fact that the drafter's notes were still on the initial copies introduced into this place. The WorkCover Authority Bill locks ministerial interference into the affairs of the occupational health and safety authorities in the Australian Capital Territory. Why is that so, you might ask? It relies on an authority consisting of seven members, all appointed by the Minister, and is a business model. That is confirmed in the appointments clause - clause10 -which states:

> The Minister may only appoint as director a person with managerial, commercial or other qualifications or experience the Minister considers necessary to enable the authority to perform its functions.

The briefing I received from government officers confirmed that this legislation is more or less a lift from the New South Wales legislation. That might explain why it has such a business style about it. In so far as ministerial interference is concerned, the Bill relies on the Minister for the appointment of those directors. The potential for ministerial interference is confirmed in Part 4 - Management of the legislation by the provisions for the development of business plans. The Minister must approve all of the business plans which are made for the authority to operate under for the ensuing financial years. That identifies clearly that this piece of legislation is designed to entrench ministerial interference in the affairs of those who provide occupational health and safety services in the Territory.

I indicated a moment ago that this Bill was a lift from the New South Wales legislation. I also referred to the business model upon which it is based. It is inappropriate for such a model to be adopted for the ACT if you compare the size of the labour force in the ACT with the one in New South Wales. According to a most recent publication comparing the workers compensation arrangements in Australian jurisdictions, the labour force in New South Wales in June 1999 was 3.1 million people, whereas in the ACT it was 168,700 people. The Government is adopting a model which was intended for a work force of a much larger size and applying it to the Territory. It would be a most expensive model for the ACT. It is intended for a different sort of jurisdiction altogether than is the case in the ACT.

I should also point to some other features of the WorkCover Authority in New South Wales which may make this model applicable there but which certainly rule it out of being applicable here. At 30 June 1998, the WorkCover Authority in New South Wales presided over $5.68m worth of assets and $7.364m worth of debt; it was $2m in debt. It is no wonder that they need an organisation such as has been described in this Bill to manage their affairs as their operation is a business operation.

How can we confirm that? All we have to do is to refer to the Workplace Injury Management and Workers Compensation Act 1998 and the Workers Compensation Act 1987 of New South Wales, which describe the very complex functions that this authority must deal with in New South Wales. In relation to workers compensation, I should say that it not only sets the premium in New South Wales but also manages several funds to ensure that the workers compensation provisions work in that jurisdiction. That model may well be appropriate in New South Wales, but it is not appropriate in this jurisdiction.

Mr Speaker, not only is it inappropriate, but also it does not meet the recommendations that the coroner made in the wake of the tragic circumstances at the old Royal Canberra Hospital. Mr Speaker, the coroner in his recommendation said:

> WorkCover and DGU -

the Dangerous Goods Unit -

> should be an independent statutory authority with appropriate funding and resources. Both bodies should be created as one autonomous statutory unit independent of any departmental control answerable to a Minister of the Legislative Assembly. The models adopted in other states of Australia would seem to suggest that this is a practical way to ensure workplace and public safety is preserved.

That seems fine to this point. The recommendation continues:

> Consideration should be given to the adoption of the interstate models. All relevant stakeholders should constitute its Board again accountable to the Assembly.

An important issue which has been left out of this legislation is the position of the stakeholders. There is no suggestion in this legislation that the recommendations of the coroner in relation to the stakeholders have been incorporated. In fact, they have been deliberately excluded. Mr Speaker, the only place where the stakeholders remain is in the Occupational Health and Safety Council, established under the Occupational Health and Safety Act. Yes, Mr Speaker, the Occupational Health and Safety Act will continue to operate; but, under the Government's model, the WorkCover authority will be the superior body in the scheme of things and will manage all the affairs of the Occupational Health and Safety Act.

The approach of the Government was taken in a complete vacuum when it comes to the issue of consultation. No attempt was made at that. My contacts on the Occupational Health and Safety Council have been asked to consider not one word in relation to the establishment of this legislation. They were not even consulted. How appalling! The premier advisory body for occupational health and safety in the ACT was not even consulted about the development of new legislation which would cover their future affairs. How is it that the Government has come to a conclusion in relation to this legislation without consulting its premier tripartite advisory council?

I note that the Trades and Labour Council have written to members urging them either to delay the legislation which has been put forward by the Government or to defeat it and support the legislation which I have put forward. I will demonstrate in due course that the legislation which I have put forward is quite up to the job and satisfies the requirements, not only of the coroner in his report, but also of the other circumstances which gave rise to the need for statutory independence for those people delivering occupational health and safety services in the ACT. Mr Speaker, the Government's legislation has missed the point. Not only has it enshrined ministerial interference, but also it has ignored that important part of the coroner's recommendations in relation to stakeholders. The legislation I have introduced accommodates that quite adequately; it accommodates the existing arrangements.

As I said earlier, the legislation which I introduced as private members business on 30 June this year originated from direct interference by a Minister of the ACT Government in the role of WorkCover inspectors at a job site in the ACT. It was an appalling event in governance in the ACT when statutory officers were interfered with by political appointees from the offices of a Minister. I have no doubt that at that time there was no commitment to occupational health and safety in the ACT.

A subsequent committee inquiry recommended the establishment of a statutory body to deal with occupational health and safety in the ACT. That proposal was rejected out of hand by the Government as being too expensive. The Government has come up with a model which is most suited to the circumstances in New South Wales, where there is a multimillion dollar operation, and is totally unsuited to the one which applies in the ACT, which can be achieved more economically by the proposal I have put forward.

Following the Government's rejection of the committee's recommendation for the establishment of such a body, I made it my business to issue drafting instructions to ensure that this outcome was achieved. These drafting instructions were issued in October 1998. I will just deal with the first paragraph because it explains exactly where I was coming from in relation to the matter. Under the heading "Establish the office of Commissioner for Occupational Health and Safety", I wrote:

> I have looked at the ACT Ombudsman and ACT Discrimination Commissioner as possible models and I favour generally the Discrimination Act provision from sections 111 to 120 inclusive. However, I would also include the applicable provisions of section 28 of the Ombudsman Act in relation to suspension and removal of the commissioner.

Mr Speaker, you will find elements of both of those pieces of legislation in the Occupational Health and Safety (Amendment) Bill (No.2) which we are debating today.

I heard Mr Smyth on the radio criticising the legislation which I had put forward, saying that it did not create any independence for the Occupational Health and Safety Commissioner. What a joke! It adopts models which are working in the ACT. Is Mr Smyth suggesting that the Ombudsman is not independent? Is he suggesting that the Discrimination Commissioner is not independent? Surely not. Those models are not much different either from those which apply to the DPP, the Fire Commissioner and the Community and Health Services Complaints Commissioner. All those people hold positions in statutory bodies. Is Mr Smyth suggesting that they are not independent? I am sure that he is not. I am sure that that was just language for the masses and had nothing to do with the facts. It is another example of him saying the first thing that comes into his head, as long as it makes him look as though he is across the issues and denigrates what the other side is doing.

One other factor which needs to be taken into account in relation to the legislation I have introduced is the issue of accountability. Mr Speaker, I have made it clear that the legislation I have introduced, if passed in this Assembly, would make the Occupational Health and Safety Commissioner completely and utterly accountable to this place. Yes,

he is appointed by the Minister, but any ministerial directions have to be tabled in this place and any ministerial attempts to discipline the commissioner have to be confirmed in this place, otherwise they have no effect. This place can directly call on the Government, pray to the Government, to remove such a person, in much the same way as it can for, I think, the Ombudsman.

My model is an amalgam of the Discrimination Commissioner provisions, which reek of independence, and the Ombudsman provisions, which, of course, provide for total independence, and that is what is needed here. People will say that the most contemporary recommendations that we have in relation to this matter come from the coroner and they are all we should consider. I say no to that, because you cannot ignore the precedent which has been set in this place by a Minister of the ACT Government in directing staff to interfere in the arrangements of a workplace in the ACT. So, Mr Speaker, I have set out to ensure that Ministers stay out of the action. I have set out to ensure that, where they are about issuing any instructions to any independent body, they will have to account for it and they will be held accountable.

Mr Speaker, when you look at both models, you can only come down in favour of the model which was put forward on 30 June 1999 because it accommodates both areas of concern. If the coroner had been able to hear evidence in relation to the atmosphere towards political interference which had developed in WorkCover as a result of that first ministerial interference, he might have had more things to say in his recommendations in relation to WorkCover. As far as I can make out, Mr Speaker, the coroner was not able to consider that sort evidence, which is a pity as he may well have had a different view about the atmosphere under which WorkCover officers had to work and he may well have had a different understanding of the potential impact of interference with WorkCover inspectors' duties by a senior officer of the Government. It is important in considering this legislation to accommodate all of the separations which are necessary to ensure that proper workplace safety is provided for workers in the Australian Capital Territory.

Mr Speaker, I said that I would refer to some proposed amendments which I have had prepared in the wake of the coroner's report. *(Extension of time granted)* I circulated those amendments a couple of days ago, following a briefing from government officers in relation to their legislation. Mr Speaker, associated laws are described in the Occupational Health and Safety Act as the Dangerous Goods Act 1984; the Dangerous Goods Act 1975 of the State of New South Wales in its application to the Territory; the Dangerous Goods Regulation 1978 of the State of New South Wales in its application to the Territory; the Machinery Act 1949; the Boilers and Pressure Vessels Regulations; the Machinery Regulations; the Scaffolding and Lifts Act; the Scaffolding and Lifts Act 1912 of the State of New South Wales in its application to the Territory; the regulations under the Scaffolding and Lifts Act 1912 of the State of New South Wales in their application to the Territory; and such other laws, if any, as are prescribed.

The Government has come up with a more contemporary list of what might be described as associated laws in the WorkCover Authority Bill. Following the briefing, I issued instructions for the preparation of some amendments which would apply to the legislation I have put forward which would bring it more up-to-date about what is an associated law in relation to occupational health and safety in the Australian Capital

Territory. Mr Speaker, the amendments to clause 10 deal with proposed section 25B on page 3 of the Bill I introduced in June 1999. The amendments are to do with the functions of the proposed Occupational Health and Safety Commissioner. They merely add the associated laws to the functions of the Occupational Health and Safety Commissioner and ensure that the Dangerous Goods Unit recommendation of the coroner is accommodated in this statutory authority. All of the updated associated laws are also accommodated in the amendments I circulated. Mr Speaker, they will bring this statutory officer up to speed in so far as independence from the Government and freedom from interference by Ministers are concerned.

