DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

24 February 1994

Thursday, 24 February 1994

Liquor (Amendment) Bill 1994 231
Statute Law Revision Bill 1994 232
Land (Planning and Environment) Act 233
Leave of absence to member 245
Euthanasia - select committee 246
Legal Affairs - standing committee 246
Legal Affairs - standing committee 247
Conservation, Heritage and Environment - standing committee 248
Discrimination (Amendment) Bill (No. 3) 1993 250
Ministerial arrangements 259
Questions without notice:
Woden Valley Hospital - bed numbers 259
Freedom of information 260
ACTION - industrial dispute 261
Public holidays 265
Department of Education and Training - separation scheme 266
Housing Trust - property sales and purchases 266
Woden Valley Hospital - surgery-free day 267
Boulevard car park site 270
Garema Place redevelopment 270
Woden Valley Hospital - bed numbers 271
Subordinate legislation 271
Hospice (Matter of public importance) 272
Noise Control (Amendment) Bill 1993 288
Adjournment 292
Answers to questions:
Consumer product safety orders (Question No. 1096) 293

Thursday, 24 February 1994

MADAM SPEAKER (Ms McRae) took the chair at 10.30 am and read the prayer.

LIQUOR (AMENDMENT) BILL 1994

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.31): Madam Speaker, I present the Liquor (Amendment) Bill 1994.

Title read by Clerk.

MR CONNOLLY: I move:

That this Bill be agreed to in principle.

The Liquor Amendment Act 1993 establishing the method for setting occupancy loadings was passed by this Assembly in June of last year. The Act provides for the determination of occupancy loadings by the Registrar of Liquor Licences on the basis of an assessment by the Fire Commissioner in accordance with the Building Code of Australia. The Act provides for an appeal to the Administrative Appeals Tribunal from that decision. In considering such an appeal, the president of the tribunal has indicated that, as the legislation stands, as long as the registrar's determination conforms with the assessment of the Fire Commissioner there is no further scope for the review of the merits of that determination. This outcome is clearly an unintended consequence, and the Government has moved quickly to ensure that licensees who believe that the registrar's determination is incorrect can have that decision fully reviewed.

The Assembly will be aware that since the introduction of the occupancy loading legislation the Australian Hotels Association has argued that the allocation of one person per square metre and two for dance floors is an overly conservative approach. The Chief Police Officer has advised me that the occupancy loading legislation has had a positive impact in reducing the level of alcohol-related misbehaviour in the ACT. The Fire Commissioner is unequivocal in his advice to me that, from a fire safety point of view, the ACT methodology is the safest and most appropriate for ACT licensed premises. As Mrs Carnell yesterday said that one person per square metre was the basis of the smoke extraction scheme she is promoting, she would obviously agree that one person per square metre is the appropriate level.

After careful consideration of the issues involved, the Government has decided that the current method for determining occupancy loadings will be retained. I commend the Bill to the Assembly. It will ensure that occupancy loading determinations are fully reviewable on their merits by the AAT. I present the explanatory memorandum to the Bill.

Debate (on motion by Mrs Carnell) adjourned.

STATUTE LAW REVISION BILL 1994

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (10.34): Madam Speaker, I present the Statute Law Revision Bill 1994.

Title read by Clerk.

MR CONNOLLY: I move:

That this Bill be agreed to in principle.

The Statute Law Revision Bill 1994 makes corrections and technical changes to a number of ACT Acts. In addition, it repeals a number of spent provisions and one redundant Act. This Bill is one in a continuing series of statute law revision Bills which are prepared from time to time for the purpose of updating and improving the expression of Territory legislation. The Bill does not change the substance of the law, making technical corrections only. It is a housekeeping exercise to bring the language of Territory legislation up to date and remove from the statutes of the Territory formal errors, some of which go back many years. The Bill reflects the Government's commitment to improving the accessibility of legislation to the ACT community.

Broadly, the amendments make the following changes to Acts dealt with in this Bill. Firstly, typographical or transcription errors resulting in misspelling or grammatical mistakes, or incorrect numbering of provisions, are corrected in the Bill. The Bill amends ACT legislation to reflect modern legislative drafting practice by, for example, removing words which only complicate the text and do not add to the meaning of provisions, and the replacement of references to provisions of legislation which have traditionally been expressed at some length, in words, with references in numbers.

The Bill also amends legislation to remove the definitions of terms which are also defined in the Interpretation Act 1967, thus avoiding unnecessary duplication of the definitions of such terms. Transitional savings or similar provisions the operation of which has been exhausted by the passage of time are repealed by this Bill. References to repealed or redundant Acts or provisions are also removed by this Bill. The Bill also removes sexist language. While there is a scheme in place for the systematic removal of sexist language from ACT legislation whereby such language is removed as legislation is substantially amended, where other amendments to legislation of a technical nature are required the opportunity is being taken to correct sexist language and replace it with gender neutral language. The Bill will result in clearer and more accessible legislation for the Territory. I commend the Bill to the Assembly and present the explanatory memorandum.

Debate (on motion by Mr Humphries) adjourned.

LAND (PLANNING AND ENVIRONMENT) ACT
Variation to the Territory Plan - Kingston

MS SZUTY (10.37): I move:

That the approved Variation No. 6 to the Territory Plan for Kingston, section 25, blocks 4, 5 and 6, be disallowed.

Members will recall that I stated my intention to move disallowance of approved variation No. 6 to the Territory Plan, section 25, blocks 4, 5 and 6, during my speech to my dissenting report on the variation on Tuesday of this week. In speaking to the variation today, I do not intend to cover the same ground, as I spoke for some minutes on my dissenting report covering the issues which led me to oppose the variation. However, I do want to talk about the very important principles affecting the Territory Plan process which are involved in consideration of this variation.

We need to concentrate on the facts and on the handling of the matter by the ACT Planning Authority. The question can be asked: What are the facts? We know that the lease of the site was owned by the Coles-Myer group. The lease permits the land to be used for three detached residences or car parking. Any other use requires a change of the purpose of the lease, and that is still the case. What is the planning policy for the site? The current gazetted policy, which the draft variation would alter, says:

The objectives of the policy for this area are to provide parking to serve the centre, opportunities for provision of non-retail commercial uses associated with the centre, and opportunities for residential uses in accordance with the "Guidelines for Redevelopment of Kingston/Griffith".

The following land uses will be permissible:

- car park;
- non-retail commercial uses;
- personal services;
- residential.

Non-residential commercial shall be developed only in conjunction with a structured car park provided that car parking is the predominant use. The existing parking and any new parking requirements generated by additional development must be accommodated on the site.

It should be noted that applying the existing policy objective would result in public car parking of some 160 spaces to replace the existing parking, in addition to new parking requirements generated by the additional development. We also need to note that such development would have to conform to the existing guidelines regarding building height, site coverage, plot ratio, open space and setbacks. These are the standards which have been deliberately adopted to produce an overall intensity of development which is appropriate and harmonious.

As was stated by Mr Lamont on Tuesday, before the lease was offered at auction in May 1992 the Department of the Environment, Land and Planning entered into negotiations with the vendor's agents and agreed that prospective bidders would be advised that in any redevelopment of the site a public car park of at least 70 spaces would be required in addition to any parking provision generated by the new development. The question can be asked: Why did the department do this, in the face of the gazetted planning objectives requiring not 70 but around 160 spaces? The Planning Authority says that it was because, if the department had not done so, the land could have been redeveloped solely for residential purposes, without any public parking at all. This was a monumental error on the department's part. It ignored the requirement for a change of the purpose of the lease which gave adequate control to see that any development met the clear intention of the planning objectives that public parking be included.

This action of the department is objectionable for another reason. The department agreed to a significant departure from the gazetted policy objectives by private negotiation, without any due process and with no public consultation whatsoever. This is a major ground for the Assembly disallowing this draft variation. We should make it clear to the department that we will not condone departures such as this from the clear intentions and objectives of the planning legislation. Not to do so would encourage the department and the Planning Authority to repeat the process whenever they felt like it.

Let us now turn to the position of the developer. It is recommended that, should the variation be approved and the major departures from the normal standards of building height, site coverage, plot ratio, open space and setbacks be waived, the developer is required to provide some public parking at his expense. The developer purchased the lease at auction with the current planning policy objectives in place, with the existing standards of building height, et cetera, in place, and on notice that he would be obliged to provide at least 70 public car parking spaces additional to those required to meet the demand generated by the development. The developer can have no cause for complaint if he is left to conform to the existing planning objectives and standards. That is precisely what he purchased at the auction. Indeed, if the variation is allowed to stand, the value of his purchase will be markedly enhanced. Both the vendor and other bidders or potential bidders will have a legitimate complaint, and so would the public.

How would this enhancement have come about? In its report to the ACT Executive on the issues raised in the public consultation process, the ACT Planning Authority says that the revised proposal results from extensive negotiations between the lessee and the Authority. Exploratory discussions between a developer and the Planning Authority are no doubt necessary, but what has really happened here? From its consistent support of the developer's proposals - both the original and the revised ones - and from its consistent and total dismissal of any public objections whatever, it is clear that at the conclusion of its negotiations with the developer the authority was totally committed to a development proposal which did not meet the policy objectives and which involved major departures from existing standards.

If there is no open-mindedness on the part of the Planning Authority when the public consultation process commences - and demonstrably there was not in this case - then the public consultation process, a fundamental principle of the planning legislation, becomes a useless farce. This is another major ground for the Assembly disallowing the variation. The Assembly should let the ACT Planning Authority know that its role is not to treat the Territory Plan and

its associated standards and controls as a starting point for negotiations with developers for wholesale departures from them, but is to respect them as prima facie to be applied unless there is sound justification for departures, which would be expected to be of a marginal and not fundamental nature. Further, the ACT Planning Authority should be told what it should not need to be told - that there will be no confidence in the public consultation process while ever the Planning Authority acts throughout the process as an advocate for the developer rather than as an open-minded authority which respects the objectives and standards adopted in the Territory Plan and associated controls.

The Assembly has a choice. We can allow the variation to proceed. This involves accepting substantial departures from the existing general standards of building height, site coverage, plot ratio and setbacks. It involves accepting a substantial enhancement of what the developer purchased at auction in 1992. It involves accepting that the ACT Planning Authority and the Department of the Environment, Land and Planning are free to negotiate with developers for substantial departures from the Territory Plan and associated standards, and to act during the public consultation process and in their reports to the ACT Executive as a supporter, advocate and facilitator of the resulting proposal.

Alternatively, the Assembly can disallow the variation. This would delay the development of the site, but it would not take away from the developer anything that he bought at auction. It would send to the ACT Planning Authority and the Department of the Environment, Land and Planning the messages I have referred to. Their handling of this matter demonstrates that they need to receive these messages if the Territory Plan and its associated objectives, controls and standards are to be upheld and respected, and if the due processes of the planning legislation, including public consultation in which the public can have confidence, are to be carried out. Madam Speaker, I urge the Assembly to support my motion of disallowance.

MR LAMONT (10.45): I rise to speak against the motion put forward by Ms Szuty, and I do so for a number of reasons. First of all, Ms Szuty has, by either design or default, deliberately misunderstood and misinterpreted the process that has been put in place to adjudicate on whether or not this Legislative Assembly, we the legislature, we the final determinant, if you like, provided for under the Land (Planning and Environment) Act, believe that it is in the public interest to allow a particular development, which has run the gauntlet, I might add - - -

Mr Moore: She does not misunderstand. That is why she is moving disallowance.

MR LAMONT: Mr Moore, you can have your say and you can misconstrue what you want to misconstrue later on. The simple fact is that there has been a considerable process put into place in relation to what should occur on this block of land. The other day, in presenting the variation and the committee's report to this Assembly, I outlined my great concern that the developer and the community at large, as well as the ACT Planning Authority, were required to go through a process where the proponent was originally informed that a tower, consistent with the other two towers that exist in Kingston, would be allowable on that site. Halfway through the process, the National Capital Planning Authority pulled the rug. It was as simple as that; there is no other way

to explain it. Whether that was right or wrong is a matter of conjecture and depends upon your view as to whether or not there should be any towers in Kingston, or whether there should be two or three. The simple fact then was that, through negotiation following that, and a statutory consultation process, the proponent and the Planning Authority were able to agree substantially on a proposal to come forward.

Ms Szuty has said that it has exceeded this range of guidelines and therefore, as a matter of course, it should be dismissed. Ms Szuty, as a member of the Planning Committee, also was involved in the planning approval process for the block immediately opposite this one. It has a density of 1.2, which means that, in terms of the land area, the actual mass of the building is 120 per cent. It has zero setback on all of the turrets surrounding that building. It has a design which was regarded by both the Planning Authority and our committee as being appropriate for this area. One could say that, if the proponent were required to construct another one of those in exactly the same way on the site we are talking about now, there would not be an objection. It would be inconsistent of Ms Szuty to argue against such a proposition on this block.

We are at a position where, on a block of land in close proximity - directly opposite - to this block, Ms Szuty has agreed that the density, planning requirements and regime are totally acceptable, and that is with a plot ratio of 1.2 and with zero setbacks. Yet on this site, when we are required as a Planning Committee, as an Assembly, to adjudge whether it should be approved after the consultation process, where it has been quite clearly identified in all the documents that the proposal exceeds the height by about a metre, exceeds the guideline for plot ratio of 0.8, and has zero setbacks, she says that we should automatically say, "No, it has exceeded all that; go away".

The Planning Committee and this Assembly are here to judge whether, consistent with the block across the road, we are prepared to allow for an increase in the plot ratio; whether, consistent with the block across the road, we are prepared to allow zero setbacks; and whether we are prepared to allow that to occur because, in the public interest, the developer has been required to provide public car parking. The simple test is whether the public interest is served by allowing this project to proceed or whether it is served by saying to the developer, the Planning Authority, the Government and the people of Canberra, "No, your interest is not served by allowing this to proceed; your interest is served by having a rigid approach to development in this area".

Quite simply, when I weigh that up, I have some concerns about the fact that guidelines are exceeded. Any planning authority coming before the committee I chair to argue that point would want to have fairly substantial reasons for doing so. The simple judgment of the majority of members of the committee was that on this occasion they do. It is as simple as that. The Government indicated, when responding to our report, that they were not prepared to accept one part of our recommendation, and that was in relation to allowing for retail activities to occur on the ground floor, where in the original variation the proposal was for commercial.

The second part of the committee's recommendation was for a review of the way in which the Kingston shopping area should be able to be redeveloped and enhanced. The Government has said, "We want to do that before you allow retail in this area". The undeniable fact is that this area is part of the commercial precinct. The matter was tested by this Assembly and by the Planning, Development and Infrastructure Committee through one of the longest public consultation processes of any piece of legislation of this Assembly. It was the subject of consultation which extended beyond four years. It was subject to more public hearings than any other matter, and the committee determined that it was appropriate that this block of land be included in the commercial precinct of the Kingston shopping area. That, in my view, is another reason why our committee was convinced that it should allow this development to proceed in the manner outlined.

I think it is quite wrong for some members of the Assembly to say, "Look at this; the whole system has failed. Six months ago we introduced the Territory Plan, we are developing guidelines and you are not even prepared to stick to the guidelines". As I have said, Madam Speaker, it is appropriate that it be dealt with in this way. In order to undertake this type of development in this area we have outlined a process and, as Mr Moore indicates, this is part of dealing with that process. It is appropriate to have guidelines in place. It is appropriate that the Planning, Development and Infrastructure Committee is required to be involved when those guidelines are exceeded, when the consolidation of blocks occurs, and for all of the other procedures outlined under the planning Act.

On all the tests available to the Planning, Development and Infrastructure Committee, by majority decision it has determined that this type of development with this planning regime is appropriate. The ultimate test is what this Assembly does on the arguments put forward today, the weight of the evidence provided in our reports, and the response by the Government. It is a test of this Assembly, and it is an appropriate way for it to be handled. Rather than demonstrating a failure of the Territory Plan, its provisions or the activities of the Planning Committee, it is an indication of the success of the planning regime that this is the process people are required to go through.

Ms Szuty has been extremely critical of the Planning Authority, and on some occasions in the past I too have been extremely critical of the Planning Authority in terms of some of the processes that were in existence some time ago. Again, the Planning Authority puts forward a proposal and, because of the way the legislation is put in place, it is required to be the sponsor to the Executive of planning alterations. It is a simple fact. They are required, under the legislation, to be the sponsor. They are required to put the issues, as presented and negotiated to them and by them, to the Executive. At the end of the day, it is up to the Executive, the Planning Committee and then this Assembly to determine whether what the Planning Authority has done is appropriate.

I reject out of hand any concept which says that the Planning Authority, on this occasion, has been less than forthright and has not allowed issues to be exposed, debated or considered. In fact, it has done the opposite. In my view, it has ensured that public exposure to what is being proposed for this site has been as wide as possible. For anybody to suggest that there has been some sort of clandestine deal done is absolutely outrageous and something which this Assembly should reject. Madam Speaker, I will have much pleasure in voting against the disallowance motion, and I seek the support of the rest of the Assembly for that view.

MR MOORE (10.56): Madam Speaker, I have listened to both Ms Szuty and Mr Lamont. Mr Lamont's speech, lucid as it was, as usual, did raise the issue of the process. I must say that the process we are part of now is entirely appropriate. The process Ms Szuty has enhanced by moving disallowance is entirely appropriate. It is important to raise a few issues that I think will throw some light on what has happened here and on where we are going.

