DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

11 December 1991

Wednesday, 11 December 1991

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MR SPEAKER (Mr Prowse) took the chair at 10.30 am and read the prayer.

PETITION

The Clerk: The following petition has been lodged for presentation, and a copy will be referred to the appropriate Minister:

Euthanasia

To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory:

The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly:

* That euthanasia ignores the fundamental value of every human being.

* That the mere legalisation of euthanasia would put pressure on the handicapped, aged and terminally ill members of our community to kill themselves, or to be killed, so as to not be a "burden" on their friends and families.

* That experience in the Netherlands demonstrates that acceptance of so called "voluntary" euthanasia leads to the adoption of involuntary euthanasia.

Your petitioners therefore request the Assembly to reject any move towards the legalisation of euthanasia in the ACT, and to provide for the establishment of a hospice as an expression of the Assembly's true concern for the welfare of the aged and terminally ill of our community.

By **Mrs Grassby** (from 271 residents).

Petition received.

PAYROLL TAX (AMENDMENT) BILL 1991

MR COLLAERY (10.31): Mr Speaker, I present the Payroll Tax (Amendment) Bill 1991. I move:

That this Bill be agreed to in principle.

Mr Speaker, this Bill seeks to overcome and clarify some anomalies which have arisen from an amendment to the Payroll Tax Act passed by this Assembly in October 1989.

Briefly, the first Follett Government presented a Bill to amend the Payroll Tax Act on 28 September 1989. The Bill was brought back before the house less than a month later, on 25 October 1989, and the relevant *Hansard* reveals that the Rally and the Liberal Party questioned then the adequacy of consultation prior to passage of the amendment. Accordingly, the Rally moved that the debate be adjourned because the Rally, as the *Hansard* shows, was awaiting advice about unintended effects of the proposed sections, then 3B and 5A. I refer members to the relevant *Hansard* for 1989, at page 2055.

Unfortunately, the Government had the numbers with Mr Duby's support, and the Bill was brought back that day and passed. The former Deputy Chief Minister, Mr Whalan, had strongly argued that the Assembly had a duty to put down avoidance and evasion schemes. The Bill was supported in principle by the Rally. The Liberal Party remained opposing the Bill, and I need to say that for the record.

Subsequent events have shown all too clearly the dangers of introducing complex legislation without proper consultation with those potentially affected. Often those with a detailed knowledge, such as accountants, are able to contribute from another perspective that the Government's own financial advisers do not have.

At this juncture I should like to acknowledge with gratitude the briefing provided by Ernst and Young to all members of the Assembly in relation to the service contract provisions introduced in 1989. With the benefit of that submission and knowing the views of the Housing Industry Association, the master builders group and the Canberra Business Council, the Rally instructed Parliamentary Counsel to draw amendments to overcome the perceived deficiencies in the legislation.

The record shows, Mr Speaker, that the Rally has consistently expressed concern about the effect, particularly on the small subcontractors, of the service contract provisions. We have discussed the matter both in government and out of government and over that time we have had helpful advice from the commissioner, Mr Gordon Faichney. However, we are yet to secure advice as to what element of the annual $85m payroll tax revenue is

attributable to service contract provisions. I understand, Mr Speaker, that the Housing Industry Association has been pressing for those details for some time and it is apparent that the Government may face some difficulty in isolating that sum.

The Rally's own computation of the potential impact on revenue is based on the following premise: If the threshold liability for payroll tax is a payroll of $500,000 or more, which is the current law, then the net does not catch the small builder. On the Housing Industry Association's advice, the tax liability is for those builders who build between 15 and 20 homes per year. The industry also believes that the service contract provision adds between $1,200 and $1,500 to the price of an average new home. I remind members that the Master Builders Association has lobbied strenuously for an exemption from payroll tax for independent subcontractors, including labour-only subcontractors such as bricklayers, ceramic tilers and carpenters.

The 1989 amendments impose an assessable tax liability in respect of any trades man or woman if he or she works for a contractor for more than 120 days in one year. The legislation has been expressed at 90 days, but in fact much discretion has been left to the Commissioner for ACT Revenue in setting these parameters.

Returning to the computation, if one looks at an annual housing turnout rate of 2,400 per year in the Territory and figures provided by the Housing Industry Association indicating that only 50 ACT builders would fall within the payroll net as a result of building an average of 25 homes a year, the assessable tax liability is therefore 1,250 homes by $1,200. This brings the maximum estimated potential diminution in revenue to $1.5m.

However, from that sum should be deducted those elements of payroll tax liability which do not relate to the service contract provision and will remain assessable items. This is the computation that only the Government is in a position to provide. I note that the Chief Minister reminded us yesterday, in answer to a question that I posed, that the Government is aware that this tax has an incidence in the service related occupations outside of house construction, but the extent of that impact is as yet unassessed.

In any event, as a means of offsetting this loss of revenue, the Housing Industry Association argues that the 8,000 subcontractors in this Territory could be licensed in the same manner in which they are registered in New South Wales. As members are aware, and as I mentioned yesterday in the house, only plumbers and electricians are licensed in this Territory, whereas a vast range of subcontracting trades - for instance, bobcat drivers, carpenters, ceramic tilers, painters, decorators - are not registered. An annual registration fee of $100 would produce approximately $800,000.

Whilst it is the Rally's view that we should reduce red tape and regulatory measures, wherever possible, from their impact in the building and service trades, there is, of course, the element of public interest in the registration of subcontractors. That is the approach taken in New South Wales, where there has been no strong objection within industry. On the basis of equity, if plumbers and electricians have to pass the test in the ACT, so too should the other trades, particularly those related to occupational health and safety issues such as those who drive earth-moving equipment on sites. The Rally will support these moves, subject to further consultation with the affected groups.

Returning to the amendments, they are, as members can discern, already complex in their form and they add to a complex piece of legislation. That legislation, payroll tax legislation, is a law which in Victoria and New South Wales, more by commissioner ruling and discretion than by statutory prescription, commands a field of taxation. There has to be a balance, of course, between discretion and prescription; but in the scale of discretions on the east coast the ACT commissioner, clearly, from my reading of the relevant CCH series for Victoria and New South Wales, is the less accommodating.

I believe that the commissioner in this Territory is in an invidious position. The way the amendments were drawn in 1989 gives very little discretion, arguably, to the commissioner, who, by providing some exemptions, may in fact be acting ultra vires the legislation and taking a risk that the Auditor-General would not be able to countenance. Equally, there is a lack of clarity about a discretion to the commissioner in definitional terms, particularly those relating to what is in the course of business and the performance of service contracts.

The amendments before the house today, I remind members, have been put together not by the Residents Rally upstairs, but by the best minds available in the industry. In my view, they need to have an effective input from the Commissioner for ACT Revenue, and there may well be a capacity for improvement.

Mr Moore: It is really important that you table this Bill today!

MR COLLAERY: However, the overriding view of the Rally is that, with this legislature unlikely to commence again until next May, and with issues of this nature hardly likely to be at the forefront of an incoming legislative program, we may see another long period of assessable liability and impact on the ACT building and service trades groups. I remind members, having heard Mr Moore's flippant interjection, that the impact of this essentially is a disincentive to employment, particularly in the youth and apprenticeship areas. I know that that has been acknowledged by members previously in this house. We believe that the Government should - - -

Mr Moore: It is just your blatant political opportunism in introducing it today when it has no chance of getting up.

MR COLLAERY: We acknowledge, of course, that Mr Moore will not have the opportunity to contribute to this. Nevertheless, we believe that the Government should accept these amendments in the good faith in which they have been presented. If the Government were minded to adopt them in consultation with its own treasury and finance advisers, we would support that move. Given the Chief Minister's responses in question time yesterday when she conceded that the matter was under active review, given the fact that her Government has recognised the potential problems in this area, and also acknowledging that this Assembly rises in a few days, we could hardly, as a Rally, be said to be hijacking a government agenda which we will assist in developing.

We commend the Bill to the house. We trust that the Government will provide the non-government parties with scope to debate and pass the amendments next week during government business time. Failing that, we hope that the non-government parties will support a move for sufficient extra time, against the background of severe unemployment stress, particularly in the youth sector, and put these much-needed amendments through the Assembly before we rise.

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

TOURISM COMMISSION BILL 1991

MRS NOLAN (10.41): I present the Tourism Commission Bill 1991. I move:

> That this Bill be agreed to in principle.

It is rather ironical that prior to the 1989 election I, as a member of the Liberal Party, put together a tourism policy which had the support of the tourism industry as it reflected the views of that industry. It was welcomed by almost all, even, I have to say, the *Canberra Times* editorial, when announced. That policy included a Tourism Commission for Canberra which involved the revamping of the then Canberra Tourism Development Bureau into a statutory authority. That is what the industry thought they were to see established; that is what the policy was supposed to achieve.

However, somewhere along the way things went very wrong. When the former Alliance Government established the Tourism Commission in 1990 they merely put in place an advisory committee. What a terrible mistake! The Tourism Commission was also buried in amongst the rates, rubbish and roads portfolio - urban services. I have to say,

Mr Speaker, that at least that has been rectified now. I acknowledge the Chief Minister for achieving that and at least putting the portfolio into the economic development area, where it rightly should have been.

When the commission was announced it was stated by the then Minister that the commission would bring a new professionalism into the promotion of Canberra. The Minister went on to say that the commission would have a greater flexibility in the way that it operated than its predecessor and it would bring commercial expertise to help it readily respond to market demands. Mr Speaker, it is no criticism of any individuals in the current structure; however, the industry cannot work effectively under bureaucratic control. Nothing has changed.

During the pilots strike it was shown by some State commissions around Australia that the most essential ingredient for good marketing and tourism promotion was the ability to react quickly to changed circumstances. We in the ACT during that strike did not react quickly enough to our changed circumstances, and in my view a much stronger focus needed to be placed on regional attraction, in particular, Sydney's western suburbs, which are only three hours away from Canberra by car.

Several years later a similar problem still occurs. Forward bookings are not healthy for the great majority of accommodation properties for January, and traditionally January has always been a very busy period. It is a school holiday period; it is the Christmas period when people take holidays.

It is unfortunate that a decision has been taken by government bureaucrats that another Tourism Commission meeting should not be necessary until January. That further concerns the industry. They say that the December meeting had been forgone as the move for the commission staff to the CBS Tower is now more important. What a nonsense! There is a problem and it must be solved quickly. The solution, clearly, Mr Speaker, is a statutory authority which will then have a clear brief and its own financial and administrative responsibilities. An industry that employs over 8,000 people and contributes over $450m annually must be given a sound foundation and be responsible for its decisions.

The Bill I place before you today does exactly that. This Bill has the support of the tourism industry. It has the support of the Canberra Business Council and the Canberra Visitor and Convention Bureau, and recognition that it is essential. I am sure, Mr Speaker, that any legislation that has that level of support also must have a similar level of support from the members of this Assembly. The most recent call for a statutory authority came only last month, November, when the Canberra Business Council called on the Follett Government to establish the authority.

Mr Speaker, the Bill I have presented to the house today is along similar lines to the New South Wales Tourist Commission Act and it will restructure the existing ACT Tourism Commission as a statutory authority under a commission of part-time members. The Bill takes into consideration the existing appointments of tourism commissioners and intends those appointments to continue, with the exception of the CEO position, which will become the general manager of the commission, who would be appointed by the commission and be responsible to it for the management of the affairs of the commission. The general manager and the staff of the commission will be employed on public service terms and conditions, except where alternative arrangements are specifically approved.

Mr Speaker, currently the commission is restructuring and I understand that positions are also being advertised. The commission offices in both Sydney and Melbourne have been closed to reorientate the small amount of funds to a more marketing approach. There is no doubt that business is now done differently by the consumer than in the past. There is, in my view, no longer a need for tourism offices in Sydney and Melbourne. There is, however, a very great need to concentrate on our market, on our nearest neighbours, Sydney's west.

January school holidays, as I said earlier, always saw a time of high occupancy in this city. There is no doubt that the other States and the Northern Territory have become more competitive for the visitor market than we in Canberra. I support the industry's view that we can surpass that competition yet again. The opportunity is before us today. The tourism industry should be allowed to get on and do what they do best. Only when the Tourism Commission becomes a statutory authority will that be achieved.

Mr Speaker, in conclusion, I know many staff of the commission and I am aware that one thing that was done badly when the commission was announced under the former Alliance Government was that the staff were not informed until after the announcement. I have to say that I apologise to the staff for not letting them know about the introduction of this Bill today. For the commission staff, this time it really does not mean change. What it will achieve will be to put our most important industry on a sound foundation at long last. I do have to say, Mr Speaker, that I would like to have seen this Bill introduced earlier than this. It was unfortunate that this was the earliest I could achieve in having the Bill drafted and getting it to the house. I also urge members that there be further private members business so that this can be debated before the Assembly rises.

MR SPEAKER: Do you wish to present an explanatory memorandum, Mrs Nolan?

MRS NOLAN: Thank you, Mr Speaker. Yes, I seek leave to present an explanatory memorandum to the Bill.

Leave granted.

MRS NOLAN: I present the explanatory memorandum.

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

PROPOSED VARIATIONS TO TERRITORY PLAN
Motion of Rejection - Griffith and Forrest

MR DUBY (10.50): Mr Speaker, the notice paper for today shows that I am moving a motion that the proposed variations to the Territory Plan relating to block 1, section 96, Griffith, and blocks 4 and 5, section 24, Forrest be rejected. At the outset, let me say categorically - - -

MR SPEAKER: Move the motion, Mr Duby.

MR DUBY: Mr Speaker, I move:

> That the proposed variations to the Territory Plan relating to block 1, section 96, Griffith and blocks 4 and 5, section 24, Forrest be rejected.

Mr Jensen: The Government should be doing that, Craig.

MR DUBY: As I said, Mr Speaker, I have moved this motion for a specific reason. I have had a comment from the rear, from Mr Jensen, saying that the Government should move this motion. At the outset let me say that I have moved this motion for no other reason than the fact that I want the matter debated, discussed and decided by the Assembly today.

Mr Jensen: My Interim Planning Bill requires it to be.

MR DUBY: Mr Jensen is again interjecting. I may have to ask for protection, Mr Speaker, if this continues. As I was saying, I want to make it perfectly clear, Mr Speaker, that, whilst I am the mover of this motion, I, for one, do not support the proposal that this particular variation to the Territory Plan be disallowed. I brought this matter on so that it can be decided today. Mr Speaker, you will be well aware of the situation that we are facing, given the number of days that are left in this sitting. You will also be aware of the situation that we are facing in terms of disallowance motions, which require six sitting days, et cetera, before a matter can be finalised.

Mr Collaery: I raise a point of order, Mr Speaker. Mr Duby has moved, on its face, a substantive motion, and that is that the variation be disallowed. Nevertheless, he has stood and he has stated that he actually agrees with the variation. Mr Speaker, I do not believe that there is a

substantive motion before the house. I ask you to rule that Mr Duby is out of order with this motion. His motion, Mr Speaker, makes a mockery of the processes of the legislation and the processes of this house. His motion, Mr Speaker, is an abuse of the processes of this house. He has stood up on the basis of a prima facie substantive motion and he has now said that he has no intention of bringing about what he wishes upon this house, the decision.

I draw your attention, Mr Speaker, to May's *Parliamentary Practice*, which clearly indicates, somewhere around page 400, that a motion is in two forms. One is a substantive motion, and a substantive motion has to be accompanied by the substantive argument. Mr Duby has no intention of arguing his motion. He is arguing against his motion; therefore, his motion is out of order as well because it is not expressed in the manner in which he seeks a decision from this house. I ask you to rule on that, Mr Speaker. This is a very important matter in the history of the proceedings of this Assembly. This is an abuse of process.

MR SPEAKER: Just before we proceed Mr Collaery, you mentioned "around page 400". I found something on page 310 that contradicts your argument. If you could give me your reference, I would be prepared to look at the matter.

Mr Kaine: Mr Speaker, I would like to speak to the point of order. I do not think there is any substance to Mr Collaery's objection. He referred to some abuse of parliamentary process. I think that what he is really miffed about is that Mr Duby has cut him off from doing exactly what he is accusing Mr Duby of.

As I understand it, he intended to move a disallowance motion of his own; but he intended to move it in such a way that if this one failed today he could move another one next week and further aggravate the parliamentary process which he claims now to hold so dearly. I think that Mr Duby is quite in order. As he said, he has put this motion on the table so that the matter can be debated, and it is a matter that needs to be debated. It needs to be dealt with before this Assembly goes into recess. Now is the time and we should not allow ourselves to be diverted by Mr Collaery's red herring.

Mr Duby: Mr Speaker, all I was going to say was that I do not believe that I have stated that I am totally opposed to my motion. My recollection of what I said is that I introduced this motion so as to bring the matter on so that the Assembly may decide. If having the Assembly as a whole decide on a matter of great public importance is contrary to standing orders, perhaps the standing orders need to be changed.

Mr Collaery: Mr Speaker, the substantive motion that May classifies is that which is a self-contained proposal drafted in such a way as to be capable of expressing a decision or opinion of the house. Mr Duby has a prima

facie substantive motion before the house; that is the notice of motion that we have. He is now standing and moving another motion. He has stated that he agrees with the development. He said it, clearly; the *Hansard* will show it. I say to you, Mr Speaker, that he is not moving his motion. He is speaking to another thing which he has not given notice of.

MR SPEAKER: Yes, I take the point that you have raised legally, but I am looking at page 310 of *House of Representatives Practice,* where it says:

> It is in order, however, for a Member to vote against his or her own motion ...

I am bringing it back to that. I must say that you have brought forward a very important issue, Mr Collaery, but under the circumstances I am prepared to let Mr Duby proceed. We will review this in consideration of future problems of this kind.

MR DUBY: Thank you, Mr Speaker. To tell you the truth, I have forgotten where I was. Mr Speaker, given the point of order that was taken by Mr Collaery, it might be worthwhile expanding on why I felt it necessary to bring this motion on. This project, the redevelopment of both blocks at Griffith and Forrest, has been a matter which has been in the system, as it were, for some two years. I think it is also a very important issue that needs to be discussed in terms of general business confidence within the community.

Mr Speaker, the variations to the Territory Plan that the Government tabled last week have been involved in the most rigorous process for quite some time. As we are all aware - I hope that all members have availed themselves of the papers available on this matter - there has been a quite rigorous public consultation process on these issues. There has been a response by the Territory Planning Authority in relation to the objections and various objections that were raised by various people and, all in all, the Government, quite rightly, I think, has come to the conclusion that these particular variations should proceed.

Mr Speaker, these variations involve capital construction works of the order of some $3m. In today's economic climate, I think that projects of this nature, given the fact that they have already been through the process and that they have met all the requirements that have been set up by legislation and also the expectations of the community, should be allowed to proceed.

When the Government moved these proposed variations to the plan last Thursday, Mr Collaery moved a disallowance motion on one half of the project. Indeed, if Mr Collaery had moved disallowance of the entire project, this particular motion that I have moved probably would not be in place today.

As Mr Kaine pointed out in responding to the point of order raised by Mr Collaery, there are grave doubts existing in some members' minds as to exactly what the Residents Rally wants to achieve with this particular process.

Mr Jensen: They want a proper process to take place, a proper inquiry.

MR DUBY: They want a proper process, I hear from Mr Jensen. Of course, the implication of that is that a proper process has not been followed. Nothing could be further from the truth.

MR SPEAKER: Order! There are members in the gallery making too much noise. If you wish to debate things, please go outside the public chamber.

MR DUBY: Thank you, Mr Speaker. The fact remains that Mr Collaery's motion last Thursday, rejecting one half of this proposal, in effect left the whole proposal, the whole development proposal, in limbo.

Mr Collaery: And what is your interest?

MR DUBY: My interest is in seeing development work proceed, and proceed throughout the Territory in a number of ways. Mr Speaker, this is a $3m redevelopment proposal. The objections that have been raised by various people - - -

Mr Jensen: Just because it is worth $3m does not make it right.

MR DUBY: It would not matter whether it was for $30m or it was a $300,000 proposal, Mr Jensen. The objections that have been raised by various people have focused on all the issues relating to the redevelopment. They have been rightfully and properly examined and, under the process that exists by law, the objections have been counter-argued, and it has been decided that the proposed development can go ahead. For people like Mr Jensen to say that therefore it is still a wrong development simply does not add up.

Mr Jensen: I never said that. I said that it does not make it right because it is worth $3m.

MR DUBY: Mr Jensen is again mumbling from my rear.

Mr Wood: It does not make it wrong, either.

MR DUBY: Precisely, it does not make it wrong whatsoever. Mr Speaker, this is a matter that has been around for some time. I think it quite right and proper that the Assembly should deal with the issue one way or the other. The major proponents of the proposal have been involved for, as I

said, some two years now in putting this matter forward, and given the timeframe that we are in with the coming elections it is only appropriate that they know one way or the other whether their proposed development is to proceed.

I think that anyone who would be opposed to giving them a firm answer today clearly would not be interested in the benefits of the business community and, indeed, the rest of the business community at the Manuka shopping centre. I am not too sure where we go with exactly what I want to do with this proposal, Mr Speaker, but - - -

Mr Kaine: We speak on it and we vote on it, Mr Duby.

MR DUBY: Precisely. It has been pointed out to me, Mr Speaker, that it might be appropriate that I move that the question be divided. The proposed redevelopment affects two particular parcels of land. The questions on both parcels of land could be dealt with. We already have a disallowance motion on one parcel and one parcel only within the provisions that apply in this case. I move:

> That the question be divided pursuant to standing order 133.

Mr Berry: Why?

MR DUBY: I heard a lonely voice on the opposite side of the room ask why. The advice has been that it may well be the appropriate way to deal with this matter. I have moved that the question be divided. One question will relate to block 1, section 96, Griffith; the other will relate to blocks 4 and 5, section 24, Forrest.

Question resolved in the affirmative.

MR SPEAKER: The question now is: That the proposed variation relating to block 1, section 96, Griffith, be rejected.

MR KAINE (Leader of the Opposition) (11.04): Mr Speaker, I am quite happy to speak to both parts of the motion, whether it is divided or not, and I oppose both disallowance motions. I oppose it for two reasons. First of all, I oppose it on the ground that the proper process that has to do with variations to the Territory Plan has been faithfully followed. Secondly, I oppose it on the merits of the proposal itself.

Every time we get a proposal to change something that is going to do something for this city, the Residents Rally jumps to its feet and says, "Let us delay it. Let us stop it. Let us not do it".

Mr Collaery: That is funny, coming from you. You have never done anything about payroll tax.

MR KAINE: You can get your chance to speak in a minute, Mr Collaery. Your payroll tax is like several of the others - nothing but a political gimmick because an election is just around the corner.

MR SPEAKER: Order! Relevance, please.

Mr Collaery: We will see about that.

MR KAINE: You have had three years to put these things on the table and you choose the last sitting day of the Assembly. Do not tell me that it is not a political gimmick.

Mr Collaery: It was your portfolio as Chief Minister.

MR KAINE: You opposed most of these things in three years.

MR SPEAKER: Order! Order, Mr Kaine, please!

MR KAINE: Well, if he wants to debate, I will give it to him, Mr Speaker. We happen to be talking about development. This is another case, of course, where the Residents Rally jumps on every convenient band wagon. They claim that they are not anti-development. But every time a development proposal or a redevelopment proposal comes up in any form at all, the Rally opposes it; it wants it to be delayed.

Mr Collaery: That is nonsense. There have been 42 variations and we have opposed four.

MR KAINE: It wants further public consultation. It does not want to make a decision. It does not want to make a decision about anything. They would keep Canberra in the 1950s if they could, despite the fact that the population continues to increase. The city continues to grow and we have to accommodate that growth; and we have to accommodate it in some planned, logical and sensible way.

Now, I defy Mr Jensen. I know that he is going to get up in a minute and say that the proper processes were not followed. It was only yesterday that he claimed that there were defects in another proposal in the suburb of Theodore. He is an expert at nitpicking the thing to death. As the Americans say, you nickel-and-dime a proposal to pieces until it dies, and that is what the Rally is on about.

There is no question that the proper processes for a variation to the lease purpose have been followed. There has been comprehensive community consultation. The Planning Authority has taken into account the community input. They have made a recommendation to the Government. The Government has considered that recommendation in the full knowledge of the facts and has made its decision.

Mr Collaery: Why don't you just join the Labor Party, Trevor?

MR KAINE: I belong to the Liberal Party and I am proud of it. I do not sit on the fence and I do not fall off whichever way the wind blows.

MR SPEAKER: Order! Order, Mr Collaery!

Mr Collaery: You are part of the right wing Labor Party in exile in your party.

MR SPEAKER: Order! Mr Collaery, please!

MR KAINE: When I fall off a fence because I think the wind is blowing the right way, like you do, that will be the day.

Mr Collaery: I will tell you what: I have bitten more bullets than you have in this chamber.

MR SPEAKER: Order!

MR KAINE: You have not bitten one. You fall off the fence whichever way the wind blows strongest. This is a classic example. The Rally thinks that by jumping on all these planning issues they pick up a few votes. Well, they do not. They thought they picked up a few on the Forrest bowling club recently; but they did not, because everybody recognised that it was just like this stunt, a political stunt, a political ploy, to get the Residents Rally's name on the front page of the *Canberra Times.* You do not get votes that way unless you are sincere about it.

The voters out there are smart enough to know that the Residents Rally is not sincere about anything except trying to get themselves re-elected now. We are within a month or two of the election. The proper processes have been gone through - - -

Dr Kinloch: Mr Speaker, I raise a point of order. I believe that I heard Mr Kaine say that we are not sincere about anything. I wonder whether that comes under the category of telling us that we are lying.

MR SPEAKER: No, it is certainly not. No, that is not a point of order. Please proceed, Mr Kaine.

MR KAINE: You can tell the truth and still be insincere. There is no question about the proper process. I think we can dispense with the furphy that the proper processes have not been gone through. The next thing is to look at the merits of the proposal.

Mr Jensen: Ah, now you are talking.

MR KAINE: Mr Jensen fancies himself as an expert on the merits of proposals.

Mr Duby: He is a planner.

MR KAINE: Yes, he is a planner. Of course, he will nickel-and-dime it to death if we give him half a chance, like he has done with almost everything else that has come forward in some constructive fashion in terms of the development of Canberra. Mr Duby alluded to the fact that Manuka, in terms of further development, the provision of parking and the retention of the amenity of the place - they are not mutually supportive; in fact, some of these propositions tend to work against each other - has been an issue for a long time.

One of the big problems down there has been the shortage of parking spaces. If you happen to drive round the place and try to find a parking space, you would know what people complain about. It is a complaint on the part of the people who have invested in business there because it is a constraint on their ability to make their business prosper, and it is a complaint on the part of the people who want to go there and do their shopping. It is a disincentive. They cannot find anywhere to park. So, there is a parking problem.