Further amendments which I have developed following those consultations basically pick up some good ideas in the Bill, that is, where a Minister issues a direction to the authority the Territory must pay for the reasonable cost of complying with the direction, and there is a method for calculating what is reasonable in the absence of any agreement with the relevant Minister. An inconsistency clause in the existing Act refers to the associated laws; but, of course, we cannot apply the inconsistency rule with a law of the Commonwealth and the non-application of that clause in relation to the law of the Commonwealth is referred to. There are some other machinery changes and there is a new reporting requirement which, sensibly, has been picked up in the WorkCover Authority Bill of the Government. I have included those in these amendments to ensure that all aspects of the Occupational Health and Safety (Amendment) Bill (No. 2) which I introduced on 30 June are brought up to date.

To summarise what I have said so far, the Bill that I have introduced accommodates the recommendations of the coroner. It also addresses the need to deal with previous events where there has been ministerial interference in the duties of WorkCover inspectors. My Bill sets out to rule out the entrenchment of ministerial interference in the operation of WorkCover. The Government's Bill makes sure that it continues, and that is what we are trying to avoid. The Bill that I introduced on 30 June satisfies both problems and addresses the coroner's report, particularly in respect of the need to involve all stakeholders.

Mr Speaker, I intend through my Bill to maintain the premier status of the Occupational Health and Safety Council in its advisory capacity to the Minister and to ensure that any laws that are applied to the Occupational Health and Safety Commissioner are applied after full consultation with the relevant people out there in the community, those stakeholders who have been abandoned by the Government in the preparation of its legislation. The amendments pick up the positive and good ideas in the Government's legislation and apply them to a superior model which I hope will be endorsed by members of the Assembly when the time to vote comes.

MS TUCKER (8.49): Speaking to both pieces of legislation, I would echo the concerns that Mr Berry raised about the timing of the Government's proposal. The Government's Bill was tabled only in the last sitting period. I understand that the major stakeholder bodies, including the Occupational Health and Safety Council, created under the Occupational Health and Safety Act were not given time formally to discuss the Government's Bill. Given the enormous expertise of the council on OH&S issues, it is

quite amazing that the Government has not drawn on this expertise in reviewing and improving its proposals.

I have been advised that a consultant has been engaged to review the impact of the Government's Bill on the OH&S Council and the Insurers Advisory Committee after the Bill has been put to this place and passed. That is indeed a very strange process. The Government should have undertaken a review first and then tabled its legislation, informed and amended in response to the findings of that review. In that way the Assembly could properly scrutinise the Government's proposals, certain that the Government had figured out how the council and the advisory committee fit into the Government's broader legislative changes.

I am interested in the Government's Bill, particularly Division 2.1, which relates to the establishment, functions and powers of the Government's proposed WorkCover authority. Clause 6(b) of the Government's Bill lists one function as the power to collect payments under the WorkCover legislation for the Territory. What is this clause about? I look forward to Mr Smyth enlightening us on that. I think it is a really important question. We did accept a briefing from the Government on their legislation and I asked questions about why there was a need for a business plan to have the predominance that it does in the legislation. At first the government officials thought that the definition of "business plan" would include the broader brief and that maybe it would finish in the Financial Management Act, but it has not. That has been confirmed as well by the officials. There is a statement of intent in the Financial Management Act, but that is a quite different thing from a business plan.

I am interested in knowing what the function of collecting payments under the WorkCover legislation for the Territory is all about. Is that about some other proposal that Government is not putting to the Assembly at this stage, some revenue-gathering mechanism which is envisaged for the future but which we are not privileged enough to know about at this point or debate at this point? I do not know. Is it some kind of levy? What is it about? Perhaps the Government could clarify that issue for us tonight. I think that it certainly needs clarification if the Government is to have any hope of getting its proposal supported.

I am also concerned, as is Mr Berry, about the proposed structure and membership of the authority as defined in Division 2.2 of the Government's Bill and I will also revisit the coroner's recommendations regarding WorkCover and the Dangerous Goods Unit following his inquiry into the demolition of Royal Canberra Hospital. As Mr Berry said, and I will repeat it because I think it is important to stress it in this debate, the coroner recommended on page 294 of his report that WorkCover and the Dangerous Goods Unit should be an independent statutory authority, with appropriate funding and resources. He also recommended that both bodies should be created as one autonomous statutory unit independent of any departmental control and be answerable to a Minister of the Legislative Assembly, saying that this new body could be modelled on similar authorities in other States and that all relevant stakeholders should constitute its board, again accountable to the Assembly.

The Government is proposing the appointment of seven members to the authority, being the general manager and six directors. Clause 10 of the Bill states:

> The Minister may only appoint as director a person with managerial, commercial or other qualifications or experience the Minister considers necessary to enable the authority to perform its functions.

The coroner did recommend, though, that all relevant stakeholders should constitute its board, again accountable to the Assembly. Whilst the Minister has the discretion to appoint anyone with any qualifications and he or she must consider recommendations from the OH&S Council and the Insurers Advisory Committee, the only qualifications that are clearly defined in this clause of the Bill are qualifications pertaining to the managerial or commercial skills of potential directors. That means, in theory, that all the members of the authority, excluding the general manager, could come solely from the business sector and have no experience of or insights into occupational health and safety issues or employer-employee concerns.

When that is put with the presence of the business plan and the unclear business of the ability to collect moneys, it really is quite worrying. It is skewed to business and ignores the other relevant stakeholders, reflecting the strong business focus that permeates this Bill, and does raise questions for the Assembly. In contrast, the existing OH&S Council membership as defined in the OH&S Act 1989 has broad stakeholder representation. It comprises four members appointed by the Minister after consultation with such persons or bodies as the Minister considers represent the interests of employees and four other members appointed by the Minister.

Under the council's membership as defined in the Act it is clear that employers and employees - two of the key stakeholder groups in OH&S - are well represented, with the Minister's discretion to appoint an additional four members allowing him to include members with commercial experience. I understand that the Government is considering appointing members of the authority from outside the ACT. Maybe the Minister could confirm that for us as well. If it is true, not only would the Government's authority have a business focus but also its interstate members would not have local knowledge about the ACT regulatory environment.

I have other concerns about the authority that the Government is creating. Whilst I realise that the coroner recommended that we look to other jurisdictions for our model for an independent WorkCover authority, the model that the Government has delivered seems like overkill. We have plenty of examples in the ACT of statutory positions which work at arms length from the Government, which are headed by single commissioners and which are very effective, accountable and transparent in their regulatory responsibilities. The two who come to mind immediately are the Discrimination Commissioner and the Commissioner for the Environment. The Government's proposed authority seems to be big, unwieldy, expensive and not necessarily accountable. It is also not clear how it sits with the OH&S Council.

Because of the concerns about the Government's proposal, I will be supporting Mr Berry's Occupational Health and Safety (Amendment) Bill (No. 2). Mr Berry's model proposes the creation of a single commissioner to head the new WorkCover authority, accountable to the Legislative Assembly. The duties of the commissioner are

defined clearly in terms of his or her regulatory and educational functions. Mr Berry has included a number of checks and balances which make his Bill more transparent and accountable than the government model on offer. For example, the provision in Mr Berry's Bill for the suspension or removal of the commissioner requires the Minister to cause a statement of the grounds of the suspension to be laid before the Legislative Assembly. The Assembly can then resolve to support or terminate the Minister's statement calling for the removal of the commissioner from office.

The Legislative Assembly also has the power to present to the Executive an address calling for the removal from office of the commissioner, based on misbehaviour or physical or mental incapacity. In contrast, the Government's Bill only allows for a notice of termination to be laid before the Legislative Assembly within three sitting days after notice of termination is given to the general manager. Termination of the appointment of directors of the Government's WorkCover authority are handled by the Minister without scrutiny by the Assembly.

I believe that Mr Berry's model delivers a more workable, accountable structure for regulating occupational health and safety issues in the ACT. It also retains the OH&S Council, with its broad stakeholder representation, in its advisory role. Given the questions which hang over the Government's model, particularly how the existing council and advisory committee would relate to the authority proposed by the Government and the other concerns that I have raised, it is very difficult to support the Government's Bill. As I have mentioned, I have concerns about the focus on business in the Government's Bill, particularly Part 4 - Management. Clause 24 states:

> The functions of the authority must be discharged -
> (a) in accordance with sound business practice; and
> (b) so as to give effect to the authority's business plan.

That is fine, except that we do see a very much broader responsibility there that is not getting as much focus. As I have said already, there are unanswered questions about why that is necessary and what revenue-raising capacity, if any, the Government has in mind for its proposed authority. The statutory authority is to have regulatory responsibilities for OH&S in the ACT; that is obviously to be its key function. We have learnt from significant mistakes in past processes, and it is really important for the ACT community to have confidence in what this Assembly is doing now to address the very significant issues that have resulted from incompetent management of this area of government regulation. I repeat that I am really concerned about the Government's process here in that they have chosen to table this Bill in such haste that they would be employing a consultant afterwards to check it out and that they have not consulted with the OH&S Council. Mr Berry, on the other hand, has been working on this subject for quite some time and has a model that does appear to be much more accountable and suitable for the ACT, so it is with pleasure that I will be supporting Mr Berry's Bill.

MR BERRY: Mr Speaker, pursuant to standing order 47, I indicate that I may have misled members in some way or misstated the position in relation to New South Wales in drawing a comparison between it and the ACT. I said that, according to a comparison of workers compensation arrangements in Australian jurisdictions, the New South Wales WorkCover Authority had assets of $5.6m or thereabouts and $7.3m worth of

liabilities. On reflection on the figures, the assets are $5.689 billion and the liabilities are $7.364 billion. ACT WorkCover has neither of those.

MR SMYTH (Minister for Urban Services) (9.01), in reply: As always for Mr Berry, it is based on assertion. If I asserted harder than you asserted, what I say must be true. What we need to do is compare the Bills before us to see which one meets the suggestion of the coroner and which will better serve the people of the ACT. This Bill and the model that we have put before you - sorry to contradict Mr Berry - are not necessarily based on the New South Wales model. In fact, much of the legislation was lifted from small authority models within the ACT in designing the WorkCover authority. For example, we used as a model the Cultural Facilities Corporation and the Canberra Tourism and Events Corporation.