Back in 1986-87, when Greg Cornwell and I, and many other people, sat through NCDC proposals about how we were going to improve development in Canberra in terms of the rights of both the developers and the opponents of development, the one thing that was consistent, I think it is fair to say, was that both the developers and the opponents wanted certainty. We heard from developers again and again that they wanted certainty. It seemed to me that the development of the Territory Plan provided that option. For the vast majority of developments, the developers simply go to the Territory Plan, work within the constraints and, having done that, can be assured that their development will proceed. The only time they lose that certainty is when they try on something else, when they decide that they want to change from the Territory Plan and see whether they can vary it. The Territory Plan must be a living document and, therefore, it is appropriate that variations go through the process we have talked about.

In this particular instance, Mr Lamont has misrepresented a number of things that have happened. The developer in this case purchased the property knowing very well - we know this from the letter Mr Wood was kind enough to distribute - that, as part of purchasing that property, within the purchase price he was prepared to bid, he had an obligation to provide a certain amount of public parking. He knew that he had that obligation, so he had to work that into his price. Yet the argument we have heard from Mr Lamont again and again is that he was entitled to seek to change the guidelines because he had to provide this public parking. That is just not the case. He knew the guidelines. He knew what had to happen from there.

After that, he tried it on. However he got to that position, he made an ambit claim in terms of the tower. He tried on a variation to the plan to see whether he could get a tower going there because, if he did get a tower going, he would make much more profit. When that was knocked on the head, he went for a further variation. It is the old developer's game that you purchase a piece of land for a certain price within certain guidelines, and then you vary those in order to be able to do something else, because in that way you can make a greater profit. That is a normal part of the process we have, but we also have a responsibility to ask: Is that process in the public interest?

Quite clearly, Mr Lamont believes that it is in the public interest, as do the majority of the members of the Planning Committee. As a rule, when the majority of the members of the Planning Committee agree - and many of their reports are unanimous - the Assembly seems generally to accept that. However, there will no doubt be times when individuals in this Assembly who are not on the Planning Committee will still move disallowance because they disagree with even unanimous reports of the Planning Committee, and that is also part of the process. We have here a situation where the developer makes an ambit claim; it is knocked off, so he goes for a further claim to use the piece of land for other than what it was designed for.

There is another area that I think has been misrepresented by Mr Lamont. He did not have the variation with him, so I presume that it was accidental; I will accept that it was not deliberate. On page 8 of the material that goes with the variation, there is a comparison with the development opposite. Mr Lamont said that the plot ratio for that development was 1.2 - this paper shows it as 1.26, but that is fine - and that that had been allowed and there was no problem at all with it; whereas in this situation we are talking about a plot ratio - as my memory serves me, and I am very clear about this - of 0.8, according to Mr Lamont. In reality, it is double that; it is 1.5.

Mr De Domenico: No, he did not say that at all. He said that the guideline was 0.8.

MR MOORE: Okay. I have been corrected, Madam Speaker, and I would like it to appear on the record that he said that it was effectively an additional 0.8.

Mr De Domenico: No, he said that the guideline was 0.8. The Territory Plan says 0.8. That is what he said.

MR MOORE: Thank you. We have clarified that. The guideline provides 0.8, but the current proposal is 1.54. I do not think I have misrepresented him now; that is correct. The plot ratio is actually 1.54. So it is substantially more than the 1.26 of the Somerset and nearly double what the guideline says - from 0.8 to 1.54. It is clear that we are talking about a very substantial difference. When you do a comparison of the site coverages, the Somerset is presented at 36 per cent and in this case it is 52 per cent without the podium and 68 per cent with the podium.

What we have is a substantial difference, a substantial increase, an incremental increase over what is going to happen on the site opposite. What happens at the next site that comes up in Kingston? Do we take another step or not? I accept that, if that is the case, it goes through the Planning Committee and it comes through this process. I am not a great believer in incrementalism, as a rule; but I think it is important to clarify that this is a substantially more dense development than the one across the road and that the guidelines are being exceeded in a substantial way. It seems to me that that was not presented clearly, and that is why I wanted to deal with it.

When we are dealing with the public interest, one has to determine to what extent we are going to allow that intensity. Where does it stop? That is the real concern over this issue. Where is the line drawn? The line was originally drawn at 0.8, as has been shown here, in terms of the guidelines; it has gone to 1.26, and now it is at 1.54. We have to make the decision as to what is going to be in the interests of appropriate living space for the community.

Ms Szuty has argued very strongly, I believe, that this is an inappropriate development, that it is the appropriate time to say, "Enough. It is time to draw the line". Clearly, other members of the committee have, at least to a certain extent, agreed with her. Trevor Kaine has made it clear that he was not one of the people who voted in support of this development. Other members of the committee clearly believe that this is not the right spot at which to draw the line at this stage. That is a difference of opinion, and it seems to me that that is what the issue is about. The local residents' perspective has to take into account the impact that such a development is likely to have on their surroundings.

Their views are entitled to very serious consideration, and I believe that the Planning Committee gave them that consideration. That is why the vote was three to two rather than unanimous, as is the case with so many of the Planning Committee's reports on variations.

Madam Speaker, I think there are very good arguments as to why this variation ought to be opposed, and that is why I happily support the motion put forward by my colleague Ms Szuty to disallow it.

MR DE DOMENICO (11.02): Madam Speaker, I suppose that it is about time people on this side of the house expressed their point of view.

Mr Berry: You just have. They are all on that side of the house.

MR DE DOMENICO: If Mr Berry would care to listen, the Liberal Party will not be supporting Ms Szuty's disallowance. Go on reading your other documents, Mr Berry. Do not worry about a thing; things will happen without you. Just keep out of this debate, unless I change my mind.

Mr Wood: He is actually on your side.

MR DE DOMENICO: Good. Madam Speaker, I think we need to get some rationality back into this debate. Let us have a look at what Ms Szuty had to say, first of all. The most important thing that needs to be said is that the Territory Plan - and I have heard Ms Szuty and others say this - is a living, breathing document. So it should be and so it is. The fact that we are debating this issue today shows what a living, breathing document it is. It also shows what a wonderful system we have. No objector or member of the community who wants to object to anything about this development can say that they did not have an opportunity. As Mr Lamont quite rightly said, this went through an exhaustive public consultation process, including public hearings.

The other thing that needs to be said, and Mr Lamont said it quite clearly in the committee, is that the Planning Authority has been told that the manner in which this development was brought to the attention of the committee should not happen again, for the sake of everyone concerned. The developer was not delighted, nor were the residents, nor was the committee, nor was the Government, I believe, nor was the Planning Authority, because we had that other ogre, the NCPA, overlapping all of this. Who will ever forget the public statements made by the NCPA initially about allowing Mr Willemsen to build a third tower? It has to be stated on the record that Mr Willemsen was given the impression by the NCPA initially that he was going to be allowed to build a third tower. After some discussions with people who lived in the first or second towers, who could not bear to have a third tower - - -

Mr Wood: Tower NIMBYs.

MR DE DOMENICO: Tower NIMBYs - the NCPA changed its mind. Mr Moore talks about certainty; but where was the certainty supposedly given to the developer, in this case Mr Willemsen, when he was advised that he could build a third tower? There was no certainty whatsoever. By the way, this block of land was never a public car park; it was owned by Coles-Myer. The fact that cars parked on the land is beside the point; it was never a public car park.

So Mr Willemsen, the developer, for whom everybody wants certainty, is in a bind. What does he do with this block of land, which he bought originally because he was given the impression that he could build a tower on it? What is he going to do with it? What Mr Willemsen could have done was to put a fence around it and do nothing. That is one option he had. He had another option.

Mr Moore: The Territory Plan showed him that he could not do that.

MR DE DOMENICO: Mr Moore talks about the Territory Plan. I will tell you what the other option was. Mr Willemsen would not have had to come anywhere near the Planning Committee or this Assembly if he had stuck on that block of land totally residential units, with not one public car park. The Minister will correct me if I am wrong. What Mr Willemsen said was this: "We have to look at Kingston in the overall context that it is an area that is enjoyed not just by the residents of Kingston but by the entire Canberra community". Those people who parked their cars on the Coles-Myer block prior to Mr Willemsen's purchase of it will have nowhere to park if Mr Willemsen either sticks a fence around it and does nothing or builds residential units and does not provide any public car spaces.

Mr Moore quite rightly said that, when things like that happen, it is up to members of this Assembly to make a decision about what is in the public interest. The committee has done that. Some people might find it odd that members of one political party on this committee have different points of view. I do not think that is strange at all. If more political parties had individual members who were allowed to have different points of view, how much better this place would be.

Mr Berry: Tony, you do not believe that.

MR DE DOMENICO: Keep reading your health stuff, mate. Do not get involved in the debate. You know nothing about it, as usual, so just keep out of it.

Much was said about the 1.26 block ratio of the Somerset and the 0.8 in the Territory Plan guidelines. I inform Mr Moore in particular that, if you take away the public car spaces from that development, the plot ratio would be less than the 0.8, in my opinion. I make the point that apparently it is okay for 1.26 instead of 0.8 over the road in the Somerset, as Mr Lamont said, but not okay for 1.54. Who is going to make that arbitrary decision? This Assembly will make the decision because this Assembly ultimately will ask: Has this committee really taken into account the public interest? Is that sufficient for this Assembly, the elected members, to give permission for this development to go ahead? For all those reasons, Madam Speaker, the Liberal Party will not be supporting Ms Szuty.

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning) (11.12): Madam Speaker, I want to make a few comments. I appreciate the work the committee has put into this. It has been a fairly well-examined proposal and the history of it has been well stated. Ms Szuty made the point that she believed that there was no due process. That is simply not right. There was a process. Mr Willemsen proposed something that was beyond what is laid down in the

Territory Plan, and there is a very carefully established process once someone wants to change what is in the Territory Plan - the living Territory Plan, as has been said. There is a process and it was followed, and Ms Szuty's work on that committee was part of that process. That due process was very carefully detailed.

There are two points that are most significant, and I want to restate them. First, as Mr Lamont said, this is a commercial precinct and we should understand what is happening in that context. The other point mentioned by everybody, and it is a key to this debate, is the position of the car park. It was never a car park. It was used for parking cars after buildings had been knocked down, and it was used courtesy of J.B. Young's, or whoever owned the building across the road. After the site was sold by Young's, or whoever were the former owners, the department indicated very clearly that it wanted there a car park that was always going to be a car park. It indicated that by means of the letter I tabled the other day. Mr Willemsen did not contest the matter; he did not take it to the AAT or to the Supreme Court. He did not take it further. I understand that it was all amicably done; that is the report I have. He was prepared to do that, but it was important from the Government's point of view that car parking facilities be provided. We do it there, as we do elsewhere.

I will read into the record the paragraph Mr Moore and others have quoted from. I think it gives quite accurately the background to the way the plot ratio was finally decided. This letter is to the auctioneer, and I presume that the auctioneer read the letter out at the auction. It reads:

The Authority has seen the sketch designs prepared by Mr Colin Stewart ... for a residential redevelopment of the site incorporating a public carpark ... The scheme results in a plot ratio of approximately 1.25 to 1. The Authority considers that a development on the lines proposed in the sketches could meet the gazetted Policy provisions for the site.

That was extending that particular plan from 0.8 to 1.25. Let me then go to the last paragraph:

The information has, however, been given solely to assist the lessee and potential bidders at the auction. It does not in any way bind or commit the Department including the ACT Planning Authority in the determination of any future applications for Design and Siting or lease variation approvals.

The clear import of all this is that there is going to be a public car park. The density and other factors are there for consideration, for examination, for what always happens - discussion between the Planning Authority and the developer, and that is exactly what happened. The draft variation went out and the due process was followed. I think the due process, the majority decision of the PDI Committee, was entirely appropriate. There is nothing problematic about this. It is a process that has delivered us a car park, when there was no certainty of public car parking there in the past, and it has given us a residential development and maybe into the future a retail development that will be of benefit to Kingston and to Canberra.

MS SZUTY (11.18), in reply: I would like to respond to some of the issues that speakers in this debate have raised. Firstly, Mr Lamont said that some considerable process had occurred with regard to this draft variation on the future of this piece of land in Kingston, a process that we know members of the community have not had confidence in. I think that is the important point to be made there. He also referred back to the history of the tower proposal. That does form part of the history of the proposed development of this site, but it is really not the issue at hand. The issue at hand is the proposed development that is going to be sited on this block of land in Kingston.

Mr Lamont also talked about the density of the block opposite as being 1.2. Members will recall that on Tuesday, when I spoke to my dissenting report on this draft variation, I referred to a letter from Stuart Saunders on behalf of the tower residents - I cannot remember the name of the organisation. Those people had no objection whatever to a density of 1.2. What people are objecting to is the greater density proposed on this site of 1.54, the figure Mr Moore has identified as being listed in the draft variation material this Assembly is considering.

Mr Lamont is right about the Planning, Development and Infrastructure Committee's role in determining the issues. We do have a role and, as Mr Moore has mentioned, on most occasions when we are dealing with planning issues we come up with a unanimous report. But on this occasion the committee has not done that. I have disagreed with the Planning Committee's report on this occasion, and Mr Kaine also spoke in this Assembly on Tuesday about his views on the proposed draft variation. I am not saying that the whole system has failed, as Mr Lamont implied. I am saying that in this instance it has failed. I certainly do not get up in this Assembly every time a variation comes before us and oppose it. Mr Lamont also said that I have been critical of the ACT Planning Authority. I would like to put on the record that I have been critical of the ACT Planning Authority in this instance. There are many other occasions on which I have praised the work of the ACT Planning Authority in relation to other draft variations which have come before this Assembly.

Mr Moore in his remarks made some very pertinent points. He said that this Assembly knows that the developer had an obligation to provide public parking. As a result of the letter members received from the Minister, the letter from Mr Townsend, the Secretary to the Department of the Environment, Land and Planning, dated 8 May 1992, we know that the developer was aware of the guidelines which applied to this site. Mr Moore indicated that the guidelines had been exceeded substantially. In my remarks I said that the guidelines had been exceeded fundamentally; that it was not a marginal departure from the guidelines as they currently exist but a quite fundamental departure from those guidelines.

Mr Moore rightly pointed out that the ACT Legislative Assembly has to decide what is ultimately in the public interest, and obviously the key question in this debate today is: What is in the public interest with regard to the site in Kingston?

MADAM SPEAKER: Ms Szuty, it is 22 minutes past 11. I have to interrupt the debate at this point.

Motion (by Mr Lamont), by leave, agreed to:

That the time allocated to Assembly business be extended by 30 minutes or until the expiration of Assembly business, Notice No. 2, relating to the motion for disallowance.

MS SZUTY: I turn now to Mr De Domenico's remarks about this draft variation. He quite rightly said that the Territory Plan is a living, breathing document. That is a statement I have made and with which I totally agree. But the issue we are talking about is the degree of divergence and departure from the guidelines, and I have made this point on many occasions. It is not a marginal difference; it is not a slight difference, it is a substantial and fundamental departure from the guidelines.

Mr De Domenico also talked about the National Capital Planning Authority's role in regard to the history of this draft variation and indicated that the National Capital Planning Authority was in favour of the third tower on this site in Kingston. I ask the question: Does that then mean that the Assembly has to accept any other proposal for the site as a result of the tower not going ahead? It is my view that the Assembly should not. I refer specifically to the letter from the Secretary to the Department of the Environment, Land and Planning, Mr Townsend, about this site. The first paragraph of the letter, which is dated 8 May 1992, states:

The existing lease permits the site to be used for carparking or three detached houses.

That is what Mr Moore said. Further, at the bottom of the page it states:

The Department wishes to ensure that any redevelopment on the site retains a substantial public carpark. Such a carpark should accommodate at least 100 spaces and when constructed should be transferred to the ACT Government to own and manage.

As Mr Moore has said, the developer for this site knew exactly what the requirements were when he bid for that site at auction.

I now turn to the remarks the Minister, Mr Wood, has made in this debate. Mr Wood said that he did not believe that there had not been due process on this draft variation. I think I have indicated to the Assembly today where I believe that no due process has occurred. I do not believe that the Minister really understood the comments I made about the process when he made his remarks. Finally, I refer again to the letter from Mr Townsend. Mr Wood referred to this paragraph in his remarks. It states on page 2:

The Authority has seen the sketch designs prepared by Mr Colin Stewart dated 28 and 29 April 1992 for a residential redevelopment of the site incorporating a public carpark. Copies of the plans are also attached. The scheme results in a plot ratio of approximately 1.25 to 1. The Authority considers that a development on the lines proposed in the sketches could meet the gazetted Policy provisions for the site.

I ask the Assembly: If that statement was made on 8 May 1992, why are we now looking at a proposal for the site which substantially exceeds those guidelines in every respect? Madam Speaker, this disallowance motion has been moved on the basis of public interest, and I commend the motion to the Assembly.

Question put:

That the motion (Ms Szuty's) be agreed to.

The Assembly voted -

AYES, 3	NOES, 12
Mr Moore	Mr Berry
Mr Stevenson	Mrs Carnell
Ms Szuty	Mr Connolly
	Mr Cornwell
	Mr De Domenico
	Ms Ellis
	Mrs Grassby
	Mr Humphries
	Mr Lamont
	Ms McRae
	Mr Westende
	Mr Wood

Question so resolved in the negative.

Mr Lamont: Madam Speaker, I inform the Assembly that a pair is in operation today for the Chief Minister, and I understand that Mr Kaine is providing that pair. The Independents were advised of the pairing arrangements earlier this week.

LEAVE OF ABSENCE TO MEMBER

Motion (by Mr Berry) agreed to:

That leave of absence be given to Ms Follett for today, 24 February 1994.