This proposal, first of all, is one to build up the business involvement in Manuka, a further investment. In today's financial climate somebody is prepared to make an additional investment in the place. Does the Rally knock that? I do not. They want to enhance the place, they want to turn it into a more prosperous little centre, and that is to be commended. As part of that, they are meeting an obligation to pick up some of the slack in parking.

If the Rally can show how that is bad for Manuka or for anybody, I will be fascinated to hear it. It is a good proposal. There are all sorts of red - - -

Mr Jensen: What if there is a better one?

MR KAINE: Oh yes, you will always come up with something better. I suppose you are going to talk about the site opposite Woolworths. You show me the person with $16m to put the development down opposite Woolworths and I will listen to you, Mr Jensen. There is nobody on the horizon with that sort of money. If they are, where are they? That proposal has been on the books for years too and there has been nobody prepared to come forward and invest the money. So, that is a red herring. If somebody comes along with a proposal to redevelop that part of Manuka I will be delighted. But it is not instead of this one; it is in addition to this one.

Of course, Mr Jensen does not live near Manuka. He does not care about Manuka. He does not care about the people who have investments in business there. He does not care about the people who want to shop there. He does not care about the people halfway up into Forrest who have cars parked outside their houses because there is not enough

parking space in Manuka. He does not care about all of that. Mr Jensen has a better idea. I suppose the better idea is to bulldoze Manuka and then they can all go and shop down at Tuggeranong, where Mr Jensen comes from. I presume that that is his alternative.

Mr Jensen: You can do better than that, Trevor.

MR KAINE: I am doing quite well already because I am demolishing you. I do not know what arguments you are going to put up that suggest that this is a bad proposal, or that it should be set aside in favour of somebody else's proposal that is not even on the books, or how you are going to say - I am sure you will think of something - that the proper processes of planning have not been gone through.

Mr Berry: It is good to sit on this side of the fence.

Mr Duby: It is like the joint party room revisited.

Mr Wood: Let us put that on the record.

Mrs Grassby: Yes, we need that one on the record. Is that right, Trevor? Is this the joint party room revisited?

MR SPEAKER: Order!

Mr Collaery: No, it is not the same; Trevor did not threaten to quit when he started to speak.

MR SPEAKER: Order! Order, please, members!

MR KAINE: I am not threatening to quit now. There is one thing for certain: After 15 February I will be back, but I do not expect to see any members of the Rally back. All of this grandstanding to get legislation on the table on the last sitting day of the Assembly has no merit at all from their viewpoint because they are not going to be here to debate it.

I think, Mr Speaker, that I have made my point strongly. This proposal has gone through the proper processes. All that is required now is for this Assembly to reject this disallowance motion and we will see some decent development going on that will make Manuka a better place for the business people there, for the people who want to shop there, and for the people who live within half a mile of it and who have people parking outside their houses when there is no real need for them to be there.

It is a good proposal in itself and there is no counterproposal that I have heard of from anywhere else that would suggest that it is a better proposal than this one. In fact, there is no proposal from anywhere to do anything else. I do not believe that we can allow Manuka to choke itself to death, as it will if we do not start doing something about the parking space down there.

I would urge the Residents Rally for once to get off the fence, to support something instead of objecting to everything. Let us deal with this matter. Then we can get onto some business in the Assembly that really is important and that really needs to be debated, rather than just giving this one the nod and letting it go.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (11.15): Mr Speaker, first of all, can I thank Mr Duby for initiating a very interesting debate. It has been one that has been enjoyable to listen to. I think it is important at the beginning that I should say that this was a matter to which the Government gave very careful consideration. It was not a draft variation that , like some, was instantly agreed to. We scratched our heads; we gave it careful thought. I pored through all the information and eventually took it to my colleagues with a recommendation to approve.

They also expressed their concern and did not readily agree. Indeed, I went with the Chief Minister onto the site and looked at the proposed extension to the theatre and also at the car park further up the road. Once we had weighed up all the pros and the cons we agreed to the proposal, as you well know. That agreement was dependent on certain changes being made to the variation or to the eventual outcome, so that the anxieties of some of the community and in particular of the cathedral can be accommodated.

I might say that in one sense this is a debate that we all regret having, because the original Capitol Theatre should never have been demolished. There is no question about that. I can state emphatically that under a Labor Party administration, under procedures that are now in place, such desecration would never occur.

Let me look at a number of the points that have been raised, and in particular the further development of the cinema. You would know that the owner of the Capitol theatre applied to purchase the adjacent car park, with some 23 car parking spots, so that she could extend her business with two additional cinema screens. She argued that in today's cinema world it is not possible to survive with the old-fashioned single theatre complex.

If you look at what has happened just recently in Tuggeranong, if you look at proposals for Belconnen, if you note the configuration of cinemas in Civic, you will agree with her assessment. Indeed, the Planning Authority so agreed; that in today's world, if that cinema is to survive, it needs to change the way it operates, and that needed to be done by expanding into the adjacent area, the car park, which of course was available for purchase, but subject to a draft variation.

The variation limits uses to a cinema and additional facilities supporting the cinema. Those facilities will be consistent with the character of Franklin Street and will increase the attractiveness of Manuka as a shopping and entertainment centre. The ACT Planning Authority, in conjunction with the National Capital Planning Authority, will ensure that the concerns expressed by a number of people, including the cathedral, will be taken into account in the design of the building development conditions.

They will require that the cinema complex be designed to a high standard, to reflect its prominent position on an important site - in particular its visual quality when viewed from the corner of Canberra Avenue and Furneaux Street and from St Christopher's Cathedral across the road. The facade of the present building fronting Canberra Avenue is to be remodelled and upgraded.

I agree with the comment from the administrator of the cathedral that the Capitol theatre is an ugly and drab building with no architectural attributes. In this redevelopment the opportunity will be taken to improve on what is there. In addition, external materials, colours, finishes and, particularly, signs and graphics will be subject to special design requirements. They have to gain approval and that will see that there are no graphic film advertisements facing onto the cathedral - so that you would not walk out of the cathedral, perhaps after a funeral, and see a big board promoting *Terminator 2* or something of that nature. There will be a sign, obviously, for the Capitol theatre and perhaps, as you see in other theatres, simple signs with a lit background advertising the current show.

Most importantly, ancillary uses to the cinema will be restricted to uses such as shops and restaurants so as to ensure that the existing ambience and amenity of the cathedral and its setting are preserved. There will be a specific exclusion in lease documents so that there will be no nightclubs or discos or amusement centres on that site.

Let me turn now to the question of car parking. I am aware, as I am sure all members are, of a petition with some 4,000 signatures, complaining about inadequate car parking in and around Manuka. That was lodged by the Manuka Business Association. What we need, obviously, is not only the new car parking arrangement, which is only a partial and relatively small attention to the need for parking, but also the proposal that Mr Kaine mentioned for further parking as part of a major construction at the other end of Manuka. Manuka will be serviced by those two car parks. We would hope to get some proposal for further development of the sort that Mr Kaine mentioned some time soon, but it is not perhaps the best time for that.

We have to replace the car parking that will be displaced, those 23 spots outside the cinema at present, and that will be in the nature of a two-level structure up the road. That structure will be dug into the ground. Its level will

be a level consistent with the lower end of it now, roughly where you drive in, or it may go even lower than that so that it is about the level of the adjacent car parking space in the offices of the Catholic church next door, what used to be a Catholic school. The expectation is that there will be pretty much one level of car parking; so at the top side of the car park it will be quite well dug in.

Further to that, the requirements are such that I rather expect this car park to win some architectural award. It will be well constructed, of course, but it will also be aesthetic.

Mr Moore: Like the ones on Ainslie Avenue that should be turned into gaols.

MR WOOD: In its design it will be rather better than that, I should think, Mr Moore. I have seen photographs of some of the car parks we have around the town. If you are interested, members, photographs and some draft sketches are available for viewing in the anteroom behind me. It is possible to design an aesthetic car park, and that will be done.

For example, there will be a height level of the walls sufficient to ensure that lights are not distracting to nearby residents, and there are not very many nearby residents. There will not be light poles up high; they will be set into the side walls so that there will be minimum visual disruption to the people in, I think, three or five houses close to the car park. It will be done well.

I might say that one of the concerns of the cathedral, one that I think is highly valid, is that they were anxious that some of their elderly parishioners would not have to park too far away. The cathedral, in its letter, comments that if the cinema was operating on Sunday morning - I do not know that they do very much - attendance at the theatre might take the car parking spots right outside the cathedral and deprive their parishioners of that facility. We will certainly look at the traffic signs in that area, the parking signs. If there is anything we can do about that we will, although, acknowledging that it is on a Sunday, I am not sure how it could be policed.

Mr Duby: It could read "Christians only" or something like that.

MR WOOD: Well, we might do that, Mr Duby. We will look at that. I also point out that use of the car park, as I have described it, with that ground floor level, a low level, would mean that any parishioner would have a very easy and very short walk from that new car park across what is also a car park at the back of the church offices and across the road to the cathedral. I think that would be a quite convenient path that they could follow.

Mr Speaker, I think that again I can say, as we did yesterday in the debate on Theodore, that the processes work. Plans are put out - they are drafts - and they are certainly capable of improvement. The Planning Authority attends to comments that are made. Members of this Assembly, individually and collectively, as now, make their comments. I believe that the proposal, after the most careful consideration and modification to it, is one that this Assembly should support.

MR MOORE (11.27): Mr Speaker, it seems to me that the reason we see objections from the Residents Rally to this sort of development is that they get caught up with the minutiae and lose sight of the issues for which they were originally formed. It had to do with the overall concepts about the planning of Canberra. This particular variation is a quite positive development that can add to the nature of Manuka. It is not about an issue that has to do with the major involvement of planning and conceptual planning in Canberra. It is not to do with, for example, the idea of employment being concentrated in Civic Centre as opposed to being decentralised into the town centres or with the quality of life that people have there.

Mr Collaery looks absolutely delighted because he has some great strategy here that suddenly Michael Moore is going to be taken out of the planning area as a commentator on planning. On the contrary, it has always been part of my interest to check and see where planning development seems appropriate and where it does not seem appropriate.

In this case, to me, having read through this very carefully, this is a quite appropriate development that I believe will enhance that shopping centre, and that is really a positive move. I do not have this idea that every single thing that is done by the Planning Authority or by the Economic Development Division has some great scheme behind it, a scheme that is somehow or other manipulated by Paul Whalan in the background, with a great effort at conspiracy by all sorts of public servants, ex-Ministers and politicians from all over the place, who have all worked to ensure, not exactly that money has been changing hands but at least that there has been a great deal of influence, in all these ways, in some seedy way. I do not think that has been the case at all. It has been a quite straightforward application. It has been considered in the light of current plans and a variation has been proposed.

I think this fits into very much the same sort of issue that Mr Jensen got caught out on as far as Theodore went yesterday, which caused him finally to say, "Well, they asked me to put it up". They asked you to put it up! Big bloody deal! What they asked you to do does not mean that you have to do it. What you should do is make your own decision. When somebody asks you to do something you should say - - -

Mr Jensen: I did make my decision. I believe that it was right.

MR MOORE: Well, as it so happened, I think you are wrong. Even though you are going to lose a vote or two, you should say that we have a particular reason for looking at the development, in the case yesterday, at Theodore, a development which would provide a series of homes through the Housing Trust for people who might well otherwise not have homes. I think that that objection was as ill thought through as indeed is this objection.

There have been a series of problems associated with this development, but in the process those have been handled appropriately. If we have a situation where people are going to expect that every single variation to the Territory Plan is going to be handled as an objection in order to catch out a few developers, or as if it is always the developers who are the baddies, then there is no way that we can proceed. In fact, if that were the case, we would not have the wonderful and beautiful city that we have today. There is a particular and important role for investors to play and for developers to play and they have to feel that they have some confidence. In fact, this development will certainly add to that kind of confidence.

I think it is important that the business community understands that the people who have a chance of being elected next time will have a much more positive attitude than that put forward by the Rally as far as these sorts of variations go. It is time they focused on the big picture and stopped fiddling at the edges.

MR COLLAERY (11.32): Mr Speaker, unlike the Liberal leader and Mr Moore, I want to concentrate on the central issue about this development. The central issue is as accepted by the Planning Authority in its response to the submissions relating to parking. I will read the response into the record:

> The principal parking issues arising from the proposed expansion of the existing cinema are the need to accommodate the additional parking demand generated by the cinema and the need to accommodate the displaced parking capacity of Griffith Section 96 Block 1.

I really hope members will listen to this. The central issue about this proposal is the provision of parking space.

I was saddened, more than angry, to hear Mr Moore, because he has been a great believer in traffic management studies being released with the draft variation proposals. No traffic engineering or management study was released with this. That has been an article of faith with all of us, and Mr Moore, of course. Many informed people will read this transcript and I am very sorry to see Mr Moore moving

from a position he championed for city developments that affected his own residence in Reid. Mr Speaker, we have pressed always for traffic management studies. We have been very consistent about that matter from about 1987 onwards.

I take you now to the parking matters. I do ask members to listen because we will put you on notice as to a matter that will probably result in this development falling over in a court of law anyway. This is the position. The theatre park, which will be built over, has 23 short-stay parks. The existing car park, which is proposed to be redeveloped to two-storeys, has 106. So, there is a total of 129 car parks affected. The new two-storey car park proposed will have 186 places. That leaves a net increase of 57. Mr Wood knows that we all concede that, on that computation. It is 56, 57, 58.

Mr Wood: I noted that. About 60.

MR COLLAERY: The net increase is about 60. If one examines the draft variation to the plan, one sees that these matters have to be attended to. Firstly, Bougainville Street, on one side of the proposed car parking structure, is a narrow street, as is Franklin Street on the cathedral side, as is the parking station block, except where the Government has recently moved to take out some car parking spaces - 10, in fact. They are too narrow to allow parking on either side. "No parking" has gone up on one side, but there is still an egress traffic problem.

The fact is that the computation does not include the following factors which we have advice on. The theatre complex as planned, with a GFA, gross floor area, allows a computation to be made that planners use. The computation means that there will be 38 extra staff working in the cinema complex, with its retail components and the rest. Of that, the computation allows for up to 20 cars being brought into Manuka by those workers, assuming that those workers are recruited from persons who do not already work in the Manuka area. So, that is 20 cars. We are using established parameters.

It is clear to all of the advisers we have that there will have to be a removal of 12 car parks in the Furneaux Street to Bougainville Street section because of egress problems from the car park. We all know that as you come out of the present car park, and that exit will remain, there are cars parked directly opposite outside the village. So, it is minus six parks there; and minus 12 in Bougainville Street.

Of course, traffic will not go down around to Canberra Avenue, on the advice we have, and there will be 36 car parks lost behind the car parking station, where the residences exist and where people are already pressing for the removal of parking outside their front doors and where the road is dangerously narrow. So, the fact is that there

will be a diminution of 74 car parks not revealed in the brief dissertation on traffic management. So, what do the shoppers of Manuka get? What do the shopkeepers get? They get a net loss of 17 places.

As Mr Connolly knows, in administrative decision judicial review terms, we have an error on the face of this decision making process and we have an admission that the prime concern is to accommodate the additional parking demand. I quote from the Planning Authority:

> Investigations indicated that the site could accommodate the required number of carparking spaces in a two level structure ...

That is wrong, Mr Wood. There is no net increase. There is a diminution. In any event, a net increase of 56 car places hardly has anything to do with the upsurge in parking for matinee performances during school holidays and the rest.

The Planning Authority refers to investigations into the traffic management and parking issues. I call upon the Labor Government to release those investigation papers. I call upon a government committed to open consultation to let us put those investigation documents before our own advisers. I just say that.

I move to some other issues and at this stage I have to declare an interest; I am a commercial lessee in Manuka. I put that on the record in case someone else takes the point. I am fully aware of the parking problems and the need to provide more footpath trade for our traders. In fact, I am a former solicitor for five of the prime commercial traders in Manuka. So, I assure you, unlike Mr Kaine's empty pronouncements, that I have had a very close and personal involvement over many years with the issues in Manuka. Mr Speaker, the one thing that my former clients and the traders in Manuka want is an increase in parking capacity. When they find out that it is a net decrease they will be very disappointed. They will be disappointed in the Government that approved the development that caused those matters.

The Rally has no wish to involve itself in the minutiae, as Mr Kaine or Mr Moore or someone said, of the planning design and siting issues subject to the concerns expressed by the Institute of Landscape Architects, which opposed the visual aspects of both of the proposed developments, the National Trust in its proposals, and other credible opponents of the development. We will go to the central core issue which will result in a successful legal challenge, in my view, to this development and that is that the authority has premised its approval on an increase in parking. There will not be any appreciable increase; on our argument, there will be a decrease.

Mr Kaine used his speech to take some political shots at the Rally. He is entitled to do that and we will see what the result is in the ballot-box. But I remind Mr Kaine that the Rally has supported draft variations to plan approvals in Lyons for car parking, in Calwell, Weston, O'Malley, Ainslie, Melba, Lyneham, Hackett, and numerous other areas, including Kambah, Phillip and Yarralumla.

The fact is that we have moved only two or three disallowances in the life of this Assembly and in the life of the disallowance process, and we have not opposed all developments; far from it. What we did oppose, of course, was the bulldozing of some school sites which, with the free commercial lease proposal, took Mr Kaine out of government.

Mr Moore: After you had moved that the schools be closed.

MR COLLAERY: It is a sad day, of course, for Mr Moore. He has put himself on the record and he will not escape it. Mr Speaker, Mr Kaine said again - he said this and was howled down by his former blue Liberal supporters in Forrest - that proper processes have been faithfully followed. Mr Kaine has that wrong. He has it wrong because we were not given the traffic management study and investigation reports. I ask Mr Wood to indicate whether he will make those available. Proper processes surely allow us, as the new planning Bill will, access to the traffic studies so that we can refute the very basis for this approval.

I want to stress, in conclusion, that we support reasonable development in Manuka. We have nothing personal whatsoever against Mrs Liangis' proposal. What we are concerned about, on behalf of the Manuka traders - I have already admitted that I have an interest in this matter, and I do not believe that I am offending against the self-government Act - is that there is no increase in parking. There is a diminution of parking, and that is the problem. Mr Speaker, this matter should be disallowed or deferred until it is studied and I think that those members who make light of it - - -

MR SPEAKER: Order! Your time has expired, Mr Collaery.

MR HUMPHRIES (11.43): Mr Speaker, I think we can see what a loser the Rally are on with a planning issue when Michael Moore does not support them, and they clearly must be in this case. I had a number of concerns about this proposal when I first saw it. I was anxious to consider a number of matters that had been raised with me about that; but I must say that, having heard the debate, in particular the Minister's contribution, I feel that many of those concerns, if not all, have been dealt with, and I feel happy in supporting this development going ahead.

There will, of course, be a need for the Government or the planning authorities to monitor the development of this proposal and ensure that concerns that have been raised

about preserving the character and nature of Manuka and the access to facilities there are overcome; but I believe, on the basis of what the Minister said, that that is going to be the general objective of the Government.

Mr Collaery said that the central issue in this debate is the provision of more parking space. I completely agree and believe that it is essential that we look at that question. I have to say that I do not understand the mathematics that Mr Collaery uses to say that there will be less car parking space after a second storey is put on the car park opposite Manuka Village. Perhaps I can study the transcript afterwards to see how he reaches that figure, but I do not believe that that is the case. It seems to me that there will be more parking spaces. Anyone who has visited Manuka at a lunchtime during the week or on a Saturday morning knows how desperately important it is that there are additional spaces in that place.

It is pleasing to see that concerns about the presence of nightclubs, discotheques, amusement centres or bowling alleys in that Capitol theatre block are being addressed. They are going to be excluded by the terms of the lease. That is very pleasing. I might say, Mr Speaker, that my understanding is that these concerns were not actually addressed by the Government until this morning. The concerns, at least of the church at Manuka, were not addressed until that time, which is a matter of some concern but - - -

Mr Wood: A bit earlier than that.

MR HUMPHRIES: Well, whenever the decision was made and advised to representatives of the church there, it is pleasing to see that that happened eventually anyway. I am also pleased to see that the standard of the building on the Capitol theatre site is going to be a high one, complementary to both the vista of Canberra Avenue and the cathedral.

I also think that the additional parking space provision to complement the additional seating in the cinema complex will be important. Obviously, the use of the cinema complex occurs, as a general rule, at different times from the use of the other shops and amenities in the area of Manuka. People do not usually go to the cinema on Saturday mornings or, to the same extent anyway, during the weekdays, and therefore the capacity being installed for the cinema will not necessarily cut across the capacity that will be used at other times for shopping.

There is, of course, a very real concern about the use by the cathedral and by other services associated with the cathedral, such as the Catholic Education Office, of parking spaces around Manuka. Clearly, it is important to preserve the capacity of parishioners to use the parking spaces that are presently there and which, frankly, at the present time, are not used frequently by parishioners but are taken already by people using the shops at Manuka.

I have a suggestion which I hope the responsible Minister might take into account. I assume that that is Mr Connolly. I think that it might be valuable if the Government would consider one-and-a-half-hour parking spaces along Franklin Street in front of the cathedral. One-and-a-half hours is longer than the average mass time, thus allowing for those members of the clergy, but shorter than the average duration of whatever the latest movie might be, *Terminator 2* or whatever it might be. If that were the time limit for those free parking spaces along Franklin Street and if it were enforced even on Sundays, I think that some of the concerns presently being experienced by parishioners at the cathedral would be met and that access to the church's facilities there would be retained.

As I have indicated, I am pleased about the general tenor of this proposal. I believe that it does address the very real question of providing additional parking spaces in Manuka and I therefore will not support the motion moved by Mr Duby.

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

> That the question be now put.

MR SPEAKER: Who is the next speaker?

Mr Moore: It is a two-part motion. I want to speak to the second - - -

MR SPEAKER: No. There is one motion before the Chair at the moment. You can speak on the next one.

MR DUBY (11.49), in reply: Mr Speaker, I am not all that sure of the procedures that are in place at the moment, but I would like to say that I am quite disappointed that this motion that I have moved today was necessary. The one important thing in life, I think, is certainty. With this morning's disallowance motion I have tried to achieve that for the people involved, either for or against the proposed development at Manuka.

It has been very interesting to listen to the debate. Unlike almost every other member of the Assembly I, apparently, am not an amateur planner. Everyone else has enormous views on what should be done in terms of parking, in terms of the provision of services, et cetera. The view always seems to be that it does not matter what the experts say; their opinion is better.

I am quite satisfied that all due processes that should have been followed have been followed in this regard. I am quite satisfied that the concerns of various people about this development have been listened to and addressed. I take great comfort from the Minister's statement that matters will be looked into in terms of the future provision of parking and things like that.

As I said, I am disappointed that the motion was necessary, but I am pleased that it is now being done. We have not a further delay of something like six months, waiting for persons, either for or against, to know which way the wheel is going to turn.

I am quite pleased, also, that it appears that the vast majority of the members of this Assembly are happy to let this development go ahead - everyone except the Rally. The Rally, of course, is out of step with the world. It appears that everyone has it wrong except them. Nevertheless, I think that is the way life is going to be for them for the foreseeable future.

Mr Kaine: They listen to a different drummer, Craig.

MR DUBY: They march to a different drum, perhaps. I thank members for allowing this to be brought on in private members' time. I am quite amazed that it has taken well over an hour to discuss this issue.

Mr Moore: We are only halfway through the debate. We have the second one to go.

MR DUBY: Mr Moore is saying that we are only halfway through the debate. On that basis I shall resume my seat and let the process continue.

Question put:

> That the proposed variation to the Territory Plan relating to Block 1, Section 96, Griffith be rejected.

The Assembly voted -

AYES, 4	*NOES, 13*
Mr Collaery	Mr Berry
Mr Jensen	Mr Connolly
Dr Kinloch	Mr Duby
Mr Stevenson	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Kaine
	Ms Maher
	Mr Moore
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

MR SPEAKER: The question now is:

> That the proposed variation to the Territory Plan relating to Blocks 4 and 5, Section 24, Forrest be rejected.

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

> That the question be now put.

Question put:

> That the proposed variation to the Territory Plan relating to Blocks 4 and 5, Section 24, Forrest be rejected.

The Assembly voted -

AYES, 4	*NOES, 13*
Mr Collaery	Mr Berry
Mr Jensen	Mr Connolly
Dr Kinloch	Mr Duby
Mr Stevenson	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Kaine
	Ms Maher
	Mr Moore
	Mrs Nolan
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

Mr Wood: Mr Speaker, I raise a point of order. Under standing order 136, would you please make a ruling in respect of notice of motion No. 6, private members' business, standing in Mr Collaery's name, that that is no longer on the notice paper.

MR SPEAKER: Yes, I take your point, Mr Wood. Under standing order 136 I may disallow a motion which is the same in substance as any question which, during that calendar year, has been resolved in the affirmative or the negative. The motion moved by Mr Duby and divided is the same in substance as the motion proposed by Mr Collaery and shown on the notice paper as notice No. 6, private members' business. I am therefore directing that that motion be removed from the notice paper.

CRIMES (AMENDMENT) BILL (NO. 4) 1991
Detail Stage

Consideration resumed from 4 December 1991.

Clause 3

MR COLLAERY (11.56), by leave: I move:

Page 1, line 13, proposed new subsection 92NB(1), after "who", insert "knowingly".
Page 2, line 4, after proposed new subsection 92NB(1), insert the following subsection:

"(1A) It is a defence to a prosecution for an offence against subsection (1) that the defendant reasonably believed that the person depicted or otherwise represented as a young person was not under the age of 16 years.".

I remind members that this clause relates to the possession of child pornography and the amendment provides a defence for those who want to have that material. It is unfortunate that they would want to have it; but, if they do and they believe that the persons depicted in that pornographic material are above the age of 16 years, there is a defence for them. Both those amendments have been moved at the instigation of the Director of Public Prosecutions, whose helpful advice I acknowledge.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.58): The Government supports these amendments, which improve the Bill. The problem previously was in relation to "knowingly". A postal worker, for example, or a delivery agent could have been convicted of an offence because he would have had possession of this material for a period. The defence of reasonable belief that a person was over age again is an appropriate defence to a criminal charge if the person honestly and reasonably believed that he was engaging in no unlawful conduct. So, these defences improve the legislation and are supported by the Government.

Amendments agreed to.

Clause, as amended, agreed to.

Clauses 4 to 6, by leave, taken together

MR COLLAERY (11.59): Mr Speaker, clauses 4, 5 and 6 in the original Bill were deficient, and I candidly admit that. They took in a whole range of offences. Acting on advice from the Director of Public Prosecutions and further consultation with the Parliamentary Counsel, the whole matter has been removed and has been reduced to the clause headed "Transmitting X-Films interstate". I move:

Omit clauses 4, 5 and 6, substitute the following clause:

"4. After section 151 of the Crimes Act the following section is inserted in Division 4 of Part IV:

Transmitting X-Films interstate

'151A. A person who transmits an X-Film to a person in a State or Territory knowing that the possession of that X-Film is prohibited by the law of that State or Territory is guilty of an offence punishable, on conviction, by imprisonment for 2 years.'.".