So let us dispel the myth that this is not suitable for the ACT. Mr Berry's assertion is that they get a big board. We are little; we should just have a commissioner. Does that mean that all the other boards that have been put in place by this Assembly under governments of both persuasions are irrelevant because of Mr Berry's assertion? I look forward to Mr Berry abolishing every other board in the ACT and putting commissioners in their place.

The preoccupation of Ms Tucker seems to be that it has a business plan. It is involved in business; therefore, it must be dirty. We all go about the business of the Assembly. We all go about our own personal business. "Business" is something you can use to describe that which an organisation does. The business of the WorkCover authority would be investigation, enforcement, education and all the other activities that such a group should undertake. They also have to do that within a framework of management. That is why you put together a business plan. You put together a business plan so that you can achieve your objectives.

If we go to a comparison of the Bills, we talk about the structure of the agency. Mr Berry refers to the coroner's report, page 28 I think. He said, "This proves that my model meets what the coroner said". Under our structure, we would have an independent statutory authority operating under its own legislation building on the reforms pursued over the past two years within WorkCover. What Mr Berry is proposing is a single commissioner tied up in the OH&S Act. It is not a statutory authority; it is an ad hoc arrangement. He quotes the Ombudsman. The Ombudsman has its own Act, as do all statutory officers. They have an independent Act. They are not hidden. They are not inserted inside another Act. It is very important. Mr Berry's arrangement is ad hoc. Ours is quite clear and decisive.

The structure of our agency is six part-time directors plus the general manager. Mr Berry proposes simply a commissioner that has no organisation to back him up. We have a staff to assist the general manager for the day-to-day function of the authority, and they are employed under the PSM Act. Under Mr Berry's Bill, what the commissioner has to do is arrange with the chief executive of the department to use the services of public servants and facilities to perform his or her duties.

What we have in our Bill is a comprehensive safety framework which will deliver through coverage of all relevant legislation, including dangerous goods, scaffolding, lifts, machinery, workers compensation, et cetera. I notice that until Mr Berry's amendments were circulated he covered only OH&S. I am glad that he has picked up on what the Government has done, and he has broadened what it is that he is seeking to achieve. Already we can see through the simple structure of both these Bills that our Bill achieves an independent statutory authority, whereas Mr Berry's Bill has his commissioner enmeshed in the OH&S Act, under some sort of obligation to the department for resources, et cetera.

Let us look at the appointment process. Directors are appointed by the Minister, with recommendations made by the OH&S Council and the Insurers Advisory Committee to be taken into account. Mr Berry talks about people who have been disenfranchised. I do not see anywhere in his Bill where he has to consult with the OH&S Council on these appointments.

Let us look at direction by the Minister. Under our Bill, the Minister may direct the authority in writing on the performance of its functions. Under Mr Berry's Bill, the Minister directs the commissioner. Under our Bill, the Minister must table directions in the Assembly within six sitting days, not disallowable. Under Mr Berry's Bill, the Minister must table directions within five sitting days of giving the directions, not disallowable. Under our Bill, the Territory must pay the authority the cost of complying with direction, and I think Mr Berry has just changed that through his amendments to the requirement to fund the cost of any direction. I am pleased that he has picked up on the points that we make, but he still has not suggested anything to me that indicates that, one, he is setting up an independent statutory authority and, two, that he is meeting the coroner's needs.

You then need to talk about the independence of staff. Under our Bill, the staff answer to the general manager for the day-to-day functions of the authority and are not subject to ministerial control. Under Mr Berry's model, the staff still work for the department and therefore are subject to direct ministerial control. Under our model, the staff undertake delegated functions and regulatory roles within management frameworks of authority but without interference, including from the directors; whereas under Mr Berry's model, staff perform delegated functions and regulated activities. But, because they do not belong to the commissioner and they are not independent, because there is not an Act establishing an independent statutory authority, they could be directed by the department in conflict to the commissioner's directions.

When we get to the termination of the appointment of directors and the general manager, under our Bill the Minister may terminate a director for misbehaviour or physical or mental incapacity. Under Mr Berry's Bill, the Executive will suspend or remove from office the directors and the general manager for misbehaviour. Our Minister may terminate the appointment of a director if the director becomes bankrupt, is absent without leave for three consecutive authority meetings, does not comply with disclosure of interest provisions or is convicted of an indictable offence. Under Mr Berry's Bill, the commissioner must be removed from office by the Executive for bankruptcy. The Legislative Assembly may request the Executive to remove the commissioner from office on the above grounds.

Under our Bill, the Minister may terminate the general manager's contract in circumstances specified in the contract, but not on the grounds of personal incompatibility, and must table a notice of termination in the Assembly within three sitting days of issuing the notice to the general manager. Under Mr Berry's Bill, if the Executive suspends the commissioner, Assembly approval is required for the removal of the commissioner. I think it is quite clear, when you look at it in this format, that what Mr Berry is arranging is somewhat ad hoc. He has simply got it wrong.

When business plans are put together - and some people seem to be upset by the term "business" - they are not solely financial. They must display the activities and the priorities of the organisation for the year ahead. They must enhance the transparency of the authority by openly displaying the coming year's activities and costs. Ms Tucker spoke about clause 16, which provides for the collection of payments by the authority. This enables the authority to collect the levies already charged under various pieces of existing legislation, for example, the Dangerous Goods Act or the Occupational Health and Safety Act. There is nothing sinister there. They are functions that are already carried out.

The crux of all this, as you can see from the comparisons I have made, is an independent statutory authority. Independent statutory authorities are normally set up under their own Act. They have their own Act to ensure their independence. They are not inserted in an ad hoc arrangement inside another piece of legislation. The real issue is how a single officer is able to be independent when he or she has no organisation to administer, they are beholden to the department for resources to carry out their functions and they have to continually enter into negotiations with the department for the staff and facilities to do the job that they should do. It should not be like that.

The coroner has said that it should be at arms length, and our model clearly provides for that. Mr Berry, in jumping the gun and getting his Bill out early, got it wrong. No amount of gloss or floss from Mr Berry can change the fact that his Bill does not create an independent statutory authority. He can assert that as much as he likes, but it is not the case. What we have put together does that. The comparison between the two Bills shows that.

What we are debating today is the WorkCover Authority Bill, which is a comprehensive piece of legislation developed by the Government to ensure the independence of the Territory's key workplace safety regulator. I think there are three essential cornerstones in our Bill. Firstly, we have the framework. This Bill ensures that the regulatory functions associated with the various pieces of legislation to be administered by the authority can be conducted with independence. They are independent of the department and independent of the Minister. This is achieved by providing for the appointment of suitably qualified and independent directors to oversight the authority's operation. They have the power necessary to direct the operation of the authority without fear or favour.

Secondly, the individual staff of the authority charged with the various day-to-day responsibilities of administering WorkCover legislation will do so independently because they work within the management framework established by the authority, not

inside the department. They will be able to perform their duties free of influence. Only the Minister can direct the authority, and then only by a written instrument which is required to be tabled in this place. No longer will the activities of WorkCover be enmeshed in the day-to-day business of my department, and that will enable it to sharpen its focus on its core regulatory responsibilities.

Some may suggest that the authority should have stakeholder interest in charge. Clearly, for independence to be achieved, directors of this operational authority - and that is what it will be doing; it will be conducting the operations of WorkCover - should not be represented by sectorial influences. For that reason, the Government is not entertaining any notion that an individual employer or employee or any other stakeholder group should be represented on the authority.

The Government has, however, been careful to ensure a continuing role for the existing Occupational Health and Safety Council, on which all relevant stakeholder groups are represented. There has been misinformation about this being the demise of the OH&S Council. Its role is undiminished. Its role is to advise the Minister on OH&S policy, and it will continue to do so. I say to Ms Tucker: the role of the Occupational Health and Safety Council is undiminished. It will continue to advise me - which is how it has been set up - on OH&S policy.

I do not believe it is appropriate for employers and unions to be part of the regulatory authority. There is a clear conflict of interest there. The council is enhanced by this Bill, and it will provide the Minister of the day with recommendations on any appointment to the authority. Mr Berry's Bill makes no mention of that. The Government has been very careful to ensure that the role of the OH&S Council continues because it performs a very valuable function in the ACT. What it will do is report directly to and receive requests to undertake work from the Minister of the day. Under this Bill, the Minister must consider any recommendations the council may wish to make on the appointment of directors.

The second cornerstone in our Bill is the accountability processes. The Bill establishes the authority's responsibility for administering occupational health and safety, workers compensation, dangerous goods and other pieces of legislation. I am pleased Mr Berry has picked that up and extended the roles of his commissioner. Concurrent with those responsibilities comes accountability, and the authority and any individual inspectorial, administrative and managerial staff actions are accountable to the authority itself.

This accountability is then to the Assembly through the Minister. How? Annual business plans, quarterly reports and annual reports must all be prepared by the authority, and they will be tabled by the Minister in this place. As I have said before, the Minister is clearly accountable to the Assembly for any directions issued to the authority. These must also be tabled. The cost of their application by the authority will be paid for by the Government.

The third and most important part is how the staffing arrangements will work. We have achieved much in the ongoing professional development of the staff in the past few years, and the Government wants to continue to build on this. This will be a key responsibility of the authority. The Bill uses the continuation of the Public Sector

Management Act for the employment of the staff of the authority. It is the expectation of the Government that the existing WorkCover staff deployed on functions transferring to the authority will be transferred with these functions at no detriment. The independent authority then has its own staff to carry out the functions they are charged with. They are independent of the Government, unlike Mr Berry's commissioner, who will beholden to the department of the day for resources as is required. (*Extension of time granted*)

It is also the Government's desire that the new authority would then continue to pursue best practice in regulation, education and enforcement. To that end, the authority will be charged with establishing core competencies for inspectorial and administrative staff of the authority at a level that satisfies reasonable expectations of a competent regulatory agency. The further process is that the Government will, upon the passage of this Bill, consult further with staff, stakeholders and members of the Assembly to ensure that the authority is unencumbered in identifying its consultative mechanisms that enable a collaborative and inclusive approach to its operation.

Resourcing the authority will also be important to ensure its effectiveness. Through the Government's commitment to implementing a draft budget process, all stakeholders will have an opportunity to consider the resources proposed for the authority. The period of consultation will enable any consequential amendments, if they are necessary, to be identified and they can be dealt with early in the year 2000. What we have here is an independent framework. What we have is a framework that meets the needs of the workers of the ACT to ensure their occupational health and safety. It also meets the needs as outlined by the coroner, which Mr Berry's Bill does not. The Bill demonstrates, firstly, the Government's determination to deliver to the community a first-class, properly independent WorkCover authority. Secondly, it embraces the coroner's recommendation in his report on the inquest into the death of Katie Bender to have an independent statutory authority.