EUTHANASIA - SELECT COMMITTEE
Printing and Circulation of Report

MR MOORE (11.29): I move:

That:

(1) if the Assembly is not sitting when the Select Committee on Euthanasia has completed its inquiry into the Voluntary and Natural Death Bill 1993, the Committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker who is authorised to give directions for its printing and circulation; and

(2) the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

Madam Speaker, when the select committee was set up its reporting date was given as 17 March. That was before the sitting pattern had been determined. I believe that the committee will be ready to report on 17 March. Therefore I urge support from members of the Assembly to allow us to report on the set date, or by the set date, by means of the procedure that we have become quite used to in these sorts of circumstances.

MR LAMONT (11.30): Madam Speaker, as one of the other members of the committee, I echo the sentiments of Mr Moore. It is important. Given the issues and how they have been debated to date, it is appropriate that we get out the findings of our committee as early as possible. That is the reason why this process was seen as appropriate, although unusual, given that a date had been set for the report.

Question resolved in the affirmative.

LEGAL AFFAIRS - STANDING COMMITTEE
Inquiry into the Statute Law Revision (Penalties) Bill 1993

MR HUMPHRIES (11.32): Madam Speaker, I ask for leave to make a statement and to move a motion regarding a new inquiry by the Standing Committee on Legal Affairs.

Leave granted.

MR HUMPHRIES: I wish to inform the Assembly that on 16 February 1994 the Standing Committee on Legal Affairs resolved to inquire into and report on the Statute Law Revision (Penalties) Bill 1993, which was introduced by the Government late last year. Accordingly, it is appropriate that I move the following motion:

That notwithstanding the provisions of standing order 174:

(1) The Statute Law Revision (Penalties) Bill 1993 be referred to the Standing Committee on Legal Affairs for inquiry and report, by the last sitting day of June 1994.

(2) On the Committee presenting its report to the Assembly, resumption of debate on the question "That this Bill be agreed to in principle" be set down as an order of the day for the next sitting.

Madam Speaker, members will be aware that this Bill contains a great many revised penalties for offences committed under a range of Acts of the Assembly. It is a fairly complex and far-ranging piece of legislation and it does affect a great many disparate pieces of legislation. It seemed to the committee quite appropriate that the many penalties referred to in that Bill be referred to a more detailed inquiry than might be possible on the floor of the Assembly. There has been some debate already in the pages of the *Canberra Times* and perhaps elsewhere about the range of those penalties, about whether they are commensurate one with the other, whether they are appropriate, and whether they reflect modern standards of criminal responsibility. The committee felt that it would be a suitable function for the Legal Affairs Committee to consider those matters. My colleagues and I were quite willing to embark on that matter, even though there are a number of other inquiries before the Standing Committee on Legal Affairs at present. I hope to be able to present that report in June of this year. I commend the motion to the Assembly.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (11.34): Madam Speaker, the Government would have no problems with this. It is precisely the type of Bill that can benefit from an Assembly committee looking at it. It is a massive exercise and review of penalties. It is far better that these matters be resolved in the committee than on the floor of the house.

MR MOORE (11.34): Madam Speaker, I am delighted to have the opportunity to support such a referral. It is exactly the same sort of process that is being used with the Smoke-free Areas (Enclosed Public Places) Bill. It seems to me to be a very sensible and rational way to deal with legislation.

Question resolved in the affirmative.

LEGAL AFFAIRS - STANDING COMMITTEE
Alteration to Reporting Date

MR HUMPHRIES: Madam Speaker, I ask for leave to make a statement to inform the Assembly of a new reporting date for one of its inquiries.

Leave granted.

MR HUMPHRIES: Madam Speaker, I would like to inform the Assembly that the reporting date I indicated to the Assembly on 16 September 1993 when informing it of the committee's inquiry into the Criminal Injuries Compensation (Amendment) Bill 1993 has been altered to 31 March 1994.

CONSERVATION, HERITAGE AND ENVIRONMENT - STANDING COMMITTEE
Report on Solar 93 Conference

MR MOORE (11.35): I present the report of the Standing Committee on Conservation, Heritage and Environment on the Solar 93 Conference of the Australian and New Zealand Solar Energy Society. I move:

That the report be noted.

Madam Speaker, the Solar 93 Conference was attended by me as chair of the committee and the secretary, Mr Bill Symington, at the behest of the committee. This report could be considered a supplementary report to our report on cogeneration of electricity that was tabled in this Assembly. We have decided to continue this process because in the area of solar energy and other forms of energy it seems to us that change is so rapid that occasionally it is worth updating what has been happening. It seems to our committee that quite a number of our environmental problems are associated with energy and energy consumption as well as energy generation. Madam Speaker, not only have we had the benefit of attending that conference but also Mr Westende, from his visit to Europe, has provided more information to the committee. We also had the benefit of some information that Ms Szuty brought back after visiting a wind farm at Esperance over the Christmas holidays. While members obviously are aware of this issue, I think that we should ensure that the issue continues to be dealt with appropriately.

We draw attention to the work being done by ACTEW on this issue. I have had a number of meetings with officers of ACTEW who continue to look at how they can become involved in energy generation other than through the coal-fired or hydro-electricity sources from which we currently buy our electricity. We refer also to the energy efficient house that ACTEW has and their work in producing yet another of those houses to demonstrate what can be done in terms of using less electricity rather than just the notion of: How can we produce more? That is consistent with the general conservation policies that the Government emphasises in everything other than their own garbage collection system, where reduction is the most important thing, then reuse, then recycling.

Madam Speaker, solar buildings are an issue that is drawn attention to in the report, particularly in terms of demand. We refer to the Australian Conservation Foundation's green home and the notion that the ACF has licensed preferred green builders. It is an issue that Mr Wood may well consider taking up as part of his process in terms of a star rating for energy efficient houses. We also looked at solar thermal applications, both the range of styles of solar heating and solar energy. They are being used in places like Yulara at the moment, and there are proposals for Tennant Creek. The Australian National University has been at the world forefront of solar energy in terms of its big dish technology. That is something that I think the ACT could look at, although our situation is not ideal for that method.

Madam Speaker, following our report we were given to understand that wind electrics were being looked at carefully by ACTEW. One of the things that we found is that wind electrics are becoming cheaper and cheaper as more and more people are using them. That is a very encouraging sign because they have clear advantages where the appropriate spot can be found. We finish our report, Madam Speaker, by looking at the implications for the ACT. I hope that this report will continue the discussion on this issue and keep awareness of generation of power as part and parcel of the thinking of this Assembly.

MS ELLIS (11.41): I would like briefly to follow on from the remarks that Mr Moore has made on tabling this report. As a member of the committee I have had the opportunity to take a continuing interest in this subject. A point that I think I recall making at the time of the tabling of our original report on this subject and that I would like to reiterate today is that issues concerning solar energy or alternative sources of energy have well and truly passed the stage where they are regarded only as trendy issues. They are now part of our day-to-day consideration of our environment and of how we can better improve our living conditions, and viable environmentally safe alternatives.

Australia, I think, leads the world in certain areas of this science. There is a great incentive to see exactly what we can do with the full development of these ideas and these incentives. We could have a very strong export program in them. I am convinced that that is a possibility. In some areas of the development of this industry that is already the case. There is extraordinary potential available for this country to take on and to develop some areas to a point where we could lead the world in a physical sense, not just in a scientific sense. I think that members of this place need to think of that occasionally.

I endorse this report not only for its contents. The mechanism of tabling a report such as this creates continuing debate. Questions continue to be raised on these issues and there is continuing emphasis by our community on them. As I said at the outset, no longer is this trendy; it is now essential. Anything that we can do to assist, as members of this small Assembly, in the big world of the environmental cares of the world in general, any one small issue that we can do to enforce such a philosophy, has to be commended. It is my pleasure to join the chair of this committee in commending this report to the Assembly.

MR WESTENDE (11.43): Madam Speaker, I shall be very brief because everything that has to be said has been said. I concur fully with what Ms Ellis and Mr Moore, the chair of the committee, have said. Likewise, believe that Australia could be at the forefront of some of those technologies. Indeed, in certain instances it is already. I commend the report.

Question resolved in the affirmative.

DISCRIMINATION (AMENDMENT) BILL (NO. 3) 1993

Debate resumed from 9 December 1993, on motion by Mr Connolly:

That this Bill be agreed to in principle.

MR HUMPHRIES (11.44): Madam Speaker, the Discrimination (Amendment) Bill (No. 3) 1993 now before the Assembly, in terms of its substantive effect, essentially inserts one word into the Discrimination Act. It inserts the word "age" in section 7 of that Act. Section 7 in a sense is the operative section of the Act. It is the section which lists the criteria on which discrimination is unlawful. The rest of the Bill, the next six or seven pages, is essentially a list of exemptions from the operation of that particular provision.

Madam Speaker, one cannot argue with the concept of banning discrimination on the basis of age or, indeed, of any of the other matters which are referred to in section 7 of the Act. It is clearly a problem which is very much alive in this Territory. It is very much an issue that we need to be alert and vigilant about. If members have any doubt about that they need only look at the front page of yesterday's *Canberra Times*, where there is a report of a 28-year-old woman who was fired from her job allegedly on the basis that she had suffered a seizure, an epileptic fit, at her home, not at work, and that this constituted the second such seizure she had experienced in a period of nine years. We see in a case like that a vivid illustration of how legislation of the kind that we are considering today needs to be kept up to date and relevant, and actively employed to prevent discrimination of what I might call - this might be a sub judice matter in the near future - a quite outrageous example of discrimination.

I want to quote briefly from the article. One reference there is to comments made by her solicitor. I quote from that article in that respect:

Her lawyer, Ron Clapham, who is finalising a formal complaint to the Human Rights Commission, said it had been a clear case of discrimination. Epilepsy had already been tested in the courts as to whether it could be deemed an "ailment", as contained within the Discrimination Act 1991, and it had been ruled it did.

Under the Act it is unlawful to discriminate against a person by dismissing them because of an ailment.

"I was outraged", Mr Clapham said ...

I think we would all be outraged, Madam Speaker, if those are the facts of this matter. We need to be looking to see whether we can make our legislation comprehensive and effective for people who find themselves in positions like that of the woman referred to in this article.

The issue is not so much whether we achieve the outlawing of discrimination but how we go about doing that. My party certainly will be supporting the legislation before us today, with one small amendment. I do think, though, that we need to ask ourselves whether or not we have properly covered the field, and whether we have properly excluded the possibility of unforeseen and unreasonable consequences of this kind of amendment. As I have said, almost the entire Bill is taken up with exemptions from the concept that one should not

discriminate on the basis of age, and presumably many of these exemptions were inserted in the Bill on the basis of comments made arising out of public consultation. This Bill was released in draft form, or at least the discussion paper raised the issues in draft form and they have resulted in some comments and changes. I will quote some examples.

It is illegal to discriminate on the basis of age, although there can be discrimination on the basis of age if you are the Director of Family Services and you are making certain insertions in the register of persons seeking to place a child for the purpose of adoption. You can discriminate on the basis of age if it is under the Commonwealth Occupational Superannuation Standards Act 1987. You can discriminate on the basis of age if your discrimination is based on actuarial or statistical data on which it is reasonable to rely, or other data of another kind on which it is reasonable to rely. You can discriminate on the basis of age if you are putting on a dramatic production or other entertainment in which you are seeking a person of a particular age group for the purposes of authenticity. So you could not have a 15-year-old playing King Lear, presumably. Similarly, if you want to have calendars with nubile young ladies on them and a 65-year-old person wants to be in that - - -

Mr Connolly: "Young persons", Mr Humphries; gender non-specific language.

MR HUMPHRIES: Yes, they did have young persons ones, but I think that some of them are explicitly young ladies and there are certain age requirements that you might insert in those circumstances. It is also legal to discriminate on the basis of age when paying a youth wage. It is legal to discriminate on the basis of certain standards which might be required to comply with reasonable health and safety requirements; and so on, in this legislation. There are some questions about that.

It is not mentioned in this Bill, but there will also be an exemption from this provision to do with the capacity of the Government to discriminate on the basis of the retirement age of judges. I might mention at this point that originally I had considered an amendment to the Judicial Commissions (Consequential Amendments) Bill now before the Assembly to remove that requirement that there be some forced retirement age of judges and magistrates at the age of 70, until I was reminded by the Attorney-General that the people of Australia passed a constitutional amendment in 1977 which made it mandatory for there to be compulsory retirement of judges of the High Court at the age of 70, and it seems unreasonable that we should take a different view with respect to other lesser judicial officers in this Territory. So that is another exemption to the concept that we should have a compulsory prohibition on discrimination on the basis of age.

I suppose the question that springs to mind in that respect, Madam Speaker, is this: If there are so many exemptions that have been given rise to in this process, have we picked up all the possible exemptions that might be available? If there is a question of whether we have not done so, is it appropriate that we use a formula which in fact is contained in the Bill and in the Act and which might, perhaps, be more appropriate? A formula is picked up in proposed new paragraph 29(2)(e). That refers to discrimination in respect of superannuation and it says that discrimination is lawful where "the discrimination is reasonable having regard to any other relevant factors". That is a similar provision to the provision that occurs in section 8 of the Act. Paragraph 8(1)(b) talks about people

imposing or proposing to impose a "condition or requirement that has, or is likely to have, the effect of disadvantaging persons because they have an attribute referred to in section 7". That is that they are pregnant or they are female or whatever. It says in subsection (2) of that section:

Paragraph (1)(b) does not apply to a condition or requirement that is reasonable in the circumstances.

I suggest that because, perhaps at the end of the day, by simply imposing a reasonable test and attempting not to cover the fields so comprehensively, we might prevent unforeseen consequences of the application of the Act.

I note that yesterday in the Assembly Minister Berry tabled the annual report for 1992-93 of the ACT Human Rights Office with respect to the operation of this Discrimination Act. I have not had time to read that closely yet, so I do not know what it says about whether there have been unforeseen consequences of the operation of the Act, but I think that we should read it very closely. There may well be other cases where discrimination is reasonable and where this amended Act will have the effect of outlawing that discrimination and we will have to come back and amend it in the future. If there are many such cases, in the longer term it might be reasonable to reconsider the way in which we structure that ban on discrimination.

Madam Speaker, I want to raise a few other points to do with the Bill before the house today. This Bill, except in a few cases like, for example, judges, makes it illegal to discriminate in such a way as to require compulsory retirement. The effect of this is that when an employee reaches 65 or 70, whatever the age might be for compulsory retirement at the present time, an employer will have to determine at or about that time whether that person is suitable to continue on as an employee, taking account not of their age but of their general competence. That, on the face of it, is a very reasonable requirement. A person should not be compelled to retire at the age of, say, 65 merely because they are 65. There are many - - -

Mr Kaine: You are darned right.

MR HUMPHRIES: Mr Kaine has a vested interest in that proposition.

Mr Kaine: So has Lou.

MR HUMPHRIES: So has Mr Westende.

Mr Westende: We could always work for nothing.

MR HUMPHRIES: You could always work for nothing? Mr Westende and Mr Kaine do a lot of work for nothing; but the fact of life is that many other employees do not have that luxury and there will be circumstances where there will be a question of whether discrimination might apply.

Of course, Madam Speaker, it is arguably much more difficult for an employer to make out a case that an employee is incompetent than it is to make out a case that they are 65, obviously. We see, when we look at copies of the Commonwealth Government *Gazette* and we examine the section dealing with dismissals for incompetence, that that provision to dismiss employees - this, I am sure, applies to the ACT Government Service as well - is very rarely invoked. It is extremely

difficult, frankly, to dismiss employees in the Commonwealth Government service, and perhaps the ACT Government Service as well. In the private sector it may not be so difficult. But we must acknowledge that it is difficult. It is not a simple matter to say to an employee, "I consider that you are no longer capable of carrying out work to the standard that I require and therefore you will leave my employment". That is not an easy thing to do, and it may be that we give rise to a great many applications and claims in these circumstances under this Act. It may also be that many employers in the circumstances of this legislation will say, "I choose not to run up against the legislation. I will leave that employee in place, even though I would rather not have them continue to work". That is a problem which we give rise to and I think, Madam Speaker, that we need to monitor this matter with great care because the effectiveness of our working population is very important in this regard. We need to be aware that it is important for the efficiency of businesses and employers of all kinds if they are able to properly deal with problems in their work force in an appropriate fashion.

Talking of dealing with problems in a work force, there is, as members will be aware, a provision in proposed new section 57D which requires that, after a period of two years, employers in the ACT should not be able to have compulsory retirement. That two-year period is an acknowledgment of the fact that there are difficulties now in imposing a new regime which does not have compulsory retirement. Employees, for example, perhaps will need to adjust their allowances for superannuation to take account of that fact. There is a provision in there dealing with the Territory's work force, Territory employees, that effectively says that the Government is not bound by this provision. There will be, as members are aware - it having been circulated - an amendment to the Bill on that score.

Madam Speaker, there is also an exemption at the other end of the scale to do with youth wages. It is not illegal to pay somebody a youth wage, which obviously is less than a senior wage. I sense from the presentation speech of the Attorney-General that the Government had certain misgivings about this and that there was a little bit of friction, perhaps, between the Commonwealth Government provisions and what the ACT Government would like to have in force here. I think it is important to acknowledge that youth wages are very much a part of our industrial award system; and if they were not imposed by the Commonwealth they ought to be a feature of any ACT award, in my view. Mr Berry looks daggers at me for that comment, but I think it is extremely important that young people be given the chance to enter the work force on preferential terms in order that they may gain valuable experience which otherwise they may not be able to achieve. So I would strongly support the retention of any kind of exemption of this kind, and we need to consider, in the long term, how we deal with that. The Government has accepted the fact that the Commonwealth makes that mandatory and it cannot change that. The Government has gone along with that by saying, for example, that an employer can advertise to fill positions that are applicable only to people who would obtain the youth wage. So you could say, "I want youth wage potential employees to apply".