Mr Speaker, I want to comment only briefly on this. The offence imports the knowing test that Mr Connolly has quite correctly pointed out was required elsewhere in the Bill. That is, if a seller of X-rated films in this Territory does not know that there is a law banning possession in another State, there is a defence to any such offence. I have already mentioned that, to the best of my advice, there is no explicit ban on possession anywhere in Australia. There is an equivocal law in Western Australia, which to my knowledge is not enforced.

I stress that all States have a situation whereby they pay lip service to the fact that they would ban the films and that this Territory is the porn capital of Australia. In fact, there is an extensive porn industry in some other States, and this offence creates a situation whereby we can say justly that we are not seeking to overturn the democratic decisions of parliaments, in both Liberal and Labor territory outside the ACT. I do not know whether any parliament would legislate to ban possession. Members well know my views on prescriptive laws that seek to censor access, but I do not believe that other States can have it both ways.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.02): Mr Speaker, the Government remains opposed to this amendment in its final form. It has been through a number of forms in the weeks leading up to this debate. We remain opposed to it because of the fundamental principle that liability to the criminal law in this Territory should depend only upon the state of the law in this Territory. It is bad law, we say, to make liability to the criminal law here depend upon the state of the law in some other part of Australia. The criminal law should be self-contained.

Mr Collaery, last time this was debated, gave us a tirade on the moves towards uniformity in national laws and moves towards uniformity in criminal law, and that is something that I very strongly support. Indeed, sometimes the former opposition was crossing swords with Mr Collaery on that issue because we were urging the course of uniformity as opposed to some of his more interesting innovations. But that is a different issue.

It is fine to say that the law should be uniform; it is fine to say that we should be moving towards a single set of national laws. It is an entirely different thing to come up with this unique proposal to say that whether you are guilty or not guilty of an offence in the Territory depends not on the state of the law here but on the state of the law elsewhere. I hasten to add that that offence carries imprisonment for two years. This is not a monetary penalty provision. There is no fine here. This is a maximum two-year gaoling provision rather than a matter carrying a pecuniary penalty.

Is the purpose of this to do a put-up or shut-up on the other States? I gather from Mr Collaery's views that it is. He is saying that, if the other States do not like the X-rated video industry here, this gives them the opportunity to put up or shut up. If that is the purpose, I point out that you do not make changes to the criminal law to make those sorts of political points. You do not create a two-year imprisonment offence to make a political point against other States.

If you want to ban the X-rated video industry in the ACT - again I acknowledge that that is the expressed and espoused view of the Liberal Party, and I acknowledge that the Liberal Party will, whenever they get the opportunity, vote to implement their party policy - that is good and proper. But I would say to the Liberal Party: Do not be a party to this strange provision of the criminal law, which is designed, as we have heard from its author, to make a mere political point but which creates a fundamental problem in principle by creating a new form of criminal offence where what makes you a criminal or an innocent person is not the law as debated and laid down in the statutes of this Assembly but whatever happens to be the state of the law in another part of this country.

The criminal law of this Territory should be as laid down in the statutes of this Territory and should not be conditional upon or contingent upon the criminal law in any other State. We take the view that this is bad law, and I ask members of the Assembly to vote on this on the principle of the way the criminal law is constructed rather than on whether this may or may not aid or cause hindrance to the X-rated video industry. If you want to express your party policy against the X-rated video industry, we can do it openly and debate Bills as we have done previously in this place, and the Assembly's view is well known.

This is a bad law, and I urge members of the Assembly not to support it, for the reason of principle. I ask members of the Assembly who may be pledged to a party policy and who may enthusiastically support their party policy seeking to ban the X-rated video industry in this Territory not to support this amendment, because it is a stunt for the other States and it creates a bad precedent of a new form of criminal law, with liability depending on the law of another State.

MR STEVENSON (12.06), by leave: I move the following amendments to Mr Collaery's amendment:

After the words "a person who", insert the word "knowingly"; and
Omit the words "knowing that the possession of that X-Film is prohibited by law of that State or Territory".

Firstly, I shall talk briefly about the principle of law. I do not believe that it is okay for a law of this Territory to be dependent on laws that may come or go in another State or Territory. However, that problem can be easily resolved. My amendments seek to do just that.

The amendments would, first of all, insert the word "knowingly" after the words "a person who" at the start of Mr Collaery's amendment. Obviously enough, it is important that a person is not just working in the post office, a courier service, et cetera. They need to know what they are doing.

The second amendment is to omit the words "knowing that the possession of that X-film is prohibited by the law of that State or Territory". This removes the problem Mr Connolly has highlighted, and he asks us to vote on the point of law, not on the principle of X-rated pornographic videos. My amendment would remove the problem with the point of law, and then we can debate the actual issue. I know that time is moving on. I need say no more about the principle of the amendments.

MR MOORE (12.08): The amendments moved by Mr Stevenson bring out the issue at hand and are a logical way to deal with it. It is an issue we have dealt with time and time again in the chamber, but it is Mr Stevenson's right to take an opportunity like this to deal with the issue rather than get caught up in the original concept of this law.

I think Mr Collaery's concept is set out very nicely in the original Bill, where we read the headings "Aiding and Abetting", "Incitement" and "Conspiracy". That is really what this is all about. It is about a tactic somehow or other to develop a strategy that will embarrass Labor and Liberal governments all over Australia because they have

done a terrible thing in saying that Canberra is the porn capital while at the same time not doing anything about their own laws, and this will force them into some kind of action. Mr Collaery has this great conspiracy theory and a strategy all worked out so that everybody is going to feel embarrassed about it.

The trouble with it is that it breaches this basic principle of how we make our laws, which Mr Connolly has spoken about. At least with Mr Stevenson's amendment it is quite clear what he is talking about. It is quite clear that he is trying to ban X-rated movies, and it is a responsible way to deal with it in the ACT. I disagree with him, as I have said on many occasions. Since Mr Stevenson has not repeated those arguments, I shall not either. At least this is a straightforward way of dealing with things, instead of this weird, convoluted idea of Mr Collaery's, which fits into his standard modus operandi.

Question put:

That the amendments (**Mr Stevenson's**) to the amendments be agreed to.

The Assembly voted -

AYES, 5	*NOES, 12*
Mr Humphries	Mr Berry
Mr Kaine	Mr Collaery
Mr Prowse	Mr Connolly
Mr Stefaniak	Mr Duby
Mr Stevenson	Ms Follett
	Mrs Grassby
	Mr Jensen
	Dr Kinloch
	Ms Maher
	Mr Moore
	Mrs Nolan
	Mr Wood

Question so resolved in the negative.

MR SPEAKER: The question now is: That Mr Collaery's amendments be agreed to.

MR STEVENSON (12.16): I would like to speak very briefly on the matter. I do not need to mention why X-rated videos should be banned or how strongly I have worked to achieve that. However, I will not introduce false principles of law to do that. I do not think the means justify the end in this case.

Question put:

That the amendments (**Mr Collaery's**) be agreed to.

The Assembly voted -

AYES, 7	*NOES, 10*
Mr Collaery	Mr Berry
Mr Humphries	Mr Connolly
Mr Jensen	Mr Duby
Mr Kaine	Ms Follett
Dr Kinloch	Mrs Grassby
Mr Prowse	Ms Maher
Mr Stefaniak	Mr Moore
	Mrs Nolan
	Mr Stevenson
	Mr Wood

Question so resolved in the negative.

MR SPEAKER: The question now is: That clauses 4, 5 and 6 be agreed to.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.18): Essentially, we have now had the vote and debate on this issue. Mr Collaery put what he said was the most refined version of his proposal. We are now back to the incitement, aiding and abetting, conspiracy thing, which is a fairly broad-ranging, all-encompassing proposal. Mr Collaery acknowledged that there were some substantial difficulties with it, and the Government's view certainly would be that they should all be negatived.

MR COLLAERY (12.18): Mr Speaker, clause 6 no longer stands. We should not be speaking to it. Clauses 4, 5 and 6 are to be omitted. We have had the vote on the Bill. We have finished the detail stage.

Mr Connolly: No, we voted on your amendment, which was to delete clauses 4, 5 and 6, and that was negatived. What is now before the Assembly is the original form of your Bill, which you have acknowledged you have some problems with.

MR COLLAERY: I withdraw clause 6, Mr Speaker.

MR SPEAKER: I am not sure that you can do that.

Mr Moore: Why don't we just negative it - vote against it?

MR COLLAERY: Yes. I move:

That the question be now put.

Question resolved in the affirmative.

Clauses negatived.

Title agreed to.

Bill, as amended, agreed to.

LITTER (AMENDMENT) BILL 1991

Debate resumed from 16 October 1991, on motion by **Mr Jensen**:

That this Bill be agreed to in principle.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.20): Mr Speaker, the Government is not in a position to support Mr Jensen's proposed amendments to the Litter Act. That is not to say that we do not acknowledge where he is coming from or what he is trying to do. However, I think his proposal is an unsound way of going about it. What he is doing is creating two classes of offences under the Litter Act - one that applies if the litter is likely to cause injury to persons or damage to property, which carries a $2,000 penalty; and any other case, $250. No other State has such a provision, and my advice is that amending the Act in this way does not comply with established criminal law policy in that it creates two different penalties for essentially the one offence and is a very subjective creation of an offence.

I understand what Mr Jensen is getting at, and in his prime example it seems very reasonable. Mr Jensen says that, if somebody leaves broken glass or a syringe lying around, it is a more serious matter than if you throw away your pie wrapper. Indeed, that is a sensible proposition. But there is a vast area of grey here. The first and most obvious example is: What of the glass that is not broken but which may become broken? Is that "material that may cause injury to a person" or is that "any other case"? For the person who drops a glass bottle, not broken, is that a $2,000 offence or a $250 offence?

The pie wrapper we are talking about throwing away, we will assume, is a $250 offence, being a paper pie wrapper; but what if it is a plastic bag that a child can stick his head in, which can cause significant injury? What, indeed, of the piece of paper that can fly onto the road and hit the windscreen of a car? Creating a different offence with the subjective "Is the item likely to cause injury to persons or damage to property?", in the Government's view, is unsound and ought not to be supported.

Currently, the Litter Act is being reviewed by the waste management section, a very active and enthusiastic group of public servants who advised all the residents of North Canberra of the fantastic reopening of the Ainslie Transfer Station last week. They are looking at the general penalty of $250, which they think probably does need some review. It has been there for quite some time. They are also looking at increasing the on-the-spot fines for littering from the current $25 to perhaps $50. They are looking at things such as advertising flyers and whether they should be dealt with as litter. That is the thing people often find stuffed under the windscreen-wiper when they return to their car.

The Act is due for review and people are going through that process. I suggest that it is better to await a general review of the Act than to create this fairly novel idea of a subjective test as to whether a $250 penalty or a $2,000 penalty should apply.

MR STEFANIAK (12.23): Mr Collaery reminds me that Professor Whalan did not have a problem with this. It is a fairly short Bill. I have had a quick look at the principal Act, which in section 3 currently has a penalty of $250 for littering. That remains for the normal type of litter, and what Mr Jensen is seeking to do here is to create an additional offence if the litter strewed around is likely to cause injury to persons or damage to property.

I suppose an Act such as this is difficult to enforce at times in that you actually have to catch someone in the act of littering, or have people give very good evidence of who is doing it, to succeed in a prosecution. Nevertheless, what Mr Jensen aims to do is to put some realistic penalty on people who wantonly strew bottles, be they broken or otherwise, in areas where people can be seriously injured, especially children. The genesis of this, I think, was some young children in Kambah being injured by glass strewn around by some hoons in a kids play park. That is certainly not an uncommon occurrence, although in terms of people actually being caught for it there may be some problems.

I was on the Scrutiny of Bills Committee with Mr Collaery and I certainly cannot recall Professor Whalan having any problems with this amendment. Invariably, on a daily basis the courts are called upon to exercise their discretion and work out for themselves what is reasonable. I have practised in courts more than anyone else in this place, and I do not think a court would have any huge problem in interpreting Mr Jensen's amendment.

I am pleased to hear that the Attorney, in his capacity as Minister for Urban Services, is conducting a review of the Litter Act, because this is only one small amendment dealing with one rather specific type of litter. Certainly, the Act is in need of review, and I would hope to see whichever government is in power next year bringing

before the Assembly more substantial amendments in relation to litter. The Liberal Party cannot see any great problems with Mr Jensen's amendment, and we think that on balance it is more likely to be a positive good and an improvement to this Act.

MR JENSEN (12.26), in reply: I do not think there is any need to have any further debate on this, and I quite happily move:

That the question be now put.

Question resolved in the affirmative.

Original question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

CRIMES (AMENDMENT) BILL (NO. 5) 1991

Debate resumed from 16 October 1991, on motion by **Mr Collaery**:

That this Bill be agreed to in principle.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.27): Mr Speaker, the Government does think this Bill that Mr Collaery has proposed has merit. Basically, it clarifies the power of police to take fingerprints, and in particular in some of his amendments he clarifies the special rights that apply to younger people if they come into police custody.

There were some problems in the original draft. In particular, it could have been construed so as to override a more general protection in the Children's Services Act in relation to young persons in custody. I understand that in the amendments Mr Collaery has foreshadowed those problems are picked up. We are left with a piece of legislation that clarifies the power to take fingerprints and clarifies the protection available, in particular, for younger persons. The Government sees merit in this proposal and will be supporting it in its amended form.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR COLLAERY (12.29), by leave: Mr Speaker, I move:

Clause 3, page 2, line 1, omit "who is of or above the age of 14 years".
Clause 3, page 2, line 10, new subsection (3), after "identification", insert ", including fingerprints, handprints or photographs".
Clause 3, page 2, line 11, omit "(1)", substitute "(3)".
Clause 3, page 2, line 12, omit "a photograph", substitute "photographs"; omit "14", substitute "18".
Clause 3, page 2, line 12, new subsection 353A(4), omit the subsection, substitute the following subsection:

"(4) Nothing in subsection (3) authorises action that would contravene section 36 of the *Children's Services Act 1986*.".

In providing instructions to counsel, I overlooked the provisions in section 36 of the Children's Services Act, which state that a child under the age of 18 years cannot be fingerprinted. I am indebted to the Attorney's officers for drawing that to my attention. I stress that this Bill has been looked at by the Director of Public Prosecutions.

The amendments seek to make some technical improvements, on the advice of Mr Connolly's officers, and accepted by Parliamentary Counsel. In the main sheet of amendments that has been circulated, paragraph 4 says, "omit '14', substitute '18'". That also is to bring the photograph issue into line with the Children's Services Act. It is now entirely consistent with the Children's Services Act.

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

> That so much of standing and temporary orders be suspended as would prevent debate on this Bill concluding.

MR STEVENSON (12.30): The initial Bill suggested that children over the age of 14 could have their fingerprints, photographs, et cetera, taken; but there is a provision within the Children's Services Act 1986 that prevents that happening. Mr Collaery's amendments will now protect children from such unwarranted actions. I agree with the Bill as it will be amended.

MR STEFANIAK (12.31): Whilst we have no problem with most of the Bill, it is something we would be looking at in future. It is obviously going to pass, as it is very important. We are mindful that law-breakers, no matter how old they are, are brought to justice.

Whilst we agree with the amendments proposed by Mr Collaery, I would sound a note of warning in relation to proposed new subsection (4). I note that Mr Collaery has made his amendments because of the Children's Services Act, which has a similar provision. However, the old judges' rules, which applied to the taking of evidence and how the police go about their business in terms of interviewing people, did have the original provision Mr Collaery had here in relation to the consent of a parent or guardian being needed before fingerprints or photographs could be taken of a young person over the age of 14 but under the age of 18. I tend to think that that is a sensible provision.

Unfortunately, there are a number of young people in this town, often aged 16 and 17, who commit very serious offences and who do not necessarily have a parent or guardian who can be easily found. Perhaps that is something a future government will need to look at. I think there are some problems with the Children's Services Act, and this would merely mirror that problem. That is something the law enforcement agencies have to consider, and it would need some further law reform. The rest of the Bill does put into legislative form what has been the practice. I have also spoken to the Director of Public Prosecutions in relation to the substantive Bill, and he has no problems with it.

Amendments agreed to.

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

Bill, as amended, agreed to.

APPROPRIATION (AMENDMENT) BILL 1991

Debate resumed from 10 December 1991, on motion by **Ms Follett**:

That this Bill be agreed to in principle.

MR KAINE (Leader of the Opposition) (12.33): Mr Speaker, the Liberal Party has no objection to this Bill. It is clearly simply a machinery Bill, and we agree with it.

MR COLLAERY (12.33): The Rally also supports the Bill, Mr Speaker.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Sitting suspended from 12.34 to 2.30 pm

DISTINGUISHED VISITORS

MR SPEAKER: Present in the gallery today is His Worship Alderman Frank Pangallo, accompanied by Mr Hugh Percy, the Queanbeyan City Manager and Town Clerk. On behalf of all members I bid them a warm welcome.

Members: Hear, hear!

QUESTIONS WITHOUT NOTICE

Ministerial Travel Expenditure

MR KAINE: I direct a question to the Chief Minister. I note that, according to today's media, one Minister in Queensland has resigned over misusing only $342 worth of travel funds. Given the use by the Chief Minister and Mr Berry of nearly $7,000 of public moneys to go to the Labor conference in Hobart, does the Chief Minister believe that she is less accountable than her Queensland colleagues and, if not, when does she intend to resign?

MS FOLLETT: Mr Speaker, I will not be resigning. There has been no misuse. We have visited this issue on a number of occasions, and I have repeatedly addressed the issue. I can say that there was no misuse of public funds on that occasion, and I really do not believe that Mr Kaine has any call whatsoever to talk about resignations.

MR KAINE: I ask a supplementary question. Does the Chief Minister not believe that she is accountable to the taxpayer for the $7,000 that she spent to go to Hobart?

MS FOLLETT: Of course I am accountable, Mr Speaker, and the matter is a matter of public record. I have never pretended otherwise. It is an accountable matter, and it has been accounted for.

Occupational Health and Safety

MR MOORE: Mr Speaker, my question is about occupational health and safety at TAFE. I am quite happy for either Mr Berry or Mr Wood to take the question. My question follows a letter from the student association of the ACT Institute of TAFE, which claims that a decision has been made to centralise all occupational health and safety units in the hope of saving $100,000 and that it will result in an inferior service for the following reasons: A full-time occupational health and safety officer has been replaced by a part-time, two-to-three-days-a-week person; local TAFE knowledge is lost; the officer will be less able to interact with a balance of TAFE corporate services, special student needs and so forth. The students are wondering - indeed, I am wondering, and I presume the Canberra community is wondering - whether, in fact, there will be a saving under these circumstances and whether the loss of services can be adequately justified.

MR BERRY: I thank Mr Moore for the question. Yes, the Government set out to deliver occupational health and safety services more efficiently. That is why there was a centralisation, if one may use that term. But there will be no loss of service. In fact, with the centralisation of these services, it will be found that services will be of a high quality and workers in those areas need not worry about the level of occupational health and safety surveillance and service that they receive.

It is true that some workers might be concerned about losing designated people from their particular work area, but the Government has made a decision which basically boils down to more efficient use of occupational health and safety officers. Of course, they will have access to higher quality databases and more centralised expertise which will in turn flow on to the workplace.

Since the centralisation of occupational health and safety functions within the ACT Government Service, the responsibility for the overall provision of these functions rests with the Chief Minister's Division, as Mr Moore has pointed out. However, the organisation of these services is provided by the work improvement department of the ACT Institute of TAFE.

The objective of that department with regard to OH and S is to provide a service which maintains and improves both working and teaching environment - including the conducting of health and safety audits, taking action to correct OH and S related problems as appropriate and carrying out routine and ad hoc inspections of all work areas - and to ensure the overall quality of the working and teaching environment within the institute with regard to its OH and S requirements. These services protect both institute staff and students.

OH and S service provision is carried out in accordance with the legislation and agreements which apply across the ACT Government Service. It really goes back to the quality of a legislation, which of course the Labor Party was proud to introduce, and adherence to that legislation. I feel confident that the level of OH and S attention required on the job and in the workplace for teachers and students will be of a quality which will satisfy both them and Mr Moore.

Career Education

MR STEFANIAK: My question is addressed to the Minister for Education, Mr Wood. The Education Department identified the career education consultant's position as surplus in 1990, as a result of which we will see that role and a work experience coordinator position combined into one. Are you aware that that decision may well reduce the professional delivery of career advice and information in ACT government schools, thus inhibiting the ability of ACT public school students to make informed decisions concerning their career and occupational paths, and will affect the training and development of the ACT public schools career advisers? Does the Minister intend to see through the amalgamation of those two positions or not?

MR WOOD: Mr Speaker, I did answer this question, I think, from Mrs Nolan the other day. Can I suggest, Mr Stefaniak, that you look at my answer of one day last week. It will explain the situation.

Psychiatric Facilities

MR STEVENSON: My question is directed to Mr Berry. It concerns patients with severe psychological disturbances that require them to be confined to a ward, possibly because of antisocial or violent behaviour. How many beds are available, and at which hospital or hospitals are they available, for such patients?

MR BERRY: As far as the public hospital system is concerned, the new psychiatric wing at the Woden Valley Hospital - I am trying to, but cannot, recall the date - has been open for some time, and I had the pleasure of opening it. I think Mr Humphries was there; Mr Kaine was there.

Dr Kinloch: We were there, but we cannot remember the date either.

MR BERRY: Does anybody else remember the date?

Mr Collaery: But you were not taken aside and asked to lie down.

MR BERRY: Were you?

Mr Collaery: I was smart enough not to go, Mr Berry.

MR BERRY: A range of services is provided at varying levels of security within the facility, but my recollection is that there are about 32 beds within it.

Mr Stevenson: Is it currently operating? Are they currently available?

MR BERRY: Yes, it is open and running.

MR SPEAKER: Order, Mr Stevenson!

Assembly Building Lifts

MRS GRASSBY: My question is addressed to you, Mr Speaker. It is about the lifts in this building. Is there anything that you can do about them? There are times when I am sure everyone in the Assembly has waited for five minutes or a lot longer for a lift.

Mr Connolly: Craig and Carmel are still waiting.

MRS GRASSBY: I gather that Craig and Carmel are still waiting. I have the feeling that there is a sixth floor in this building or maybe a B3 that only you know about and that at times the lifts go to either one of these places and stay there. I have the terrible fear that one day the door will open on the fifth floor and I will find one of the attendants looking 10 to 15 years older because he has been in the lift all that time. Could you do something about the lifts, please?

MR SPEAKER: I would like to advise members that this has been brought to my attention previously, as one can assume with the extra two minutes that were given to the ringing of the bells to overcome that delay. It is a considerable expense to vary the lifts - many thousands of dollars. At this time we just do not have the money, and the owners of the building, I believe, are not prepared to do it on their initiative. Unfortunately, you will just have to get up earlier.

Domiciliary Oxygen Service

MR HUMPHRIES: My question is directed to the Minister for Health. Can he confirm that the domiciliary oxygen program is about to exceed, or has already exceeded, its budget for this financial year? If so, what arrangements will the Minister be making to ensure that patients who are presently part of that program will not miss out on domiciliary oxygen for the rest of this financial year?

MR BERRY: The domiciliary oxygen service is a very important service for people who require the provision of medicinal oxygen, and undoubtedly Mr Humphries recalls, from his time as Minister, some difficulties with its provision.

Mr Humphries: Which were rectified in the end.

MR BERRY: He claims that they were rectified in the end. I wonder whether that had anything to do with the $17m budget blow-out which probably happened around the same time.

I am not able to tell Mr Humphries now how much money the domiciliary oxygen service has spent to date. Had he put on notice the question asking for those sorts of details, I would have been happy to investigate the matter and give it to him in writing or, if he had given me an hour's notice, I would have been able to give him the answer now. I am not able to give him the level of detail that he requires, but I can say that the Government will be working to ensure that the provision of oxygen to people who are in need of it will continue and that the Labor Government will be as compassionate in that regard as it is in all others where its social justice focus leads it.

MR HUMPHRIES: I have a supplementary question. I ask the Minister: Will he do me the courtesy of taking my question on notice, then?

MR BERRY: Now that he has asked, I shall.

Tourism Commission Offices

MRS NOLAN: My question is addressed to the Chief Minister in her capacity as Minister for tourism. I understand that the tourism offices in Sydney and Melbourne closed at the end of November. Are we still paying rent on those offices? If so, for how long is that to continue and what is the compensation pay-out required to get out of the leases on both of those offices?

MS FOLLETT: I thank Mrs Nolan for the question, Mr Speaker, and I think again it is very similar to a question that we had previously.

Mr Kaine: I think so, too.

MS FOLLETT: I think so. Mrs Nolan has asked about the Tourism Commission offices in Sydney and Melbourne. It has been well known for some time that there has been the intention to close both those offices and that the reason for that has been in order to concentrate the Tourism Commission's funds and activities on marketing. I think that decision was well taken and I think it will prove to be a cost-effective decision.

Mrs Nolan has asked, in particular, whether the commission continues to pay rent on those offices. I think it might be best if I take that question on notice; but I would like to note in doing so, Mr Speaker, that there are commercial considerations involved for the Tourism Commission. If it is not possible to give Mrs Nolan a high degree of detail

on those matters, I hope that she will understand, because it is a commercial matter and it may not be in the commission's best interests to have the full detail of those sorts of commercial arrangements, particularly when it is presumably trying to get out of leases, revealed in public. I will get Mrs Nolan all the information that it is possible to get and give it to her as quickly as I can.

Sports Facilities Coordinator

MR COLLAERY: My question is directed to the rapidly departing Mr Berry, the Minister for Sport. I ask him whether, in view of his comments in relation to the secondment of Mr Peter Conway to his office - seconded through "relevant experience in sport and recreation" - he will assure this house that that senior appointment or secondment was based on a consideration of relevant criteria, other potential candidates and an open appointment.

MR BERRY: I thank Mr Collaery, but not very much, for his question. I get a little disappointed over this issue because this officer's name has been mentioned three or four times in this house in the last couple of days, and it seems to me as though it is more a personality issue than anything else. When this question was first raised I told the member that it was a matter for the public service. It is not an appointment to my office; it is an appointment to a position within the service, and it is entirely a public service matter, not one in which Ministers were involved.

MR COLLAERY: I have a supplementary question: In view of Mr Berry's response, would he care to comment upon an article in the *Canberra Times* on Saturday referring to Mr Conway's singing the praises of the Chief Minister at a sports function, and would the Minister concede that Mr Peter Conway is a long-term, active member of the Australian Labor Party?

MR BERRY: I think the question is out of order. If he wants to find out whether the person is a member of the Labor Party or not, I think he should ask him or the secretary of the party, not the Minister for Sport.

Mr Collaery: You are using government funds to campaign, are you not?