I commend the Bill to the house. This is a good Bill, and it is based on legislation that currently works in the ACT, particularly the Cultural Facilities Corporation, and Canberra Tourism and Events Corporation. We drew heavily upon their Acts to make sure that we had a model that we know will work for the ACT. This is the way to go. The independent commissioner will not achieve what the ACT needs.

MR BERRY: Mr Speaker, I seek leave to make a statement pursuant to standing order 47.

MR SPEAKER: Do you claim to have been misrepresented?

MR BERRY: Yes, I do.

MR SPEAKER: Please proceed.

MR BERRY: Mr Smyth drew particular attention to the staffing arrangements under both pieces of legislation. He attempted to have us believe that there was something different between the Government's legislation and the legislation which has been put forward by me. They are almost identical. I wish Mr Smyth would not try these sorts

of things on. Mr Speaker, if you look at the WorkCover authority legislation, clause 22 states:

> The staff assisting the General Manager must be employed under the Public Sector Management Act 1994.

If you look at subclause 25(i) of the Occupational Health and Safety (Amendment) Bill No. 2, it states:

> The staff assisting the Commissioner shall be employed under the Public Sector Management Act 1994.

It is the same provision. That was an inaccurate assessment of my speech and these pieces of legislation which are being considered by the Assembly. That cannot pass without comment.

Mr Smyth also made mention of the functions of the WorkCover authority. He commented on the Occupational Health and Safety Council, saying that its role and function would remain in place. What the Minister should have said was that many of the functions of the WorkCover authority parallel, in many ways, what the Occupational Health and Safety Council has been set up to achieve.

MR SPEAKER: I think you are now moving beyond the bounds of a personal explanation, Mr Berry.

MR SMYTH (Minister for Urban Services): Mr Speaker, I seek leave to address the comments that Mr Berry made. If Mr Berry would turn to page 4 of his own explanatory memorandum, he will see that it states:

> Staff: The Commissioner can arrange with the Chief Executive who controls an administrative unit, or other appropriate person, for the use of the services of public servants and facilities to assist in the performance of his or her duties. The Public Sector Management Act 1994 is to apply for such Public Servants.

The use of the Public Sector Management Act is not the issue. Again, we see gloss here. The point is that the commissioner can arrange with the department for resources to carry out his or her activities. The commissioner is not independent. The commissioner is beholden to and dependent upon other people to carry out his or her functions. What we want to set up is true independence. Mr Berry is missing the mark, as he always does.

Question put:

> That this Bill be agreed to in principle.

The Assembly voted -

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

Question so resolved in the negative.

OCCUPATIONAL HEALTH AND SAFETY (AMENDMENT) BILL (NO. 2) 1999

Debate resumed from 30 June 1999, on motion by **Mr Berry**:

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole.

MR BERRY (9.26): I seek leave to move together the amendments circulated in my name.

Leave granted.

MR BERRY: I move:

Clause 4, page 2, line 10, paragraph (a), omit the paragraph, substitute the following paragraph:
"**(a)** by omitting from subsection (1) the definitions of ***associated law*** and ***designated work group*** and substituting the following definitions:
'***associated law*** means any of the following laws:
(a) the *Dangerous Goods Act 1984*;
(b) the *Fuels Control Act 1979*;
(c) the *Machinery Act 1949;*

(d) the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth);

(e) the *Scaffolding and Lifts Act 1957*;

(f) the *Workers' Compensation Act 1951*;

(g) the *Workers' Compensation Supplementation Fund Act 1980*;

(h) any other Act or subordinate law, or provision of an Act or subordinate law, prescribed under the regulations.

designated work group means—

(a) a group of employees established as a designed work group under subsection 37 (1) or (2) or 38 (1) or (2); and

(b) such a group as varied under subsection 37 (4) or 38 (3).'; and"

Clause 10 -

Page 3, line 27, proposed paragraph 25B (1) (a), add "and the associated laws".

Page 5, line 23, proposed section 25G, at the end of the section, add the following new subsections:

" '(4) The Territory must pay to the authority the reasonable costs of complying with a direction.

'(5) The amount payable is an amount agreed between the authority and the Minister or, failing agreement, determined by the Chief Minister.".

New clause –

Page 6, line 17:

"**11A Inconsistency with associated laws**

Section 96 is amended by adding the following new subsection:

'(2) This section does not apply in relation to an associated law that is a law of the Commonwealth.'.".

Amendments -

Clause 12, page 6 –

Line 19, omit "section is", substitute "sections are".

Line 32, after proposed new section 96B, add the following new section:

" '96C **Quarterly reports**

'(1) The Authority must, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operations of this Act and of the authority during that quarter.

'(2) The Minister must cause a copy of a quarterly report to be laid before the Legislative Assembly within 6 sitting days after he or she receives the report.

'(3) In this section—

quarter means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April in a financial year.'.".

I do not need to add any more to what I said in the debate in relation to these matters. They are fairly self-explanatory. They do pick up the good ideas which were in the government legislation. I would like to thank government officers for providing their advice in relation to these matters. I would also like to thank those officers from Parliamentary Counsel who have been so swift in their advice and assistance in preparing this legislation.

Amendments agreed to.

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

Bill, as amended, agreed to.

DISCRIMINATION (AMENDMENT) BILL (NO 2) 1999

Debate resumed from 16 November 1999, on motion by **Mr Stanhope**:

That this Bill be agreed to in principle.

MR STANHOPE (Leader of the Opposition) (9.28): Mr Speaker, the Discrimination (Amendment) Bill (No 2) 1999 is a Bill to amend section 27 of the Discrimination Act 1991. It is fair to say that the genesis of the Bill was the decision of the Administrative Appeals Tribunal in ACT Health and Community Care Service, the Discrimination Commissioner and Alexander Vella and Ors. That is a decision which arose out of a dispute that occurred in relation to the placement of a disabled person in a house which at the time was the home of four other disabled people.

The situation that arose in that case was that there were four people currently occupying a house. ACT Community Care decided that it was appropriate that a fifth person be placed in the house. The extant occupants objected to that placement and sought to resist it. They resisted it by making a complaint to the Discrimination Commissioner. The Discrimination Commissioner found certain shortcomings in the service's administration, which the Discrimination Commissioner found to be discrimination under the Discrimination Act 1991.

The commissioner did not find an act of discrimination in the decision to move the fifth person into the house, rather she found discrimination on those matters where the existing residents of the house had been treated less favourably than non-disabled government tenants in similar circumstances; that is, by being denied tenancy status by not being informed of or provided with any grievance mechanism, by not being adequately consulted about decisions concerning their home.

The commissioner was focusing not on decisions central to the disability program such as funding support levels or even, for instance, whether the house could or should accommodate an additional person. Rather, the commissioner held that in the administration of the disability program the service could not treat people less favourably than people without a disability in relation to those matters people with

disabilities and people without disabilities share in common. I think as members can gather, from that description of the nature of the complaint that was made by the residents of the house in this instance, the situation in the law relating to this area of the Discrimination Act is really quite complicated.

Following on from the finding of discrimination by the Discrimination Commissioner, Community Care actually appealed the Discrimination Commissioner's decision to the Administrative Appeals Tribunal. The Administrative Appeals Tribunal in this case upheld the service's appeal. An important part of this whole debate that we are having today is that the tribunal upheld the service's appeal on the basis that section 27 of the Discrimination Act has the effect that no conduct of the service in the course of administering a disability program can lawfully amount to an act of discrimination no matter how gross or reprehensible the discrimination is. Section 27 was construed by the Administrative Appeals Tribunal as providing a blanket exemption to service providers for conduct engaged in in the course of the administration of the program. I can go to the decision of the Administrative Appeals Tribunal and can go into it in detail. We are debating a complex issue.

I will read a couple of excerpts from the Administrative Appeals Tribunal decision in the case of Vella. I quote:

> We have come to the conclusion that the conduct of the service in introducing the fifth resident could not amount to discrimination under the Discrimination Act and so it is unnecessary to set out the facts ...

These are interesting conclusions the Administrative Appeals Tribunal made, that the conduct of the service in the context of section 27 could not amount to discrimination under the Discrimination Act. They went on to say their conclusions meant the issue of possible maladministration should be pursued elsewhere. They then went on to say:

> We turn now to the application of the Discrimination Act to the facts of the case. As explained by this Tribunal in the case of Re Prezzi and Discrimination Commissioner … the Discrimination Act differs from discrimination legislation in other jurisdictions in not requiring a comparison to be made between the way in which the complainant has been treated and the way in which a person without the relevant attribute is or would be treated in the same circumstances. We do not need to repeat the analysis of the legislation set out in Prezzi; we are content to refer to the reasons in that case and to adopt the view of the operation of the Act taken by the Tribunal in that case.

They go on to say:

> It is claimed that the conduct is discriminatory because, in terms of section 8 of the Act, the four residents were being treated unfavourably because of their attribute of impairment or that a condition or requirement was being imposed that would have the effect of disadvantaging them because of their attribute of

> impairment … For example, if Mr Vella had been refused accommodation as the fifth resident in the Lyall Street house because his level of impairment was greater than the standard of care provided in the Lyall Street house, he would have had a complaint that he was being treated unfavourably because of his impairment.

The ratio of the particular Administrative Appeals Tribunal case was then provided by the Administrative Appeals Tribunal in paragraph 12 of the decision, and it goes on to say in paragraph 13:

> Like provisions in the discrimination laws in other jurisdictions have generally been regarded as meaning that special measures for the benefit of persons suffering some inherent disadvantage are not to be taken to discriminate against those who do not suffer from that disadvantage. Section 27 clearly has that effect. But that is not the limit of its effect. What it means is that 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 residential care program provided by the Service is clearly a program designed to give disabled persons access to services and facilities, including accommodation and care, to meet their special needs. The section is not confined to blocking claims of discrimination by those outside the scope of the program; the opening words of section 27 block a claim by any person of discrimination arising from an act done in the course of administering the program.