One effect of this Bill which was referred to by the Attorney-General is that it will be unlawful to dismiss a person because they are no longer eligible for a youth wage. So, when an 18-year-old turns 19 and becomes eligible for a higher youth wage, or when they turn 21, I think it is, and become eligible for no youth wage

and go onto an adult wage, it will be impossible for that employer to say, "I no longer wish to employ you; I wish to employ somebody else who will be eligible for that youth wage". That, Madam Speaker, does compromise the concept of a youth wage.

Mr Berry: No, it does not.

MR HUMPHRIES: It does. Potentially, we will see a situation where the worker at McDonald's who turns 21 will say to the boss, "I am sorry; I want to stay on in this job. I quite like it. It suits my hours", or whatever. We may, in due course, see older and older people behind the counter at McDonald's, serving us the hamburgers and the fries to go with them.

Mr Kaine: And the price of hamburgers will go up.

MR HUMPHRIES: As Mr Kaine quite accurately points out, if that is the trend, the price of hamburgers will go up because McDonald's obviously will be paying a higher wage.

Mr Connolly: But all the smokers will be forced to go to McDonald's for their takeaways because we ban smoking in restaurants. They will be in greater demand, so you will be right.

MR HUMPHRIES: The Government can make frivolous comments about that; but, frankly, if you have the capacity to employ somebody because you want a youth wage worker but you do not have the power to dismiss them when they cease to be eligible for the youth wage, you necessarily compromise the concept of a youth wage.

Mr Berry: No, you do not.

MR HUMPHRIES: I think you must.

Mr Connolly: Your concept of a youth wage is cheap sweated labour. That is not the concept of a youth wage that we have.

MR HUMPHRIES: We are not arguing about a youth wage. The Commonwealth acknowledges that there is such a thing as a youth wage. It says that it is lawful to pay people at a lower rate in order to facilitate their gaining of experience and their entry into the work force. It is a pity that members opposite do not realise that that is a very good thing to happen. The question of how much you pay them is quite immaterial in that sense; the concept is already there. To quote that famous line from Lord Byron, "I am not arguing, madam, what you are, but how much we are going to pay you". Madam Speaker, the point is: If we compromise the concept, how will this impact out in the work force? How will we find people dealing with that situation in the work force? Will it cause people to say, "I am potentially going to be employing people on an adult wage for a long period. Perhaps I should review the policy on which I employ people on a long-term basis. Perhaps I should not be going for untried 18-year-olds or 17-year-olds, as I do not know what I will be getting if I am still employing them when they are 27 or 37."? That is a real argument.

Madam Speaker, there are a few other minor matters of concern. I suppose one could argue about what "authenticity" means - whether one can discriminate if one wants to employ somebody because the authentic rendition of a particular role in a play is that it be played by a person of a particular age; but, if you want to do a version of a play which might be revolutionary and might envisage some different non-authentic concept of that play, you cannot then discriminate on the basis of age, and that is a very complex matter.

Having said all that and having made those points, I am not arguing against the concept of outlawing age discrimination. Obviously it is a repugnant concept. It is repugnant to suggest that people should be shunted off into retirement, or denied access to accommodation or to educational services or whatever, merely because they happen to have a particular calendar year against their name. We must work against that. The quibble that I raise, and I raise this only as a matter that we should be alerted to, is that we need to make sure that this operates in a sensible fashion and in an efficient fashion; that it does not operate as a burden to our community rather than a benefit. Having said that, I commend the Bill to the Assembly.

MS SZUTY (12.03): Madam Speaker, it is pleasing for this Assembly to see that, in general, discrimination on the basis of age will be unlawful; but I would like to note the same point that Mr Humphries made in his remarks, fairly early on. The Bill we have before us is largely a list of exceptions to where age discrimination would be otherwise unlawful, and I think that is unfortunate in many respects. I understand the need for these issues to be fairly carefully thought through; but it is unfortunate that, in a Discrimination (Amendment) Bill which seeks to outlaw discrimination on the basis of age, we have a whole range of exceptions to those provisions.

Mr Humphries has been very carefully through most of those exceptions relating to age discrimination. I would like to comment on just a few of them, the first one being adoption. I note that the Director of Family Services still has the provision for discriminating against people on the basis of age in relation to adoptions. I know that we have been through these issues at great length at other times in this Assembly, and the point would need to be made that, of course, the Director of Family Services would discriminate against people on the basis of age in the best interests of the child in the adoption process. Mr Humphries also mentioned the section on youth wages. I noted, too, that the Minister's presentation speech and the provisions of this Bill fairly clearly state the Government's reluctance to see young people paid at a lower rate for work that can be done to the same capacity by older people. I note that these provisions will apply only where awards exist for young people to be paid less than would normally be paid.

The other exception that I would like to comment on, which Mr Humphries did not, relates to education and senior secondary colleges. I note that there has been some talk generally in the community that mature age students should have greater access to senior secondary colleges than they do at the moment. According to the legislation, it seems to be an issue that the Department of Education and Training is considering, but mature age students really will not be able to have access to senior secondary colleges until 1 January 1996. That is almost two years away. I guess that gives the Department of Education and Training substantial opportunities to review the whole question as to whether mature age students should have access to senior secondary colleges.

In concluding, Madam Speaker, I would like to say that I think the process of consideration of this legislation has been a good one. There has been wide community discussion and debate about the provisions in it and I believe that it is worthy of support by this Assembly. I am also happy to support Mr Humphries's amendment, which he has circulated in the chamber. It relates to section 57D and compulsory retirement. I understand that he has discussed this amendment with the Government and that the Government has agreed to accept it. I would like to indicate that I will be supporting it also.

MR DE DOMENICO (12.07): I will be very brief. I want to ask the Minister a couple of questions he might address in his closing remarks.

Mr Berry: That is later on today, mate.

MR DE DOMENICO: Once again, Mr Berry should butt out. Minister, I would like to take on board what Mr Humphries had to say. Perhaps you could explain how this will work in an establishment like McDonald's or other places that do hire young people part time, the various supermarkets around the place, pizza shops and what have you. Secondly, is it not a rule within the Australian Labor Party that the compulsory retiring age is, I think, 65 years? Quite obviously, you will be moving to - - -

Mrs Grassby: Not in the ACT.

Mr Connolly: Mrs Grassby advises me that it is not in the ACT.

Mr Kaine: What about Federal members?

MR DE DOMENICO: Mr Connolly, perhaps you might look at the Federal rules, or all the other rules for those Federal members who happen to reside in the ACT. Quite obviously, if the Government is going to be consistent, it will be making sure that its own rules are not in breach of this piece of legislation.

MR MOORE (12.08): Madam Speaker, I think the Bill has been dealt with very well to this stage by Mr Humphries and Ms Szuty. That reflects the very positive approach of the Assembly to the work done by the Government by, firstly, putting out the discussion paper and then following it up with this Bill. The question that I would like Mr Connolly to consider, in the same spirit that Mr De Domenico asked, relates to the ACT public service. With our new public service coming on line shortly, it would seem to me that the spirit of this legislation which we are demanding other people to put on line should also apply to us. We should start looking now at what we are doing in our backyard.

A number of people have approached me - I have written to the Chief Minister on a number of occasions with representations on their behalf - as they feel that they are going to be forced into early retirement because they happen to be caught in this transition period between when the ACT gets its own legislation and when we get our own public service. It is possible under current public service regulations for somebody's retirement age to be extended when it is in the interests of the department. It would seem to me that it is in the interests of the department to retain morale, and it is in the interests of the department to stick with Government policy on such issues. Therefore, through you, Madam Speaker, I would like the Minister to respond and to say how he is going

to deal with people who are now approaching 65, who perhaps turn 65 in the next few months, and who may well be caught in this time warp. They could be assisted by the standard extension of, say, six months to their working life so that those who wish to continue and are fit to do so and are comfortable about it are not discriminated against. That is what it is about.

I think the tools are in your hands. I would ask you to give us a general response. I realise that without looking at a specific case you cannot give a specific answer, but what is the general attitude? This is very good legislation and you should be congratulated for getting it up, and getting it up in the manner that you have. I would appreciate your response as to how you are going to deal with it in terms of your own workers.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (12.11), in reply: I thank members for their general support. I was pleased that Ms Szuty and Mr Moore referred to the extensive consultation process on this Bill. There was a discussion paper and extensive debate before it came in. The point was made by a couple of members that there is a short clause stating "age" as the basis of discrimination and a long set of exemptions. If you examine the principal Act, there is a short section, sections 7 and 8, which creates discrimination, and a long section, sections 24 to 57, which deals with exemptions. The reason that age is one of the last grounds of discrimination to be inserted is that it was always acknowledged to be one of the more difficult ones, and issues like superannuation and the rest of it needed to be addressed.

The Government is supporting Mr Humphries's amendment, which brings the position of ACT employees into line with private sector employees. It was always our intention to do that. The provision in the Bill could be misconstrued to suggest that we were trying to have a separate exemption for ACT employees. It was really done in that way because the mechanism of ACT employment, when this Bill was first drafted, was less clear than it is now, and in the coming months the Assembly will debate the new ACT Public Sector Employment Act. It is our intention to apply to ourselves the same rule that we apply to the private sector, which is to give two years to work out issues like superannuation, work practices, education and the rest.

I am not in a position to say that there is a blanket exemption and from today onwards everybody who is 65 can have their employment extended indefinitely. There always have been provisions to say that we can look at specific circumstances. It is not the intention, in introducing this Bill, that the age of the work force will gradually increase because nobody will retire. Indeed, there are various provisions in place in ACT public employment to encourage people in some cases to take early retirement. We will certainly look at case-by-case exceptions. We agree with Mr Humphries that it should not appear that the Government is trying to be different from anybody else, with less rigid standards for us; but equally we are not going to say, "As of today, there will be no age discrimination".

Mr De Domenico was agitated about youth wages and asked whether this will apply to McDonald's. Yes, it will. If anybody sacks a person because they turn 18, that is unlawful, and it should be unlawful. It is the intention of this Bill to make it unlawful. I must say that I do not think that McDonald's do that.

I think that what tends to happen is that young people work there while they are students and when they get a little bit older they move off to tertiary education or whatever. You do, indeed, from time to time, see more aged employees there.

In relation to the application of this Bill to political parties, one could wonder whether there should be an examination by the Discrimination Commissioner as to whether this was a factor in the internal decisions of the Liberal Party in relation to Opposition Leaders' positions. We may be creating a cause of action within the Liberal Party. Perhaps we should have looked at not making ACT public employment retrospective, but making its application to political parties retrospective in order to have that issue canvassed. Thank you for your support. The Government will support Mr Humphries's amendment.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR HUMPHRIES (12.15): Madam Speaker, I move:

Clause 7, page 5, lines 11 to 17, proposed new subsection 57D(2), omit the subsection, substitute the following subsection:

"(2) Subsection (1) ceases to have effect 2 years after the date of commencement of the *Discrimination (Amendment) Act 1994*.".

This amendment simply makes it clear in proposed new subsection 57D(2) that all employers in the Territory, except presumably the Commonwealth Government, are subject to the requirement that, at the end of two years from the date of commencement of this Bill, they will not be able to discriminate against an employee on the basis of age in setting a compulsory retirement period for that person. The Minister has covered this, I think, in large part.

Clearly, it is not in the interests of this Assembly to be seen to be creating exemptions for itself from what will be, in some respects, known as a provision for the private sector. If we are going to require that for the private sector, we should be setting an example by doing that ourselves. I would hope, in fact, that, to the extent that it does not actually cause hardship to employees - I cannot see how it would - we would be facilitating this to happen as early as possible so that the benefits of these provisions are flowing through to our employees sooner rather than later, and ensuring that we are showing the private sector that it can be done and that these provisions are positive and helpful ones in creating a happier, more productive work force. Madam Speaker, I commend that amendment to the Assembly.
Amendment agreed to.

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

Bill, as amended, agreed to.

Sitting suspended from 12.16 to 2.30 pm

MINISTERIAL ARRANGEMENTS

MR BERRY (Deputy Chief Minister): As members are aware, the Chief Minister is travelling to Hobart for the Council of Australian Governments meeting and she will be absent from question time today. If there are any questions that members may wish to have answered, they can direct them to me.

QUESTIONS WITHOUT NOTICE

Woden Valley Hospital - Bed Numbers

MRS CARNELL: I will do the right thing, Mr Berry, and ask you a question. My question without notice is directed to the Minister for Health. Today it has been confirmed that there are only 482 operational beds at Woden Valley Hospital, excluding day care. This is 128 beds fewer than were available last year. In June 1991, when the Minister took office, there were 405 beds at Woden Valley Hospital and 282 beds at Royal Canberra Hospital. Since then the Minister has closed Royal Canberra Hospital and has spent more than $100m on the redevelopment of Woden Valley Hospital. How does the Minister justify spending more than $100m to achieve 233 fewer public hospital beds?

MR BERRY: And, of course, I patched up the mess that was made by Mr Humphries in his period of office. Mrs Carnell completely ignores the significant growth in the number of beds at Calvary Hospital. You did not want to talk about that, did you?

Mrs Carnell: No, there is not. There were 178 at that stage, and there are now 175 - three fewer.

MR BERRY: When Royal Canberra Hospital closed, of course, there was a growth in beds.

Mrs Carnell: No, there was not. There are 233 fewer.

MR BERRY: Mrs Carnell, of course, excludes day surgery, because she wants to ignore advances in surgical procedures within the hospital system, and advances in efficiency. The fact of the matter is that there are some predictions that say that by the turn of the century we will be doing 50 per cent of our surgical procedures in day surgery. We are now on about 32 per cent, I think. That will result in fewer beds. It will continue to result in fewer beds.

Mrs Carnell: Except that the same predictions show that we need 3.3 beds per 1,000.

MR BERRY: It will result in fewer beds. Mrs Carnell has ignored the fact that there has been a growth in day surgery within the health system. Whether she likes it or not, there will be fewer beds per capita as a result of those improvements in efficiency.

Today I have announced a review of health financial management and health generally to seek to ensure that we are doing everything we can to speed up the process of implementing efficiencies within our hospital system. That is something that the ACT people will welcome because they know that we have to be more efficient, like every health system in Australia, indeed, across the world. As we proceed down the path of increased efficiency and better services to the community, people will be in hospital for much longer. As the acting chief executive - - -

Mr De Domenico: Much longer? You said shorter.

MR BERRY: Much shorter, I should say. The acting chief executive said a little while ago that he does not know of anybody who craves to stay in hospital for any longer than they have to. That is why average lengths of stay are falling. So, too, will the number of beds per head of population. You have to get used to it.

MRS CARNELL: I have a supplementary question, Madam Speaker. Minister, this means that you have spent over $100m increasing the number of beds at Woden Valley Hospital from 405 to 482. That is $100m to produce 77 extra beds. Do you believe that that is value for money?

MR BERRY: I detect the sounds of another stupid press release coming. We have spent $100m, and that includes money for a lot of high-tech equipment which will result in less dependency on beds to produce services for the community. Mrs Carnell refuses to accept that and continues to count beds as the only measure of performance within the hospital system. She lives in the past, always. She lives in the past only for the purpose of issuing press releases and trying to grab a cheap headline. This is nonsense.

Mr Kaine: I raise a point of order, Madam Speaker. I think the Minister is in danger of misleading the house and he may want to correct his statement before he goes much further. He said during that answer that after the closure of the Royal Canberra Hospital there was an expansion in beds at Calvary Hospital. That is not the case and he might like to correct himself.

Mr Berry: I withdraw that.

Freedom of Information

MS ELLIS: Madam Speaker, my question is directed to the Attorney-General. Can the Attorney-General inform the Assembly of any moves to make freedom of information more accessible to the general public?

MR CONNOLLY: The Government has taken steps recently to make freedom of information more accessible to the public. The Opposition are not interested in that; they are interested in FOI only as a research tool for scandalmongering. We have taken a quite significant step in regulations, which were signed and were gazetted yesterday, which now provide that the public will have free access to FOI for personal information. That goes further than the Commonwealth's provision which allows free access to personal information if it is personal information relating to income support. The Commonwealth provides free access to income support personal information. We are prepared to provide free access

to any form of personal information to the person requesting it, up to 20 hours of search time - as it is $20 an hour for search time, that is a saving of up to $400 on search time - as well as 200 pages of free photocopying. Beyond 200 pages people will pay 10c a page. That means that the ordinary citizen who wants to know what the Government has relating to them will have free access.

There has been a provision that allows us to waive fees in individual cases; but the person, in effect, has to come cap in hand to the Government and say, "I need my fees waived". We think that is inappropriate. We are prepared to say that the individual does have a right to find out the information that the Government holds on them. The Opposition, of course, says, "No, no; we should have the right to find out what is going on in your Cabinet room". That is not what freedom of information is about. Freedom of information is about the public having access to information about themselves.

I did give some undertakings at the Estimates Committee last year, when I was pressed about turnaround times in FOI, that we would seek to have some improvements. I am pleased to report that in the first six months of the current financial year - that is, from July 1993 to the end of December 1993 - compared to the equivalent period in the previous financial year, we dealt with 88 per cent of requests in under 45 days compared to 64 per cent of requests in under 45 days. That is a significant improvement in the fast requests. Most significantly, only 4.1 per cent of requests have taken longer than 60 days to process, whereas in the equivalent period in 1992 some 20 per cent of requests were taking more than 60 days. Given that many of these requests, particularly the ones that are taking a long time, are the complex "We want to fiddle around in the Cabinet room documents" requests from politicians and journalists, this indicates that we are processing matters more rapidly, which was exactly what I gave an undertaking to the Estimates Committee that we would do.

ACTION - Industrial Dispute

MR DE DOMENICO: Madam Speaker, my question without notice is to the Minister for Urban Services. The Minister is to be congratulated and - - -

MADAM SPEAKER: Would you be seated, Mr Stevenson.