MR BERRY: As was said a moment ago, Mr Conway is one of many thousands of ACT Government Service members who sing the praises of Rosemary Follett; there is no question about that. The chorus is long and loud. I do not know why Mr Collaery is so upset about that, except, as I have said before, that he is getting involved in personal sniping matches with people who cannot defend themselves in this place. It is a ridiculous proposition to have Government Service members' names raised in this place. Mr Collaery

attempts to smear the process. Mr Conway was appointed in accordance with public service management priorities, and no Minister had anything to do with it. That is the end of the matter.

Mr Collaery: Is that on his file?

MR BERRY: I do not look at his file.

Mr Collaery: So, how could you say it?

MR SPEAKER: Order!

School Principal and Deputy Principal Appointments

DR KINLOCH: My question is addressed to Mr Wood, the Minister for Education. Friday will be the last day of the state school year. There has been a remarkable development in the promotion system in the ACT teachers bailiwick. There are a lot of new deputy principals and principals, and there is considerable worry in many parts of the teaching community, including the college community, about the degree to which those appointments have been finalised and will be finalised by Friday. If they are not finalised then, there is no possibility for those appointees to be in charge for the forthcoming educational year. Could the Minister comment?

MR WOOD: Mr Speaker, the question in relation to one school in particular was raised with me about a week and a half ago. It was expressed that it was not possible to conclude the appeals this year and that they would have to wait until next year. I found that unsatisfactory and required that appeals in that instance be completed this year so that the principal would be known before the school year is out. I expressed the view that this should universally be the case, and it is my expectation that all principals' positions will be filled before the year is closed. I have to say "expectation" because there are semi-legal processes in place, I suppose. Appeals panels are meeting, and I cannot impose heavily on those matters of procedure. But, certainly, I think everybody recognises that it is important that these matters be complete, and I trust that they will be.

Policy Plan Changes

MR JENSEN: Mr Speaker, my question is directed to Mr Wood in his capacity as Minister for the Environment, Land and Planning. I refer him to the written response to my question on policy plan changes for open space to residential, which was asked on 3 December. The written response was signed on 4 December. He said that some of the areas being proposed for residential use were ancillary

open space permitted under the residential PLUZ and would not be developed for residential use. Can the Minister advise when the details of those areas in annex I of the planning report, which were changed from open space or similar land use to residential and which it is proposed to develop as residential as opposed to ancillary open space in the residential PLUZ, will be made available to the public?

MR WOOD: I do not have that date or the approximate date available. I will make the appropriate inquiries and inform you, Mr Jensen.

Government School Funding

MR MOORE: Mr Speaker, my question is directed to Mr Wood as Minister for Education. The ACT Council of Parents and Citizens Associations has rejected outright the key recommendation of the Schools Restructuring Task Force, for per capita funding of ACT government schools. The council described such a recommendation, if implemented, as a backdoor method of closing schools through financial, education and administrative strangulation of smaller schools. In the light of such a scathing response, will the Government now reject per capita funding of public schools?

MR WOOD: Mr Speaker, I have read the response of the Council of P and C Associations, as I have read the draft, or the public advance, document of the task force. It is proper for me, as Minister, to withhold comment at this stage. I certainly have some views, and they are constantly being formed and further developed; but I expect that when Professor Brine brings the report to me it is the correct procedure to give it careful consideration and ultimately to make a view known. That view will not simply be my view but will reflect the view of the ALP Government.

Health Portfolio Expenditure

MR HUMPHRIES: Mr Speaker, my question is addressed to the Treasurer, or to the Minister for Health if she is unable to answer it. I ask: What is the dollar amount that has actually been spent on the health portfolio in the year to date? I understand that there is a difference between that and the amount that was detailed in the monthly statements that have been tabled in the Assembly, in that those figures reflect some discounting through the business rules which the Minister was kind enough to produce the other day. Given that there is a difference between those two sets of figures, I ask: What is the dollar amount that has actually been spent on the health portfolio in the year to date?

MR BERRY: This issue, Mr Speaker, demonstrates the level of interference in the affairs of the Board of Health to which the member opposite is prepared to go. This Assembly went through a lengthy debate about the provision of figures by the Board of Health; a motion was passed, calling on me to provide those figures; I have subsequently required the board, in accordance with the legislation, to provide the figures to me in order that I can give them to the member. If he wishes to vary the motion which has been put before this place in relation to those figures, perhaps it is an appropriate course for him to take.

But let me say this: He mentions two sets of figures. There is only one set of figures, and that is the set that I have given him, in accordance with the directions of this Assembly. I do not have a separate set of figures. You have asked for, and I think at great impost the board supplies, a set of complete figures each month, and it will continue to do that as I have directed it to do it.

Mr Humphries: What is the effect of the business rules, then?

MR BERRY: Another member of the Liberal Party asked me a question about the business rules, and I have provided him with them. The issue of a separate set of figures does not arise from the business rules. The business rules merely demonstrate the circumstances under which funding will be provided to the Board of Health.

MR HUMPHRIES: I have a supplementary question. Do I take it that the Minister is advising the Assembly that the operation of the business rules does not have any effect on the actual amount that is expended by the Board of Health vis-a-vis the amount that is appropriated for the Board of Health under the budget?

MR BERRY: No, you take it wrongly. If, under the business rules, the Board of Health seeks supplementation and it accords with the business rules, then supplementation will be provided.

Mr Humphries: Do they show up in those figures that were given to us?

MR BERRY: Mr Humphries now asks whether or not these figures show up in the most recent ones provided to him. Mr Humphries got behind a motion in this place to provide that set of figures. Those are the figures for expenditure and so on which were provided to the end of November. I think he has a full supply of information in relation to expenditure.

Mr Humphries: To the end of October.

MR BERRY: Yes, it was to the end of October. Time slips away when you are enjoying yourself.

Respite Care

MRS NOLAN: My question is addressed to Mr Connolly in his capacity as Minister for Community Services. I refer him to an article in today's *Canberra Times*, at page 3, which refers to Respite Care which visits the frail elderly and the young disabled for several hours each week to give their usual carers some relief. I understand that the waiting list is of between 30 and 40 in both these categories. What is the Minister going to do about this situation, given that over the holiday period there is going to be a very great necessity for some respite care for carers?

MR CONNOLLY: Mr Speaker, the position of this service, along with a number of other services funded under the home and community care program, certainly gives me no great joy. The ACT Government has been able to maintain funding and provide growth funds for these programs roughly in accordance with the current rate of inflation, at 2.9 per cent. So, we have been able to insulate this program from cuts and from the general reduction in the size of overall ACT expenditure, which I think across the whole of government is something like 4.5 per cent. The Chief Minister and Treasurer was commended a week or so ago by the Commonwealth Government for the responsible way in which the ACT has faced its significant reduction in Commonwealth revenue.

In the context of a very tight budget, holding the program in real terms is as much as we have been able to do. I am not happy about the fact that waiting lists are growing. No HACC program has ever been intended to be a sort of supply on demand program. It has never been intended that HACC programs would be able to meet every demand that is placed upon them. All HACC programs are now looking at the way they provide their services, the way in which they allocate priorities and the way in which they provide a service either totally free or subject to some charge, whether it be means tested or otherwise. It is an area in which, if we had more money, we could do more, no doubt. The HACC programs have been in place only since about 1987. The awareness in the community continues to grow, and the growth in recent years has been quite significant.

All we have been able to do this year is maintain the program in real terms. The Commonwealth has held out the carrot of additional funds to these services if the ACT Government can match those additional funds; but, as I was reported as having said in the paper this morning, it is something of a two-card trick because the Commonwealth, which has dramatically reduced ACT revenues by cutting us off at the knees with our general grants, taking a large wad of money out of our back pocket, is dangling a few dollars in front of us and saying, "If you can match this,

we will give it to you". The inability of the ACT Government to fully match the Commonwealth growth funds is an inability which is matched by every other government in Australia: Labor, Liberal - there is only one Liberal government at the moment - and Country-Liberal Party in the Northern Territory.

So, this is not a party-political problem. It is a problem that every government has had; the Commonwealth is holding out the promise of growth funds which cannot be matched. I am proposing to write to my colleagues in this portfolio around Australia and see whether we can have a unified approach to the Commonwealth to free up some of that additional funding which at the moment is simply sitting in the Commonwealth coffers.

Health Services

MR HUMPHRIES: Mr Speaker, my question is directed to the Minister for Health. He has maintained in the past that he believes that in the current financial year health services can be maintained at existing levels and that at the same time the budget can be cut by something in the order of 8.5 per cent. I ask the Minister: If the choice comes down to sustaining services or experiencing a problem with the budget outcome - that is, overrunning the budget - which would the Minister's choice be?

MR BERRY: That is a hypothetical question.

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

PAPERS

MS FOLLETT (Chief Minister and Treasurer): I would like to offer some replies to questions without notice which were directed to me. The first was from Ms Maher yesterday; it concerns a consultancy report on a review of training and development options for women. The second is from Mrs Nolan; again, it was asked yesterday and it concerns the land tax and the question of thresholds at a variety of levels. I have an answer to a question from Mr Collaery about the sum raised as part of payroll tax which would relate to service contracts. A question was asked by Mr Kaine about the number of jobs that the ACT budget initiatives would create in this fiscal year. Mr Speaker, I wish to table those answers and seek leave to have them incorporated in *Hansard.*

Leave granted.

Documents incorporated at Appendix 2.

MR BERRY (Minister for Health and Minister for Sport): For the information of members I table the 1990-91 annual report of the Radiation Council.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning): Mr Speaker, for the information of members I table:

ACT Decade of Landcare Plan, December 1991.
National Plan of Action for Women in TAFE - National Plan.
ACT Implementation Plan 1992-94.
Department of Education and the Arts - Report for 1990-91.

CONSERVATION, HERITAGE AND ENVIRONMENT - STANDING COMMITTEE
Report on the Environmental and Heritage Aspects of Rural Leases

MR MOORE (3.02): Mr Speaker, I present the report of the Standing Committee on Conservation, Heritage and Environment on the environmental and heritage aspects of ACT rural leases, together with extracts of the relevant minutes of proceedings. I move:

That the report be noted.

On 10 May 1991, the Conservation, Heritage and Environment Committee resolved, on the motion of Mrs Robyn Nolan, to inquire into and report on the environmental and heritage implications for rural areas of the ACT of lease allocations, leasing conditions and tenure provisions, land use controls exercised by the ACT Administration, and provisions for the resumption of land by the administration, to the extent to which the standard of maintenance of rural leaseholds and homesteads is affected by lease conditions, and any related matters which may arise.

Following that initiative of Mrs Nolan, I think it is worth pointing out to the Assembly that she ceased being a member of the committee on 21 June 1991, but the committee proceeded with this report and now has pleasure in presenting it to the Assembly. It is really the first broad look at the rural environment since the area was settled over 150 years ago. Rural land in the ACT is held in three primary ways - under a lease, under a licence or under agistment. The committee has looked at the way in which leases are held and has reported accordingly.

I think it is important at this stage to point out, Mr Speaker, that the committee did not see its role as representing the interests of rural leaseholders, although we had a great number of submissions and many approaches from people who hold those leases. The committee's

responsibility was really to take a long-term view of the heritage and environmental aspects of rural leases. Insofar as we looked at the environmental aspects, the issues that were raised by the rural lessees were of great interest to us, in particular tenure, farm management and farm management techniques.

We made a series of recommendations, the first of which has to do with lease administration, and they are found at pages 9 and 10, where the committee recommended that we allocate all new and transferable agistment and other leases, apart from intermittent grazing, on an open market basis; make it a condition that in the sale of any lease the prospective purchaser provide evidence of appropriate technical, financial and other relevant resources to manage the lease effectively; examine the desirability, in terms of economic viability and potential pressures on the land environment, of amalgamating leases into larger units when areas of land are left over from other leases or as leases are surrendered; ensure that alluvial river flats and other land suitable for intensive agriculture in the ACT be retained; monitor all grazing and agistment leases and licences to prevent overstocking and act to control overstocking where it occurs; and require all lessees and agistment licensees to protect trees from ringbarking, particularly where horses are agisted.

Mr Speaker, I think the first set of recommendations that the committee provided in this report really reflect the agenda of the committee, and that is to do with the environment and our interest in looking at our environment as a whole. We in the ACT are very fortunate that we have leasehold land. As such, it is important for us to remember that, whilst the lessee has a prime interest in the land, it is still owned by the people of the ACT and, as such, the people of the ACT in general also have an interest in that land; we have a particular interest in the long-term maintenance and the long-term sustainability of that land. It is interesting how often that term "sustainability" seems to have been mentioned recently, but I think it is entirely appropriate that it is and that it continues to be, because land in particular must be able to be taken care of in a sustainable fashion.

With that in mind, Mr Speaker, I take you to one of our particular recommendations, which has to do with farm management and development plans and which you will find at page 21. The committee recommended that it be a condition of existing and prospective leases that a farm management plan covering proposals and budgets to meet lease conditions be submitted for agreement between the Government and the lessee; all farm management plans include provision for sustainable environmental goals, including land care and tree conservation and regeneration; and the Government and the lessee jointly review farm management plans at least every two years to assess performance against the objectives and, as necessary, vary plans to meet changing circumstances.

At first glance this may appear to be a particularly onerous task; but there are a limited number of rural leaseholders in the ACT, and it seems to us that it is a vitally important role. It is not the role of the Government to tell people how to manage their farms or how to look after land care or tree conservation and regeneration. What the committee foresees here is that it will be a cooperative approach whereby a farm management plan is prepared by the lessee and the Government then becomes involved in a discussion on that so that the lessee is aware of the longer-term goals so that the Government and the people of the ACT feel confident that the long-term goals of our rural areas are being looked after in an appropriate way.

I really think it is important, Mr Deputy Speaker, to emphasise that we do not see that recommendation as being invasive. The rural lessees pointed out to us that they do not have a concern about a need for farm management plans; they all have farm management plans anyway, and there is a taxation requirement as far as farm management plans go. So, we are not asking them to do anything new. What we are saying is that those farm management plans ought to include a very strong environmental flavour as well as a farm viability flavour that includes how many sheep can be run for how long and what is profitable.

The other area to which I will draw attention, Mr Deputy Speaker, is the control of land use, particularly with reference to noxious weeds, native grasses and woodlands, and feral and native animals. At page 25 the committee recommends that the Government examine the feasibility of establishing a native vegetation retention and regeneration scheme. One thing that is causing more and more concern and more and more interest in environmental circles is the notion of native vegetation, particularly native grasslands. I think we may well find in the next few years that there are many advantages to emphasising our native grasses and other vegetation over imported varieties.

It is important that the Government take action to control the growth of and eradicate, as far as possible, noxious plants and weeds where they occur on government controlled land. Evidence given to the committee suggested that, whilst the Government is insisting that rural leaseholders control the noxious weeds and feral animals on their properties, it is not doing as well as it could on government land. The committee also recommended that the Government assist in the eradication of noxious plants and weeds where they occur on leaseholds adjacent to government controlled lands, as well as encouraging the lessees.

The other important thing that we need to do is examine whether the habitat and existence of rarer marsupial animal species are being threatened by the numbers of eastern grey kangaroos in the ACT. I digress a little from the report in saying that we certainly are becoming aware of the

growing number of eastern grey kangaroos in the ACT. That is going to need to be looked at very, very carefully and will have to be dealt with in a sensitive and appropriate way.

From living in South Australia on the Eyre Peninsula during a drought time, I am aware of how devastating large mobs of kangaroos can be, and I am familiar with the techniques that were used there to cull kangaroos, none of which were particularly pretty - rather the contrary was true. However, licences were granted and methods were established to cull those kangaroos. I think it is an issue that the ACT is going to have to deal with before too long. But, in that sense, I digress from the report.

Mr Deputy Speaker, I would like to offer my thanks particularly to the secretary of the committee, Bill Symington, for his work in the preparation of this report and to Kim Blackburn, who has worked behind many of the reports of many of the committees in which I have been involved and which I have chaired. I think we really must not underestimate her work because she has been typing for and supporting those committees for the life of this Assembly. I feel delighted that in the last sitting days of the Assembly I have the opportunity to thank all the committee support staff and particularly those people.

To the members of the committee who participated, my thanks are appropriate. I still believe that one of the strongest facets of the life of this Assembly which has been broadly recognised is the work done by the committees, because they almost invariably work with a spirit of cooperation and are rarely the place for point scoring.

In this particular case, I would also like to extend thanks to the Public Affairs Branch staff who were kind enough to prepare the front cover, as indeed they were kind enough to prepare the front cover of the discussion paper that we brought down the other day for the same committee. I think the cover of this report sets a new standard as to how reports could look and how much more attractive they could be. They deserve special thanks for doing that. I hope other committees will be able to use that technique in the future.

Many government officers have been involved in providing information to the committee. I thank the Ministers involved in lending us those public servants, and I thank the public servants, who have been particularly helpful.

Also I thank those who made submissions, particularly the Rural Lessees Association, and those rural leaseholders who entertained and looked after the committee on their properties, particularly Mr and Mrs Anderson and Mr and Mrs Adams.

Mr Deputy Speaker, I think this report on rural leases is very valuable. It was one of the positive contributions made by Mrs Nolan to the Standing Committee on Conservation, Heritage and Environment, and I think it is an appropriate report to be considered by the next government of the ACT.

MR JENSEN (3.16): Mr Deputy Speaker, this is a very important report which probably should have been produced as a joint committee report, which would have enabled the leasing and planning related issues to be covered in greater detail. However, it certainly has been able to relate environmental and heritage concerns to the need for longer lease terms. To this end, I think it will have achieved its aim, and I think it has been a good report from that point of view. I am also aware that the bureaucracy, the Rural Lessees Association and those concerned about environmental issues related to rural activities in the ACT are eagerly awaiting it. I do not believe that they will be disappointed with it as it stands at the moment.

Before commenting on some aspects of the report, I would like to place on record my appreciation for the work of the former members of the committee - Dr Kinloch, Mrs Nolan and Mr Stefaniak - and the members of the committee secretariat, particularly Bill Symington and Mrs Kim Blackburn whom Mr Moore has already mentioned. I would also like to express my thanks to the other members of the committee, but I will come to that a little later.

It is also appropriate, Mr Deputy Speaker, to thank the members of the Rural Lessees Association who provided the committee with an opportunity to see the issues on the ground. I thank Mr and Mrs Adams, whom Mr Moore has already mentioned, Mr and Mrs Anderson and Murdoch Geikie and his family from Lanyon, who provided an opportunity for members of the committee to see the issue at first hand.

Also, we paid a visit to the Royalla woolshed, which is currently being leased by a family from outside the ACT, who live just across the border. It was most illuminating to see that particular site. I am not quite sure what the current situation is with the electricity for that particular facility. I understand that some work was being done on that. Mr Wood might like to make a note of that and see where we stand on that one, as it is a property that belongs to the ACT and there was an issue about having the electricity connected there. I am not aware of the current situation.

At this time it is appropriate to thank the members of the Conservation Council of the South-East Region and Canberra who also took time out to show members the potential problems of the Gungahlin development for the existing rural operations in that area.

All these groups also submitted detailed and thoughtful submissions on the issue and appeared before the committee. I think all committees in the ACT should be appreciative of the amount of time taken by these groups, particularly voluntary groups and organisations, to not only prepare detailed submissions but also take the time - some of them, I would suggest, during working hours; so they would have to take time off from work - to appear before our committees.

Mr Deputy Speaker, this is a good report because it is unanimous and has the support of the committee. It is now appropriate for me to thank those existing members of the committee who participated in the preparation of this report and its final recommendations in an atmosphere of general cooperation and participation. I think all members are to be commended for that attitude. As Mr Moore has said, it has been a feature of the committees of the ACT Assembly in general terms that this sort of cooperation in this process has taken place.

Like Mrs Nolan and other members of the committee, for some time I have been aware of the problems and concerns being expressed now by the rural lessees - prior to the Assembly being formed and as a member of the Alliance Government with regular contact with rural lessees in my role assisting the former Chief Minister, Mr Kaine, in the area of environment, land and planning and assisting Mr Duby in relation to heritage matters.

Also, I think it is probably appropriate to put on record the fact that, as Mr Moore will no doubt recall, the Residents Rally had a clear statement in our regional policy and in our environment policy on the need for a review of the system of land tenure; it was covered in more detail in our environment policy. Our particular concern related to the effect on the environment of the short terms of existing leases and the lack of incentives to spend the funds required to help maintain the environment. Some of the farms that we visited - particularly Mr Adams' farm at the end of the Tuggeranong Valley - are prime examples of how a landholder has moved onto a property and taken the initiative, in conjunction with government, to assist in the retention of the environment which has been modified by the operations of rural activities over a number of years.

Early this year I attended a national conference on trees and sustainable agriculture at Albury in my capacity as a member of Greening Australia and the management committee of that organisation in the ACT. I used it as a study trip to improve my knowledge of this very important issue in not only Australia but also the ACT. It was obvious to me that there is an increasing awareness by rural landholders of the benefits of planting trees and other activities in improving not only production but also the environment, particularly as it relates to dry land salinity from which the ACT, fortunately, does not suffer to any degree. We have more problems with erosion, I would suggest, than dry land salinity.

I think these are some of the matters that we have to look at, as we also look at problems associated with weed infestation, for example. I note and support fully the comments made by Mr Moore in relation to the requirement for the ACT Government to play its role in ensuring that any land for which it has responsibility is looked after so that the rural lessees who live nearby do not suffer from the problems of weed infestation from government land.

Let me now turn briefly, Mr Deputy Speaker, to some of the recommendations of the committee's report. One of the key recommendations in relation to the current process is the need to allocate new and transferable agistments and other leases, apart from intermittent grazing, on an open market basis. I think that is a very important process. It is very important to make sure that those people who are bidding for rural leases do so on an open market, in competition with others. But I think we have to remember that there are people who have been living on some of these rural leases for some time and that they are their places of residence. I think we cover that later in one of our recommendations. It is important to acknowledge that when we are looking at the allocation of leases.

One of the other problems associated with the ACT has been overstocking. I think in general terms the officers of the Department of the Environment, Land and Planning who look after this area do a pretty fair job in ensuring that we do the best we can to not allow overstocking of our areas. We have a policy at the moment of agistment being granted to only those people who actually have an ACT rural lease, to make sure that there is potential for them to move stock around if they run into a problem.

I think we all are aware of some of the problems associated with the ringbarking of trees, particularly in relation to where horses are. Some work is being done at the moment in relation to trees like Eucalyptus macrorhyncha, or the red stringy-bark, which seems to be particularly affected in areas where horses are allowed to graze or agist.

Moving on to issues like soil erosion, I think it is important for the Government, in conjunction with rural lessees, to engage in remedial work, and not necessarily leave it all to the leaseholder, because some of the problems have developed over a period and are, I would suggest, a result of the policies that have been in place for the short term of the lease. We have recommended that the Government consider the availability of low interest loans to enable lessees to improve the soil conservation practices on their properties.

I think the issue of management plans has been discussed. It is quite clear that most farmers or rural lessees who have any aspirations to be effective and efficient farmers have developed forms of management of the land and are preparing land management plans, et cetera. As members may or may not know, some very good information has been made

available through the New South Wales department to assist farmers in carrying out an assessment of their property with a view to developing a management plan. My understanding is that the ACT service is taking that up with its New South Wales counterpart so that some of the information from that can be made available to people of the ACT. I would encourage them to make full use of it. That is a rather key issue, Mr Deputy Speaker, that we need to look at.

The issue of tenure has been discussed. We need to make sure that the responsibility for management, in terms of environment and ecology of the leasehold, is undertaken effectively and efficiently by the owner of the leasehold. You will find that once the recommendations of this committee are digested we will see, in conjunction with the Territory Plan, longer-term leases being made available to the rural lessees in the ACT. That will be an important start in improving the environment around the ACT, particularly in relation to noxious weeds and other problems like feral animals, which do cause problems within the environment.

Lastly, Mr Deputy Speaker, I think the issue of the maintenance of heritage sites within rural areas in the ACT is very important. The ACT started as a rural area from the point of European settlement, and I think it is important to make sure that we maintain a representative section of that type of activity in the ACT. On this basis, while the Government should oversight the maintenance of, and accept responsibility for, heritage sites which are not being maintained by the lessee, we also have to insist on some Federal role in this.

We all know that heritage grants are provided to the ACT when an area is listed by the National Trust, for example; but I think it is important to provide money as well at the same time to enable proper conservation plans to be prepared for these sites. One prime example is the old dairy in Belconnen. It was listed by the National Trust, but unfortunately no money was available to prepare a proper conservation plan for that site. By the time we get around to putting in a grant, excessive damage, just by virtue of time, may have occurred to that set of buildings, which may cause us some problems in the future. I think the issue of heritage is very important, and this is an area that all governments, Federal and State, have to look at on a joint basis to make sure that a representative section of our heritage, particularly our rural heritage, is maintained for future generations.

MRS GRASSBY (3.31): I am going to make this very short because there is another speaker after me. I want to thank the committee people who worked on this and who did an extremely good job. Also, I thank the people who came in and gave evidence. I did not get the opportunity to go out to the farms because, as I am on so many committees, it was impossible.

One of the things that came out of this report was that if you are going to lease land to people for farming purposes you have to give them tenure and, if the land is taken back at some time, they then would need to be reimbursed a reasonable amount because you cannot expect people to take up farming land and look after it as it should be done if they know that at any time they could find themselves with a week's notice to get out on the road, as the saying goes, or if they cannot be reimbursed for the amount of work they put into it.

We are very fortunate to have this sort of land around Canberra. There will come a time - I am quite sure my grandchildren will see it - when a lot of this land will have to be built on if Canberra keeps growing at the rate it is at the moment. Being a country girl, I know what a lovely life it is to be able to live on more land than just a small acreage or small block in town with neighbours virtually at your front and back doors.

Some evidence has shown that there are people who are not doing well, but there are also people who are doing extremely well. A person to whom I spoke had rented a house on a block that the Government leased out; it also had two other houses on it. When she leased the house, it was in very bad repair. The rent was rather reasonable, so she was prepared to put quite a bit into doing up the house. Immediately this had been done, not only did her rent go up but also the rent on the other houses went up. When she added up the amount of money that was coming in from the rent on the houses, she found that the person leasing the property was making quite a bit of profit without doing anything to the land. This was a point that needed to be looked into because I felt that this was not the way to go about it.

I feel that the land should be in use. If there are cattle or sheep on the land, it prevents bushfires from starting in long grass. Also all the farmers to whom we spoke, who farm this land or who look after it, do not stop people from bushwalking on their land. They do not mind this, as long as people close gates and take the care that they take of it. So, the people of Canberra are not locked out of this land; they are still able to use it for bushwalks or picnics or things like this.

Most of the people to whom we spoke were very helpful in coming forward with their remarks. I felt that the majority of them were genuinely keen to do the right thing but the fact that they have little or no tenure and that, if they were to leave, they would not get reimbursed for quite a bit of the amount of money that they have put into the land is of great concern. As a girl from the land and a farming area, I saw their point. If you feel that you are not going to get anything back from it, why should you sink an enormous amount of money into it? I think we should look after these people. Until we need the land,

they are doing us a service. I think the Government should be looking into a way in which we could be protecting not only their interests but also our interests, because while we would be protecting their interests we would be looking after our own.