That is very complex and quite confusing, I admit. It has very serious implications for disabled people or people in certain classes. The broad impact of that decision of the Administrative Appeals Tribunal is that that provision or similar provisions appear in all Commonwealth and state anti-discrimination legislation, not just legislation dealing with disability discrimination. It is commonly referred to as the "affirmative action" provision. Its purpose was to prevent people from outside the relevant class complaining about services targeted to those within the relevant class and in need of it. For example, it is intended to prevent men from complaining about women's specific health services. It is intended to prevent non-Aboriginals from complaining about their exclusion from programs for Aboriginal people. That was the intent of section 27. It was intended to help classes of people with special needs.

I think the Attorney's intention in introducing this Bill is that the decision in Vella puts the provision to a whole new use. It is a vehicle to deny people with a special needs class the same rights as people outside the class. A group of non-disabled single persons residing in an ACT government house under the single shared accommodation scheme are tenants with rights to decide who may or who may not reside in their home; to be consulted; to have access to grievance mechanisms, et cetera; whereas single people with disabilities living in a government house are denied this status specifically by reason of their disadvantage. It is in recognition of that change to the scheme, or to its

interpretation, that the Attorney has acted. As members would know, that is not the reason I prepared drafting instructions on this matter some months ago.

I first became involved in the issue last March. But I issued instructions a couple of months later. I have consulted quite broadly with the disability community. As a result, I introduced legislation into this place to amend section 27. Mr Speaker, we are faced with the Discrimination Amendment Bill 2 (1999) introduced by the Attorney. The relevant part of the Attorney's Bill, "Measures intended to achieve equality", says:

> Section 27 is amended by adding at the end the following subsection:

This is the Attorney's amendment. Subsection (2) states:

> However, subsection (1) does not make it lawful to do an act for a purpose mentioned in that subsection if the act discriminates against the member of the relevant class in a way that is irrelevant to the achievement of that purpose.

The Attorney goes some way to meeting what I regard as the unintended consequences of the interpretation of section 27, as applied by the Administrative Appeals Tribunal, namely, in effect, a service provider can discriminate against a person in a certain class, if the service provider's excuse - basically the relevance - is that he was intending to implement an affirmative action arrangement in relation to other people within the same class. The difficulty is then that the person discriminated against within that class, to achieve that purpose, has no recourse. So we have a situation whereby the interpretation of section 27 as applied by the Administrative Appeals Tribunal now legislates, encodes, the possibility of discrimination by the Government or a service provider against a person in a particular class, as long as the discrimination is inflicted for the sake of some other person within that class.

The Attorney's Bill, which we are debating and which I will seek to amend, at least seeks to soften that discriminatory possibility by suggesting that the discrimination must be relevant. We are introducing the notion: "Yes, you can discriminate against somebody within that class of individuals, so long as the discrimination is relevant". I am not quite sure in practice what a "relevant discrimination" means. It does soften the impact of Vella and the Administrative Appeals Tribunal's interpretation of the application of section 20. I concede that. But it only goes half way. It basically signals to service providers, "If you can make your discrimination relevant to the particular needs of an individual within that class, then that is okay".

But it does not create a level playing field. It does not put disabled people, for instance, or Aboriginal people, or women in situations in which they as a class are the subject of an affirmative action program in the same boat. It does not put everybody in that class in the same boat. For instance, we can still relevantly discriminate against a disabled person in a group house if in this context a greater good is achieved, namely, "We will discriminate against those disabled people in favour of this disabled person, even though we could not do that if they were not disabled; we can do it because they are disabled". We have a different class of citizen here. We are saying to the service

providers, "Yes, you can discriminate in those circumstances, but make your discrimination relevant".

Just imagine if we did that to non-disabled people in relation to the provision of housing or accommodation. Just imagine if we said, "We can discriminate against some of you, just so long as our discrimination against you is relevant to our discrimination in favour of this other person".

While I acknowledge that the Attorney's Bill goes some way to apparently soften, though I cannot quite see how it would operate in practice, the harsh implications of the Administrative Appeals Tribunal's interpretation of section 27, it does not go far enough. It does not overcome the basic objection that we are allowing service providers not to be fully subject to anti-discrimination provisions in providing services to some of their clients. That is the end result. We are sending a signal: "Yes, in some circumstances you as a service provider can discriminate, and you are not susceptible to a complaint to the Discrimination Commissioner or to the Ombudsman, or wherever. It simply will not measure as discrimination". That is not acceptable.

I do not think we have the capacity. If we are genuine about overcoming all discrimination against all classes of people, it is not acceptable for us to have this hierarchy of discrimination that we can allow a relevant discrimination. We should not be legislating to that effect.

I foreshadow an amendment to Mr Humphries' Bill which puts people within that class in the same place as if they were not in that class. If they are discriminated against, they have the same right of recourse as anybody else. So that they are not in some way corralled or closeted. I will speak to my amendment when I move it. I do have an amendment to move, but I will do that later.

MR MOORE (Minister for Health and Community Care) (9.44): Mr Stanhope correctly says these are very complex issues. Anybody who has read the Vella case, which went through the Discrimination Commission and the Administrative Appeals Tribunal and then to the Supreme Court, would know just how complex the case is. It was right that an effort was made to clarify the Discrimination Act. Mr Humphries does have it right. Mr Stanhope's foreshadowed and circulated amendment would take it too far.

I will attempt to explain why in the simplest terms I can. It is correct to say we are discriminating against people with disabilities. But we are doing it as affirmative action. We seek to ensure that people with needs – disabilities, in this case - are in a setting as close as possible to a home rather than in an institutionalised setting. To do that, we provide funding for, among other things, a range of group homes.

It is important to put this in a national context. We have identified through the Australian Institute of Health and Welfare $294m in unmet need. There is real pressure on the financing of disability services. Ministers recognise that figure nationally as current, but we know that unmet need is growing for several reasons, not the least of which is the ageing of population and carers.

Put in that context, it becomes critical to make decisions that allow our services to apply affirmative action; to help as effectively as we can with what money we have. That creates some difficulties. We have to make sure we can provide services as best we can and distribute them as equitably as we can. In no other way should we be able to discriminate on the grounds of somebody's disability. That is the nub of this argument.

That is why Mr Stanhope's amendment goes too far. He is saying you cannot discriminate at all. The difficulty is that we create a problem in our affirmative action in attempting to provide the best possible services that help to eliminate the impact of somebody's disability. I understand quite a number of advocacy groups have supported the amendment, and I can understand why. They are advocating for individuals at any given time and would have another tool to do that.

If you take the bigger picture and ask how we are going to meet the needs of people for whom we cannot provide accommodation when three people in a disability house say, "No, you cannot discriminate against us; we are not going to allow this person into the house", we will wind up with a series of houses with low tenancy, or people with very high needs requiring different services. That will make delivery of our services nigh on impossible. The impact of that would be far greater harm than the benefits of the Discrimination Act going as far as Mr Stanhope does.

It may well be in 10 years' time - I hope - we could meet disability needs so well that this becomes irrelevant. But most of us know that is a dream. It would take at least 10 years to get there with a very positive attitude from all governments in Australia prepared to meet unmet need - we have identified $294m – and to continue the escalation required. Indications are not good at the moment. The offer put on the table by the Federal Government was anything but generous and certainly does not go anywhere near meeting that annual requirement, even at 50 per cent.

The challenges for us in the disability areas are great. I am very pleased Mr Humphries has put up the amendment. It goes just the right distance for us to handle and manage the issues before us. To go any further would make it impossible to manage our disability services effectively. It would be a major disadvantage to individuals who would not get the help they need.

MR RUGENDYKE (9.50): This debate boils down to a choice of two alternatives - which model the Assembly prefers to best apply to section 27 of the Act, the amendment by Mr Humphries or the amendment by Mr Stanhope. I have consulted fairly seriously with advocates for disabled people. The overwhelming thought was that Mr Stanhope's amendment is far clearer. There are certainly no vagaries in what Mr Stanhope proposes. I came to the conclusion that Mr Humphries' Bill did not actually change the status quo. Mr Stanhope's amendment makes the system more accountable, in my view.

If a disability service becomes outdated, inappropriate or ineffective, there has to be accountability. I am not confident that this would exist under the terms proposed under Mr Humphries' amendment. When I speak to advocacy groups, I ask a simple question: "Do you feel offside or onside with the relevant department?". If they answer offside,

I figure they must be a pretty good advocate for their clients. I find this not just in this area, but across the board. So, Mr Speaker, I will be supporting Mr Stanhope's amendment.

MS TUCKER (9.53): The Greens will be supporting Mr Stanhope's amendment. The debate on section 27 of the Discrimination Act 1991 in the view of the Greens is fundamentally about human rights and the rights of groups of people with specific attributes as defined in the Discrimination Act. Until recently, it was generally believed that section 27 was an affirmative action provision that protected the rights of certain classes of people. Section 27 permits certain acts that might otherwise be considered discriminatory in other parts of the Discrimination Act to ensure that members of a relevant class 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. It was commonly understood that these provisions were intended to protect services and organisations who conduct special needs programs for particular groups in the community, without breaching other sections of the Discrimination Act, as Mr Stanhope outlined with the example of the women's service, which is often cited.

Recent decisions by the Administrative Appeals Tribunal and the Supreme Court reinterpreted the intent of section 27. Instead of protecting "relevant classes of persons", it provided legal protection for service providers, ensuring that they could not be prosecuted for discriminatory behaviour by the relevant classes of people they were meant to be servicing. The effect is to prevent clients serviced from complaining about a service if they believe that service discriminates against the very client group it is meant to cater to.

For many this was a bewildering interpretation. The belief that section 27 is an affirmative action provision that positively discriminates on behalf of certain classes of people is in part based on the title of this section of the Act, which I remind members is described as "Measures intended to achieve equality". Equality for some members of our community is only achievable through special measures, measures that advantage those who have long been disadvantaged. This is a principle supported in international conventions to which Australia is a party, such as the International Convention on the Elimination of all Forms of Racial Discrimination. It is also enshrined in our own federal Racial Discrimination Act.

Thus, it was a blow to discover that section 27 could be interpreted in another way that disadvantages and discriminates against often already disadvantaged groups of people, by denying them rights available to the broader community. In spite of these recent interpretations, there are other pieces of legislation we can look to that state and reinforce rights of people with disabilities, including schedules 1 and 2 of the Disability Services Act 1991. Schedule 1 sets out "human rights principles to be furthered in relation to people with disabilities". These include:

> 2. People with disabilities, whatever the origin, nature, type or degree of disability, have the same basic rights as other members of society and should be enabled to exercise these basic human rights.