Mr Stevenson: I thought that if I stood up I would be in early for the next one.

MADAM SPEAKER: You may have just missed your opportunity.

Mr Stevenson: "Vengeance is mine", sayeth the Speaker.

MADAM SPEAKER: Order!

Mr Stevenson: I think there should be.

Mr Berry: This is a bit over the top.

Mr Stevenson: I agree.

MADAM SPEAKER: Mr Stevenson, you will withdraw your comments, or I will be forced to name you.

Mr Stevenson: Which one?

MADAM SPEAKER: There are standing orders which do require you to not treat me with contempt. You will withdraw those comments that were deriding of my position.

Mr Stevenson: I take a point of order, Madam Speaker. To suggest that you - - -

MADAM SPEAKER: No, no, Mr Stevenson. I asked you - - -

Mr Stevenson: To suggest that you would take action because I had stood up is perhaps not the right manner in which a Speaker should operate.

MADAM SPEAKER: Mr Stevenson, I have no option - - -

Mr Stevenson: However, as you are on your feet, and as you have the power under this Assembly to chuck me out of here if I stand up for justice and a right to say something, I withdraw.

MR DE DOMENICO: Madam Speaker, my question without notice is to the Minister for Urban Services. I preface my question by congratulating the Minister, and perhaps even Mr Lamont, for finalising the enterprise agreement between ACTION and the Transport Workers Union last night. Minister, noting that the TWU agreement signed last night was virtually identical to the agreements reached by ACTION and the TWU last year, what reasons can you give as to why ACTION commuters and the ACT community have been subjected to repeated strike action and disruption of bus services since last year? In other words, why did you not settle the dispute sooner?

MR CONNOLLY: Madam Speaker, the ACT community would not have thanked us if we had signed off a wage proposal quickly to settle a dispute in ACTION buses, which then led to wage break-outs across the whole of the ACT Government Service, with leapfrogging wage claims. We have gone very carefully through this proposal, to guarantee that we will be delivering very substantial savings to the ACT community. The package that was agreed last night by senior ACT Government officials and Transport Workers Union officials, and which was ratified by a meeting of the transport workers membership at lunchtime today, will deliver very substantial savings to this community. It will deliver savings in the order of some $6m which will allow us to progress on our process of change at the workplace in ACTION buses.

Public transport reform has proven to be one of the most difficult and intractable problems for State governments around Australia, regardless of their political persuasion. In other parts of Australia we have seen strikes going for weeks or months. The Melbourne trams were tied up for months at a time a year or so ago. We have seen long outbursts of industrial action in other parts of Australia. This issue resulted in one full day's strike and a couple of morning and evening slowdowns and stoppages when there were stop-work meetings. I think that is not too high a price to pay for a process that will deliver ongoing micro-economic reform in the workplace at ACTION.

"Micro-economic reform" is a term that one wonders whether members opposite can spell, let alone understand. Industrial relations is something that members opposite have shown that they cannot understand. When the Liberal Party was running this show we had the ACTION deficit running at the highest level ever. It was right up there amongst the highest levels of operating deficit in any public transport system in Australia. We have now pulled it down to the point where the deficit is running at below Melbourne and Sydney levels. The process we have announced to this chamber, of a $10m reduction over three years, amounts to a 20 per cent reduction in the operating deficit, which is a dramatic achievement. To achieve that we have to instigate massive change at the workplace, massive changes in the way people operate within ACTION, and that is what this agreement that has now been finalised delivers.

Madam Speaker, in order to deliver change at one place you have to ensure that you do not upset a whole-of-government wages outcome; that you do not have either a breakdown in overall industrial relations negotiations or a break-out in wages. As I said earlier, if the Government simply had signed off a deal quickly, which then led to leapfrogging wage claims and strike action in other areas of ACT public employment, nobody would have thanked us. By going through a very deliberate process to ensure that we are genuinely getting achievements for the community as well as the workers in ACTION, we have delivered reform to this community in a manner which will not result in industrial confrontation or chaos elsewhere. I do not like it when we lose any time in industrial action. One presumes that the workers do not either, because they do a day's pay when they are on strike for a day. But at the end of the day we have delivered a massive process of reform in the public transport network, something that has eluded - - -

Mr Humphries: Oh, hardly.

MR CONNOLLY: "Oh, hardly", grumbles Mr Humphries. Mr Humphries, when you were administering departments, when did you ever achieve a 20 per cent saving in a department that you administered? Never, because you lot could not control a budget. You were Mr $9m blow-out in your health budget. The process that we have achieved in public transport eluded you lot when you were in government. When you lot were in government the ACTION deficit was going right up. I think even Access Economics said that in a publication that I have shown here in years past. The deficit was flying up when you were running it. It is coming down now, with minimal industrial disruption. We delivered a landmark agreement.

Mr De Domenico: Why did you not do it last year? It is the same one that you knocked back last year.

MR CONNOLLY: We have done it in such a way that it will not cause industrial problems elsewhere. Simply signing it off immediately, which presumably is what you want us to do - I assume, Madam Speaker, that the Liberal approach now is that whenever - - -

Mr De Domenico: No. I would have sat down and got more than six-and-a-half from them.

MR CONNOLLY: You failed woefully when you lot were in government, Mr De Domenico. When Mr Kaine was Chief Minister and Treasurer the deficit in ACTION was flying out of control.

Mr De Domenico: What absolute rubbish!

MR CONNOLLY: It is absolutely true, Mr De Domenico. It is absolutely true, as has been demonstrated not by me but by documents that have been published by the Advance Bank through a research paper that Access Economics did. It charted the level of increase in the ACTION operating deficit. It reached its highest point, as well as its most rapid increase, under the Liberal Government. It has been coming down ever since. We will deliver a 20 per cent reduction in the cost to the ratepayer of running ACTION, we will deliver industrial harmony in ACTION, and we will do it in a way which does not create breakdowns or break-outs in wages across the Territory. It is an approach of a government which knows how to handle industrial relations, which takes a unified approach to these problems, and which is fit to govern - unlike you.

MR DE DOMENICO: I have a supplementary question, Madam Speaker. Mr Connolly, what timeframe is envisaged for the $6.5m savings, what guarantees have been given for achieving such savings, and, finally, will you provide members with a copy of the agreement and will Mr Berry ratify it?

MR CONNOLLY: I am glad that you asked that question, because had we signed if off last year, as you urged us to do, there would have been no timetable. Then it was merely a document saying, "These are the savings that are possible and this is the wages outcome we want". What we have been working on is a process which links the wage point movements to the delivery of savings. That will be achieved. We are setting up a steering committee to achieve that. The final documentation is not yet there. Your lack of understanding of how industrial relations operates is evident from the question that assumes that there is a document this thick which sets out precise workplace change and precise timetables. There is no such document, but there is agreement to a process.

Mr De Domenico: No, I know; I have read the document.

MR CONNOLLY: That surprises me because - - -

Mr De Domenico: Because I should not have one?

MR CONNOLLY: Anyway, you can say what you like. It surprises me because the full details down to the very small changes in the workplace simply do not exist yet, but if you say that you have one - - -

Mr De Domenico: What have you signed then?

MR CONNOLLY: I have not signed anything. We reached agreement at a meeting. That has been taken back to the workers, who have endorsed it, and the process will now continue. We will set up - - -

Mr De Domenico: Will Mr Berry approve it?

MADAM SPEAKER: Order!

MR CONNOLLY: It is the view of the Government. The position yesterday that was sorted out by Mr Townsend was the position of the Government. We have taken a unified position on this all along. I have been saying all along that I am confident that we can deliver progress here, but we must do it in such a way that it does not prejudice whole-of-government approaches to industrial relations. That is what we have done. We have a proven track record, Madam Speaker. These little people opposite have no understanding of how to run government. They were a failure when they ran government. The deficits were flying out of control in public transport. When you were Chief Minister and Treasurer, Mr Kaine, you were a failure. We are delivering. Our ACTION budget has come in on target every year. We will continue to do so. We will reduce it by 20 per cent, through an enlightened approach to industrial relations.

Public Holidays

MR LAMONT: My question is directed to the Deputy Chief Minister in his capacity as Minister for Industrial Relations. Could the Minister inform the Assembly whether or not the Government will support moves to rationalise the number of public holidays in the ACT?

MR BERRY: The Liberals opposite would seek to remove public holidays from workers. There is no question about that. That has always been their stand - "Fewer holidays; they are too well off; we want to reduce their wages and working conditions". The ACT Government supports moves to ensure equality of treatment for Australian workers as regards public holiday observance. The ACT Government does not support attacks by some State governments - Liberal governments - and employers - conservative employers - seeking to reduce the number of public holidays which workers enjoy. These attacks do nothing to provide a proper base for enterprise bargaining in Australia. Therefore, the ACT Government will be making submissions in the forthcoming review of public holiday observance by a Full Bench of the Australian Industrial Relations Commission. In those submissions we will be supporting the development of a standard clause for incorporation in Federal awards that would confirm the basic public holidays currently enjoyed by all workers - - -

Mr De Domenico: Including the trade union picnic day.

MR BERRY: And the substitution arrangements by which additional days are observed when public holidays, other than Anzac Day, fall on a weekend day. In addition, the clause should provide capacity for the observance of established local holidays, such as Canberra Day and Labour Day in the ACT. The establishment of certainty for employers and employees over the public holiday observance, together with other minimum employment condition standards laid down in the Industrial Relations Reform Act, will create a platform for constructive enterprise bargaining.

I heard Mr De Domenico interject on the issue of the trade union picnic day. He has always been an opponent of the trade union picnic day. He has always been an opponent of the comradeship of the trade union movement. He has always tried to undo the old trade union picnic day. The trade union picnic day is something which is owned by the trade union movement and it is incorporated in various awards around the Territory. Madam Speaker, the matter of the picnic day is in the unions' hands. Thankfully, it is not in Mr De Domenico's hands. This Government will not be moving to undo the TLC picnic day. It is a day which has some history in this Territory, and it will be there for a long time. It is for the unions to decide what they do with it, not the Liberals opposite, and this Government will not be interfering.

Department of Education and Training - Separation Scheme

MR CORNWELL: Madam Speaker, my question is to the Minister for Education, Mr Wood. Is it a fact that the Department of Education's targeted separation scheme has gone badly wrong, with money running out, so that the round two applicants, including principals and deputies, are receiving significantly less money from the packages - I have heard the figure of $40,000 mentioned, compared with $70,000 for the original scheme - than their colleagues in round one? If so, what is being done to provide social and financial justice to these round two applicants?

MR WOOD: Madam Speaker, it is not a fact that the redundancy scheme has gone awry. It worked very well indeed. Something like 203 packages have been taken up, with benefits to schoolteachers as outlined here before. The basis of Mr Cornwell's question is clearly wrong when I can say that there have been no round two offers made. There have not been any round two offers.

Housing Trust - Property Sales and Purchases

MR STEVENSON: My question is to Mr Connolly in his capacity as Housing Minister. How many dwellings are currently held by the ACT Housing Trust, including flats; how many properties have been sold to tenants, and for other reasons, during the last few years; and how many properties have been purchased during that same period?

MR CONNOLLY: Mr Stevenson did indicate that he would be interested in the number of home sales, so I had the figures updated. The portfolio stands at about 12,500 homes. I do not have the precise number of the portfolio at the moment. The sales to tenants scheme was reintroduced in April 1991, with a 10-year continuous tenancy criterion applied at that time by the then Liberal Government. We amended that tenancy criterion in 1993-94 to eight continuous years. That change applied from October 1993.

Since April 1991 a total of 109 properties have been sold, with the total revenue standing at $11.978m. The average sale price was about $109,000, or almost $110,000. That average figure is rising. That average figure indicates that, by and large, we have not been selling properties in the old inner city area; we have not, by and large, been selling the very expensive homes. Of those 109 properties, eight have been sold since the eligibility criterion was reduced to eight years.

Since October 1993, when we introduced the eight-year criterion, of those eight homes, four have been purchased with the government HomeBuyer fund finance, that is the trust finance, and the other four were purchased through private finance. While we do not have precise statistics, the advice I have from senior officers is that that is about right - that about half of the homes that we sell tend to be sold through our own finance arrangement and about half of them tend to be sold through private finance.

There are currently 70 applications before the Government and 13 are pending imminent settlement. Under the HomeBuyer program, since its inception again in 1991, something like 980 loans have been settled. Going back to when we first started having Housing Trust homes available for sale, there have been 109 properties sold, and in the equivalent time some 980 loans have been approved by HomeBuyer, which means that a lot more people have gone out onto the private market and have purchased privately.

MR STEVENSON: I ask a supplementary question. Could you indicate the difference between the private loans and the government loans? Could you give the details, if you have them?

MR CONNOLLY: Madam Speaker, essentially the ACT Government HomeBuyer loan program is an easy start loan scheme. I will give Mr Stevenson a full briefing on how the scheme works. The thing to point out is that it does differ from the Homefund scheme in New South Wales which was rather dangerous in that it attracted people on a very unrealistic basis. We are quite rigorous in the way the ACT HomeBuyer loan scheme operates. I often get representations from individuals and from members asking us to be a bit more favourable in applying the guidelines to individuals. It is a perfectly proper role, of course, for members to write to Ministers asking us to intervene on behalf of individuals; but we are very careful because they went badly wrong in New South Wales. They were overly generous in providing loans for people who got themselves into low start loan commitments which they were simply unable to service. That sent a lot of people in New South Wales bankrupt and the Government there is now facing a substantial billion-dollar-plus shortfall. Our loan scheme has been operating very successfully and is in the black rather than in the red. I will provide Mr Stevenson later with a precise breakdown on how the scheme operates.

Woden Valley Hospital - Surgery-Free Day

MR HUMPHRIES: Madam Speaker, my question is to the Minister for Health. Can the Minister confirm that tomorrow is a surgery-free day at Woden Valley Hospital? Can the Minister tell us what a surgery-free day means?

MR BERRY: Madam Speaker, the surgery-free day to which Mr Humphries refers is the common use of rostered days off and so on to ensure that - - -

Mrs Carnell: The waiting list gets longer.

MR BERRY: No.

Mr Humphries: There is no surgery.

MR BERRY: That is right, and it reduces the number of operating rooms available for elective surgery.

Mr Humphries: And increases the waiting list?

MR BERRY: No, no.

Mr Humphries: It does not? It does not increase the waiting list. That is good to know.

MR BERRY: One of the things that you have to understand, Mr Humphries, and you never learnt it when you were a Health Minister, is that you have to be efficient within the hospital system and a range of people do take rostered days off.

Mr Kaine: That is efficient?

MR BERRY: That is just stupidity, Trevor. That is the sort of nonsense that was the hallmark of your leadership of a government in this place - just sheer stupidity. You could not even control Mr Humphries in relation to his health matters, and with that sort of stupid notion in your mind I am not surprised.

Mr Kaine: That is the theory you propound every time you get up and answer a question - fewer beds, better efficiency, RDOs, shorter waiting lists.

MADAM SPEAKER: Order!

MR BERRY: As the Victorian Secretary of the Health Department said, we do not treat beds in the ACT; we treat people. There is this infatuation with beds. What about some concern about the people who do not want to stay in hospital, who want to get out? What a bunch of gooses!

Mr De Domenico: They are trying to get in, though. That is the problem. They are trying to get in and they cannot.

MADAM SPEAKER: Order! Would the members of the Opposition desist from interjecting. Mr Berry is endeavouring to answer your question. Proceed, Mr Berry.

MR BERRY: Thank you. As members might remember, there was a budget, although they do not seem to take much notice of that - except for Mrs Carnell, who says that all it takes is more money, because she whips down to her backyard and plucks a few notes off the money tree, with the help of the little fairies who are dancing underneath it. As a budget initiative there has been a common accrued day off rostered for nursing staff and the operating theatres at Woden Valley Hospital. This occurs on the fourth Friday of the operating room schedule and affects only one day in every four weeks - a sensible measure.

Mr Cornwell: Why?

MR BERRY: It is a sensible measure because it ensures that as many people as possible who are entitled to rostered days off take them at the one time instead of having a disruptive approach to allocating those rostered days off. It is a sensible measure.

Mrs Carnell: It is stupid.

MR BERRY: Mrs Carnell says, "It is stupid". That shows you a measure of the understanding - - -

Mrs Carnell: You have surgeons who want to operate.

MADAM SPEAKER: Order!

MR BERRY: Mrs Carnell says, "You have surgeons who want to operate". Surgeons always want to operate on as many people as they can get their hands on. There is no question about that, because it is all about throughput and the making of income as far as they are concerned. We have to run an efficient public hospital system. One of the measures that we are able to employ is the common rostered day off. A range of people are able to take their day off on the same day. Maintenance, cleaning and all those sorts of things can occur on those days and it is more efficient to do it that way. Mrs Carnell would not understand that. Mr Humphries does not understand that. He is trying to make a big measure out of it. It is a sensible efficiency measure, and it will be persisted with because it is sensible.

Mr De Domenico: It is like Ros Kelly taking a day off from question time.

MR HUMPHRIES: I ask a supplementary question, Madam Speaker.

MADAM SPEAKER: I am sorry, Mr Humphries; it is impossible to hear you. Could we have a bit of order, Mr De Domenico.

MR HUMPHRIES: I ask the Minister: What sort of conscience does he have that would allow surgery-free days to occur in the region's principal hospital while 3,688 people are awaiting surgery - an increase of 106 per cent since he became Minister? Does he feel better now?

MR BERRY: I can say to you that I have a far, far clearer conscience than the surgeons who went on strike for five weeks and caused a big increase in that waiting list. Mr Humphries never criticises the people who refuse to take people off the waiting list while they are on strike. Why do you not get out and criticise them? My conscience is clear because we have a commitment to the people of the ACT that we will treat 50,500 people this year. We are going to be prevented - - -

Mrs Carnell: And no more.