I would like to thank all the other committee members who worked on this inquiry. It was an interesting one; we enjoyed this. It was not a really hard committee.

Mr Humphries: Not like bed numbers.

MRS GRASSBY: It was quite interesting, and it was very enjoyable. As Mr Humphries just said, "Not like bed numbers". I would not say that that was that hard either, Mr Humphries. It just depends on whom you are sitting on the committee with, and I will not name any names; it is not the place to do it.

But I thank them. I found myself on about seven committees, but this was one that I quite enjoyed being on. Even though I am a country girl, I learnt quite a bit from being on this committee about running small farms, as they do in Canberra. I come from an area where the farms were much larger and a lot more per acre is grown on them under irrigation. It was an interesting time. I thank those people, and I thank the committee. I will not take up any more of the time of the house because I know that Mr Humphries wishes to speak on this as well.

MR COLLAERY (3.36): Mr Deputy Speaker, the subject of rural leases in this Territory has to be looked at, as the committee clerk indicated in the introduction that was prepared for the committee, as part of the Monaro, part of the Limestone Plains. We are dealing with a custodianship issue, as Professor Hancock made very clear in his geographical survey of the Monaro some years ago, and as John Gale wrote, many years ago, in the history of the settlement of the Canberra region.

Mr Deputy Speaker, as a practising solicitor in this town who is aware of the practical condition of rural licensees, I am very pleased to be part of the committee which hopefully is going to prod the Government into providing tenure for those many licensees who are kept on in a variety of forms in the areas adjoining our urban developed parts of Canberra.

The problems can be rolled into one. You have, in many cases, good farmers on reasonable land - it is good land in some cases, but mostly it is reasonable at best - and they may well be keen to conduct a better economic activity on the land, but they do not have sufficient long-term tenure to use it as collateral to raise finance for pasture improvement or capital improvements. Additionally, they do not have the overall incentive to do that because in farming there is a strong attachment to the land and a strong sense of passing on your achievements within the family.

I think we have to look at the fundamental concerns of people who are on the land. Many of them see the land almost in mystical terms. I think some of the original greenies, as Mrs Grassby will no doubt agree with me, were farmers. That was a long time before the term became popular. Those of us who grew up on farms well know the measures that were taken by our elders in those days to protect trees from being effectively ringbarked by cattle rub and the rest. It always astounds me how those people who are let onto blocks without adequate backgrounds can very often lead to their degradation. The modern greenies often tend to blame the Pitt Street farmers and lump them in with the real farming community.

As my colleague Mr Jensen and other members know, the Decade of Landcare is a significant event in Australia, and Greening Australia is receiving significant support throughout the country from farmers and in the Territory from some of our leading rural licensees. We call them lessees, but in law some of them do not have a lease and they are mere licensees; some of them are licensees at will. That is a disgrace, and it must be put an end to. Rather than go through the overview of the various comments that others have made, with which I mostly agree, I want to say that the first thing that the incoming government has to do - these are major decisions and they should be made by an incoming government - is create a rural lease tenure system which gives those guarantees.

Mrs Nolan: Hear, hear!

MR COLLAERY: Mrs Nolan interjects, "Hear, hear!". I think the community is fortunate to have had the reference to the committee moved by her.

Mr Deputy Speaker, I want to record the graceful manner in which a number of witnesses assisted the committee. A lot of old-world grace still exists among rural people. However differently they perceive this Assembly, they contributed without rancour and spoke, in many cases quite eloquently, of what, in an urban sense, would be a most insecure position for them and their children to be living in. We do have genuine rural people in our midst. They do not number many; they do not count much in terms of electoral numbers. But from my point of view they are very important people, and I am sure other members agree with that.

I want to record one item particularly, and that was the evidence given by Mr Murdoch Geikie, who is the licensee, or lessee, at the old Lanyon station. In referring to changes in the Murrumbidgee River during the many, many decades that he has seen the Lanyon area develop and, to an extent, be spoilt, particularly by development too close in, he referred to the fact that there were, in the river, water moles. One had to think for a while and do some research to realise that that was the term used decades and decades ago for platypus.

This was a throwback in evidence before our committee of someone who could talk as John Gale recorded the platypus in this region in his book around the turn of the century. Here was Mr Murdoch Geikie referring to it in the old language that was used by our earlier settlers on the Limestone Plains. I believe that it was an honour to have that gentleman before our committee, and I was humbled to hear from someone of that excellent vintage a very, very green statement about how we should be preserving our waterways and the fauna in them.

Mr Deputy Speaker, I also wish to indicate that the rural lessees need to not be tied up in too much red tape. Even though I have supported a recommendation, at paragraph 10.5, that requires the Government and the lessee to jointly review farm management plans at least every two years to assess performance against the objectives and, as necessary, vary plans to meet changing circumstances, I did that with a degree of reluctance. Frankly, I wonder whether many bureaucrats know a lot about the detailed aspects of farm management. I know that we have excellent people with specialist qualifications in our Parks and Conservation Branch, and they are great people; but nothing beats having to scratch around on a farm to know the capacity of each paddock and the different attributes that each paddock has in terms of sun, run-off and soil capacity.

Some years ago, Mr Deputy Speaker, I did a course in soil agronomy relating to this region. I believe that there are great things to be won out of the rural lands around this Territory in terms of local wines. Those of you who have done the wine circuit around our region - I am not talking about the bars in the city area - know that we can pull some more of that productivity closer in and that we can and should be planting other crops, such as olives, which can come on in years to come.

The Monaro lends itself to very long cropping processes of farming as well as the traditional grazing in other areas where the blocks and the capital infrastructure are not really good enough in most cases, except for the showplaces, to compete with the land around Crookwell and Goulburn.

I believe that there is much to be said for a form of smaller farm on the alluvial areas around the city, and I believe that that should be broadly supported by the conservation movement, even though it is unhappy in principle about hobby farming. I believe that the conservation movement will support it when it realises that there is a growing market for locally produced farm produce in this Territory.

Our health food stores and vegetable markets are increasingly finding it commercially attractive, even though costs are still higher, to advertise locally grown produce, organically grown produce and, in terms of poultry

issues, free-range eggs. We all have seen those programs on television indicating how difficult it is for a battery hen to have any reasonable lifestyle in the systems that exist in our egg production plants. There are also long-term reviews being done of hormone-induced egg and poultry production. For a city that is surrounded by suitable land, those issues surely could be tackled in small measure, initially.

MR DEPUTY SPEAKER: Order! Your time has expired, Mr Collaery.

MR COLLAERY: I commend those additional issues to the lessees when they are given full tenure.

MR HUMPHRIES (3.47): Mr Deputy Speaker, I just want to make a few comments on this; I know that we have other business this afternoon. In engaging in this inquiry I was struck by the extent to which the rural surrounds of the ACT contribute a very important influence on the ACT and its urban environment.

In my reading, examination of the submissions and exploration of surrounding areas of the ACT, I noted that there were five major reasons for having a rural context, a rural environment, for the ACT: It drew the national capital into its Australian context, the context of a nation spread across a continent with a predominantly rural landscape; it rooted our cosmopolitan city to the national and cultural origins of our nation; it mitigated the sterility of a planned environment in this city; it broadened the economic base of the Territory, not enormously but significantly; and it provided some educational value to those, particularly the young, who might wish to see how tens of thousands of Australians earn their living and who might be residents of cities all their lives.

Given all those roles that the rural environment plays in our community, it is surprising that there needs to be such a timely review of the rural leasehold system in the ACT. One would have thought that those influences would guarantee constant attention to the problems being experienced by this sector, but such has not been the case.

What is surprising also is how delicate one might consider the rural assets of the ACT to be. They are greatly affected, obviously, by things such as climate and use but also particularly by matters of government policy - in this case very markedly by a tradition of rural leasehold in the ACT. Tenure, or rather the lack of tenure, in this Territory has been responsible, as other speakers have mentioned, for some decline in the status of rural industry in the ACT.

It is undoubtedly the case, and has undoubtedly been the case for many years, that short leases have contributed quite significantly to a lack of interest, to a down-playing of interest, on the part of rural lessees in the

maintenance, in the long term, of their land. If we succeed in doing only one thing in this inquiry, it will be, I hope, to raise the awareness of the administration of the need to provide more security of tenure for those who work and live off the land of this Territory.

The committee's recommendation in paragraph 5.7 therefore, I think, is at the heart of this inquiry. We recommend that the Government introduce a tenure system for all rural leases with the objective of ensuring more certainty of tenure and achieving more effective land management by leaseholders. Those two things go intimately hand in hand. You cannot expect people to take an interest in the long-term maintenance of their land - and, of course, rural leases are particularly prone to neglect in this area - unless you make efforts in the way that you structure the leasehold system to give them incentives to do so. They must have a stake in the land; they must have a reason for wanting to preserve that land, and that is why we feel that there needs to be greater tenure.

That applies also, obviously, to the policies affecting resumption of land and the renewal of leases on the expiration of those leases. We must remember, of course, that many rural leases are not just businesses producing income that supports the owners but also, in a very real sense, the homes of many people who live on them. We saw some obviously quite attractive and well-maintained homes on some rural leases in the ACT. The obsession to plan in our community, the obsession to provide for a planned, controlled environment, sometimes leaves people out of its calculations. Although it is a fairly glib statement, I think it is true in the area of rural leases. We have seen that happen very clearly in rural leaseholds.

Mr Deputy Speaker, control obviously facilitates attention to certain problems such as, in the case of rural leaseholds, erosion and overstocking. The balance is to ensure that you retain those controls without becoming suffocatingly restrictive of those who hold those leases. I think we can see a number of measures that can be used to ensure that there is that level of control by the community over those problems - that is, things like erosion and so on - without becoming big brother, looking over people's shoulders, doing what they should be doing themselves, stepping in at all stages and interfering in the running of their businesses and their livelihoods.

We recommend, for example, that all future rural leases be subject to contractual commitment by the lessee to maintain the land on an environmentally sustainable basis, with contracts to include covenants regarding erosion control, tree preservation and regeneration, and exotic plant control.

That is coupled with the lessees demonstrating, in their application for a grant of land, a technical and financial capacity to manage their land. That is not asking them to produce degrees in agronomy or whatever; it is asking them

to demonstrate that they have the willingness and the wherewithal either to have or to get the information that they need to run their businesses, their rural leases, on a sustainable basis. Also, in that regard, we recommend that farm management plans be prepared by lessees in conjunction with the department, to ensure that an ongoing program is developed to manage those pieces of land.

The report also touched on the question of heritage. It was quite fascinating to see what a significant rural heritage there is in the ACT. At one particular property that we visited I was fascinated to see the remains of a number of very early settlements on that land - a settlement that predated the establishment of the national capital by many years, the base of farmhouses, the ground floor structure of a public house sitting out there near the border between the ACT and New South Wales. Because of its age, that is a quite significant part of the ACT's rural heritage, and we must make efforts to preserve that.

We recommend in this committee report that that be done by providing incentives to lessees to do it - not necessarily have the Government come out and put up a piece of wire around these places, put up signs and do the maintenance itself, but rather give lessees the chance to maintain the property themselves, perhaps giving a reduction in their rent in order to provide that incentive.

I want to make one last reference, Mr Deputy Speaker, to the question of hobby farms. The committee was at some pains to examine that question to see whether that was a sustainable part of the ACT's rural scene. We came to the conclusion that, although there are arguments both for and against the existence of small leaseholds, it was premature for the Government to move against and outlaw categorically small rural leaseholdings in most parts of the ACT. There may be some role for them in the future; there certainly is a role, or appears to be a role, for them in surrounding areas of New South Wales - Murrumbateman, for example. It is important for us to bear in mind the evolution of agricultural practices and policy in the coming years. That is why we felt that it was wrong to exclude hobby farms or small leaseholds from the future of our urban scene.

I want to thank my colleagues. It was an interesting inquiry. I particularly thank the chairman, Mr Moore, who worked very hard to head off any dissenting comments. I was pleased that he and my colleagues were able to work hard enough on this report to ensure that we brought down a unanimous report, without the need for additional or dissenting comments.

Question resolved in the affirmative.

WORKERS' COMPENSATION (AMENDMENT) BILL 1991

[COGNATE BILL:

WORKERS' COMPENSATION (CONSEQUENTIAL AMENDMENTS) BILL 1991]

Debate resumed from 28 November 1991, on motion by **Mr Berry**:

That this Bill be agreed to in principle.

MADAM TEMPORARY DEPUTY SPEAKER (Mrs Grassby): Is it the wish of the Assembly to debate this order of the day concurrently with order of the day No. 3, Workers' Compensation (Consequential Amendments) Bill? There being no objection, I will allow that course to be followed.

MR STEFANIAK (3.56): I will speak to this piece of legislation in principle. I also foreshadow, to save time, an amendment that will be moved by me on behalf of the Liberal Party. It is the only amendment we will be moving and it is a fairly substantial one in terms of principle.

This legislation has been a long time in coming. Tom Uren, when he was the Federal Minister, set up an advisory body to look at workers' compensation and come up with an agreement on what should go into territorial legislation. That was many years ago, back in the early 1980s. That body looked at it and came up with a number of recommendations. I understand that that was in 1984. The body was pretty representative: It included representatives from the Trades and Labour Council, the insurance industry, the Law Society and the department, and it formed a fairly effective working party.

That working party unanimously agreed to some 38 changes to the Workers' Compensation Ordinance, as it then was. I understand that 18 of those 38 changes were later identified in a draft Bill as being ones that could be actioned quickly.

Mr Berry: It is 17, Bill.

MR STEFANIAK: Well, 18 were identified, but only 17 appear in this Bill; hence our significant amendment in relation to what I will refer to as the eighteenth. It went missing.

Mr Berry: You were not listening to my earlier speech.

MR STEFANIAK: For the Deputy Chief Minister's benefit, it is my understanding that Mr Charles McDonald, who was the TLC representative, was quite happy with the termination provisions to be put in back in 1984. Something seems to have gone wrong, from what I can gather, in the last three months. We will hear a little more about that later. In relation to the Act, whilst there are a number of

improvements that can still be made, and work is still being done on this legislation, including rehabilitation clauses, this Bill will put the ACT on a far better footing than it has been in the past.

A few things probably do need to be said on a general note. Our costs and benefits are higher than those in New South Wales.

Mr Berry: Not so.

MR STEFANIAK: Not from the information I have. This Bill, of course, has no limit. It is interesting to note that Comcare does have a limit of $110,000. There are some good features about this Bill. It provides the best benefits available for private enterprise, but it does cost. Accordingly, it is a piece of legislation that will need looking at from time to time, particularly with reference to what schemes operate in the other States - especially New South Wales, the State that surrounds us and has such a big effect on us.

Despite that, this legislation, which is quite substantial, has the support of the Liberal Party and we will move only one amendment to it. That amendment is important for a number of reasons. Firstly, it is fair, in that it relates to one of the points originally agreed to and now not agreed to by the parties and taken out by this Government. I fear that it has been taken out on some ideological grounds rather than on grounds of practicality and commonsense.

The amendment deals with termination. There is no realistic provision for termination in the current Act. Termination and rehabilitation have not yet been linked in any other jurisdiction. I understand that the reason this was taken out was that the TLC went back on its previous position on what it linked with rehabilitation. All other States have similar termination provisions to those we are proposing. The ACT will have a rehabilitation scheme put in place, but in no other State are the two actually linked, which I understand was the position of the TLC.

If the amendment proposed by the Liberal Party does not go in, there will not be any streamlining effect in terms of when anything dodgy is happening or when there is some area of conflict and there is a need for benefits to be terminated. I stress that this amendment affects only non-arbitrated payments. If they are arbitrated payments, there is no problem. We do not have a problem with that; no-one else does.

If there is a problem, the employer would have to go to court. As people know, there are lengthy delays in courts and, in these matters, to go to court and get a decision takes somewhere in the vicinity of nine months. This provision would ensure that certain situations, such as

occurred in Barbaro v. Leighton Contractors Pty Ltd, would not occur again. In fact, it overturns the ratio decidendi of Barbaro v. Leighton Contractors Pty Ltd, which indicates that an employer has to go to court to stop a payment.

There is a danger - hopefully not a very significant one, but nevertheless a danger - of false claims being made, of double-dipping. An employee could be working and still getting workers' compensation payments when in all fairness the payments should cease because there is no real need for them. Under the Act as it is, the employer would have to go to court after waiting about nine months, in many cases, I imagine, with little chance of getting back any of the back pay.

That causes further cost and delays to the system. Costs are very important because, whilst this Act gives a lot of benefits, the costs are still higher than in other States. While it is basically a good scheme, costs are very important. When business has to bear excessive costs, it affects the ability of business to operate efficiently and it affects jobs. The amendment I am proposing would be beneficial not only to business but also to employment prospects in the ACT and would have the effect of assisting in the creation of jobs.

Mr Berry: Come on; you are stretching it a bit.

MR STEFANIAK: I do not think so. Let us face it: The economy is not exactly in a marvellous condition at present, and everything we can do to assist in that regard is going to be of benefit. It is pointless paying people twice when there is no justification for doing so. This provision, which I will speak to further, would stop the possibility for abuse there. As I said, it deals only with non-arbitrated payments and the conditions are quite strict. The provision has been around for some time; it has been taken out of one of the draft Bills, only recently, on my understanding, and it should be put back in.

Madam Temporary Deputy Speaker, my party supports this Bill in principle, but I have foreshadowed one substantive amendment. There is no need to deal with the Bill clause by clause because the amendment relates to the one point. The Bill can be dealt with as a whole; I do not wish to delay needlessly the passage of this legislation. I highlight our amendment because it will benefit greatly the efficient operation of the Act and, indeed, will ensure that it operates fairly. The provision should never have been taken out in the first place.

MR COLLAERY (4.05): I want to put this into historic context. I have practised in this jurisdiction and I am aware of the competing issues. I am not buying into the ideology, if there is any, of the TLC, the Labor Party and the Liberal Party. I do not want any part of it. I agree that the workers' compensation situation in this Territory is crying out for widespread and concerted reform, and this

Bill goes part of the way to making some of the reforms. It avoids wide swings either way. There is a little compromise in it. I am not going to bore the house with all the background, which long preceded self-government in some respects. Mr Berry, from his competent advisers, is well aware of that background.

The issues I want to address are the core concepts of where we are going with workers' compensation in this Territory. We have seen the disasters interstate of Workcare and so on, and we have seen the at times excessive publicity given to lump sum redemption rorts in the workers' compensation area. When you mention a workers' compensation pay-out, you often tend, given the prejudice of this community, to think it has been paid to someone whose name ends with a vowel and it has been part of a rort. I have acted for workers with genuine injuries. I have also acted for a worker who allegedly had to be helped into my office for years while we pursued a claim. At the end of it I was shown by an insurer a film of my client carrying great big stones, building his own rockery. I have gone through all of that, so I speak from no ideological position. I want to put that on the record.

One of the problems about the workers' compensation scheme is the lack of definition for termination of payments for insurers and the natural temptation upon them to offer lump sum redemptions. When the word got out that you could get this lump sum redemption - in other words, your big pay-out, your compo payment - the market became greedy. A process of leading a worker off a settled wage - keeping him on a wage for a while and then leading him down, if he is in an irrecoverable situation, to long-term national health and social security benefits - led the worker to think that there was a pot of gold at the end of that damaged, prematurely osteoarthritic limb and that there was to be a very large lump sum payment. The insurers have some of this on their own heads because of the pressure, particularly within my profession, to get lump sum payments. Lump sum payments produce higher rewards generally for the legal profession. Mr Stefaniak smiles, but I think we should put a few cards on the table in this debate.

I have difficulties with the time period in Mr Stefaniak's amendment. In effect, it takes the worker off after 12 weeks. A schedule 5 notice can be given, stating baldly that his payments are terminated. What it says is, "Your payments are terminated; see you in court", or "See you at the arbitration". I point out to Mr Stefaniak that heaps of workers were injured on the Jolimont Centre, where there was a disgraceful situation involving a now defunct firm - I will name them - Tasmanian Bricklayers. Those special fire-compressed blocks for the Jolimont Centre were extremely heavy, well beyond the weight limits for normal bricklaying, and the scaffolding did not match the floor levels, under OH and S requirements. So, many workers were working down at their ankles and above a safe height for placing bricks.

During the work on the big hill over here and on the Jolimont Centre, many solicitors had damaged workers streaming through their offices. They were workers who had not had a day off in some cases, and the bunnies were the insurers, who had to bear the get-rich-quick contractors' activity. The ultimate victims were the workers who could not get their joints going again properly.

You also have workers who, once they have been off for a while and become a home parent, frankly are not motivated to get back into the work force. We have all seen those cases too. There is a saying around the legal trade that, if your client has been off for more than about two years, you are going to have a dickens of a time getting the client to do anything but settle for a lump sum because he has got used to a different lifestyle. Even though that lifestyle may involve chronic pain, he is not inclined to go out in the winter in this Territory, if he is an open-air worker, and so on.

You are dealing with very complex issues of human motivation. You have the insurers in the distance all the time, healthily sceptical, and you have the unions on the other perimeter wanting to protect their workers, and often blaming the insurers for the unsafe work practices of contractors. There is one thing about the construction industry that must get better. When we have construction upsurges we do not want firms flying into this town with out-of-State practices that indicate lack of safety. In my opinion, there have been some unhealthy failures by safety conscious union stewards to bring to the attention of the relevant authorities unsafe practices that have ultimately resulted in claims upon the insurers.

Coming back to the period of three months proposed by Mr Stefaniak, your client is presenting in this position. Often if your client is a go-getter he will want to settle early. He is talking settlement when he is supposed to be in pain and more interested in his level of health care. You can pick them. Three months is nowhere near enough time to decide whether injuries are stabilised, and anyone who has had a bone injury will know about what I am saying. You have to go through a winter season, depending on your age and the prospects of premature osteoarthritis, which is common with ankle and other injuries.

You have to realise that many workers have financial commitments, particularly when the building industry is booming and there is a bullish wage incentive and award situation. They have committed themselves and they cannot easily get out of those commitments in the space of three months.

I am advised that in New South Wales, Victoria, South Australia and the Northern Territory, and with Comcare here, the replacement payments stay at pre-injury levels, in effect, for six to 12 months. In Western Australia and Tasmania, benefits continue until a monetary limit is

reached, usually after five years; and there is a variant of that in Queensland. The ACT is seen as being bedevilled a bit by the peculiar keenness within the legal profession and, to an extent, the union community to go for a redemption and a lump sum to solve the problem and see it off the books.

The excellent review of the ACT workers' compensation scheme made available to the Alliance Government in August 1990 refers to a key issue, which is the Federal Court's judgment in Barbaro v. Leighton Contractors Pty Ltd, reported in 1980 Australian Law Reports at page 123. I have drawn it to Mr Berry's attention. That is the historical basis of the end of a great deal of uncertainty in town. It did not go the insurer's way. I clearly remember when the judgment was delivered. It said that once payment had commenced an insurer could not stop payments until the court agreed. I have simplified the judgment, but that is it in essence.

That at least brought some certainty to the scene. What is wrong with the situation is that workers' compensation matters go on and on. I could not believe it, sitting next to a legal colleague at a Law Society luncheon today, when I was told that he was still handling a matter that had started in my practice some years ago and that payments simply for medical treatment were already up to $60,000 for this young woman. That is just too long. I am aware that in other circles there is a middle ground for this matter. It is not to put the ball back in the worker's court in less than three months, as Mr Stefaniak proposes; it is to have rules of court that require both parties to get their medical evidence in quickly and stop the long delays that characterise workers' compensation processes, at least in this Territory.

I believe that claims not proceeded with with due expedition should be subjected to a number of disincentives. Only in recent times the courts have created rulings that require litigants to swap medical information. The gambit of taking each other by surprise with differing expert witnesses; flying down a bevy of people to wait out in a back room and then springing noted psychiatrists and surgeons, is stopping to a great extent now, and that is an improvement. The angst of the insurers needs to work its way out in the court procedures that in many instances contribute to this process. We should not forget that in the ACT the magistracy handle very large awards and payments, which is in some respects unusual compared with the judicial process elsewhere.

The issue of whether an insurer should be able to terminate when a worker has shown a great reluctance to proceed with a claim is one that I sympathise with Mr Stefaniak on. We should not forget that practitioners occasionally have clients who do not make appointments and who take a long time to come in. When they do come in they look pretty

bronzed, as if they have the instinctive grasp of a fishing rod in their hand. You know exactly the category of client I am talking about. I think there is a little bit of six of one and half a dozen of the other in this debate. The Barbaro decision has resulted in game playing by some claimants - I am not going to use the pejorative term "workers". On the other hand, I think a three-months cut-out is too soon.

I want to come back to the situation of insurers. I do not believe that the insurers are alleging that they are having a huge loss in this Territory. As the committee found, and I quote from page 30 of the main report:

> Thus, when similarly composed work forces are compared, the average ACT premium rate exceeded those from other States by between 75 per cent and 150 per cent.

Shades of the NRMA actuarial history. So, I am not convinced that there is a financial crisis among the insurers on this issue. There is certainly a high degree of well-founded frustration with a number of cases they have; but, equally, I do not see how the insurers will be able to be properly selective in serving Mr Stefaniak's proposed form 5 notices. I reckon that every worker will be looked at as a prima facie person to get a notice of termination. Workers' compensation will then boil down to 12 weeks' payment and "See you in court thereafter, and we will delay you in court and we will play the game all the way".

So, on balance, the Rally will not support Mr Stefaniak's amendment. We support the other provisions in the Bill. *(Extension of time granted)* I am indebted to the house. I foreshadow an amendment to the definition of medical treatment and a definition of psychologist. It has been a long-term beef of psychologists in this town that they are unable to get their payments when there has been a referral to them. Many insurers have been pretty good about it; there are two who have not. I will not name them. The existing legislation does not provide, believe it or not, that psychological counselling or therapeutic advice is a compensatable item. I am putting that broadly.

Mr Berry: It says psychologists. Psychologists are in there.

MR COLLAERY: Yes. The present Act before us says that a psychologist can be paid, to put it shortly, if he or she gets the referral from a doctor or dentist. That is demeaning. That is demeaning, in any event, to a profession. Secondly, psychologists, on my advice and knowledge, often get referrals from occupational therapists, Mr Berry, as you know, and from consultant rehabilitation experts. The rehabilitation centres send workers along for psychological advising and therapeutic advice. I hope that Mr Berry will support that foreshadowed amendment. It is no great issue of angst.

The reason why I suggest that there is no definition of psychologist in the Act is that we still do not have a psychologist registration Act in this Territory. It has been a long time coming. We should have it. People can set up a shingle as a psychologist without the usual processes applicable to other registered groups. We need to attend to that matter and I commend to Mr Berry that amendment. If he would take a pause and talk to Tom Sutton and a number of clinical psychologists who practise in that area - reputable people - he would know what I am referring to.