> 7. People with disabilities have the same rights as other members of society to receive services in a manner which results in least restriction of their rights and opportunities.

Schedule 2 sets out "requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities". These include:

> 2. Services should contribute to ensuring that the conditions of everyday life of people with disabilities are the same, or as close as possible, to the conditions of everyday life enjoyed in the general community.
>
> 12. Programs and services should be designed and administered so as to ensure that appropriate avenues exist for people with disabilities to raise, and have resolved, any grievances about services.

Other provisions of schedule 2 ensure that people with disabilities have access to advocacy support, can participate adequately in decision-making about the services they receive, and ensure that they are provided with opportunities for consultation in relation to the development of major policy and program changes. Mr Humphries' amendment to section 27 will in many cases disadvantage and discriminate against already disadvantaged "classes of persons in our community" by denying them or lessening them a right available to the broader community.

The schedules I have just referred to from the Disability Services Act are there to set standards. Where is the redress? Where is the place or the channel, if we support Mr Humphries' amendment, for them to challenge how services are actually being provided in the ACT? If we support this amendment, I believe it would seriously diminish the ability of redress for this group of people.

Listening to Mr Moore's arguments - and it is consistent with the arguments that were given by the official who gave us a briefing on this matter - it seems basically about resourcing. I noted some of his comments. He referred to the fact that we have increased the wellbeing of people with a disability because we no longer have them institutionalised and they are in group homes instead.

I immediately recalled many of the submissions I received when we did the Social Policy Committee inquiry into the Commonwealth-State Disability Agreement. The point was made many times that a group home can be an institution. It is obviously about how you live in that group home and how you are treated and what choices you have. That goes to the core of this debate tonight.

As has already been mentioned by Mr Stanhope, the question of the right to have a say in whether you have your one room turned into a bedroom or not; or a particular person living with you, is obviously an issue that is significant for people in any class.

Mr Moore: It tends to exclude somebody else and they have nothing.

MS TUCKER: I think Mr Moore is interjecting to confirm that this will mean fewer people will be able to access the group homes. But it is a bit of a circle, is it not? If you turn the group homes into places where people do not have choices, you might as well have an institution. If you take the Government's argument that because of resourcing issues we have to undermine the rights of people with a disability, then what are we gaining? What are we gaining here in terms of rights of people with a disability and living conditions for people with a disability - all the things outlined in schedules to the Disability Services Act of which we are so proud?

People in Australia were so proud to see those standards finally in place. All Mr Stanhope's amendment is doing is allowing a redress; a channel to question if people with a disability think those standards have been seriously undermined. There is an area of defence - the justifiable hardship clause - which service providers can use. A defence is there, but the Government seems to be so intent on stopping complaints that they are seriously undermining hard-won rights. According to the Government, it seems supporting, defending, reinforcing the rights of those with disabilities is a luxury this community cannot afford. This is a very disturbing view.

In the briefing, reference was also made to recent decisions in the courts in Victoria, selectively and incorrectly interpreted. She was arguing that these decisions support the amendment by the Government. In one case the Victorian courts ruled that a decision by a service provider about to whom it can provide a service is not discriminatory when faced with two clients seeking the same service. The court found that neither client had a right to expect favourable or unfavourable treatment and that it was appropriate for a service provider with limited resources to decide to give priority of one client over another. The issue there is really about whether there was an expectation that one of those people would be treated differently. The power of service providers to make decisions about whom they provide services to will not be affected by Mr Stanhope's amendment, so long as their decisions are based on relevant criteria related to delivery of special needs services.

The Greens will support Jon Stanhope's amendment to section 27. We believe this amendment protects the special nature of services intended for members of a relevant class of persons. His amendment also ensures that section 27 cannot be interpreted so that discrimination against a member of a relevant class of people is allowable, acceptable and legal in the delivery of special services or programs.

Another comment Mr Moore made was about advocacy. He seemed to suggest that advocacy groups should not be given as much credence, because they are advocating for individuals. That is not my experience. It is clear that advocacy groups, while they may have a function for individual advocacy, are very strong voices for system reform. There is certainly user experience with individuals to highlight problems in the system. Right now the Federal Government is attempting to undermine the role of advocacy by forbidding advocacy groups to be advocates for the system. They will be confined to individual advocacy. This is of grave concern to advocacy groups around Australia who see their role through their experience with individuals definitely as being advocates for the system, system flaws and so on. Mr Moore is incorrect in saying we should not give advocacy groups credence for having an overview of the whole system, because they

clearly do. Through their work, they, more than many, are able to identify what is working and what is not in the system.

On resourcing, there is the unjustifiable hardship provision in section 47, which provides a defence for service providers along with businesses and other organisations who quite clearly cannot provide or afford what has been described, slightly derisory, as a Rolls-Royce service to every disabled person. I do not think it is fair comment to use that analogy. Many people with a disability are accepting of what is not satisfactory. They accept that there are resource issues. That is obvious. But Mr Humphries' amendment goes too far. I believe Mr Moore thinks Mr Stanhope is going too far. I would say Mr Humphries is going too far in accommodating these resource constraints at the expense of rights.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (10.03), in reply: Mr Speaker, to close this debate: I said this is a very complicated matter. I appreciate that members have taken the time to look at these issues and talk to some of the parties involved. I will try to explain as simply as I can and, hopefully, not over-simplify the argument. I think it is appropriate to pass the government amendment to the Act and not to pass the amendment that Mr Stanhope is going to move to my Bill. We all accept in this debate that the decision of the Administrative Appeals Tribunal in Hill and Vella was unfortunate and needs to be addressed in some way by the legislators of the Territory.

The Hill and Vella decision essentially said a person is unable to make a complaint in respect of a program designed to meet the needs of disadvantaged people; that is, in effect, that the Discrimination Act does not have application within these sorts of special programs set up in the Territory for people with special needs. We are talking particularly here about people with disability needs addressed by a particular program. When the Government and Opposition heard of the effect of this decision - the words used by the President of the Administrative Appeals Tribunal in the context of that decision - they were alarmed. Separately, we decided to deal with the problem.

The problem with the decision was that it effectively said that if I were disabled and went on a program for disabled people within the Government, and sought to be admitted to the program, and was told, "I'm sorry, you are Jewish. You cannot have access to programs. We do not like Jewish people", then there would be no right of redress because the Administrative Appeals Tribunal had said the Discrimination Act has no application in the context of special service programs. We all felt that was quite wrong. It had to be addressed.

But we also acknowledge that some discrimination, in a sense, is a necessary part of providing these programs. For example, a group house established for people with the particular condition of cerebral palsy would not be potentially suitable accommodation for a person with motor neurone disease. And we could discriminate against a person with motor neurone disease on account of their disability, because the service was not designed for people of that particular kind.

Now, it is appropriate to preserve, in a sense, that kind of discrimination within the Act but not to preserve discrimination which is not relevant to that program. So, the disabled person comes to the Government, wants access to the group house. Under our amendment, if he were to be told, "Sorry, you're Jewish, you can't get into this group house", then the Discrimination Act under our proposals would cut in and say, "Sorry, you can't discriminate on that basis. You must admit this person". But if the person has motor neurone disease and the people in the group house have cerebral palsy and it is designed for their needs rather than for some other class of person, then it is okay to discriminate in those circumstances.

That is the essential object of the Government's amendment. It is about appropriate discrimination; discrimination relevant to the kind of service being provided. Mr Stanhope's amendment goes one step further. It provides something quite different. It provides for something which was not available, as I understand it, before the Hill and Vella decision.

Mr Stanhope has represented in this debate that he wants to effectively restore the law to what it was before the Administrative Appeals Tribunal came along in Hill and Vella as subsequently confirmed in the Supreme Court and other places. He wants to put the situation back to the way it was. I do not think that is what his amendment does. His amendment, in effect, creates a new right to appeal the level of service in terms of quantity or quality that a person may receive. Under Mr Stanhope's amendment a person would be able to ratchet up the quality, or perhaps the quantity of service they maintain they should receive, on the basis of the claim of being treated less favourably either in that program or in a similar program somewhere else, perhaps even in the kind of service a non-disabled person might receive elsewhere in the community. You might say, "The Government runs a program over here which admits people to group houses under these conditions, without any restrictions on the type of person being admitted. I demand that I have the same rights in this group house designed for people with disabilities because unlimited, free access is provided in another government service. I deserve no less treatment in this service also run by the Government but designed for people with disabilities".

Mr Speaker, what it becomes under Mr Stanhope's proposal, is a way to transfer decisions about the allocation of resources away from providers of those programs, away from governments, into the courts. And the courts will be saying, "No, you clearly aren't enjoying as high a standard of living or as high a quality of service as people are receiving somewhere else. You are being treated therefore less favourably than people somewhere else. And you are entitled to an upgrade in the quality of the program. We order that this program should be improved in quality or in quantity to meet your requirements".

Some would say that is a legitimate role for a discrimination Act. Some legislation in the United States requires governments and private providers to change the nature of the service on the basis of not enough quality. Not many argue that they should have access to the service or that they are entitled to exclude others who do not qualify for that service, but that they should actually have a better quality service. A simple objection to that proposition is in resources.

As Mr Moore pointed out, across Australia over $200m worth of unmet need has been identified in disability services. As a member of a government that attempts to meet unmet need in the ACT in this and other areas, I regret that fact. I hope this community, and in particular, this Government, can continue to address unmet need. It has to be a community decision through its government; through its elected representatives, to deal with those issues. It is not appropriate to transfer that decision-making power into the hands of the courts.

Mr Stefaniak: Talk about separation of the powers.

MR HUMPHRIES: Well, it did. It is an argument about separation of powers, as Mr Stefaniak has suggested. Who should decide what quality of service we deliver in the area of any part of government programs, any part of community programs? I would suggest that appropriately it is a decision for the community to make in the context of democratic processes. A party says, "We stand for more services for people in particular areas. Vote for us and we will deliver those services". People vote for that party and they get those services. That is the nature of the democratic process. That is the right way of going about improving quality of services.

This suggested way is the wrong way. Mr Stanhope's provision is the wrong way, I argue. It is also not what was the case before the Hill and Vella decision. I think Mr Stanhope has been saying, "I just want to correct the law to what it was before the Administrative Appeals Tribunal's decision in Hill and Vella". No, that is not what the legislation Mr Stanhope proposes actually does. He wants to create a new avenue of complaint and redress within the ACT which I believe did not exist in the ACT. So, it is wrong to argue that we are simply correcting a wrong comprehensively with this amendment of Mr Stanhope's, and that the Government's amendment does not go far enough.