MADAM SPEAKER: Order!

MR BERRY: We have been provided with money to do that. We are being prevented from doing that now because of the lost productivity which was caused by the doctors strike. Of course, the Liberals will always defend those people in the medical profession who went on strike, because they will always defend the well off and privileged. They always do. There is no concern amongst the Liberals opposite for those people who were affected by the doctors strike, some of whom are now extra people on the waiting list. Mrs Carnell laughs. She thinks it is a great big joke; it is a great big joke that those people are affected by the doctors strike. It is not a joke, Mrs Carnell, and my conscience is clear.

Boulevard Car Park Site

MRS GRASSBY: My question is to the Minister for the Environment, Land and Planning. Can the Minister inform the house about the section 52 car park opposite the Boulevard which the Government repurchased some time ago? Is there to be any redevelopment on that site?

Mr Kaine: That would be a good place for a hospice, Bill.

MR WOOD: It is a good place and I should think it is appropriate for hotel accommodation or serviced apartments - certainly for accommodation. It is the case that the Department of the Environment, Land and Planning is now drawing up appropriate development conditions for that site. It is then likely to be released for restricted auction, and I think that would happen before the middle of the year.

Garema Place Redevelopment

MS SZUTY: My question also is to the Minister for the Environment, Land and Planning, Mr Wood. Many months ago now the Minister announced a study into the future development of Garema Place. My question to the Minister is: What progress has been made to date on the study by consultants Mitchell Giurgola and Thorp, and when might the ACT community and members of this Assembly be informed of the results?

MR WOOD: Madam Speaker, in fact there are three studies affecting Garema Place, City Walk and adjacent areas. It is the case that the one Ms Szuty referred to was the first of those studies and it led to a second, which was a marketing study. It was found out very early in the process that we needed to engage the cooperation of the private sector. We can propose all sorts of things for Garema Place, but unless we can get the cooperation of the shopkeepers and the owners, the lessees in that area, we can do only a limited amount. A number of meetings were called.

There was another consultancy, I think with Jones Lang Wootton, who approached the owners in the area with an aim of developing a more coherent path. I suppose the best model is that of the Brisbane city mall, which is a cooperative effort between the owners in the area and the Brisbane City Council. The owners contribute very substantially, as does the council, to the improvement and the maintenance of that mall, and we thought it was appropriate to go down that path too. Needless to say, it is not particularly easy, with a quite large number of owners around Garema Place, to get their endorsement, let alone some action. That was that side of it. As well as that, the Mitchell Giurgola and Thorp one related to some of the more physical aspects of what we can do.

The third one relates to one that I am most interested in as well, which is a cultural environment, if you like, from the Canberra Theatre Centre, down Ainslie Avenue, and then into City Walk. I would like to see, over the long term, that become something of a cultural precinct; that as developments occur the ground floor becomes more appropriate to cultural precincts, bookshops and the like. That one is still in its fairly early stages of development. I have been planning a public announcement in some considerable detail to apprise people of the other studies, and I will be doing that when we get it all together.

Mr Berry: Madam Speaker, I ask that further questions be placed on the notice paper.

Woden Valley Hospital - Bed Numbers

MR BERRY: Madam Speaker, during the course of questioning, I withdrew a remark in relation to Calvary Hospital. I would not like that withdrawal to create the impression that there was no expansion of bed numbers in Calvary Hospital as a result of hospital amalgamation, which, of course, there was. There was an expansion.

Mr Humphries: Why did you withdraw it?

MR BERRY: In relation to the timing that you are talking about, there was an expansion of beds in Calvary Hospital as a result of the overall amalgamation of the two hospitals. That is a known fact, and I would not like to create the impression that there was not.

SUBORDINATE LEGISLATION
Papers

MR BERRY (Deputy Chief Minister): Pursuant to section 6 of the Subordinate Laws Act 1989, I present subordinate legislation in accordance with the schedule of gazettal notices for determinations.

The schedule read as follows:

Food Act - Determination of Fees - No. 10 of 1994 (S25, dated 22 February 1994).

Freedom of Information Act - Revocation, declaration and determination of fees and charges - No. 12 of 1994 (S28, dated 23 February 1994).

Public Place Names Act - Determination - No. 11 of 1994 (S27, dated 23 February 1994).

HOSPICE
Discussion of Matter of Public Importance

MADAM SPEAKER: I have received a letter from Mrs Carnell proposing that a matter of public importance be submitted to the Assembly for discussion, namely:

The inappropriateness of the Government's hospice plans in light of the Health budget crisis.

MRS CARNELL (Leader of the Opposition) (3.09): Madam Speaker, Canberra's public health system is in a critical condition. I do not think anybody would doubt that. Nowhere was this demonstrated more clearly than in a telephone call to a Canberra radio station this morning. The caller told FM104.7 about his 18-month-old twins who were suffering from chronic middle ear infections. In fact, they have had 20 middle ear infections in the last eight months. He told the listeners that his kids, who regularly woke up screaming in the middle of the night, obviously in great discomfort, have had to be put on the waiting list for elective surgery. These two very young children are on the waiting list for elective surgery, but they have no date for surgery.

Today this father said aloud what most Canberrans are now thinking: That the real issue in Canberra is not about Ros Kelly and whether she should be sacked for her actions; it is about Wayne Berry and the fact that he should be sacked - I will use the words that this caller used this morning - "for his bastardisation of the ACT health system". They are his words, not mine. Minister, you can ignore my warnings about the dire state of our health system, but there are hundreds more cases in Canberra like this - - -

Mr Berry: Is he uninsured?

MRS CARNELL: I do not know. Are you?

Mr Berry: I just thought he might have said. If he is, it probably explains why he is waiting longer.

MRS CARNELL: There are hundreds more cases like this who will let you know at the ballot-box, Minister. That is the only option they have. They are waiting for surgery, but I am sure that they will be looking forward to the next election. I am sure that it cannot come soon enough for these people. This is not about whiteboards; it is about one man, Mr Berry, who is playing politics with the lives of Canberrans. He is a Minister who chooses to play politics when it comes to the establishment of a hospice and, of course, when it comes to our public hospital system - what little we have left of it. Crispin Hull, in an article in the *Canberra Times*, makes comment about the hospice:

A hospice for 17 people will be built on a site where no-one wants it, to fulfil a political promise that no-one cares about anymore.

I want this Assembly and Mr Berry to be crystal clear about what his mismanagement has done to ACT Health. Mr Berry often talks about providing me with lessons about health. Today I am going to pay him back with interest and expose the idiocy of siting a hospice on Acton Peninsula and the inevitable

impact that that will have on the already overstretched health budget. I am going to make him eat his words, particularly those words that he told ABC radio last August - and I still cannot believe them. He said:

We're on the way to a better health system.

He said that on a number of occasions.

Mr Berry: And we are.

MRS CARNELL: A better health system with no beds, everybody on the waiting list - an amazing health system! Firstly, let me present the Minister with the facts, because his office had an awful lot of trouble yesterday advising the Minister what the true picture was when it comes to ACT Health and the budget. Mr Berry, there are 3,688 people on our hospital waiting list. This waiting list has more than doubled - that is, increased by 106 per cent - since you took office in mid-1991. One in every three patients on this waiting list has to wait for more than six months for elective surgery.

We have the lowest number of public hospital beds per capita of any State or Territory in Australia. In fact, we had the lowest number of public hospital beds before we closed the 128 beds that have been closed in the last 12 months. Now we have a level of public hospital beds that is lower than the projections that the Macklin report made of the need in Australia in the year 2000 after taking into account the growth in day surgery. With Mr Berry's much spoken about day surgery, the Macklin report suggested that we would need fewer beds, but now the ACT is dramatically below the 3.3 beds per 1,000 that the Macklin report suggests we will need in the year 2000. In fact, the ACT is quite a lot below, at 2.5 beds per 1,000, which really shows you that we are below the critical level. As I mentioned in question time, there are reports that we have only 482 beds open at Woden Valley Hospital today. Last week there were all sorts of reports in the *Canberra Times* about how we had a 10 per cent reduction to 556 beds. Now we find that only 482 beds are actually available today. This has to be one of the best new comments on health: We do not actually close beds any more in ACT Health; we make them "unavailable", which apparently is something totally different.

Mr De Domenico: Who said that?

MRS CARNELL: It seems that the chief executive of Woden Valley Hospital suggested that the beds were only unavailable; they were not closed. It is certainly an unusual approach. Remember that, on average, we had 610 beds open at Woden Valley Hospital last year.

Mr Berry: Get your figures right.

MRS CARNELL: That was your figure, Mr Berry. Are your reports wrong? We had 610 beds last year, and it seems, from counting the beds today, that we have 482 now. That means that one in five beds have been shut down over a period possibly as short as two months. In June 1991, when Mr Berry came to office as Minister, the average number of public hospital beds in the ACT was 891. Today we have 658 beds. That is 233 fewer beds.

Mr De Domenico: But he is spending more money, too, is he not?

MRS CARNELL: He is spending more money as well, yes. It makes an absolute mockery of Mr Berry's commitment to maintain services and to maintain hospital beds at the same level when Royal Canberra Hospital was closed. In fact, the people of Canberra were promised - and I am sure that Mr Humphries would remember this - that we would have 1,000 public hospital beds by the year 2000. That was a step in the right direction, but we have gone in the wrong direction, from 891 to 658. That is just a remarkable reduction. In June 1991 there were 405 beds at Woden Valley Hospital. That is before the redevelopment. Today, as we mentioned in question time, we have spent a sizeable amount of the $180m-odd allocated to the redevelopment and have increased the number of beds by a mere 77. No matter how Mr Berry looks at that, it means that we have spent over $100m for 77 beds. At the same time, of course, we have closed 283 beds.

This Minister has continually increased the pressure on nurses, doctors and other staff in our public hospital system. You know that you do that, Mr Berry. You suggest that the nurses, the doctors and the hospital staff - - -

Mr Berry: Talk about people. How many people have we treated?

MRS CARNELL: Almost the same number as were treated in 1991. The staff are picking up the tab for Mr Berry's mismanagement. They are being required to get patients through the system quicker, to discharge them quicker - and that is with occupancy rates that are regularly around 100 per cent. Every single writer on health economics knows that you cannot operate a hospital with occupancy rates so high, because quality care suffers.

We also learned this week that doctors are having their surgery lists cancelled at the last minute. There are not just surgery-free days, Mr Berry; surgery lists are being cancelled regularly or reduced. Why? Why can these surgeons who want to operate, and they do - Mr Berry was right there - not do something about the waiting list? The reason is that there are no beds. You cannot operate if there are no beds. In fact, what these surgeons are being told, Mr Deputy Speaker, is that there are no nurses and there are no beds, because there is no money left. That is really what it comes down to. Yet here we have a Minister who spends his time trying to find ways to stop the registration of new obstetrics beds at John James Hospital - beds that could reduce the pressure on our public hospital system and that would not cost the ACT taxpayer one cent.

The costs of our public hospital services are 30 per cent higher than the national average. We have been told that again and again, as recently as last year. More evidence of this Minister's incompetence emerges when you look at his budget management. Over the last two budgets we have seen blow-outs of $17m.

Mr Berry: No, you have not.

MRS CARNELL: That is over two years.

Mr Berry: No, you have not.

Mr Humphries: Come on, Wayne!

MRS CARNELL: In the first six months of this year we have a $4.6m blow-out - another $4.6m - and Mr Berry was supposed to achieve a $3m saving. Mr Deputy Speaker, I think that, if you put your ear to the ground, already you can hear faintly, just faintly, the sound of the - - -

MR DEPUTY SPEAKER: I cannot hear through the interjections, Mrs Carnell; but I will try, if people will be a little quieter.

MRS CARNELL: I think you can probably hear that Treasurer's Advance coming to the Minister's rescue again. What makes this all the more remarkable is that, even with this budget blow-out, Mr Berry remains determined to go ahead with a hospice on Acton Peninsula. It is going to cost us $3m to refurbish the old H Building site, on which the Minister has only a five-year tenure. That means that he could have to spend the $3m all over again in five years' time.

Mr Berry: That is a lot of rubbish.

MRS CARNELL: It is not rubbish, Mr Berry. That is exactly what the Federal Government and the NCPA are telling you. That is what is going to happen. But it is not just that that is the problem, not just the $3m it is going to cost to refurbish the new hospice; it is the $2m a year it is going to cost us to run the hospice. That is Mr Berry's own figure. That makes the daily bed cost at the hospice potentially higher than the critical care cost at Woden Valley Hospital.

Nobody doubts that we need a hospice. The Liberal Party has maintained throughout this debate that palliative care in the ACT should be a priority; but a hospice is only part of a palliative care program, and a palliative care program must be a holistic program. It must be a program that has, as part of it, services that can be provided only by a hospital. Certainly, a hospice should not be in a hospital, but it should be associated with a hospital. Mr Berry is quite happy to spend 20 per cent more to run this hospice than it would cost if it were associated with a public hospital. That is $400,000 a year just to keep Mr Berry, with his little ideological hang-up about this issue, happy - $400,000 that could be spent on teachers, hospital beds, or any amount of other services. But no, we are going to establish a facility that will cost us $400,000 a year more to run than the same facility associated with, say, Calvary Hospital.

If the facility were associated with Calvary Hospital it would have access to such services as physiotherapy, pharmacy, pain management and radiology. As it turns out, every time a patient needs an X-ray - and, fascinatingly, they still do, even though they are in a hospice, because you need to know how to treat the pain - they will have to get into an ambulance and go six kilometres to the nearest hospital. That is certainly not good service. We also will have to duplicate many services - chaplaincy services, social work and patient family support services, not to mention food services - and the staffing of a facility that may have only six to eight patients at any one time will be an absolute nightmare.

This is at a time when we honestly cannot afford it. We have more beds being lost at Woden Valley Hospital than any of us could have imagined in our wildest dreams. At the same time, Mr Berry wants to go ahead with a hospice that will cost us $400,000 a year more to run. We have had a number of consultancies on this. Every one of them has said that this hospice must be associated with a major hospital because it will simply cost us too much. There is not one hospice in this country currently being built or built in the recent past that has not been associated with a major hospital. There was a time in the seventies when it was trendy to build hospices separately, but they were big ones - 60-bed ones, Mr Berry, not 17-bed ones.

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport) (3.24): Mr Deputy Speaker, the first thing I would like to deal with before I get to the hospice, and I will spend a little time on this issue, is the performance of the public hospital system. If you look at the report provided to you, the average length of stay, year to date, is falling. That means that more people will be going through. Mrs Carnell made a claim about 482 beds. She wants to exclude day surgery beds because it mucks up her flash little press release if you include them.

Mrs Carnell: No, I did not, because people do not stay overnight in them.

MR BERRY: That is right; you need fewer beds as a result. Up to 35 per cent of all our admissions are done through day surgery. You cannot just ignore that. It means that you need fewer beds, so you have to include it.

Let us have a look at the performance of Health. We will talk about people, not beds, for a change. In 1990-91 - Mr Humphries would not remember this because he was not one for figures - 47,301 people were treated in 867 beds. In 1991-92 - Mr Humphries still would not remember this; as I said, he never had a head for figures - 47,976 were treated in 825 beds, an improving performance; and in 1992-93, 50,542 people were treated in 797 beds. We are doing better; we are much smarter; we are more efficient. We are talking about people - 50,500 people in 797 beds. We are doing more people in the hospital with fewer beds, which is more efficient.

This year the target was 50,500, and the apologist for the doctors climbs on her feet and complains about that as well. The doctors strike cost us a lot of money and it cost us a lot of productivity. Whilst the doctors were on strike we were not going to attack our other workers, and we had to pay for them standing idly by while the doctors refused to take people off the waiting list. That was their problem. They refused to do their work. If you want to apologise for the doctors, if you want to play their game, you are going to have to share some of the shame, ma'am. The target is 50,500. We will do it this year and we will do it with fewer people.

All members of the Assembly are aware that the negotiations for the establishment of a hospice service in the ACT began in the 1980s. After consideration of all the factors and all the arguments, this Government made the decision to site the hospice on Acton Peninsula. I announced this decision in the Legislative Assembly in August 1991 and the decision was reaffirmed in our election commitments in February 1992 and in June 1992.

The Government also agreed in principle to the provision of $3m for a hospice in the 1992-93 capital works program. This commitment has been made by the Government for the benefit of all the potential patients of the hospice and their families and friends.

My Government has investigated fully the possibility of co-locating the hospice with an acute hospital and has made the final and irrevocable decision that this is no longer an option. This decision has not been made without a great deal of investigation, discussion and consideration. The Government has considered a range of views, including those of the medical and nursing professions, the Hospice and Palliative Care Society, the AIDS Action Council, religious and non-religious groups, and the management and staff of almost every hospice in Australia. In fact, over 20 different hospice facilities have been consulted by members of the hospice working party. All the parties consulted agreed that a hospice did not need to be co-located with a major hospital.

Once again, I will detail the reasons for the Government's decision to build the hospice away from a major hospital. There is a world of difference between a hospice and a hospital. A hospice is a specialised health facility that employs complex techniques for symptom control and pain management. It is not a place where people go to be cured. It is also apparent from the available evidence that the closer a hospice is built to an acute hospital the more acute interventions will be carried out.

Mrs Carnell: There is no evidence at all of that.

MR BERRY: Because you would like that. You are an apologist for the people who want it close. The Calvary Hospice at Kogarah in Sydney is a freestanding facility, and staff there have found that only a very small number of patients - less than 3 per cent - need to be transferred to an acute hospital for procedures. This contrasts with the Daw Park Hospice in the grounds of the repatriation hospital in Adelaide, which transfers approximately 8 per cent of its patients to the hospital for treatment. The difference in the intervention rates will be borne out by an analysis of any number of hospice facilities.