MR BERRY (Minister for Health and Minister for Sport) (4.23), in reply: I have to say that it is certainly not surprising for the Liberal Party to attack longstanding conditions of workers, and I do not use the term "workers" in any pejorative way. They are entitled to maintain their conditions, and this is certainly one area where they are entitled to that. They are entitled not to expect that people like those from within the Liberal Party will attack these sorts of conditions, which are, after all, very important in the workplace as we move to a safer workplace as a result of changes in occupational health and safety practices and so on.

I know that Mr Stefaniak has an ideological position in relation to unions and, unlike Mr Collaery, I am prepared to enter into the ideological debate just by saying that my position on workers is different from Mr Stefaniak's. I suspect that the Liberal Party generally, and all of their candidates, are eagerly anticipating these sorts of changes, which, of course, help employers exploit workers or make workers more helpless under this sort of legislation. I see that Mr De Domenico, another Liberal candidate, is in the gallery and I can see in his eye a glimmer of eager anticipation that the Liberal Party might have the numbers to knock this particular provision over in this legislation. Well, I do not think they will.

Let me say, Madam Temporary Deputy Speaker, that the most important piece of legislation which affects these particular provisions can be found in the Workmen's Compensation Act, in the First Schedule at paragraph 12. It provides, "A weekly payment", other than a payment that arises from a worker who has departed us, that is payable under the Act, "may be varied or ended by agreement or by arbitration under this Ordinance.".

Arbitration, of course, is available through the courts. Two of the members who have spoken previously on this issue mentioned the Barbaro v. Leighton Contractors Pty Ltd case, where the Federal Court found that an employer who had ceased payments to a worker had done so incorrectly. That was overruled by the courts. The Liberal Party now seeks to take out that precedent which was set by the court by changes to the legislation. Mr Stefaniak has set out to cut the conditions available to workers by a substantial amount. For example, instead of a worker being entitled

for the first 26 weeks to an amount of money equal to that which he earns in the normal course of his duties, and then subsequent to that period a statutory amount, Mr Stefaniak seeks to give to employers the right to cease payments at the 12-week mark. No appeal; just give that right to the employer.

Notwithstanding the fact that the employer, in the first place, has accepted the right of that employee to those payments, and in fact has endorsed them by paying them, and has paid them for a period of up to 12 weeks, Mr Stefaniak wants that employer to have the right to change his mind and say, "I thought you were entitled to them 12 weeks ago, but now I do not think you are", even if the employee has provided the employer with relevant medical evidence. So, the employee can be fully incapacitated and off work and at the 12-week mark the employer can say, "Okay, you can starve from here on in". That is what Mr Stefaniak sets out to do.

He said in the first place that this was all because Charlie McDonald changed his mind. That is not correct. Mr Stefaniak should know, if he had been paying attention to what was going on in the area of workers' compensation, that there is a Workers' Compensation Monitoring Committee which has been considering these matters and in fact has recommended all of those changes which have been proposed by the Government. The Workers' Compensation Monitoring Committee is made up of employees, employers, the Insurance Council of Australia, the Government Insurance Office and the Government Actuary.

All of those people, together, have decided that the legislation which Mr Stefaniak is proposing should not proceed and that the issue of termination should be considered along with changes to the legislation in relation to rehabilitation. That is quite appropriate because rehabilitation, in my view and in the Government's view, is inextricably linked to the issue of termination of payments. For Mr Stefaniak to step outside that linkage is absolutely crazy in terms of rightful benefits to workers. It is quite appropriate for the Workers' Compensation Monitoring Committee to look at this issue of termination in the context of rehabilitation, and they are doing that.

It is pre-emptive of the Liberals to move in this way when the matter is being considered by consultative means, as it is in this case, and, I suggest, by the same consultative means that were being undergone during the period of the Alliance Government. It is absolutely pre-emptive for the Liberals to move now in a way that would undermine the work of this committee. The Liberals seek to ram this legislation down the throats of the trade union movement and workers instead of coming to an arrangement which results in better workers' compensation conditions in the ACT by way of an appropriate consultative mechanism.

Debate interrupted.

ADJOURNMENT

MADAM TEMPORARY DEPUTY SPEAKER: Order! It being 4.30 pm, I propose the question:

That the Assembly do now adjourn.

Mr Berry: I require the question to be put forthwith without debate.

Question resolved in the negative.

WORKERS' COMPENSATION (AMENDMENT) BILL 1991

[COGNATE BILL:

WORKERS' COMPENSATION
(CONSEQUENTIAL AMENDMENTS) BILL 1991]

Debate resumed.

MR BERRY: Of course, an amendment to include the termination clause was discussed by the monitoring committee at a number of its meetings. The committee was set up under the Alliance Government, as you might recall, in 1990, and, as I said, comprises a number of representatives across a range of interested parties.

The amendment that has been circulated by Mr Stefaniak has quite a few flaws. It seems to me, from a layman's point of view, that one of those would be from a legal point of view. Most particularly, it falls short of the mark when it comes to the interests of employees, employers and the insurance agencies.

While it mentions termination, it does not explicitly give the power to terminate. The amendment, at the same time, removes other existing explicit powers by deleting clause 12. I do not know why you have attacked clause 12 of the first schedule, because it seems to me that that would remove the right to vary payments by agreement or by arbitration under this ordinance. By taking out that clause, I think you leave a great gap in the existing legislation. I think it is poorly thought out and needs a lot more work. That is why the matter ought to be considered by the monitoring committee.

However, the biggest flaws are the assumptions that it will cut premium costs and speed up the processing of claims and therefore benefit employees and employers. The amendment will, in fact, further penalise the victims. Hit the victim. It is always the worker's fault. The first person that Bill Stefaniak mentioned as being at fault on this

issue was the worker, the one that works at a job and gets compo as well. He did not even mention the genuine people, the people who are fully and totally incapacitated, are in bed and cannot work, and then the employer cuts off their benefit. He did not mention what was going to happen to them. There was no mention of it at all. I think that is disgraceful.

Mr Stefaniak: I do not think that is going to happen, Wayne.

MR BERRY: Well, let us hear what is going to happen. Tell us what is going to happen to them after 12 weeks. What are you going to do for them?

Mr Stefaniak: They will continue on workers' compensation, obviously.

MR BERRY: No, they are going to be terminated.

Mr Stefaniak: No, they are not going to be terminated. This is the power to terminate them. Read it.

MR BERRY: It is only the power to terminate. So, all of the employers are so generous that none of them will terminate.

Mr Stefaniak: You just automatically assume that all employers are wrong.

MR BERRY: Yes, that is right. There is an important precedent in workers' compensation and termination of payments, and I have mentioned that in relation to the Barbaro case. The introduction of a termination clause will allow workers to be terminated from compensation, as I said, forcing them to appeal to the Magistrates Court before benefits are reinstated. This is a process that presently takes, on average, six months. It would cause unnecessary cessation of payments for many workers and leave them without sufficient financial support. Many would be forced onto sickness benefit.

Termination clauses, as I have said, must be linked with rehabilitation procedures. To argue that it will reduce insurance premiums is merely ignoring the facts. There are no hard figures to show how premiums will be reduced, or by how much, if a termination clause is introduced. The monitoring committee I previously mentioned has been successful in reducing premiums; but it has done it by consultation, Mr Stefaniak, not by beating people around the head. Their approach of consultation has triumphed over that cold-hearted approach that you are going to take, the divisive approach.

In the last financial year, the overall average rate of premiums dropped from 3.07 per cent to 2.09 per cent. The average rates payable for individual work categories fell by varying amounts. For example, the building industry rate fell from 19.17 per cent to 14 per cent; the hotel

rate fell from 4.68 per cent to 2.2 per cent; and the restaurants rate fell from 4.85 per cent to 3.61 per cent. The overall reduction to 2.09 per cent of wages is very satisfactory and compares favourably with the cost of other State workers' compensation schemes.

What Mr Stefaniak wants to do now is go for the victims. He does not want to sort out the problems with workers' compensation law. It is the old ideological anti-union position. We see it here; we have seen it here so many times in the past. These premium reductions that I have mentioned are a direct result of the review of workers' compensation which was initiated by the previous Follett Government in 1989.

Madam Temporary Deputy Speaker, this amendment cannot be supported as it will bring hardship to workers already suffering, for little benefit. It is a question of whether a worker or an employer or just an ideology is the most important. I say that the workers' rights are important and they need to be protected. I think what Mr Stefaniak sets out to do is not well thought out. It will damage the consultation process which is in place in relation to workers' compensation and will not assist us in delivering a better package, not only to employees but also to employers and the community as a whole.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clauses 1 to 6, by leave, taken together

MR JENSEN (4.38): Madam Temporary Deputy Speaker, I am not quite sure whether I can do this in the absence of my colleague Mr Collaery - - -

MADAM TEMPORARY DEPUTY SPEAKER: You can do it, Mr Jensen.

MR JENSEN: I seek leave of the Assembly to move the amendment that has been circulated.

MADAM TEMPORARY DEPUTY SPEAKER: You do not need leave, Mr Jensen.

MR JENSEN: All right. I move the amendment that has been circulated in Mr Collaery's name. I move:

> Clause 5, page 2, line 30, after proposed paragraph 6(d), insert the following paragraph: "(da) treatment by a psychologist;".

I will defer to my colleague Mr Collaery to speak on this amendment.

MR COLLAERY (4.38): The reason for this was given by me in my in-principle speech. There is a problem for psychologists in recovering their funds because, under the former legislation, they were not listed among those approved for treatment. That has been partially rectified in the current draft, which provides that they could be paid if they had been referred by a medical practitioner or a dentist. The situation, on my advice from a member of the Australian College of Clinical Psychologists and a prominent practitioner in that area in the ACT, is that many of their references come from outside those two categories, including occupational rehabilitation specialists and other sectors that deal with the traumas injured parties have suffered.

I commend that amendment, which in effect takes away the necessity for there to have been a referral by a medical practitioner or a dentist. That is the effect of my amendment. I foreshadow an amendment to define "psychologist" as a person who is eligible for membership of the Australian College of Clinical Psychologists. That will ensure that the matter is tied up and you cannot have just any old person eligible for membership.

I draw Mr Berry's attention to the definition of "speech therapist" at page 4 of the Bill. The draftswoman has drawn that to my attention. In the absence of any regulatory structure for psychologists in the Territory, I would adopt the definition at (b) under "speech therapist". To save a subsequent amendment, and knowing that Mr Berry would agree that we need a Bill to register psychologists in due course, he can safely use (a), although it will be meaningless at this stage because there will not be any law of the Territory under which psychologists operate.

Mr Berry: They can all operate here now.

MR COLLAERY: It is not a happy situation.

Mr Berry: There is no law to prevent them operating.

MR COLLAERY: That is working fairly well; but I believe that, like any State that wants to ensure that competent people practise their professions, we should look into that registration proposal at an early date. I would commend the use of arm (b) there and that we should say that they are a person who is a member of or is eligible for membership of the Australian College of Clinical Psychologists. At this stage I move the first amendment circulated in my name.

MADAM TEMPORARY DEPUTY SPEAKER: There is only one circulated at the moment, Mr Collaery. Is there another one to be circulated?

MR COLLAERY: Yes. In effect, it is cognate with this because it adds a definition.

MADAM TEMPORARY DEPUTY SPEAKER: Mr Collaery, we can put only the one amendment.

MR COLLAERY: Yes, that is it. You can put this one at this stage, Madam Temporary Deputy Speaker, and I will bring you the definition in a few moments.

MR BERRY (Minister for Health and Minister for Sport) (4.42): Madam Temporary Deputy Speaker, in principle I have no difficulty with what has been proposed by Mr Collaery in his amendment; but in Mr Collaery's own argument on the issue he raised the very problem that we will have to deal with in the ACT. It is a fact that there are no laws in the ACT to prevent anybody from practising as a psychologist and it is right then, in turn, to limit that in some way by way of legislation. That is something that the Government will consider in due course. But, as Mr Collaery might know, the issue of national accreditation is something which is being looked at in the context of the Premiers Conference and that might in itself resolve the issue of what a psychologist is as far as the ACT is concerned.

It is difficult, then, to go to an interpretation of what a psychologist is and to classify them only under a particular college of psychologists, because there might be another group of people who consider themselves to be clinical psychologists and who might be more than sore about the issue and cut out of the action, so to speak, when it comes to the provision of services to workers who might need the services of a psychologist. My senses tell me that the best approach on this issue is for the Government to oppose this amendment.

Mr Collaery: You are joking.

MR BERRY: Just let me finish. I am not joking. They tell me that because I think we again are in the position of addressing an issue on the floor of the house.

Mr Collaery: They have been corresponding with the Government for years.

MR BERRY: They have not corresponded with the Government on the issue of the workers' compensation provisions.

Mr Collaery: They sure have. They have been complaining for years.

MR BERRY: They have not, I tell you. That is the point I make. As I said to you, Mr Collaery, I have no difficulty with the position that you have taken in relation to your amendment which calls for the insertion of the words "treatment by a psychologist"; but I have some difficulty about adopting the interpretation of what a psychologist is, or means, without having more time to reflect on the matter.

Mr Collaery: Well, do not give it a definition. I will withdraw that.

MR BERRY: Mr Collaery indicates that he is prepared to withdraw that, and on that basis - - -

Mr Collaery: Not my first amendment.

MR BERRY: No; okay. On that basis I am prepared to indicate that the Government will reluctantly agree and further indicate that if there are any signs of trouble there will be moves to rectify the situation very quickly. But again I say that I am very concerned about amendments that are run at us on such short notice. It makes me very nervous and it is not the way to make laws. However, I am prepared to agree to this inclusion in the legislation at this point.

Amendment agreed to.

MADAM TEMPORARY DEPUTY SPEAKER: Mr Collaery, do you wish to move your other amendment?

MR COLLAERY (4.47): No, Madam Temporary Deputy Speaker. In view of the Minister's comments I will not pursue that amendment.

Clauses, as amended, agreed to.

Clause 7

MR BERRY (Minister for Health and Minister for Sport) (4.47): We might have to revisit clause 6 later on. Clause 7 of the Workers' Compensation (Amendment) Bill 1991 inserts a new section 6B, but I think I have to move the amendment which has been circulated in my name. I will move the amendment and present the supplementary explanatory memorandum. I move:

> Page 5, line 10, omit "23G(1)(b)(i)", substitute "23F(1)(b)(i)".

New section 6B provides that the Minister may determine categories of workers for certain purposes. Proposed new section 6B is to be amended by omitting the reference to subparagraph 23G(1)(b)(i) and substituting a reference to paragraph 23F(1)(b)(i). This amendment is in response to a comment made by the Legislative Assembly's Standing Committee on the Scrutiny of Bills and Subordinate Legislation under the watchful eye of Professor Whalan. In its report No. 21 of 1991 the committee pointed out that this cross-reference was incorrect, and the amendment sets out to correct that situation.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 8 to 11, by leave, taken together, and agreed to.

Clause 12

MRS NOLAN (4.51): My amendment has been circulated. The amendment relates to the provision of information to insurers. It was brought to my attention by many people in the tourism and hospitality industry, and also people in business, that they would prefer to see this particular section read in accordance with what is proposed in my amendment. I move:

Page 10, line 27, proposed new section 18(1)(a), omit "and", substitute "or".

My understanding is that in the current ordinance or current Act, the 1951 one, there was a provision for either/or. It certainly did not have the same provision. I also understand that if you are a proprietary company you do not necessarily need to have a certificate from a registered auditor. There would be an additional cost to business in meeting that requirement. That, basically, is why the amendment is proposed. It is a request from people within both the tourism and hospitality industry and the business community. They are concerned in relation to the costs of small business. I guess that that is one of the things that all of us are very aware of.

Small business being our only employer, we should not be making those businesses meet an additional cost purely because of what is needed in relation to information for insurers; so I think it should be either/or. As I said, proprietary companies do not necessarily have to have a registered auditor. A statutory declaration which sets out the determined categories of workers employed and the total amount of wages, I believe, would be satisfactory.

MR BERRY (Minister for Health and Minister for Sport) (4.54): In forming a recommendation concerning the audit of wages and returns, the 1984 working party was advised that many employers had been avoiding the full extent of their liability for workers' compensation premiums by understating their wage returns. Basically, that means that they are employing more people than they are paying for in terms of workers' compensation. The audit certificate, therefore, is required to confirm the total amount of wages paid to workmen employed by an employer, while the statutory declaration is necessary for management to divide the wages Bill into different work classifications for premium calculations purposes. This need does not exist in some State schemes where premiums are based on an industry classification, not an occupational classification. The current process of requiring an audited wages return provides a cost-effective system for both employers and insurers.

Acceptance of the amendment proposed by Mrs Nolan is not supported by the Government, for very obvious reasons. We need to make sure that employers pay the level of workers' compensation for their employees that they are required to pay. It is bad for business; it is bad for workers. If an employer does not pay the amount and is caught out, he is up for it himself by way of damages; but, if an employee is not covered and the employer subsequently goes broke, it is a very difficult situation for everybody concerned. So, it is most important that employers are required to prove very clearly that they are paying the proper level of workers' compensation.

It has been a difficulty, particularly in the building industry, over some years. We have all heard about cash in hand payments and those sorts of things, and that is to be avoided when it comes to payments of workers' compensation. All workers are entitled to that. Therefore we will oppose the amendment proposed by Mrs Nolan.

Question put:

That the amendment (**Mrs Nolan's**) be agreed to.

The Assembly voted -

AYES, 2	*NOES, 15*
Mrs Nolan	Mr Berry
Mr Stevenson	Mr Collaery
	Mr Connolly
	Mr Duby
	Ms Follett
	Mrs Grassby
	Mr Humphries
	Mr Jensen
	Mr Kaine
	Dr Kinloch
	Ms Maher
	Mr Moore
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

MR COLLAERY (5.01): I wish to speak to the clause. Mrs Nolan's point is that not all enterprises have a registered auditor, as indeed they do not. Many small businesses who pay workers' compensation - - -

Mr Kaine: How do you define a registered auditor?

Mrs Nolan: Mr Collaery is proposing another amendment to the same clause. He is changing the wording. I used one word. He does not want to do that; he wants to do it somewhere else.

MR COLLAERY: Are you taking a point of order?

Mr Berry: Are you moving an amendment or what?

MR COLLAERY: I wish to move an amendment to proposed new paragraph 18(1)(a) of the Bill before the house; to delete the word "auditor" and substitute the word "accountant". I will give the house an example.

Mr Kaine: What is a registered accountant?

MR COLLAERY: An accountant registered with the Institute of Chartered Accountants.

MR SPEAKER: Order, Mr Collaery! You are out of order inasmuch as you are coming in after we have debated that part of the clause. You need to seek leave to move this amendment.

Mr Berry: I want to know what you are going to do.

MR COLLAERY: Well, I seek leave, and I will speak to why I seek leave.

Leave granted.

MR COLLAERY: I sought leave because, whilst I do not agree with Mrs Nolan trusting all employers to give just a statutory declaration on the issue, the fact is that even as a practising solicitor I do not employ a registered auditor for my workers' compensation returns each year. I use my accountant, who prepares all that from the wages book. We went through that with the Associations Incorporation Bill recently, where we made very clear the difference between a registered company auditor - and they cost the earth - and the use of an accountant.

I wonder whether the Government, in fact, has had that drawn to its attention. As the Attorney knows, we made a clear distinction in the Associations Incorporation Bill for those clubs that would have to use a company auditor. They are expensive propositions. Do not forget that under the new ASC audit guidelines those auditors have to go everywhere before they will give a certification.

Mr Connolly: This really is a bad way to go about law-making.

Mr Berry: We just cannot do this.

MR COLLAERY: Mr Speaker, the reason why I move the amendment at a late stage is that Mrs Nolan has just alerted me to this issue. I do happen to be a practitioner in the area who has had to give workers' compensation returns. Mr Berry should recognise it. We are pushing legislation through at a fair crack. You are getting a

fair crack of the whip from us because we are going along with it. We are allowing this to happen, and we will be here until late tonight as well. I think you can wait just a couple of minutes, and give us leave.

It will not derogate from the intentions that the Minister sought. The Minister sought to ensure that there was no cheating going on. He wanted to make sure that there were no cash in hand arrangements. I do not think that registered accountants are any less reputable than registered auditors. Many accountants are, I think, as Mr Kaine knows, auditors, but not all are, and small business does not always employ a company auditor.

MR SPEAKER: Mr Collaery, are you seeking leave to move this amendment?

MR COLLAERY: Yes, Mr Speaker.

Leave granted.

MR COLLAERY: I move:

> Page 10, line 26, proposed paragraph 18(1)(a), omit "auditor", substitute "accountant".

MR KAINE (Leader of the Opposition) (5.05): I am not sure why we did give leave, because I do not know the effect of Mr Collaery's amendment. As far as I am aware, there is no such thing as a registered accountant. Registered with whom, and for what purpose? If he wants to talk about a certified public accountant, or a registered public accountant, or words of that kind, that is a different thing. But, if he just uses the words "registered accountant", I do not think accountants will know whether they are registered or not, or whether they qualify.

So, this does not achieve the purpose that Mr Collaery is aiming to achieve, I believe. It will merely raise more questions in connection with this section of the Act than it answers. I will not support that amendment, because I believe that it is a meaningless one.

MR BERRY (Minister for Health and Minister for Sport) (5.06): Mr Speaker, the Government will not be supporting this amendment. Again it is this issue of making decisions on the run. You just cannot - - -

Mr Collaery: It is called making laws, Mr Berry; good laws.

MR BERRY: That is right, and one should adopt a considered approach to making laws because laws are very important to the community.

Mr Jensen: Yes, that is right. Do not try to ram them through.

MR BERRY: Ram them through, my foot! It has been here for weeks. If you fellows are too tired to grab hold of the legislation which is being proposed, to have a look at it and properly research it, that is just too bad. Do not expect the responsible people in this Assembly to cop this sort of rubbish. What you end up with is legislation that does not work, or it has the reverse effect.

Mr Jensen: With your departmental backup you should get it right in the first place.

MR BERRY: All you have to do is pick it up. If you have a problem, give us a ring. You never have any trouble getting through to me at any other time, Norm.

Mr Collaery: Sit down, Wayne.

MR BERRY: Do not make silly accusations about things being rammed through, because they are not being rammed through. "Registered auditor" is interpreted in the legislation and means an auditor registered under Division 2 of Part II of the Companies Act. It is a very clear position.

Mrs Nolan: A lot of extra cost for small business.

MR BERRY: It may well be an extra cost, but it is about making sure that employers meet their obligations and that employees in the workplace are covered.

Mr Collaery: How about small business?

MR BERRY: I am as concerned about small business as you are, Mr Collaery; but I am not going to be a party to knee-jerk law-making. It is crazy. What we end up with is laws that do not work or laws that are wrong.

Question put:

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

The Assembly voted -

AYES, 5	*NOES, 12*
Mr Collaery	Mr Berry
Mr Jensen	Mr Connolly
Dr Kinloch	Mr Duby
Mrs Nolan	Ms Follett
Mr Stevenson	Mrs Grassby
	Mr Humphries
	Mr Kaine
	Ms Maher
	Mr Moore
	Mr Prowse
	Mr Stefaniak
	Mr Wood

Question so resolved in the negative.

Clause agreed to.

Remainder of Bill, by leave, taken as a whole

MR STEFANIAK (5.11): All my amendments really relate to the one point; so we could take them all together in the remainder of the Bill. They are the only other amendments to the rest of this Bill, and I seek leave to move them together.

Leave granted.

MR STEFANIAK: I move:

1. Clause 20, page 20, lines 31 and 32, omit "heading and sections", substitute "sections and heading".

2. Clause 20, proposed new section 26A, page 20, line 32, before the proposed new Part heading, insert the following section:

Termination and reduction of non-arbitrated weekly compensation

"26A. (1) Where -

(a) an employer makes non-arbitrated weekly payments to a worker for a continuous period of not less than 12 weeks; and

(b) the worker has given the employer an appropriate medical certificate;

the employer shall not terminate or reduce the payments except after the expiration of the defined period commencing on the day on which the employer gives notice of the termination or reduction to the worker in the form set out in Schedule 5.

Penalty: $5,000.

(2) Where -

(a) subsection (1) applies; and

(b) the relevant non-arbitrated weekly payments are terminated or reduced otherwise than in accordance with that subsection;

the employer shall, subject to subsection (3), pay to the worker, whether or not the employer has been convicted of an offence under subsection (1) in relation to the termination or reduction, compensation -

(c) if no written notice of termination or reduction of the payments has been given - equal to the additional compensation that, but for the termination or reduction, would have been payable during the defined period commencing on the day on which the termination or reduction took effect; or

(d) if the termination or reduction takes effect before the expiry of the defined period commencing on the date on which written notice of the termination or reduction is given to the worker - equal to the additional compensation that, but for the termination or reduction, would have been payable during the remainder of the defined period.

(3) Nothing in subsection (2) is to be taken to require an employer to pay additional compensation to a worker for any period in relation to which an appropriate medical certificate has not been given to the employer.

(4) In this section -

'appropriate medical certificate' means -

(a) in relation to weekly payments in respect of a worker's partial incapacity - a certificate by a medical practitioner certifying the existence of the worker's incapacity at the level in respect of which the weekly payments are paid; and

(b) in relation to weekly payments in respect of a worker's total incapacity - a certificate by a medical practitioner certifying the existence of the worker's total incapacity;

'defined period', in relation to a worker receiving weekly payments, means -

(a) if the worker has been receiving the payments for a continuous period of less than 1 year - 2 weeks; or

(b) if the worker has been receiving the payments for a continuous period of not less than 1 year - 6 weeks;

'employer' includes an insurer or the nominal insurer;

'non-arbitrated weekly payments' means weekly compensation payments under paragraph (1)(b) or (c) of Schedule 1, where such payments are not made pursuant to an award of the Court.".

3. Proposed new clause 23A

Page 22, line 38, after clause 23, insert the following clause:

Insertion

"23A. After the Fourth Schedule to the Principal Act the following Schedule is inserted:

" Subsection 26A(1)

SCHEDULE 5

NOTICE OF

*TERMINATION/*REDUCTION OF
NON-ARBITRATED WEEKLY COMPENSATION

To

[worker's name]

of

[worker's address]

Take notice that as from ..... [date] I intend to *terminate/*reduce to $..... per week (before tax), the worker's compensation payments I am currently paying you in respect of the following injury, sustained by you on..... [date of injury]:

[nature of injury]

[signature]

*for

[*employer/*insurer]

[date]

* Delete where inapplicable

"

4.Schedule 4

Proposed amendment of clause 12

Page 39, omit the amendment, substitute the following amendment:

Clause 12, omit the clause.

I have already spoken in relation to this point. A few fallacies, I think, crept into the in-principle debate on this point. Mr Collaery has some idea, because he has been a practising lawyer; but I do not think some people are really aware of how workers' compensation works in practice, certainly in terms of the law, and how it works in terms of our court system.