This amendment of the Government's - subsections 1 and 2 of section 27 – restores a clear message, clouded since the decision in Hill and Vella, that people are not to suffer discrimination in the context of special needs programs in the ACT, unless you can argue that it is relevant to the provision of the service of that program. That is what the Government amendment does, Mr Speaker. I think it is a reasonable objective. I hope members will support that. I ask members to carefully consider whether there is a case for taking us to a new, unprecedented level of access to the courts through the amendment Mr Stanhope is moving tonight. That would be an unfortunate step. I believe we should not go down that path.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole.

MR STANHOPE (Leader of the Opposition) (10.16): I move:

> Clause 4, page 2, line 1, proposed new subsection 27(2), omit the subsection, substitute the following subsection:
>
> " '(2) Subsection (1) does not apply to an act to the extent that it discriminates against a member of the relevant class.'.".

As Mr Rugendyke indicated, organisations that are affected by these amendments have been lobbying members. They certainly lobbied my office and I believe other members, setting out their concerns particularly with the Government's approach to this issue. The very direct representations that I have received are that they believe that approach does not cure the problem highlighted by the AAT and the Supreme Court. Under the Government's approach, people within a special needs program, whether because of a disability or some other attribute - and we need to remember this is not just about disability; it is about a range of people who fall within a class, such as gender or ethnicity - will continue to be disadvantaged in that it will be possible for service providers, such as the Government, to discriminate against them.

It is one thing for a service provider not to be able to provide a service because it does not have the resources; it is another thing entirely for the service provider to ignore or override the needs of its clients or to otherwise discriminate against its clients without the clients having access to any form of redress. The Government's amendment makes it too easy for service providers to dismiss the concerns of clients as being irrelevant - in the words of the Attorney's Bill - to the achievement of the outcomes of the program.

As I said, I have presented a Bill on the same matter, and the Attorney has explained the circumstances in which we both came to that position. The Bill that I presented, on which I consulted broadly with the community, has received broad acceptance from advocacy groups and service providers. As I mentioned, the amendment that I have moved should make it clear that the exemption contained in section 27 is designed to prevent complaints about positive discrimination in favour of persons admitted to a special needs program without abrogating the basic human rights of those persons to be treated fairly, equitably and with compassion.

Service providers and others who have concerns that they could be asked to provide services beyond what their resources permit or services which are too expensive still have a remedy - the defence of unjustifiable hardship, which is embodied in section 47 of the Act. Section 47 of the Discrimination Act states:

> In determining what constitutes "unjustifiable hardship" for the purposes of this division, all relevant circumstances of the particular case shall be taken into account, including the nature of the benefit or detriment likely to accrue or to be suffered by all persons concerned; the nature of the impairment of the person concerned; and the financial circumstances of, and the estimated amount of, expenditure required to be made by the person claiming unjustifiable hardship.

The Minister's concerns that disadvantaged persons would seek a Rolls-Royce service should be allayed by that provision and the fact that disadvantaged persons and their families very well understand the need for economy. Indeed, they expect no more, and this is explained rather neatly in a letter which I received from autism advocates, from which I will read in a second, that they expect no more than a Volkswagen service that will take them where they want to go. I think it is relevant that I read into the record a letter from one of the advocacy groups in relation to this issue. A letter from the Secretary of Action for Autism states:

> I write to express deep concern over the Minister's proposed amendment to Section 27 of the ACT Disability Discrimination Act. The interpretation of Section 27 by the AAT and the Supreme Court (mentioned in the Minister's Presentation Speech) legalises unfavourable treatment of the most disadvantage members of our community, those who depend on special measures. The proposed Discrimination Amendment Bill (No 2) 1999 maintains this inequity.
>
> The Minister acknowledged "that Section 27 [prevents] 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" (Presentation Speech, p4). Section 27 protects from allegations of discrimination service providers who choose to implement inappropriate or ineffective special measures. Limiting service provision to a cheap and mostly ineffective program and not including fallback to more effective measures that cost a little more is unfavourable treatment, but Section 27 makes this lawful in a program allegedly designed to meet special needs.

The letter further states.

> The Minister says, "any degree of dissatisfaction with a service could give rise to an allegation of discrimination". This was not the case in the years prior to the recent interpretation of Section 27. Formal allegations of discrimination are very difficult for the disadvantaged to sustain, they interfere with the effective provision of special measures and the legal process takes so long that the complainant hardly benefits from the outcome. Prior to the AAT's general interpretation of Section 27, the level of complaint was not making –

in the words of the Minister –

> "the task of service providers ... virtually impossible". Contrary to advice from executive levels of administration, the deliverers of special measures report that unreasonably limited budgets makes their tasks actually impossible.

The letter goes on:

> The Minister is concerned that every disabled person may seek a "Rolls Royce service". Rest assured, the impaired and their families understand economic restraint. They expect no more than access to a VW service that will take them where they need to go, asking only that the vehicle be properly maintained. They take the long-term view - they know Volkswagen now owns Rolls Royce.
>
> Despite broad recognition that national unmet demand for disability services exceeds $300M annually, the Minister appears to give no credence to any suggestion that a disability service could be outdated, inappropriate or ineffective. The Minister says, "decisions on service allocation must remain the responsibility of government and the service providers". As with the Stolen Generation, families of children with intellectual disabilities are told "trust us". The result of this trust is extremely disappointing: rising incidence of challenging behaviours and over-representation in prison populations, for example.
>
> I feel Section 27, both in its current and proposed forms, discriminates against the most vulnerable members of our community. Normally, people accessing services are able to allege discrimination over unfavourable treatment. Section 27 singles out people needing special measures, those with the particular attributes referred to under the Act, and denies them protection from unfavourable treatment when they most need it, that is, when normal services are inadequate.
>
> I ask that you reject the Discrimination Amendment Bill (No 2) and seek a more equitable revision of section 27.

That is a letter from Action for Autism, one of the many representations which I think members have received and which Mr Rugendyke referred to.

I think my proposed amendment, which comes from the Bill that I have introduced, is a more equitable revision of section 27. It is an appropriate message for us to send to service providers; that we do expect them to provide services to classes of people deserving or demanding of affirmative action without the protection of a provision that allows them and even, to some extent, encourages them to discriminate against individuals within that class of people whom they set out to serve. The amendment which I propose is equitable, fair and justified. It is the sort of response which the community, particularly those people who fall within those classes of people for whom affirmative action programs actually are prepared, deserves.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (10.25): I think in my in-principle speech I put the views of the Government fairly clearly. I do not want to go into great length about what Mr Stanhope has just said. I just want to make a few comments. First of all, while I do not suggest that Mr Stanhope or the person he quoted in his letter had deliberately set out to argue something that is not the case, it is easy to misunderstand the effect both of the Hill and

Vella decision and of the amendments which have been put on the table from both sides of the house.

The amendment that the Government has put forward makes it clear that people in disability programs do have access to complaint mechanisms under the Discrimination Act. It is not true to suggest that the effect of our amendment is to continue to exclude people in those programs from access to complaint under the Act and that you need Mr Stanhope's words to be able to allow a person in that program to get access to the Act. That is not true. Clearly, the government amendment provides that discrimination is illegal in respect of special service programs, special class programs, unless it can be shown to be relevant to the provision of the services in that program. That is the first point.

The second point Mr Stanhope makes is that he believes his amendment is acceptable to the service providers he has consulted with. Mr Stanhope overlooks the fact that something like 80 per cent of services to people with disabilities in the ACT is funded directly or indirectly by the ACT Government and that the ACT Government is the largest service provider in the ACT of services to people in this class. With great respect to Mr Stanhope, he has not consulted with the government service providers about these matters. I can assure him that there is extreme concern in the government services sector about the effect of such an amendment. There are extreme concerns, and I think other large providers of services are also similarly concerned.

The third point is that Mr Stanhope falls back to the other provision in the Discrimination Act about unjustifiable hardship. He said, "Even if a person were able to come forward and say, 'I demand a higher quality of service than the one I am getting. I am being treated less favourably than someone else in another part of the system, and therefore I demand and must receive a higher quality of service', then the Government, if the Government is providing the service, can go back to the unjustifiable hardship provision and say, 'It is an unjustifiable hardship on the part of this service provider to have to pay the extra money to provide this particular service' ".

The weakness in that argument is that unjustifiable hardship is a reasonable defence for individuals and small organisations which have limited budgets and which are able to say, "We have not got the resources to be able to provide for your particular needs within our relatively small organisation", but the ACT Government is a $1.8 billion enterprise. I do not think any court in this country would regard the ACT Government and all the agencies underneath it as having any claim under that provision of unjustifiable hardship. The courts would say, "You can afford another $100,000 in this particular area, no sweat at all".

It might be a reasonable defence in certain circumstances for small providers, but it will not cover the majority of large providers. It certainly would not cover the ACT Government or the Federal Government if it were providing services directly in the ACT. I urge members not to support the amendment Mr Stanhope has put forward. I put the argument in my in-principle speech that this goes beyond the original ambit of the legislation. It creates a new scenario. Mr Stanhope did not contradict that. I think that means he accepts my proposition there. Before we expand the operation of this legislation to create a whole new industry based on the capacity to claim that needs are

being met on less favourable terms than elsewhere, we should take a deep breath, pause and think about that. For that reason, I urge you to not support this amendment tonight. It is a very dangerous provision for a Territory and for providers in the Territory who have limited resources to be able to deal with a very large amount of need.

MR MOORE (Minister for Health and Community Care) (10.30): In putting his amendment, Mr Stanhope has argued that he has been approached by a number of advocates and advocacy groups in order to back the extra step that he wishes to take. If we do not take that extra step, they argue - and he quoted from an advocacy group - that there will be an undue impact or undue discrimination on people. I am very keen to persuade members how important it is to defeat Mr Stanhope's legislation. It is a significant issue for us in government.

I refer you to the scrutiny of Bills committee report on Discrimination Amendment Bill (No 2). The legal adviser to the committee took us through section 27 and argued in his last couple of sentences:

> It is designed to ensure that, where special measures are taken, a member of the group is not barred from section 27 and claim that he or she is the subject of an unlawful discrimination provision of special measures.

The critical part is the last sentence:

> As such, the Committee sees no basis for concern that this amendment is an undue trespass on the personal right to liberties of any person.