Mrs Carnell: That is because they can actually do it.

MR BERRY: The evidence is flying in your face. It is obvious to all of those working in palliative care, Mrs Carnell, that the difference in transfer percentages relates directly to the location of the hospice and the nearest acute hospital. The clinical nurse consultant at the Mary Potter Hospice in Adelaide has stated that being adjacent to a hospital will dictate practice. It follows, therefore, that, while there may not be a substantial difference in the total costs associated with caring for palliative care patients in either a hospital or a hospice, the recurrent costs associated with acute intervention procedures will be substantially lower with hospice care. I must state again, Madam Speaker, that any number of interventions will not provide a cure for those patients and that the overwhelming need is for pain management and symptom control so that these people may spend the last few weeks of their lives pain free and die with dignity.

Do not forget also that the hospice on Acton Peninsula will be supported by the home based palliative care service. The home based service will support patients who wish to die at home, whenever this is manageable by the patient's family and in accordance with the patient's wishes. A great majority of people suffering terminal illnesses die in their own homes. The home based

palliative care service provides for an average of 30 patients in the ACT at any one time. These patients are maintained comfortably within their own homes. No-one is suggesting that these patients should be confined to a hospital bed in order to die.

The philosophy of palliative care supports the notion of dying at home and, where this is not possible, providing a facility and an atmosphere as homelike as possible for those patients who cannot be managed in their own homes. If we take Mrs Carnell's logic in relation to the hospice on Acton to one conclusion, she would argue that people ought not to be dying in their own homes, that they ought to be near a hospital. It is the same logic. I fully expect the ACT to continue to lead the other States by supporting our nursing staff and general practitioners to extend their expertise into palliative care, not confine it to a major hospital. This will be possible where there is a genuine commitment to the philosophy of palliative care and where the system supports and encourages that philosophy.

I cannot deny that sometimes acute intervention will be necessary to limit pain, but that occurs at home as well. If you use your argument for home care, you would say that they ought not to be at home. While most palliative care treatments such as blood transfusions can be managed on the hospice premises, there are a small number of both hospice and home-care patients who will require interventions in an acute hospital. Radiotherapy, for example, can be used for stabilisation and pain control, and in other States this is the primary reason given for transfer of a hospice patient to a major hospital. While the Opposition is continually arguing that the hospice should be located at Calvary Hospital, if this were to happen the patients would still need to be transported to Woden Valley Hospital for radiotherapy treatment. What a silly bunch of people you are!

The patients who are likely to use the hospice are among the most vulnerable in our community. It is important that we accord them the respect they deserve - not by taking short cuts or by counting every dollar, but by providing them with the best the community has to offer. Care should be provided in a facility that is dedicated to their needs and to the needs of their families. It is starting to sink in. I hear silence over the way. We have the opportunity now in Canberra to provide just such a facility. While I am disappointed that we cannot build the specific purpose facility we first envisaged, we are able to provide for all the needs of the hospice patients in a refurbished building in the peaceful and tranquil environment of Acton Peninsula. The hospice working party is currently examining the plans of the existing buildings and determining what needs to be done to make these buildings as homelike as possible. The refurbishment will be undertaken in an imaginative and innovative way and will focus totally on the needs of the clients and the most cost-effective and efficient way the health system can meet those needs.

I believe that the time has come to put aside differences in view and concentrate fully on the needs of the palliative care patients in the ACT, but I know that Mrs Carnell will not do that. A press release and a headline is far better for her than good sense. An integrated palliative care program will provide for the coordination of services across the hospitals, the hospice and the home based program. We have a golden opportunity in Canberra to pursue a philosophy of care and a program of education for the best practice in palliative care that will be unsurpassed in Australia, and we are not going to let the inane arguments of the Opposition interfere with our judgment in this respect.

Of course, Madam Speaker, there are some opponents of this. Some of them have a Liberal Party ticket burning a hole in their pocket, some have a concern of their own about the matter; but overwhelmingly there is support for the establishment of a hospice on this site. It is a sensible decision. Of course, some in the upper levels of the medical profession would argue for it to be closer to a hospital because they do not like travel time, but we are taking into account a number of things. We are taking into account the significant cultural nature of that site. There is some significance in that site for the whole of Canberra. The Liberals would forget that, but it is a sensible place for the location of that facility.

I go past the site fairly regularly, and each time I am more convinced that the decision was right. Everybody I know who understands the cultural nature of that site is with me on that. At the end of the day, it will be a facility that will be efficient, it will be broad-based, and it will have all the connections it needs to the health system to provide comfort and well-being for those who end up there and who die there, as well as for those important members of their family and their carers. The professionals who work in that environment need special attention too. That site is ideal, on all grounds. I cannot, for the life of me, see how the Liberals can stoop to the sorts of gutter tactics they have used in relation to this facility, when they must know in their own hearts that this is a good place for this sort of facility. Politicking is good fun, but sometimes you have to look at the good sense side of it too. The Liberals probably never will, but you can rely on the Labor Party and other sensible people around this place to focus on a sensible opportunity. This is a sensible opportunity and one that will not be lost.

Mrs Carnell has used this opportunity to bag the public health system. She has not been a great supporter of the public health system since she has been here. She has always been a critic of it, continually trying to drag it down. I have just demonstrated again to this Assembly that the public hospital system in the ACT is performing better now than it ever has, save for the attack on it by the VMOs. I will go through those figures again; Mr Humphries might remember them for his next speech. In 1991, 47,300 people were treated in 867 beds. We were more efficient the next year, with 47,976 treated in 825 beds; in 1992-93 50,542 were treated in 797 beds; and this year the target is 50,500, save for the loss of productivity caused by the strike by the doctors, and we will do that in fewer beds per capita as well.

This is about efficiencies in the public hospital system, falling lengths of stay, and day surgery. Some 35 per cent of our patients are treated in day surgery, and Mrs Carnell wants to leave that out of the equation. I am afraid that the predictions are that by the year 2000 we will be doing 50 per cent of our patients in day surgery and there will be fewer beds. That is more good news for the community because, as I said earlier, I do not know of anybody who craves an overnight stay in hospital. They want to get out as quickly as they can, and most of them will be ignoring Mrs Carnell. She might apologise for her doctors and be the main apologist for the VMOs, but there is no excuse for that. This is a good decision and it will stand.

MR HUMPHRIES (3.39): Once again in this Assembly we return to the familiar theme we have sounded so many times in the last few years, and that is the considerable problems befalling our public health system, indeed our whole health system in the ACT, and especially the incompetence of the Minister who looks after it, Mr Wayne Berry. "Looks after it" might be a slightly exaggerated phrase.

The issue before us today is particularly with respect to the affordability of a public hospice in the ACT. Nobody doubts for one instant the need for this hospice in the ACT. I point out that it was the Alliance Government that placed the hospice in the position where it had to be built. It was the Alliance Government that announced firm plans in 1990 to begin the process of building the hospice, to begin the consultancies, to start to identify the site, to start to make sure that it happened. When Mr Berry was previously in office, the hospice was merely one of those good ideas, like the very fast train, which were going to be thought about in the long term. The hospice went onto the political agenda firmly in 1990. We are still waiting for it today, even though the money has been there for two years; but we now have the considerable question arising in this place of how much it is going to cost us.

When we argue for a hospice based somewhere like Calvary, we are not arguing for a substandard hospice; we are not arguing for a hospice on the cheap, a hospice which does not do its job. We are arguing for a hospice which can be afforded by a Territory health system in crisis, a Territory health system which at the moment simply cannot afford to pay the ordinary bills for basic levels of health care currently being demanded by citizens of this region. We therefore ought to be looking at some system which will provide an affordable level of health care.

Mr Berry insults all those people who have contributed to the process of getting a hospice for this Territory when he makes disgraceful comments like, "The critics have Liberal Party tickets burning in their pockets". Let us have him name a few people. Is it the Hospice Society of the ACT, which did not want a hospice on Acton, that is full of Liberal Party members? I happen to know that the head of the Hospice Society is very far from being in that category. Is it the Council on the Ageing that has Liberal Party tickets burning in their pockets? Is it the Women's Electoral Lobby, perhaps, that are clandestine members of the Liberal Party? Is it Dr Ian Maddox and Dr Ruth Redpath, the two consultants from Adelaide, the two experts in palliative care in this country who recommended that the Calvary site go ahead, who are Liberal Party fellow travellers? Is it the many nurses and doctors and others who have consistently said that, although a hospice on the Acton Peninsula has some sentimental value, it would be prohibitively expensive? The cost of the hospice is an issue that Mr Berry has not once touched upon in this debate today, or ever.

Mr De Domenico: And will not in the future.

MR HUMPHRIES: And he will not in the future. I ask the question, and it is a question we are entitled to ask and to which there must be an answer: How much more is a hospice going to cost because it is based on Acton than it would have cost had it been based at Calvary? If you cannot answer that question in the public arena of this Territory, you do not deserve to have the control of this project, and you should resign. If you do not have that

information, you should not be there doing that job. The hospice is an important facility, but it does come at a price. If we were rolling around in money, I would not doubt the capacity of the Government to say, "Let us put a hospice wherever we want to". But the fact is that we do not have lots of money and we therefore have to cut our cloth to suit our purse. We are not doing that.

Turning to the health crisis in this Territory, like the Bourbons, the Minister for Health has remembered nothing and learnt nothing. Every indicator showing serious problems in our system has been ignored. Falling bed numbers, longer waiting lists, serious industrial disruption in our system - practically every indicator you can think of is showing a problem. But the Minister continues to insist that things are getting better; without support, without any evidence, he insists that things are getting better. Yes, we do focus on things like hospital bed numbers, on waiting lists, on industrial disruption and so on, as important factors in this debate. Why do we have what Mr Berry calls an infatuation with things like that? I will give him a number of reasons. First of all, Mr Berry told us that we should have an infatuation with them. I quote Mr Berry from 20 November 1990:

Mr Berry was commenting on the latest waiting list figures from the Department of Community Services and Health which showed that the waiting lists have grown since June -

that is, June 1990 -

and had blown out by 500 in September 1990 from a five year low of 928 in 1989.

That is a long time ago. The quote continued:

The list now stands at 1,407.

Goodness me, what is it today? It is 3,688. Mr Berry was beating his chest and saying, "We are in big trouble" when it was 1,407. Today it is 3,688. For goodness sake, if that was a crisis, what is it now? He continued:

Mr Humphries has denied that there will be any shortage of public hospital beds.

He was drawing the connection between waiting lists and public hospital beds. That is funny. There is no connection, is there, Mr Berry? I quote again:

I wonder how he would explain this contradiction with the explosion of waiting time for a bed in our hospital system to someone waiting for pain relieving surgery ...

... ...

Unfortunately, under this Government, long waiting lists will be the norm rather than the exception - more bad news for ACT residents suffering under this regime ...

Again, on 12 April 1991, under the heading "Wayne Berry, MLA, Media Release", I quote:

So far we have been confronted with a massive bungle in health with blowouts in budgets and gross withdrawal of services as the Government moves to close down over 30 per cent of our hospital capacity.

Beds disappearing - well, well, well! But, of course, Mr Berry saw the light. Mr Berry had his conversion on the road to Damascus. Something remarkable happened.

Mr Kaine: And Damascus is on the Acton Peninsula.

MR HUMPHRIES: That is right. On about 6 June 1991 a shaft of light hit Mr Berry as he was walking along. "Yes", he says, "waiting lists are not the answer. Bed numbers are not the answer. The number of people suffering is not the answer. It is throughput. Throughput is all I need to worry about. Throughput will see me through". Madam Speaker, the fact of life is, of course, that throughput is no empirical test at all. There is no standard of throughput. You cannot look just at throughput, because throughput is independent of the number of people who are demanding services. If you increase your throughput through the hospital system by 10 per cent, and we certainly have not done that, but the demand from the population of the ACT or the region has increased by 20 per cent, clearly you have a problem. Clearly your efficiency has declined.

We want a measure for the hospital system which actually tells us whether things are getting better or whether they are not. Throughput clearly does not do that. "We are doing more people", says Mr Berry. In fact, you are doing more people. You are really doing them in the eye by putting them on the waiting lists, making them wait longer and longer for surgery, making sure that people waiting for that pain-relieving surgery are continuing to suffer. Those are Mr Berry's own words.

How bad does it have to get before this Government admits that there is a problem? What test, what measure, what level, what watermark has to be passed before Mr Berry and his recalcitrant Government will say to the people of the Territory, "Yes, we have a problem."? Give us any test, any test at all, that we can look at empirically. Of course, you cannot. We have seen further pathetic and ridiculous excuses from this Government: Doctors have caused the recent blow-out. What was your excuse in the previous three years? You do not have one, of course.

Madam Speaker, Mr Berry is a fanatic. He attributes waiting lists to doctors overservicing, without a shred of evidence, and he is opposed to the creation of any private facilities - the only option we have in the reasonably long term for reducing pressure on our hospital system - because he thinks it is bad. He thinks it is ideologically incorrect and should not happen. This is the man who buys out of the necessity to rely on the system by having private health insurance of his own. That is hypocrisy of the worst order. This man can get away from the problems of the public health system if he wants to, but he continues to say that other people, perhaps people who cannot afford to get private health insurance, do not have that capacity, do not have a system without the pressures that are placed on it now. If he was defending a public hospital system that could cope I could understand, but he cannot and he will not, and he stands condemned for that.

MR MOORE (3.49): Madam Speaker, I would like to comment on the significance of this site to the people of Canberra. That significance has been expressed again and again in the incredible disappointment of the people of Canberra at the closure of the Royal Canberra Hospital - an act that was carried out ruthlessly by Mr Humphries and his colleagues in the Alliance Government. When Mr Berry and his colleagues had the opportunity to save that hospital, they refused to do so.

This matter of public importance talks about two separate things. On the one hand, there is the health budget crisis, and on that matter I think the Liberals have an argument to put. Clearly, there is going to be another situation where the health budget will go beyond what is set out in the Appropriation Act. Those problems do exist, and I believe that it was reasonable to raise them. I reckon that that is fair game; Mr Berry used it when he was in opposition and the Liberals are using it now they are in opposition. What concerns me more is the notion that the Liberals, instead of sticking with that political football, are using the hospice as a political football.

It seems to me that the decision is made. It is clearly the case that the hospice is going to proceed on the Acton Peninsula, and there are very good arguments as to why it should be there. Many arguments were carefully illustrated today by Wayne Berry as to why it ought to be a freestanding and separate hospice. Certainly in the visits I made to hospices - one in Victoria which was freestanding, and Calvary Hospital in South Australia, where it was associated with the hospital - I could find nothing to convince me that it was important to associate a hospice with a hospital. In fact, I can find very strong arguments for ensuring that a hospice should be separate from a hospital. It was quite clear that where a hospice was more closely associated with a hospital, and this is reflected in the quote Mr Berry presented to the house, there was an emphasis on the facilities there and on medical treatment. The purpose of a hospice is to provide for not medical treatment but rather medical maintenance, ensuring that people are looked after in the best possible way.

We must be very careful to realise that in Canberra we already have a very good palliative care system that is carried out in the best spot of all - at home. There has to be a backup system, and there is no debate about that. Everybody agrees that there has to be a backup system, there has to be a hospice, and that it is going to cost us because we cannot run something like that without it costing us some money. It seems to me that the best possible site for that hospice is well separated from the hospital and in a tranquil location, and who can do better than Acton Peninsula?

Putting it on the Acton Peninsula also shows that we are not saying to people who are dying, "We are discarding you; we are putting you off to the side; we are putting you out of hospital". We are saying, "We are setting aside one of the most important sites in Canberra because we value you, we value the contribution you have made, and we value this time at the twilight, if you like". That is what it is about, and that is why it ought not to be used as a political football. If you are going to look for a political football, for heaven's sake, go back to the health budget and go for it. That is the one.

The other interesting thing about the Liberal line that the hospice must be associated with a hospital is that this is the standard line we get from medical practitioners, for obvious reasons. Medical practitioners come from that parameter. I am not being negative about medical practitioners; I am just talking about the way people think when they come from different parameters. They think in terms of intervention. They think in terms of medical treatment. That is the way they have been trained. That is the approach they work on, whereas the notion of palliative care is one that deals not with that but, rather, with maintaining somebody without pain.

It seems to me that basically what we get from the Liberals, whatever the health issue, is the doctors' line. I cannot think of a single example, and I would be delighted if somebody wants to interject to correct me, where the medical practitioners' line has not been taken by the Liberals. It is the same again and again. Once the AMA says it, away they go.

Mr Humphries: Smoke-free areas. Come on, acknowledge it.

MR MOORE: In his interjection Mr Humphries has finally come up with one - smoke-free areas. There is a particular reason for that, and that is that in that instance they have to follow Liberal Party policy. There is a set down, separate policy on that issue to which they are tied. So we can understand why there is a variation there, and it must be causing you a great deal of pain. It seems to me that we need a little free thinking, rather than being tied to that policy. We ought to see from the Liberals in this case an acknowledgment that we have a perfect opportunity to work together as an Assembly to deliver the best possible palliative care we can right across Canberra, with all the different methods we possibly can, and that is what we should be aiming for.

MR KAINE (3.56): Mr Deputy Speaker, my concern in this whole debate that has been raging and Mr Berry's intransigence on this subject is that underlying it is the fact that our health system is in crisis. The nurses and employees at the Woden Valley Hospital know that. Almost anybody who knows anybody who has been in hospital or who has tried to get into hospital over the last couple of years knows that. I suspect that the members of the Government know that, but they will not acknowledge it. We have a hospital system and health delivery system that is in crisis.