Firstly, Mr Berry and, to an extent, I gather, from Mr Collaery's rather garbled speech, Mr Collaery as well, seem to think that in virtually all cases, after the minimum 12 weeks is up, an employer will give a notice and, bang, some poor worker who is a cripple and virtually on his deathbed would have his payments stopped; that he would be on sickness benefit and would then have to go to court to get his benefits reinstated.

That is just ludicrous. That is Dickensian. That might have occurred during the Industrial Revolution, in and about 1840; but it certainly does not occur here now. I would think there are very few instances where any employer would be so stupid as to abuse this law, because if they did - - -

Mr Berry: They cannot right now. You want to change it so that they can.

MR STEFANIAK: If my amendment goes in, if they attempted to abuse it - and this could be abused, your Act can be abused, Mr Berry, at present - - -

Mr Berry: It cannot be.

MR STEFANIAK: It can be. If any employer tried to abuse it along the lines you are suggesting, they would be in for a very nasty shock when they did go to court, because they would be paying colossal costs, colossal damages, and the aggrieved worker, who certainly would be aggrieved in that situation, would be coming out of it very well, and rightly so. The courts are very mindful of such things.

There is a principle behind this particular amendment. I am not necessarily fussed even by the 12 weeks. If someone has some better suggestion and that is going to help, fine; we will listen to it. Firstly, this particular amendment was there, despite what has been said, in 1984, before the working committee. The working committee was under

Tom Uren, and Tom Uren was hardly known for his right-wing views. I do not think anyone could say that Tom Uren was not a friend of the workers. That working committee, including the TLC, agreed to it. Something has changed. This was one of the original 18 changes deemed necessary to the Workers' Compensation Act, and we are talking about 17 now.

Let us look at the facts of it. Let us apply a little bit of commonsense. If someone is entitled, for example, to only 26 weeks' pay, workers' compensation, if he or she is injured, that is all that should be given. No-one should be able to double-dip a system and be paid when there is no justification for that occurring, and that can occur under your legislation as it is. That can occur as a result of the Federal Court case of Barbaro v. Leighton Contractors Pty Ltd in 1980. This is a necessary amendment. This undoubtedly was in the minds of the people who drafted it and who put it in those 18 points back in 1984, four years after the Federal Court case of Barbaro v. Leighton Contractors Pty Ltd.

I reiterate what I said earlier, Mr Berry: In the other States this has not been linked, as you people want to seek to link it, to the issue of rehabilitation schemes. Rehabilitation schemes are going to be put into this Act. Rehabilitation schemes are in operation in other States, but they are not linked to termination. This termination clause should be put in because other States have termination clauses and similar provisions.

Mr Berry also asked why clause 12 was being taken out.

Mr Berry: I know why it has been taken out.

MR STEFANIAK: I will tell you why it has been taken out. It has been taken out because of professional legal advice. I do not get my amendments drafted by any old Tom, Dick or Harry; this was given to me by the relevant bodies. I think the insurance people gave me the amendment.

I took it over to the legislative counsel and made sure that they looked at it. They look at any piece of drafting I have anything to do with, because they are the professionals. I have a great deal of respect for the professional competence of the ACT Parliamentary Counsel's Office. There is a reason why clause 12 has been omitted. I will quote from a note I have from that office. It says:

> You will note that I have included a consequential amendment to omit clause 12 of the First Schedule to the principal Act. This clause deals with existing termination arrangements and, assuming the amendment to insert clause 26A is passed, will be superseded by that clause.

End of story. That is why I did it. There you are; professional legal expert opinion from the Parliamentary Counsel's Office. That, hopefully at least, will answer your question in relation to that particular point, Mr Berry.

Members, in relation to this particular proposal proposed by the Liberal Party, I reiterate that it was in the original 18 points. It has been taken out. This potential for double-dipping and the fact that court cases take six to nine months before it can be rectified cause premiums to remain higher than they would normally be. That is important; that does affect business, because it is an impost on business.

Insurance in the ACT is purely a cost of product based on legislation, and the higher the benefit and the more claims, naturally the higher the premium. That is just a fact of life. If you look at the reality of the situation, if you understand how our legal system works, if you understand the other protections within this legislation, I think you are being quite ludicrous and hysterical to suggest a survival proposition; that after an initial 12 months every worker, regardless of whether he or she is properly entitled to workers' compensation or not, is suddenly, at the whim of an employer, to be chopped off.

To suggest that that is going to happen is painfully ludicrous. That is simply not going to happen. We are in the 1990s; we are not in the 1940s.

Mr Berry: Why are you changing it, then?

MR STEFANIAK: I think I have explained that, Mr Berry. I am changing that because it will have the effect of lowering premiums. Unfortunately, where we have double-dipping, we have the fact that it is going to take some nine months before that can be rectified. My proposal will simply regulate the situation better and it will have the effect of reducing premiums. It is fairer to all when all things are taken into account. If members have any regard for business in this Territory and, indeed, the proper operation of this legislation, they will pass this amendment.

MR BERRY (Minister for Health and Minister for Sport) (5.19): One thing Mr Stefaniak did raise was the professionalism of parliamentary counsel who work for the ACT Government, and he is right on that score; there is no question about that. They act in accordance with their instructions. Mr Stefaniak has obviously issued instructions which indicate "Hit the worker" and they have shown him how to hit them properly. That is what it is all about. They do as they are told. They act in accordance with their instructions. They are very professional.

In relation to the employers, the employers have been working with this legislation whilst premiums have come down. Premiums have been plummeting even though this legislation has been in place. So, it is wrong for you to say that the best way to reduce premiums is to go for the victims. It is not the right approach.

The correct approach, and the employers who are represented on the monitoring committee agree with me, is that the matter ought to be dealt with in the context of the development of rehabilitation proposals. Nobody from the Liberal Party is interested in talking about that, because it costs a few dollars. What this is about is developing a list of proposals for rehabilitation, which may include termination, which are supported by everybody, not just by one single group in the Territory.

It is important that we have all of the parties agreeable to the outcome on workers' compensation, because if we do not we develop a formula for more confrontation in the workplace. There is no point in doing that. What we want is a situation where everybody agrees with the outcome. You will not get it with your approach. This is just shoving your particular view down the throats of workers, employees and all of those people who are represented on the monitoring committee, which, clearly, is short-sighted and does not take into account all of the effects of what you have proposed.

It is a short-sighted position. It has been ill thought out. It really does not even take into account the mechanisms that you set up when you were in government for monitoring the situation and developing recommendations for consideration by government.

It might be that some small section of the insurance constituency would be well served or would be satisfied that the Liberal Party is doing something on its behalf by moving these sorts of amendments because it is one of their pets; but it does not serve the ACT well, it does not serve the ACT work force well, and it will not serve the community well if you take this approach of ramming these sorts of changes down the throats of people who are prepared to discuss outcomes which improve the situation.

That has happened because of the review of workers' compensation in the ACT. There has been a significant fall in premiums in the ACT and I suspect that, where there are other efficiencies that can be found, they will be found. I think, Mr Speaker, that Labor can take some credit for some of the falls, at least, because of the introduction of occupational health and safety legislation into the culture. Again I say that ramming these sorts of amendments down the throats of people will not help any of us.

Question put:

That the amendments (**Mr Stefaniak's**) be agreed to.

The Assembly voted -

AYES, 5	*NOES, 10*
Mr Humphries	Mr Berry
Mr Kaine	Mr Collaery
Mrs Nolan	Mr Connolly
Mr Prowse	Ms Follett
Mr Stefaniak	Mrs Grassby
	Mr Jensen
	Dr Kinloch
	Ms Maher
	Mr Moore
	Mr Wood

Question so resolved in the negative.

Remainder of Bill agreed to.

Bill, as amended, agreed to.

WORKERS' COMPENSATION (CONSEQUENTIAL AMENDMENTS) BILL 1991

Debate resumed from 28 November 1991, 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 (Minister for Health and Minister for Sport) (5.30), by leave: I move:

Schedule - Proposed amendments to the Workmen's Compensation Supplementation Fund Act 1980 -

Page 6, line 6, omit subparagraph (i), substitute the following subparagraph: "(i) omit '18 of the Workmen's', substitute '17B of the'; and".

Page 6, line 14, paragraph (e): after "of", insert "'Commonwealth Companies Act',".

Page 7, line 21, proposed amendment of Section 39, omit the amendment, substitute the following amendments:

Section 39:

(a) after "his", insert "or her".
(b) omit "377 of the Commnonwealth Companies Act", substitute "477 of the Corporations Law".

paragraph 39(a):

(a) omit "377 of that Act", substitute "477 of that Law".
(b) omit "authority" (wherever occurring), substitute "approval".

paragraph 39(b):

(a) omit "441", substitute "556".
(b) omit "377(1)(b) of that Act", substitute "477(1)(b) of that Law".

Subsections 40(1) and (2):

omit "441 of the Commonwealth Companies Act", substitute "556 of the Corporations Law".

Clause 3 of the Workers' Compensation (Consequential Amendments) Bill 1991 provides that the Acts specified in the schedule are amended as set out in the schedule. The Workmen's Compensation Supplementation Fund Act 1980 is one of the Acts specified in the schedule. The Workmen's Compensation Supplementation Fund Act is further amended to omit the reference to section 18 of the Workmen's Compensation Act and substitute a reference to section 17B of the Compensation Act. Mr Speaker, this amendment is in response to a comment made by the Legislative Assembly's Standing Committee on the Scrutiny of Bills and Subordinate Legislation in its report No. 21 of 1991, again under the watchful eye of Professor Whalan. The committee pointed out that this cross-reference was incorrect.

The Workmen's Compensation Supplementation Fund Act is further amended to omit references to the Commonwealth Companies Act and substitute references to the equivalent provisions of the new corporations law. Mr Speaker, I present a supplementary explanatory memorandum.

Amendments agreed to.

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

Bill, as amended, agreed to.

HEALTH SERVICES (AMENDMENT) BILL 1991

MR BERRY (Minister for Health and Minister for Sport) (5.32): Mr Speaker, I present the Health Services (Amendment) Bill 1991. I move:

That this Bill be agreed to in principle.

Members will recall that in 1990 this Assembly passed the Health Services Act which established the Board of Health, among other things. During debate on that Bill an amendment was moved and passed which deleted from the Bill provisions which would have enabled appointed members of the Board of Health to receive remuneration.

Mr Humphries: Which you supported.

MR BERRY: Mr Speaker, Mr Humphries calls out from across the floor, "Which you supported", and, of course, he is wrong in that regard. We actively argued for payment to the Board of Health. It was the subject of acrimonious debate. This Bill, the Health Services (Amendment) Bill 1991, seeks to reintroduce those provisions to the Health Services Act.

The Bill provides for appointed members of the board to be paid such remuneration and allowances as are prescribed. In essence, this will allow for members to receive such remuneration as will be determined by the Remuneration Tribunal, as appropriate, given the role and functions of the board. Mr Speaker, I present the explanatory memorandum to the Bill.

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

PROCEEDS OF CRIME BILL 1991

[COGNATE BILL:

PROCEEDS OF CRIME (CONSEQUENTIAL AMENDMENTS) BILL 1991]

Debate resumed from 5 December 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR SPEAKER: I understand that it is the wish of the Assembly to debate this order of the day concurrently with order of the day No. 5, Proceeds of Crime (Consequential Amendments) Bill 1991. There being no objection, that course will be followed. I remind members that in debating Executive business order of the day No. 4 they may also address their remarks to order of the day No. 5.

MR COLLAERY (5.34): Currently, the seizure and confiscation of proceeds of crime in the ACT is provided for under the Commonwealth Proceeds of Crime Act 1987, and, as a result of the transfer of responsibility for the prosecution of ACT offences from the Commonwealth to the ACT on 1 July 1990, the Commonwealth Act will cease to apply to the ACT, with effect no later than 4 March 1992. It is for that reason that the Attorney is very anxious, no doubt, to see this Bill achieve passage.

So far as I know, the ACT will join all other jurisdictions, except Tasmania, in having enacted proceeds of crime legislation. The history of proceeds of crime legislation is marked by occasional bursts of congratulatory messages on one hand and criticism from jurists, the purists, the absolutists - and Mr Moore would well understand those categories - who question the civil liberties aspects of this and hold that civil liberties are paramount, and that the expropriation of property is a matter to be approached very carefully in a democracy.

The confiscation and expropriation of property relating to offences got its toehold in this country following organised crime disclosures in relation to drug trafficking. We watched the legislation expand to cover a wider range of offences until it became what is encompassed in the Bill before the house, which is, as members are aware, a wide net to catch a whole manner of proceeds. I commend to members the definition of "proceeds" at page 6 of the Bill, which is:

> "proceeds", in relation to an offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence.

I also remind the house that the Bill is premised, of course, on the commission of an offence. One goes to clause 19 of the Bill to work out the procedures for forfeiture orders. Briefly, they apply where the Director of Public Prosecutions applies to the court "for an order in respect of a person's conviction of an offence" and, additionally, where "the court is satisfied that the property is tainted property in respect of the offence". "Tainted property" takes the ordinary common meaning of those words, and you will read on to see that this jurisdiction is bringing forward legislation to reflect the Commonwealth Bill.

It is a replica in many respects, but it certainly does not follow the New South Wales legislation which, of course, expropriates property related to suspected offences. In other words, the New South Wales benchmark provides in the Drug Trafficking (Civil Proceedings) Act 1990 for the confiscation of property of a person without requiring a conviction.

That is an extraordinary piece of legislation and, because it relates to drug trafficking, I think jurists have accepted the legislation without too much rancour. It relates to most serious drug offences of trafficking and operates on the basis of a civil rather than criminal standard of proof. So, it is a double header to criminal law jurists for a couple of reasons . The court can find that the property is related to drug related activities and the proceeds can be recovered as a civil debt to the New South Wales Crown.

I certainly do not favour that approach at this stage in the history of organised crime in this Territory. I accept that organised crime is always an iceberg, and we need to keep our eye on how the New South Wales legislation works at this stage. But I do not believe that we should move at this stage to civil expropriation of private property. It contravenes the fundamental principle that a person is deemed innocent until proven guilty, and it also contravenes the hallowed notion in criminal law of a test of beyond reasonable doubt.

The Bill before the house in many respects, as I have said, replicates the Commonwealth legislation, and that is, of course, the Proceeds of Crime Act 1987. The differences relate to some procedural and machinery matters, and I will not detain the house on those matters. The Proceeds of Crime Bill gives local consideration to how property is to be managed whilst the matter is being processed. Under clause 42 of the Bill, responsibility for seized property, of course, rests with the Chief Police Officer.

By way of diversion, at this time, to my knowledge, some of the property seized from a matter currently before the courts - and I am able to say that much - in relation to an insurer, Mr Ainsworth, is held in certain locations, one of which is the Reserve Bank. I think it is safe to say that it is there. It would be no more insecure for me not to say that it was there. There are costs associated with that, and also issues relating to seized property.

Recently I was approached by a constituent who says that the $15,000 cash that he had on him at the time, or around the time, that he was detained for a minor trafficking offence - well, not a major trafficking offence, but a trafficking offence - was not from the proceeds of any other activity - - -

Mr Connolly: He just happened to have a spare $15,000 in his pocket.

MR COLLAERY: My colleague Mr Connolly says, "He just happened to have $15,000"; but that money, he said, was evidenced by letters from a bookmaker and other sources. The situation puts the police in a very difficult position, because it could be said, if they wished to hang onto the property, that they doubt the word of an otherwise reputable unconvicted person who has given a certificate

attesting to having seen that person at the TAB agency and, indeed, collect winnings, as, indeed, this representation from a constituent contended. That matter is sub judice. I cannot go any further; it might identify the matter. It puts the police in a position of having to say that someone who works for the TAB, and someone who is a bookmaker, is not someone that they want to rely upon in respect of returning the money.

This Bill, introduced by the Attorney, will clarify responsibility for seized property - at clauses 42 and 43. That is very welcome, particularly to the police, who over time have had a number of complaints made to them about property that they do not return - with a lot of odious implications at times about what happened to the property and so on. The Bill also provides for search and seizure powers, and there has been some comment upon that by the Assembly's Scrutiny of Bills Committee. I am pleased to say that the Attorney has foreshadowed some amendments in that regard. So, I will not detain the house by dealing with those matters.

The role of the Public Trustee is also set out in the Bill, and in that sense it differs a little from the Commonwealth legislation. I commend the provisions that have been drafted. They protect the Public Trustee from personal liability, because people are often in a suing mood over an expropriation, and often they are, regrettably, moneyed people who are in a position to use the legal processes, which are properly available to them, to their maximum.

The duties of the Public Trustee are to hold onto the property and administer it. I think it is a good decision. I might say that, of course, this Bill had been agreed to by the Alliance Cabinet at the beginning of May, and it also favoured using the Office of the Public Trustee. The position of the Public Trustee, of course, is that the trustee should manage the property prudently and not see its value lost. I do not know what the Public Trustee would do with $1,500 worth of cherries, but I am sure that something innovative could be found. It is interesting to see that, of course, in our jurisdiction, the Public Trustee does not, on my reading of the Bill, have the power to take the ameliorating steps that a trustee can take in civil matters to anticipate loss and actually sell the cherries while they are still ripe.

So, there are some minor concerns about the seizure of perishable goods. They may include goods that are not necessarily foodstuffs. They may be other goods that deteriorate relatively rapidly. They are just individual points to try to raise our flagging spirits, having had such a solid day.

The Bill seems to comply with the two international conventions which require separate funds management of proceeds of crime. They are the Council of Europe Convention on Money Laundering, and the Group of Seven Industrialised Countries Convention addressing Confiscation

of the Proceeds of Crime and Money Laundering. And, of course, the Commonwealth has introduced the cash transactions legislation, which, on my advice, is proving extremely effective in identifying those cash payments that occur, at this stage, through the banks.

At this juncture, I would like to say how amazed I was, back in 1979, to find out, in the process of a series of conveyances, how many unregistered mortgages there were in this city. Of course, there is a cultural aspect of money dealings in this country which is expanding, and that is the non-reliance upon registered mortgages as collateral for "loans". In many cases, I believe, in the heyday of what one could describe as the grass castles of this city, there was an extensive unregistered mortgage loan system in this town within certain groups. That is my speculation, based on a couple of indicators that occurred to me. But those payments, when houses are sold, are made properly and they seem to be made very promptly. So, there is probably an underground policing mechanism too.

Of course, cash transactions legislation and other legislation will eventually deal with that issue, but it is still very traditional and is still a very difficult to detect cultural activity in this town. Some of it, of course, is in no way dishonest, because it relates to the methods of lending money. Everyone knows, of course, about the silver circle among the Vietnamese community in the ACT. There is a silver circle and people put in X amount of money periodically and some lucky person wins the draw, gets that money as a capital loan fund, and can then get into business and all the rest. It is a self-help mechanism, exterior to the ACT finance and banking system. I am not going to go further, because it may not assist the processes of either those cultural groups or law enforcement.

The Bill cannot tackle those issues yet, in a democracy. There is a point at which this legislature will decide not to cross the Rubicon, and I suggest that it is not time for that at this stage. I commend the Bill to the house. Various different approaches have been taken around the country; but, since we operate closely to Commonwealth norms, particularly in respect of the use - well, at this stage - of the Australian Federal Police, with their procedures, because we operate with a Director of Public Prosecutions founded on Federal practice and because we are so close to the seat of government and these issues, I think it was appropriate for the government advisers to suggest using a Bill basically replicating that of the Commonwealth. I commend it to the house, subject, of course, to the amendments foreshadowed by the Attorney.

MR STEFANIAK (5.50): I certainly will not take as long as Mr Collaery. The Bill is very timely in that, if it were not passed in this sitting, proceeds of crime legislation in the ACT would simply cease on 1 March 1992. Proceeds of crime legislation, I think, is essential legislation which has been enacted by the various Australian States and

Territories and the Commonwealth in the latter half of the 1980s to combat crime and to ensure that major criminals do not get away, when they are caught, with the proceeds of their crime - their ill-gotten gains. We are talking, in certain cases, of many, many millions of dollars.

We are also talking about stopping really serious criminals - the drug barons, the big drug pushers and perpetrators of major white-collar fraud; cases which involve very large sums of money. Those crimes are at the more serious end of the criminal justice scale and, accordingly, it is quite wrong for people who might be caught, and perhaps serve significant terms of imprisonment, to be able to get out afterwards and reap the benefit of their ill-gotten gains. This legislation certainly has the support of the Liberal Party. As other speakers, Mr Connolly and Mr Collaery, have noted, it basically replicates the Commonwealth legislation, which has, in fact, been in place in the Territory now for three or four years, I understand.

Indeed, before I left the DPP we had established a proceeds of crime section there, and it had just started to apply the Commonwealth legislation with some effect, in terms of some of the major criminals in the Territory. I can recall, I think, a house being seized on one occasion, and bank accounts being seized, and the money trail being followed, or beginning to be followed, in a few other areas. This is absolutely essential legislation. The techniques of major criminals especially are very modern and, in many ways, some of the laws that are employed to counter major crime are still 50 or 60 years behind the times. This is very timely, essential legislation if we are going to be fair dinkum about combating major crime.

Mr Connolly has proposed a number of amendments. We have no real problem with them. It is important that the authorities involved with any sort of legislation such as this have relevant powers to combat crime. Some of the old style, nineteenth-century-type concepts have been changed in an effort to adequately counter the sophisticated crime that we experience in the latter half of the twentieth century. I think that has to be borne in mind. People should not be overly sensitive about that; otherwise, we can never effectively combat crime.

Mr Connolly's amendments take up matters which were drawn to our attention by the Scrutiny of Bills Committee. Members will note that his two major amendments - Nos 2 and 4 - relate to an occupier of premises giving the police a signed acknowledgment of consent to enter. Such provisions exist in other legislation; most recently, I think, the planning legislation that we passed. I am advised by Mr Connolly - because I have been out of the criminal area as far as courts are concerned since 1989 - that he understands that the police have a set pro forma, which they certainly would need, for someone to sign an acknowledgment. Certainly, quite often one of the big

contentious issues when a case goes to court is whether the police did or did not have the consent of the occupier to enter premises, especially when there is not a search warrant.

This Bill clarifies the situation and, provided it is not a huge administrative problem for the police - and I understand from Mr Connolly that it is not and that it can be covered quite simply - then it is a sensible addition which will save some time when the matter comes to court. It might mean the difference between having a voir dire and not having a voir dire, and that is certainly sensible. In relation to the issue of search and entry, though, I would think that in most of these cases, certainly from my experience from my time in prosecutions, you would need a search warrant because the types of criminals that we are talking about try to hide their ill-gotten gains and they are certainly not going to make life easy for the law enforcement authorities.

I have also circulated two proposed amendments to Mr Connolly's amendments. I have spoken to the Attorney about them. They relate to the prescribed time, which appears in clauses 39 and 68. The Commonwealth legislation, we think, had "one month", and that is what is in the legislation which is before us. Mr Connolly wants to amend it to 72 hours. One month is certainly more appropriate, and that is, in fact, what the Commonwealth legislation has. We have done some double-checking there and I understand that he will be supporting my amendment in that regard. Members should note, in fact, that my proposition of 28 days is based also on the Scrutiny of Bills Committee report. We changed a similar one-month clause for a search warrant in the planning and environment legislation to 28 days. That was done only last week, if I am correct. That was drawn to the attention of the Attorney by the Scrutiny of Bills Committee.

As to search warrants in relation to this Bill, I feel that for consistency, if we provide for one month or 28 days in the planning legislation, the same should apply in this legislation. Accordingly, that is taken up in my two amendments. Mr Speaker, I certainly would commend this legislation - which is crucial legislation in terms of fighting major crime - to the house.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (5.56), in reply: I thank both Mr Collaery and Mr Stefaniak for their comments. Certainly, proceeds of crime legislation is an important part of the armoury which the state needs to deal with organised crime. It has been a pattern in Australia now since 1982, when the Commonwealth Act was first introduced, that States and Territories have such legislation. The reason we are debating this tonight and the Government has some degree of urgency on it is that the Commonwealth legislation, which currently applies to the Territory, will expire on 4 March. So, it is necessary that we have this legislation in place.

I take Mr Collaery's point that it may be appropriate that in the future we look at some of the provisions in relation to the powers of the Public Trustee to deal with the property that is held. He mentioned cherries. I think he had in mind a recent media report of some stolen cherries. I recall, when I was an associate to a Supreme Court judge back in 1981, a matter involving some barramundi that allegedly had been poached. And wheeled into the courtroom in Darwin was a chest freezer chock-a-block full of the aforementioned allegedly poached barramundi. When you have property that is perishable, it does raise the question of how long it should be held by authorities before it goes off. So, that is something we may need to look at next year if there is a problem.

The Scrutiny of Bills Committee has indicated a number of problems and I am seeking to deal with those in the amendments which I have circulated and foreshadowed. With the indulgence of the Assembly, I will, in the in-principle stage, just run through them quickly, perhaps to save time later on. The first amendment merely picks up a typographical error. The second amendment makes it clear that, where there is a power to search with consent, a standard form of consent should be signed and executed by the person whose premises are being searched. That will save time at a later trial. The third amendment I will leave for the moment. It deals with the issue of the time of the search warrant. The fourth amendment is, again, intended to make clear powers of consent and a clear form of consent.

The Scrutiny of Bills Committee said that this legislation does in some cases reverse the onus of proof, and that is true; it does that. But I think this is a case where it is justified. Essentially, what is happening here is that the state is saying, "When there has been major crime" - and we are essentially talking about drug crimes in the past, but I think increasingly we will see major corporate fraud also caught within this net - "the onus is on you to say how you got the asset".

Mr Collaery related an anecdote about a constituent who had been arrested for an infringement of the narcotics laws of some type or another and who happened to have $15,000 in his back pocket and who said, "But, officer, I won it on a horse". That is reminiscent of the evidence that we were hearing before royal commissions in Australia back in the 1970s, where a number of people seemed to have been remarkably successful, winning hundreds of thousands of dollars on a horse, but they were never able to remember the name of the horse.

It always struck me, as a person who is not a gambler and who occasionally will have a ticket in a sweep at Melbourne Cup time, that if I ever won $200,000 or $300,000 on a horse I think I would have a photograph of the horse framed in the loungeroom, let alone not remember its name. But that was the case in those royal commissions. It made

things very difficult, because, in the absence of a reversal of the onus of proof on ownership of the property, you would have to prove that they were indeed ill-gotten gains, and that could often be difficult. So, the Scrutiny of Bills Committee is right in saying that there is a problem there, but I think it is a case where the Government and the Territory community are justified in reversing the onus of proof.

Mr Stefaniak indicated an area where he was differing with my proposed list of amendments in relation to the time that a warrant is valid for. I think that he is essentially right, but I might propose a different way of going about it. Essentially, the problem that the Scrutiny of Bills Committee identified was the inconsistency of using a month as the prescribed time for which a warrant was valid. The proposed amendment, I think, deletes "prescribed time" from the period of validity and locks into a 72-hour period of validity, which is based on the trigger mechanism, which is that you get a warrant if you believe that a person, within 72 hours, will have the appropriately tainted property.