That is the fundamental issue that has been identified in the scrutiny of Bills committee. Mr Stanhope's amendment is to go further, to gain extra beyond that. What is the extra? If there is no limit on the way we discriminate, then I suppose it would be reasonable – I have been trying to think of examples- for a blind person to say, "If there are not appropriate facilities for a blind person, then you are discriminating against me. It is reasonable for me to expect that I can walk wherever I like, that every footpath should not have bumpy parts along them so that I can walk places, so that I am not discriminated against".

Under this legislation, that would effectively compel the Government to deliver that service. That is a fairly simple example. As Mr Stanhope said, perhaps people would think that would be ludicrous and they would not pursue it to that extent. But, where you are an advocate for somebody who needs a particular service, that is the very thing you will pursue. I can see some conflict arising as well. I can see somebody with very high needs, for example, saying to Community Care, "If you refuse access to this particular house because of the very high needs of a particular person, you are discriminating against that person on the grounds of their disability".

On the other hand, the other three people in the house will argue that that person cannot come into the house because you would be discriminating against that person on the grounds of disability in the way the Vella case was run. There is a conflict with those

two issues. The amendment of Mr Humphries handled that. I must say it is a fairly complicated set of words, but it handles it quite well. That is recognised by the scrutiny of Bills committee. Taking the extra step that Mr Stanhope proposes will create an impossible situation. We should not take that extra step if we are going to be reasonable in this legislation.

Question put:

That the amendment (**Mr Stanhope's**) be agreed to.

The Assembly voted -

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

Question so resolved in the negative.

Amendment negatived.

Bill, as a whole, agreed to.

Bill agreed to.

KINGSTON FORESHORE DEVELOPMENT AUTHORITY BILL 1999

Debate resumed from 25 November 1999, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

MR QUINLAN (10.39): Mr Speaker, the Opposition will be supporting this Bill generally. It creates a statutory authority and I think it is common sense that the Kingston Foreshore Development Authority be set up as a separate business unit. We do have high hopes for that new body and trust that it is somewhat of an exception to the Government's business record of the last few years. We would commend the Government on the parameters that they have set for the authority's functions: Prudent commercial principles, consistent with the social and economic needs of the Territory, in consultation with the residents, and socially responsible.

I must say the people of the Causeway will be pleased to read that in the Act. Perhaps they will now be permitted to purchase the homes in which they have lived for years under the banner of social responsibility. Of course the last, but not least, parameter is ecologically sustainable development.

We believe that the provisions to bring joint venturing to the Assembly for approval are a move in the right direction as well. I do have to give notice of an intention to move amendments in the detail stage. I understand that the Bill will be adjourned before we embark upon the detail stage and those few amendments will bring the legislation up to the standards that have been applied in this place in recent times.

MR HUMPHRIES (Treasurer, Attorney-General, and Minister for Justice and Community Safety) (10.41), in reply: I thank the Opposition, Mr Speaker, for its support. Clearly we have a major enterprise, a major project for the Territory, on the Kingston foreshore. There has been disagreement about that project, particularly about the land swap in the past. But I hope there is a realisation that we have here a major opportunity to both shape the appearance of a very important, very high-profile part of our city, with respect to the Kingston foreshore area, and to create a great deal of economic activity that will be of benefit, particularly when measured in terms of jobs. I hope the Kingston Foreshore Development Authority will be a vehicle for that to occur and that it will enjoy a measure of support in the work that it undertakes across the chamber and across the community.

MS TUCKER: I seek leave to speak.

Leave granted.

MS TUCKER: We are supportive of the Kingston foreshore development although perhaps not exactly for the same reasons as the Government. This area should never have been used for industrial purposes and the original Burley Griffin plan for Canberra showed this area as being residential. Unfortunately, decisions were made by the early government planners to end the railway line there, rather than extend it to the north side, and to build the city's powerhouse there. This facilitated the location of other industrial and municipal activities on this site that unfortunately became a barrier between the rest of Kingston and the lake.

These activities have since become derelict, so the site is now ripe for redevelopment, particularly to allow greater connection to, and use of, the lake foreshore. The revitalisation of this area is long overdue, but the Greens have always said that the redevelopment of this central, unique and prominent site should be a showcase for innovative, ecologically sustainable urban development.

The Government has mouthed similar words. I even note that the Government has included, without my prompting, the promotion of ESD in the functions of this new authority, which has saved me from putting up my usual amendment on this matter. For this I congratulate them; however, I believe that their rhetoric has not always matched their actions in relation to the Kingston foreshore. First, there was a design competition for the Kingston foreshore in 1997. Originally the interim authority was not going to include in the competition brief that the entries had to demonstrate best practice environmental management. It was only

after my lobbying that the authority agreed to provide a statement of environmental management principles to entrants.

Second, there was the sacking of planning activist Ms Jacqui Rees from the board of the authority in 1997 because the Government did not like criticism of its own bad planning policies. This is obviously a case of shooting the messenger, rather than seriously addressing concerns that were echoed by many people in the community about development planned in the city. The winning entry in the design competition was interesting and showed potential; however, the preliminary assessment of the proposal put out by the authority earlier this year was a big let-down in terms of how the development would be promoting ESD.

It was very worrying that ESD principles and initiatives were dealt with in two pages at the end of a 142-page document. Ecologically sustainable development should be an integral part of decision-making and not something that is just tacked on at the end. The preliminary assessment put up by the authority indicated that the development could end up being little better than a typical urban subdivision. It could end up extending the existing medium-density development around Kingston out to the lake foreshore.

The authority was offering a fairly conventional urban development with all the usual features: Lots of roads, parking, and the usual water, sewerage and electrical infrastructure. There was little that stood out as particularly innovative. The clear message from earlier community consultation on the use of this site was that the development should be a place for all people and that there should be no obvious enclaves. Despite this, the authority seemed to be styling the development as expensive housing, not making provision for a diverse mix of public and private housing, which includes families or the elderly.

My concerns are vindicated by PALM's own evaluation of the preliminary assessment, which was included in draft amendments and variations to the National Capital Plan and the Territory Plan, which were released for public comment a few months ago. The Planning and Land Management group's evaluation found that the preliminary assessment had listed a range of options for water conservation and recycling, but - and I quote:

> Unfortunately, it is unclear what commitment, if any, there is from the IKFDA to any of the options outlined.

And:

> ... there appears to be no commitment to trial any of the options let alone a commitment to implement options.

On Jerrabomberra Wetlands, PALM found that the Interim Kingston Foreshore Development Authority was:

> ... poor in identifying the extent and range of impacts that might arise from the proposal, and has no discussion of amelioration of such impacts.

The Planning and Land Management group also found the preliminary assessment did a poor job in assessing the social impacts of the redevelopment on community facilities, and said:

> There is no discussion of the socio-economic impact of the potential the proposal has of creating a wealthy residential enclave.

The Planning and Land Management group's evaluation also points to discrepancies between the:

> ... rhetoric of the IKFDA regarding Ecologically Sustainable Development and the details of this proposal.

The preliminary assessment claims that the redevelopment has the potential to achieve significant improvements in urban sustainability in the area of social equality, and yet PALM points out that it:

> ... does not attempt to reconcile this aspiration with the anticipated price of housing in the proposal.

Prices will be as high as $350,000. PALM recommended that 10 per cent of housing in the redevelopment be priced to permit market entry by less affluent members of the community. It also concerned me that the plan variation only refers to many of the environmental management requirements and principles as elements to be dealt with later on, but really they should be built into the proposal right from the start, so that they will be considered equally, and with other planning and economic considerations. There need to be detailed strategies to reduce water use and increase recycling of waste water, minimise the environmental impacts on Jerrabomberra Wetlands, reduce energy use, use recycled products and recycled waste products, adopt low-energy systems for lighting, heating, cooling and appliances, and ensure solar efficiency through building orientation and design.

The new Kingston Foreshore Development Authority has a major task before it in making sure that this development lives up to its vision. The Bill before us today merely sets the administrative framework for this work, and I do not have a problem with this. I note that it is likely to have been modelled on the Gungahlin Development Authority Act 1996. What does worry me, however, is that there is one significant difference between the Gungahlin Development Authority Act 1996 and the Kingston authority, and that is the proposed membership of the authority.

I believe that, unless the people who work within the authority have a commitment to ESD, then it is not going to happen. It is pointless having all the right objectives for the authority if its managers and staff do not understand what these objectives mean, or know how to implement them. So I will be, when we move into the detail stage later this week, moving an amendment to the Bill to prescribe some of the positions on the board of the authority. I will talk more about that in the detail stage.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1

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

DRUGS IN SPORT BILL 1999

Debate resumed from 21 October 1999, on motion by **Mr Stefaniak**:

That this Bill be agreed in principle.

MR QUINLAN (10.49): Mr Speaker, the Opposition has no objection to this legislation. It sets out to enable the Australian Sports Drug Agency to conduct testing and associated functions on athletes within the ACT. It comes as a response to the declared need for a national approach and is effectively uniform legislation. I have to say that we accept the Government's assurances on this, as we are very short staffed at any given time. We are fully assured that it is uniform legislation and that it brings us into line with other States that are a bit ahead of us. We therefore support the legislation.

MR STEFANIAK (Minister for Education) (10.50), in reply: I thank Mr Quinlan for his comments.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

EMERGENCY MANAGEMENT BILL 1998
Reconsideration of Clauses

MR SPEAKER: Members, it has been brought to my attention that earlier today during consideration of the detail stage of the Emergency Management Bill 1998 a question was mistakenly proposed on three occasions. Members may recall the Assembly reconsidered clauses 2, 60 to 66 and 80 of the Bill. The question should have been proposed and put was, in each case, that the clause or clauses as amended be agreed to, the Assembly having earlier agreed to government amendments to clauses 2, 60, 63, 64 and 80. The Assembly's intention at the time was clear as in the debate Mr Humphries indicated the government amendments rendered certain of Mr Hargreaves' amendments redundant. Therefore, with the agreement of the Assembly I will direct that the record be amended to reflect correctly

the fact that the Assembly has amended these clauses by agreeing to government amendments 1, 22 and 23, 24 and 25, 26 and 31 and that the question should have been, in each case, that the clause or clauses as amended be agreed to.

ADJOURNMENT

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (10.51): We understand you can make mistakes on occasion, Mr Speaker, and we forgive you for making those mistakes. I move:

> That the Assembly do now adjourn.

Question resolved in the affirmative.

Assembly adjourned at 10.51 pm.