Mr Stefaniak thought that that may be too restrictive, because a warrant should perhaps be on foot for longer than 72 hours. After thinking about it and talking with Mr Stefaniak, I tended to agree with him. I then went to the Commonwealth legislation, and the Commonwealth legislation has a statutory definition of "prescribed time", which is 48 hours unless an information is laid in respect of an offence, in which case it is a month. That appears in the definitions clause of the Commonwealth Act. Then I looked at our definitions clause which also, indeed, has that same provision; that it is 48 hours, or a month if an information has been issued. I think that is the problem, really. The inconsistency that the Scrutiny of Bills Committee was pointing to was the use of a month whereas we have used 28 days elsewhere.

So, I am foreshadowing another amendment, which I have circulated, which proposes to take out "1 month" and substitute "28 days". That would be consistent, then, with other legislation, and it does not tamper with the existing period of validity of warrants, which I think could have been too restrictive.

So, what I propose doing, in effect, is to not move my amendments Nos 3 and 5 and instead move this additional amendment to the definitions provision, which will pick up the Scrutiny of Bills Committee's concerns without having what, I think, could have been the unintended consequences, if we had gone through with my amendments Nos 3 and 5, of having it far too short, and perhaps also an unintended consequence of Mr Stefaniak's provision which could have made it too long a period of validity for the case of the warrant where an information has not been laid. Perhaps that is a case where the shorter 48-hour period now contained in the definitions provision should remain.

In any event, doing it this way keeps the existing time limits that have applied under the Commonwealth legislation, and, unless and until we are advised that there is a problem with that, I think that is the most prudent course.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

Amendments (by **Mr Connolly**) proposed:

Clause 4, page 6, line 3, omit "1 month", substitute "28 days".

Subclause 14(1), page 14, line 18, omit "(4)", insert "(4),".

Proposed subclauses 38(2A) and (2B), page 40, line 29, after subclause 38(2), insert the following subclauses:

"(2A) Where a police officer obtains the consent of the occupier to enter upon land, or upon or into premises, under subsection (2), the police officer shall ask the occupier to sign a written acknowledgment -

(a) that the occupier has been informed that he or she may refuse to consent;

(b) that the occupier has consented; and

(c) of the day on which, and the time at which, the occupier consented.

(2B) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented to the entry of land or premises by a police officer under subsection (2) and an acknowledgment in accordance with subsection (2A) signed by the occupier is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.".

Clause 67, page 76, line 26, add at the end the following subclauses:

"(2) Where a police officer obtains the consent of the occupier to enter upon land, or upon or into premises, under subsection (1), the police officer shall ask the occupier to sign a written acknowledgment -

(a) that the occupier has been informed that he or she may refuse to consent;
(b) that the occupier has consented; and
(c) of the day on which, and the time at which, the occupier consented.

(3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented to the entry of land or premises by a police officer under subsection (1) and an acknowledgment in accordance with subsection (2) signed by the occupier is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.".

MR STEFANIAK (6.04): Mr Speaker, in view of the definitions clause and in view of the fact that Mr Connolly's amendments Nos 3 and 5 relate to the words "prescribed time", I will not move mine, because that matter is now taken up by clause 4 - Interpretation.

MR SPEAKER: Okay. So, they are your amendments Nos 3 and 5?

MR STEFANIAK: My amendments are to Mr Connolly's amendments Nos 3 and 5; but they are not necessary now, because Mr Connolly - - -

Mr Connolly: I am not moving my amendments Nos 3 and 5.

MR STEFANIAK: Yes, he is not moving his amendments Nos 3 and 5. We go back to the definitions clause, Mr Speaker, where he wants to insert "28 days", which is exactly what I was suggesting. That is quite suitable.

MR COLLAERY (6.05): I would like to speak to amendment No. 4 very briefly, Mr Speaker. I support the amendment, but I wish to comment again because this amendment No. 4 - that is, the amendment to clause 67 - follows the form that was put into the planning Act, and I said then that I had some concerns about whether the consent, as expressed in this provision, can operate at large for other entries. The proposed subclause says:

> Where a police officer obtains the consent of the occupier to enter upon land, or upon or into premises ...

Can that consent be a consent at large to allow the police to go back time and time again? I was not too worried about it in the planning context; but, having signalled my concern, I am concerned that we have not discussed it again since. It says, literally:

> Where a police officer obtains the consent of the occupier to enter upon land ... the police officer shall ask the occupier to sign a written acknowledgment ...

Arguably, the consent relates only to that entry. But I think that, in civil liberty terms, we need to look at the wording of subclause (3), where it says:

> ... in any proceedings, for a court to be satisfied that an occupier has consented to the entry of land or premises ...

The word "the" suggests an event - singular - but I am not sure that it is altogether clear. I am not going to press the issue tonight. When this provision is used again - as undoubtedly it will be, because it is becoming a form used by parliamentary draftsmen - I would like to be assured, since the matter does not appear beyond doubt to me, about what is intended. I trust that the words I have just said and the reply that the Attorney gives will be the extrinsic aid, in any event.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (6.07): I think that it is appropriate to respond. I would not agree with Mr Collaery that this is somewhat ambiguous, but I would certainly interpret it - as I think he would, on balance - as meaning consent to "the entry" rather than "entries". I would assume that the consent is valid for that entry.

Mr Stefaniak: Commonsense; common English applies.

MR CONNOLLY: As Mr Stefaniak says, it is a commonsense approach. But, as we know, lawyers make their careers on pulling out other than a commonsense construction from what are otherwise plain words.

Mr Stefaniak: We would be happy with them going back a few times, though, Terry.

MR CONNOLLY: Yes. It is helpful if it is made clear for the record that it is the Assembly's intention that, clearly, a consent is a consent for a particular visit and not a consent at large. Also, I guess, we will need to watch what happens in the courts as these matters are litigated. If there appear to be abuses or problems with consent forms, we will need to revisit the issue.

Amendments agreed to.

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

Bill, as amended, agreed to.

PROCEEDS OF CRIME (CONSEQUENTIAL AMENDMENTS) BILL 1991

Consideration resumed from 5 December 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

CREDIT (AMENDMENT) BILL 1991

Debate resumed from 21 November 1991, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR COLLAERY (6.09): As welcome to me as the prospect of class actions in this Territory is, I felt a wry sense of humour when I saw emblazoned in the *Canberra Times*, with a photograph of the Attorney, the words: "Class action has arrived". I will never blame the actions of a subeditor for putting a headline over any of my colleagues in this house. I would not even visit that on anyone in this chamber. But that headline caught my eye, and then I read into the article and I suddenly realised that what was being referred to was indeed the Bill that Mr Connolly introduced around that time in this house.

I share his optimism. It was a good flagwaving exercise. I can imagine all of those federations of sellers of industrial products zeroing in on that headline, and I imagine that it has been clipped and copied throughout the country, because the prospect of consumer class actions, of course, terrifies a certain element of this community.

No doubt, Mr Connolly, in his hopefully long and distinguished career, will play a role in the prosecution of consumer class actions.

Mr Stefaniak: I would not mind shortening his career.

MR COLLAERY: Mr Stefaniak, of course, hopes to return to this place to shorten that career. But time, of course, will tell. The Bill before the house, as the Attorney said, overcomes some matters which arose in respect of the administration, essentially by a bank, and banks, which had unintentionally, and, I think it would be fair to say, without moral turpitude, failed to follow the quite properly strict rules relating to credit provision. Those rules require documents to form part of a contract being made - and the definition of "part of" does not include being sent back a document in the mail after the loan is approved. It all has to be in front of you when it is approved.

I am simplifying the processes for this debate; but, essentially, a bank did not put its documents together in complying form, so there are many thousands of non-complying credit arrangements. It would, quite frankly, be absurd to see all of the matters dealt with singly by the credit tribunal, or anyone else. So, the Attorney has brought forward a Bill, which I think is a uniform Bill which I saw in another form when I was attending one of the ministerial fora that I used to sit on, in between airline flights - as the Attorney has well pointed out to me. But perhaps the Attorney will concede that the product of this meeting in Perth - or was it Hobart, or Melbourne? - was worthwhile.

Mr Stefaniak: But did you win 15 grand at the races, Bernard?

MR COLLAERY: I doubt that this Bill had any connection with the races, Mr Stefaniak. This is an effective piece of a joint Federal action. The Attorney is to be congratulated for bringing it forward. I support it and, of course, I join with him in saying, "Well, there is a little class action opening here". I wish it well. I have a feeling that no-one is going to water it much in the next year or so; but, if it can flourish, so be it.

MR STEFANIAK (6.13): The Attorney and Mr Collaery have actually gone through this Bill in some detail, and I am not going to repeat it. As Mr Connolly said, it does address two anomalies. One was a fairly small technical breach. The second one was a more substantive breach. It is uniform legislation; it brings us into line, too, with the other uniform credit States - New South Wales, Victoria and Western Australia - and also Queensland, I understand. Accordingly, it has the support of the Liberal Party.

I would also indicate that I am grateful for the two briefings that I received from the departmental officers, especially Mr Tony Charge, who went through this Bill with me in some detail on 14 November. This Bill does have the support of the Liberal Party, and I suppose that by now it could be classed also as a fairly urgent Bill, because I think it is absolutely crucial that this Bill come into force as soon as possible.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (6.14), in reply: I thank members for their contributions. Really, the only thing to be done is to follow up on Mr Stefaniak's final comment about the urgency. The ACT Credit Tribunal has some 5,500 matters before it, some 2,000 involving Westpac and some 3,500 involving the State Bank of New South Wales. The tribunal has adjourned the hearing of those applications until 20 December, pending this legislation achieving passage. So, this legislation being passed this evening will enable that hearing to proceed.

As Mr Collaery says, this is a little class action, and it will be interesting to see how that operates, because we have talked a lot about class actions in this country and we have not actually seen an action involving such a large number of consumer claims dealt with as a class action. Like Mr Collaery, I wish the process well.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

POSTPONEMENT OF ORDER OF THE DAY

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

> That order of the day No. 7, Executive business, be postponed until the next day of sitting.

DOG CONTROL (AMENDMENT) BILL 1991

Debate resumed from 5 December 1991, on motion by **Mr Wood**:

> That this Bill be agreed to in principle.

MR JENSEN (6.16): I rise today to support this Bill in principle, although I foreshadow that I will be moving a couple of minor amendments during the detail stage. These amendments have been prepared in consultation with the Canberra Kennel Association, whose representatives, I understand, have raised these matters with the Minister, without success. I trust, however, that I will be able to sway the Minister and members by force of argument. I might add that, in the preparation of those amendments very quickly this afternoon, I received some advice from officers of the Parliamentary Counsel's Office who made sure that we got the format correct. I would like to thank them for that.

Firstly, I think it appropriate to put on the record my interest in and involvement with the dog fraternity in three States, just to give an indication as to where I am coming from. As a new dog owner in Townsville some years ago, I sought assistance in training and joined a club, and eventually became a voluntary trainer for obedience classes in that town. Our dog, an Irish setter, achieved his novice qualification in a short time, although our forays into the show ring were not particularly successful. It is a bit hard to get an Irish setter that has a hip problem to win in the show ring, I can assure you. However, we did try, and we enjoyed ourselves.

As a member of the Field and Game Association, both in Queensland and in New South Wales, I was involved in gun dog trials. On moving to Canberra, I became a qualified trainer under the auspices of the Canberra Kennel Association with the Belconnen Dog Obedience Club. I was also Vice-President of the ACT Gun Dogs Society, and was responsible for the conduct and operation of its non-slip field retrieving trials. I was also, of course, a member of the Canberra Kennel Association.

By that time we were the proud owners of a Brittany spaniel and were heavily involved in training this particular dog, particularly in obedience, an interest we continued after moving to Perth. On our return to the ACT, other commitments prevented me from continuing our direct role in the dog clubs and associations.

Mr Wood: Do we need this history? I acknowledge your intentions and your background.

MR JENSEN: That is as far as I need to go, I think, Mr Wood. I understand that the Canberra Kennel Association, which represents all dog clubs in the ACT, believes that these amendments to the main dog control legislation are an improvement to dog control in the ACT. However, there are a couple of concerns that they have raised with me, for which I have prepared amendments. I will address those amendments during this speech, I think, to save time in the detail stage. I trust that I will be able to explain their position, because of my experience in this field.

There are a number of other points which deserve comment and which warrant a response from the Minister. One aspect of the new legislation raised with me is the possibility of an amnesty for unregistered dogs. I am advised that, while there are approximately 16,000 registered dogs in the ACT, the Canberra Kennel Association conservatively estimates that there are some 65,000 dogs in the ACT. I repeat: Only 16,000 registered; some 65,000 dogs in the ACT. This estimate is, I understand, based on reports and assessments by veterinarians and others involved in the dog arena. Pardon the pun - for those who are into trials.

I wonder whether the Minister could make use of the provisions of the gazettal to provide for a three-month amnesty, backed by a publicity campaign, in an attempt to encourage more people to register their dogs. That is a suggestion that the Minister may wish to consider.

Let me now turn to the issue of licence fees for keepers, as defined in the new Part IIA. I wonder whether the Minister could, during his remarks, provide a hint as to what he considers will be a suitable fee, and whether those with keepers licences are going to be required to pay the licence fee per dog as well. For example, a keeper has to pay, say, $50 to obtain a keepers licence and may have four dogs over three months - not an unreasonable number for a person who is involved in breeding dogs and bitches. If the licence fee is, say, $6 for each dog or bitch, we are looking at a charge of some $74 per annum. I wonder whether the Minister could indicate that, because the dog community, particularly those kennel club owners who are involved in the breeding of dogs in the ACT, are interested in that response.

I am not sure, however, whether we are going to get very many more dogs registered or many more people seeking a keepers licence. The limited number of officers available for enforcement in respect of this type of offence will no doubt depend on complaints being lodged, as the dog inspectors will probably be too busy on general dog control issues to control the large number of dogs that, unfortunately, will probably still be allowed to roam by irresponsible owners. However, I am pleased to see that the penalties have been increased. Hopefully, once that starts to bite, people will start to take greater control over their animals.

The issue of keepers licences does involve some problems, I would suggest, for the many owners who would seek to breed dogs without a keepers licence, especially dogs that have been known to cause problems. Unless they manage to keep the number of dogs below the specified number and within the three months age exception, I believe that we have a potential for some problems in that area. In some respects, this provision will probably affect only the owners of registered breeding names with a kennel association, be they State or national.

The owners of pure breed dogs could argue that they will be discriminated against as owners of dogs which are being bred from, let us say, for example, a bull terrier and a Rhodesian ridgeback or some similar dog which is being used as a hunting dog outside the ACT, particularly for pigs. These are the sorts of dog breeds, the crosses, that are used in this area, and I think we run the risk somehow of not being able to control these sorts of breeds, even with the licence for a keeper.

I am not quite sure what the answer is, but I think it is something that we have to look at very carefully. This issue is of concern to those registered owners who are responsible members of the Canberra Kennel Association, which is necessary if one is to breed purebred dogs, or, of course, other breed clubs such as the German Shepherd Club, the ACT Gun Dogs Society, et cetera. There is a bit of a concern there, and I think that is something that we have to look at carefully down the track.

I note, and I am pleased to see, that incentives are being offered for dog owners who make use of registered dog obedience clubs to help them train and raise a responsible dog, because, quite frankly, I have always maintained that there is no such thing as a delinquent dog, just a delinquent owner. That is effectively the problem that we have in the ACT, and all around Australia, I think. It is not the dog that is delinquent; it is the people who own it.

I trust that, in view of this, the Minister, who is also responsible for planning and land management, will ensure that a new home for the Belconnen Dog Obedience Club is found quickly. I understand that they have been asked to move and, hopefully, they will be given premises. As one of the members of that club who assisted in its establishment in its current location in Mitchell, I am fully supportive of its move.

I note the new paragraph on preventing escape. I know that it is late; but, having been the owner of a dog which from day one in three States used to take every opportunity to escape, I can recall many times having to follow at a reasonable clip the disappearing back end of a Brittany spaniel when a visitor was not aware of how quick a dog can move when given half a chance at the back gate. I guess I was a bit fitter in those days.

Let me now turn to the issue of dogs in public places. I fully support the proposal to have a dog on a leash in a public place. However, this raises a potential problem for those many dog owners who, hopefully, will take up the opportunity to train their dogs. Formal training with a club normally takes place only once a week, usually at the weekend or at night under lights. It is amazing how many dogs can fit on a shopping centre car park under lights - which is what we used to do on a weekly basis in Townsville.

However, one seeks to train a dog in public, particularly in parks, to get them used to the sights, sounds and scents around them. In some cases, as one progresses from companion dog through to companion dog excellent and utility dog, the standard of control by the owner increases markedly, and all exercises at UD level, for example, are done off lead.

The way the Bill is framed at the moment, I, as a responsible dog owner, training my dog in a local park, could be hit with an on-the-spot fine if I was practising the heel-free, recall, sit or down stay exercises, for example. In the case of a utility dog being trained, the seek back exercise would also result in a fine. Where a dog is training for the CDX standard, retrieving a dumbbell would also have the potential for a fine under the legislation as it stands.

Mr Kaine: Would you care to explain CDX standards, Norm? I missed that bit.

MR JENSEN: I do not think we have time for that, Mr Kaine. I am not sure that Mr Wood really wants that to happen. I do understand his concern about people using this provision, if the amendment that I propose is successful, to get out of an on-the-spot fine. Let me say, however, that I still believe that there is no excuse for any dog under any circumstances attacking a person or another animal while in these circumstances.

Mr Wood: Your amendment will allow them to do that.

MR JENSEN: I do not believe that that is the case, Mr Wood. Whether this amendment is successful or not, the Minister may have a definitional problem in clause 15 of his Bill, which amends section 21 of the principal Act. The proposed new paragraph 21(6)(c) allows for a person to participate in a dog show, field trial or obedience trial with the dog off the leash. I cannot find, either in this Bill or in the parent Act, a definition of what one of those items might be. Might I suggest that the Minister look at this, because there may well be some who seek to run a defence along the lines that the activity is not actually identified.

Might I suggest that the Minister consider a definition along the lines of "trials, as sanctioned by the ACT Kennel Association or an equivalent national body". I believe that the Minister may find that sort of problem. All in all, the Bill is an improvement on dog control in the ACT which is welcomed by the dog fraternity. I am sure all responsible owners will be happy to see this legislation in place, with, maybe, a couple of the amendments that I propose to move this afternoon.

MRS NOLAN (6.28): Mr Speaker, I certainly will not be taking a very long period of time, but I do want to put just a couple of comments on the record. I think most people in this Assembly are aware that I have been lobbying long and hard for this legislation to finally come before the house. I am aware of just how many people out there in the community have had concerns in relation to dogs not being properly controlled by their owners. I am also aware of the concerns that many people have had in relation to people who just let their dogs go unattended and cause all sort of problems and concerns for many in the community.

Rather than speaking in the detail stage in relation to Mr Jensen's amendment, I say now that I will not be supporting it, because I am aware that the term is a little hard to define. I think everyone will be out there training their dog, and I guess, as we walk down the neighbourhood street, we will see every dog being trained. So, I find that it is just not possible for me to support it. Finally, as I said, I welcome the amendments that have come forward in this amending Bill. They have been a long time coming. I am sure the Canberra community welcome the long awaited amendments too, and I hope that the Bill will have a speedy passage.

MR MOORE (6.30): Mr Speaker, the difficulty with this legislation is not so much what it does as what it does not do. There has certainly been a great deal of talk in the Assembly about dog control, really since the beginning of the Assembly. The difficulty, I believe, is that what we should have is a companion animal Bill, and that is a much more important thing. In fact, the biggest problem that we have, from the environmental perspective, is not so much dogs as cats. I think that, as companion animals go - - -

Mr Berry: You are treading on dangerous ground there, Michael.

MR MOORE: I can see the Chief Minister hissing; but the reality is that there are people who look after and take care of their dogs properly, and the same applies to people in respect of their cats. Dealing with companion animals is really what we should be about, rather than limiting ourselves to just dog control. That is not to say that this dog control Bill does not do an important thing; it certainly does. Indeed, I look forward to seeing, in the next Assembly, that companion animals are taken as a whole. Where it is necessary to control dogs in a particular way and cats in another way, that would be most appropriate.

I think that something that we, as an Assembly, need to take on is the protection of our environment from cats that are inadequately cared for, so that we can deal with the whole problem. I know that many people consider dog control important, not just from an attack perspective but also from the perspective of having their front lawn soiled and so on. How much worse it is, for those of us who have small children and sandpits, to have the children playing in the sandpit after the cats have used it as their toilet. I think that this is an even more difficult situation in terms of soiling.

So, there are not only environmental aspects but also control aspects where we are going to need to deal with this issue.

Mr Berry: Get a dog. What you need is a dog - to chase the cats.

MR MOORE: Mr Berry implies, by way of interjection, that one of the difficulties with good dog control is that we will not have the dogs around to chase the cats away. That is possible. I suppose that, after we have rebuilt our fences, we will be able to get a dog and get it to protect the sandpit. That remains a possibility. I welcome this Bill as part of what needs to be achieved.

MR STEFANIAK (6.33): Just briefly, I indicate that the Liberal Party supports this dog control Bill. There are a lot of people out in the community who are very concerned about the matter, and we will not be supporting Mr Jensen's amendments.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (6.33), in reply: Mr Speaker, Mr Jensen said that he would move two minor amendments. In fact, one of those amendments is not a minor amendment. It is a very serious amendment which would bring about a substantial change to the thrust of the Bill. I understand his intentions, but his amendments would cause significant damage to this legislation. I will reserve further comment about that until the detail stage, should Mr Jensen proceed with that amendment. I think he has got the message about its fate by this time.

He asked about the keepers licence. We have not yet determined the cost of that licence. There is some work to be done yet on the cost of administration. It will be based on cost recovery, and the additions and divisions have not yet been done. But he should bear in mind that keepers who meet the fairly generous qualifications get a significant discount for their animals, and I think they are well looked after in that respect. I have had conversations about the Belconnen Dog Obedience Club and the difficulties that its members have concerning their site at Mitchell, and I will be taking that matter through with the department.

Mr Jensen, like Mr Moore, wants to know about the companion animal review. The matters that you would encompass in that regard are significantly to be dealt with in the animal welfare legislation. We have toiled mightily to get that legislation up and running in this Assembly, but we have not been able to meet the deadlines. It is a complex piece of legislation. We will be getting out a piece of model legislation as soon as we can.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR JENSEN (6.36): I have circulated an amendment to clause 12 which would omit the words "or 2 metres from a boundary fence" from the legislation. I move:

> Clause 12, page 5, line 14, proposed paragraph 18C(3)(a), omit "or 2 metres from a boundary fence, and".

It has been put to me that the figure of two metres from a boundary fence is quite a distance and that it could cause some problems for people seeking to establish in their backyard a run for dogs. I am not necessarily in favour of runs. I prefer to have dogs outside that environment, but some people are required to do that for their breeding operations.

It seems to me that, as we progressively reduce the size of our backyards, we are causing some potential problems. Maybe what we should be doing, rather than specifying a two-metre boundary, is making use of current design and siting guidelines in relation to the erection of structures near the boundary fence. I wonder, as an aside, whether there are currently similar regulations on the keeping of chook pens in the ACT, and whether we have a two-metre requirement for the construction of a chook house in the ACT. I am not quite sure whether we do, but Mr Wood may like to provide the answer to that question.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (6.37): Mr Speaker, we oppose this amendment. The fact is that we are responding to the demands from the community, and the immense number of complaints every year about dogs. A significant proportion of those complaints relate to dogs startling and scaring owners next door, as they jump on the fence because of the proximity to the fence. Where a keeper has four or more dogs, I think it is entirely reasonable that they be separated from that common boundary line.

Amendment negatived.

MR JENSEN (6.38): I move:

> Clause 15, page 8, line 9, proposed paragraph 21(6)(c), after "in", insert ", training for".

I think I have made my point on this. I know that I am going to go down, but I think it is important to have that proposal at least put forward on the record.

MR WOOD (Minister for Education and the Arts and Minister for the Environment, Land and Planning) (6.39): Mr Speaker, let me quickly explain that a major element of this Bill has been that dogs need to be under control in public places. I understand Mr Jensen's motives; but, in fact, what this amendment would do is allow an out, and it would quickly be known as such to any person who takes a dog out without a lead, anywhere at all - in the street, near schools, near shops or whatever. If you do not have your dog on a lead, you will simply excuse yourself by saying, "I am training it, boss".

Mr Jensen: Define proposed subsection 21(6)(c) and you do not have a problem.

MR WOOD: That is absolutely not right. I think the will of the house is known and will be quickly expressed.

Amendment negatived.

Bill, as a whole, agreed to.

Bill agreed to.

ADJOURNMENT

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

> That the Assembly do now adjourn.

Assembly adjourned at 6.40 pm

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ANSWERS TO QUESTIONS

ATTORNEY-GENERAL FOR THE AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY QUESTION

QUESTION NO. 601

Attorney-General Portfolio - Consultants

MR KAINE - Asked the Attorney-General upon notice on 20 November 1991:

(1)In the period 7 August 1991 to 31 October 1991, what

Consultants were employed by
(a) the Minister; and
(b) each agency in the Ministers portfolio

(2) For each consultant employed, what was:
(a) the purpose;
(b) the duration; and
(c) the cost of the consultancy.

MR CONNOLLY - The answer to the members question is as follows:

1(a) Nil
1(b)

CONSULTANT	2(A) PURPOSE	2(B) DURATION	2(C) COST
INSOFAR P/L	Development and Implementation of Court Case . Management System	7 Aug - 13 Sept	$40650
MAGEE CONSULTING	Development and Implementation of Court Case Management System	8 Oct - 31 Oct	$11400
COMPUTER POWER	Specialist advice and facilities Management and Training in relation to computer system	7 Aug - 31 Oct	$29032

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MINISTER FOR HEALTH
LEGISLATIVE ASSEMBLY QUESTION
QUESTION 640

Acton Peninsula Project Working Party

Mr Jensen - asked the Minister for Health:

(1) Is the Minister aware that a letter from the Belconnen Community Council dated 21 October 1991 nominating Mrs Regina Slazenger as a Community representative on the Acton Peninsula Development Project Working Party was hand delivered by a member of the Council to the Ministers Office on 21 October 1991 and when contacted your staff said that they had not received the letter.

(2) If the Minister is now aware of this letter can he advise what action he has taken or is taking to meet with this legitimate request from a community group.

Mr Berry - the answer to Mr Jensens question is as follows:

(1) On 11 November 1991 a member of the Belconnen Community Council contacted my office. She was advised that the letter nominating Mrs Slazenger as community representative on the Acton Peninsula Project Working Party had, been received in my office and was being considered.

(2) The Belconnen Community Council have been informed of the decision in relation to the nomination.

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