Mr Berry: Three thousand more can get in than could get in when you were there.

MR KAINE: We will come to that in a minute, Mr Berry. We have a system that is in crisis, but the Government will not listen. All that we get is Mr Berry standing up here and defending the status quo. "We are doing okay", he says. We are not doing okay, and I would have thought that Mr Berry and the Chief Minister and the other members of the Government would have been concerned to try to make the system do better, not just justify what we have, with all its warts.

We are spending this year nearly $270m on a health system; yet it is in crisis. Mr Berry says, "Of course we are going to overspend this year; we always have". The fact is that last year it was only about $240m and we built his budget up by about $40m a year to take account of all of the reasons that he put forward before

to explain his blowing-out budget. There is no longer an excuse this year, Mr Temporary Deputy Speaker. All of the things that he claimed last year and the year before were contributing to blow-outs in his budget have been built into his budget this year. So he has no out this year. If he blows out this year it is due to absolute mismanagement and lack of control by the Executive. He is the man who is responsible for the expenditure of that money and, if he cannot manage it this year, he can never manage anything.

Mr Berry talks about 3,688 people being on the waiting list for elective surgery. There are two things about those 3,688 people. He can talk about the 50,000 people that the hospital system does take care of, but what about the 3,688 that it is not taking care of?

Mr Berry: Three thousand more than when you were there.

MR KAINE: He can shrug that off. It is three times as many as what you were complaining about two years ago. It is an absolute disgrace. These 3,688 people are not just people who have said, "Gee, I would like to go into hospital and have some surgery". These are people who are in pain and whose doctors have said, "This person needs surgery".

I get phone calls every day in the week. I got a phone call last week from a woman in her seventies who had been trying to get into hospital. She has a very painful back problem and she has got to the stage where she can virtually not cope with it any more. She was finally told by her doctor that she would go into surgery early next month. I think it is next week. When she checked with the hospital the hospital put a question mark around that. She was absolutely distraught because she has got to the point that she cannot cope with this pain any longer. She is one of the 3,688 that the Minister shrugs off; because we look after 50,000 the other 3,688 do not matter. They do matter. The problem is, with all of these books and so forth that the Minister produces, that these people are just numbers, and that is the way the Minister sees them. They are just numbers; they are not people.

Underlying this debate about the hospice is the fact that his whole system is in crisis. Mr Berry devotes his entire time and energy to demanding that the hospice go where he thinks is a good idea. I am not wedded to Acton Peninsula, or Calvary, as the site, but I do say that Mr Berry has had $3m in his back pocket for two years now and that $3m was to provide a freestanding hospice. What he is trying to do is sell it cheap; he is going to get a cheap one on Acton. What is he going to do with the rest of the money? Cover some of the blow-out in his budgets? If he could get a freestanding hospice in the car park on Acton Peninsula for $3m, he could go and build one on the escarpment overlooking the Brindabellas in Tuggeranong, where people have a fantastic view of the Brindabella Mountains, if it is view and outlook that he is talking about; but all he can concentrate on is, "The lake is lovely and people like to be by the lake". I can think of many other places in Canberra where it would be congenial for people to spend what few hours, days or weeks they have left of their lives. It does not have to be at Acton Peninsula, and he has had the money to do it. So it is no good him standing up now and saying, "Acton is the only place this can go and we have to do it now; Calvary is no good".

The other thing that he quotes is that the hospice does not need to be located near a hospital. If he had read a bit further he might have found that it might have been desirable for it to be so co-located. Of course, it does not need to be, but is it desirable? If he had read his advice a little further he may well have found that that was in there. The advice to me from the ACT Hospice Society was that it was desirable that it be located adjacent to an operating hospital, and I do not believe that the ACT Hospice Society has changed its mind. He picks up the words that he wants to hear. It does not need to be, therefore in his view it will not be. It is a long jump. He talked about home palliative care and all that. Of course we need palliative care at home. Not everybody wants to go into a hospice. Some people have the capacity to remain at home; they have people to take care of them and to look after them with a little bit of assistance under the palliative care program. Unfortunately, that is not the case for everybody, so we have to have a hospice for those who are not fortunate enough to be able to have those happy circumstances.

Mr Moore says that the hospice is being used as a political football. Who started this football game? Who was it who went down to the Acton Peninsula, put a bit of chalk around a bit of ground down there and said, "That is where the hospice is going to be. Do not tell me about whether it could be somewhere else; do not tell me about where it might be somewhere else; do not tell me whether it is desirable that it be somewhere else. I have $3m in my hip-pocket. I am going to build it here. Let us not have any further debate."? This is the caring Minister for Health! He drew the lines and if he had spent the money the hospice could have been there nearly two years ago. This is the caring Minister who is concerned about these people who need a hospice! It is absolute humbug, Mr Temporary Deputy Speaker, and this is the man that Mr Moore should have directed his attention to when he was talking about using this as a political football.

I say, "Let us have the hospice. Let us have it now and let us have it in a place where we are not going to have to spend another $3m in five years' time to build another one". Mr Berry is going to spend a good slice of his $3m to upgrade that old building down on Acton Peninsula, and the NCPA has already told him that in five years' time he is going to have to move it somewhere else. He is going to spend the bulk of the money now and in five years' time the government of the day - not him, because he will not be there - is going to have to produce another $3m, or perhaps by that stage $5m, to build another hospice somewhere else. How stupid can you get?

This is the paradox within this hospital system and health system that is in financial crisis. Every day of the week somebody comes along and says that we have closed more beds, and every time we do the waiting list goes up. These numbers, these people who do not matter, go up, and he is spending $280m this year to prop up that system that is going downhill every time you turn around. Why does he not do something positive instead of stonewalling, instead of blocking? It absolutely confounds me that he is so insistent, so adamant, so arrogant that he is going to fight every inch of the way to everybody else's death over where the hospice is going to go.

This man has no compassion. He has no intention of putting a hospice any place but where he unilaterally decided it was going to go. To heck with the patients. He does not care about them. The bottom line, Mr Temporary Deputy Speaker, is that this Minister should go. We talk about the Ministers over the other side of the lake who have inflicted not even half the damage to society that this man has done, but he sits there and we do not even tell him that he should go. Well, I am telling him. The Chief Minister, unfortunately, is not here, but she should hear this. She should do a proper analysis of what is happening in our health system, and he should go.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.06): In the limited time that is left to me I would like to make the point that this debate was supposed to be about the hospice. One of the decisions for which this Government will be applauded for years to come will be the visionary decision to place the hospice on Acton Peninsula - a decision which patently is supported by a majority of members of this Assembly and, we firmly believe, the majority of members of the community. Mr Moore put it very clearly when he described the physical beauty and the serenity of that site. That cannot compare with a hospice at any hospital. Both of our public hospitals in this Territory, both Woden and Calvary, are fine public hospitals; but they are institutional facilities.

Mrs Carnell: Have you had a look at the bushland setting out the back? It is very nice.

MR CONNOLLY: I have, indeed; by the car park where you are looking out at an institution - - -

Mrs Carnell: No, no, out the back; not the car park.

MR CONNOLLY: Yes, out the back, where I was parking regularly in September last year, where that block building is. It is an institutional facility. As has been shown by Mr Berry and Mr Moore, when you have a hospice next to a high-tech hospital there is an increasing tendency to apply the high-tech to the patients. It is not what people need at that time of their life. They want serenity. They want a place where their families can see them, and then reflect in pleasant, attractive surroundings. What we are delivering on the Acton Peninsula, one of the most beautiful sites in Canberra, one of the most beautiful public facilities in this community, will serve this and future generations of Canberrans extraordinarily well. In 10 or 20 years' time people will reflect on the foresight of this Government in placing that facility on one of the best sites, the most beautiful sites, in the Australian Capital Territory.

Madam Speaker, Mr Moore very effectively made the point about political footballs and health. There is something you notice as you travel round the country these days. You used to notice the differences. There were different types of beer and different types of bread available around Australia. Now you notice the similarities. The greatest similarity is that oppositions, of whatever political persuasion, are bagging governments, of whatever political persuasion, about waiting lists and bed numbers. The name of the game in health administration has changed. We treat people, not beds. We look at throughput and performance outputs. It is interesting to see in Victoria how the AMA is

bagging Health Minister Tehan there in much the same way as they bag us and as you bag us. We look at outputs in the health system. One of the remarkable indicators of efficiency that we have had is the indicators on outpatients services. We have gone from some 354,000 occasions of treatment in 1991-92 to some 422,000 occasions of treatment in 1992-93.

Mr De Domenico: Has the population gone up in proportion to that as well?

MR CONNOLLY: No, absolutely not. That is an increase of about 19 per cent, but when you take into account other factors it amounts to about a 10 per cent increase when you have an increase of population of about 2 per cent. It is a dramatic increase in efficiency, as we have seen throughout the health system. Simply counting bed numbers is a great tool for oppositions. Oppositions of whatever political persuasion use them all around Australia, but it means nothing.

MADAM SPEAKER: Order! The time for the MPI has expired.

NOISE CONTROL (AMENDMENT) BILL 1993

Debate resumed from 14 October 1993, on motion by Mr Wood:

That this Bill be agreed to in principle.

MR WESTENDE (4.09): Madam Speaker, the Liberal Party is in general agreement with the amendments contained in the Noise Control (Amendment) Bill 1993. However, there are a few points on which we would like some clarification, or on which we would like the Minister to make some noises. One is the urgency of these amendments. As the Minister as recently as October last year tabled a proposal for integrated environment protection legislation, would it not have been better to wait until that integrated environment protection legislation was put before the house? In that discussion paper the Government proposed to combine the Air Pollution Act, the Water Pollution Act, the Noise Control Act, the Pesticides Act and the Ozone Protection Act. The basis of that legislation will be to ensure effective protection of our environment in the future.

The old section 12 of the Noise Control Manual, which related to general motor sports noise measurement, including motocross and mini-bikes - the drive-by test - was deleted previously. We believe that a new section 12 on motor sports should be written into the Noise Control Manual in accordance with, or as close as practicable to, the Australian Standards on motor sports. This would bring the ACT into line with most States of Australia, including New South Wales, which already apply the Australian Standards with regard to motor sports. Remember that for certain venues we might have to compete with New South Wales, at places such as Goulburn where they already have tracks. Just as the Noise Control Manual covers the measuring and testing procedures for such items as air-conditioners, lawn-mowers, air-compressors, pneumatic tools and motor boats, so the manual must also cover motor sports.

By applying parameters under which motor sports can be undertaken in the ACT, the Government will be instrumental in setting guidelines for those participants in the sports to adhere to. After all, how can you adhere to standards if you do not know what the standards are? It would also ensure overall standards with regard to noise levels, such as the type of instrumentation used for measuring noise levels, the procedures by which noise levels are determined, and measurement procedures used for testing noise levels. The above factors are important in providing the relevant parameters under which motor sports can be conducted. We also believe that it is in the interests of the ACT community as a whole to have parameters by which the community complies. In saying this, the Liberal Party believes that it is not only essential, but absolutely vital, that section 12 of the Noise Control Manual be rewritten according to the Australian Standards, or as close as possible to it. We often see Bills introduced in this Assembly amending Acts so as to reflect what is occurring in the rest of Australia. Some recent Bills that come to mind related to heavy vehicles, the recognition of national standards for the professions and the quality standards of various products.

The Minister for Sport and the Minister for the Environment, Land and Planning recently announced in a joint statement an acoustic study into the possible new location of motor sports in the ACT. This, the Ministers announced, was because of ongoing complaints and also because the Government is determined that the site chosen be one that will comply with the noise control legislation. We know that the Act covers exemptions, and, to be fair to the Minister, we believe that he has been fair to motor sports and has given some exemptions. Some of those exemptions were for Fairbairn Park, which covers the formula 500, the go-karts, the hill climb track and the motorbike lap, and also for Sutton Park, where four exemptions were allowed for conducting motor sports. But the Minister surely must be aware that more noise comes from the heavy truck driving training about which, for some strange reason, there do not seem to be any complaints.

In areas such as Fyshwick, Hume and Mitchell the noise level during daytime is 55 decibels. Yet, in the Minister's answer to a question from Mr Humphries, he said that at Fairbairn Park there are 30 exemptions at six to 10 decibels over background noise, 10 at 11 to 15, and four at 16 to 20. Let us look at Fairbairn Park. We understand that there are very few complaints received; yet, in the Minister's own words, the nearest house in the ACT is at Oaks Estate, 1,168 metres, or just over a kilometre, away. However, there have been so-called complaints from the Ridgeway. The distance from Sutton Park to the nearest housing, not in the ACT but at the Ridgeway, is 1,583.9 metres, or over a kilometre-and-a-half. We find that very hard to understand. There have been no complaints, as far as we know, about the noise from motor boats on the Molonglo River, and the nearest house is only 200 metres from the area motor boats use.

Mr Minister, we find it strange that we cannot have a noise standard for conducting motor sports events at Sutton Park and Fairbairn Park. We all know that the integrated environment protection legislation will not be going through tomorrow, nor will a new site for the motor sports complex be decided tomorrow. That brings me back to my earlier point: Would it not have been better not to go through those bits of legislation piecemeal but to wait for the integrated legislation?

Can the Minister at least indicate how soon we can look forward to a new site for motor sports? We realise that, wherever the site will be located, some will complain, but at least we should endeavour to achieve as much consensus as possible. Would it not be appropriate for the ACT Government to get its act together? Let us not waste our time on ad hoc matters. Finalise section 12 of the Noise Control Manual and give us some indication of when the motor sports might be relocated to their new home.

Madam Speaker, will the Minister provide a new section 12 on motor sports, written according to Australian Standards, and incorporate it in the Noise Control Manual, or at least see what standards should be incorporated? Then I am sure that we will find no opposition to those amendments proposed by the Minister. We would have absolutely no problem with agreeing to the passage of this Bill.

MS SZUTY (4.18): I wish to address the Bill very briefly. This amendment Bill permits the introduction of conditions when granting exemptions and states that an amendment to the Noise Control Manual is a disallowable instrument, which is a good thing. Appeals will also be able to be made to the AAT in relation to the imposition of conditions or exemptions, which is also a good thing. It seems to me that the Noise Control (Amendment) Bill aims to achieve greater flexibility in noise control administration. This will meet both the needs of people wanting to hold events which will create noise and the needs of local residents wanting to continue to enjoy the peace and quiet of their neighbourhoods. Madam Speaker, this legislation is good legislation and it is worthy of the support of this Assembly.

MR DE DOMENICO (4.19): Madam Speaker, as Mr Westende said, the Liberal Party will not be opposing the legislation. It is technical legislation which we think is good legislation. Perhaps the Minister might want to confirm the facts. This is about offering global protection to people outside the ACT. Complaints have been received from, I think, people from the Ridgeway. Mr Westende quite adequately explained that there seem to be no complaints about the Sutton Park distance from the Ridgeway, but there are complaints about other things that go on. We could be offering New South Wales citizens more protection than is being offered to them by their own Government. Perhaps we need to look at that. One would hope that Mr Fahey will say that Mr Wood and the ACT Government are being kind to New South Wales residents in terms of the protection offered here. When Mr Fahey wants to do something about the environment in Queanbeyan, he may have the courtesy to ring Mr Wood and ask for his opinion.

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning) (4.20), in reply: Madam Speaker, I certainly think I could look after the people of New South Wales better than Mr Fahey and I am prepared to offer him advice on any occasion; but I do get the gist of what Mr De Domenico is saying. I do not think it is the case technically that we are tougher here than New South Wales is on measures there.

Mr Westende asked two questions: Would it be better not to do things piecemeal? Since we are reviewing all the pollution control legislation, should we not do this then? I suppose we could have waited, but the amendments we are looking at now are quite specific. I acknowledge that Mr Westende and others have extended the debate beyond the confines of the amendments I have brought forward, but I am happy to respond. I think they are sufficiently technical to warrant bringing forward now and not waiting, and we have discussed what those amendments are.

There was some discussion by Mr Westende about the Noise Control Manual. I would point out that it is only for measurement procedures and the sorts of instrumentation to be used. It is not for setting environmental standards. I think, from what Mr Westende was saying, that he would like me to proceed down that path, but I am not sure that it is the appropriate way. As we proceed to the integrated legislation, I am happy to discuss with anybody in the Assembly what measures might best be employed.

I have to say, because I think there has been some confusion on the part of people out in the community, that I am the Minister for the Environment. That is the role I take in these measures. I have to attend to the law of the ACT, whether it affects citizens of the ACT or citizens across the boundary. It is the law and I need to observe that law. As the Minister for the Environment, I am happy to promote the highest possible environmental standards and, if that applies to people in New South Wales, that is fine. That is exactly as it should be, and I would not move away from that position.

I understand that the proponents of racing in this Territory have issues they wish to push, and so they should; but they must view me as the Minister for the Environment. That brings me to the subject of the new site. We have acoustic studies under way now on that new site, and we will - - -

Mr Cornwell: Which new site?

MR WOOD: We are looking for a new site and we are doing acoustic studies on four sites as a starting point. I would not want it to be assumed that, by carrying out an acoustic study, any necessary action will follow. It is going to be difficult to find a new site. I do not know, given the noise that motor sports generate, whether we can get far enough away from anywhere totally to satisfy everybody, but we are looking. We do want a site for motor sports in the ACT that is good for the sports and that is as comfortable in the environment as possible. I acknowledge that motor sports in the ACT are very large. Indeed, whether they are large or small, these people have the right for their sport to be attended to, as for any other. We will proceed on that venture. We will continue that search. I know that members are going to take a keen interest in what that turns up.

I thank members for their support for this legislation, these couple of quite technical amendments, and I look forward to further debate with them as we move into the integrated environment legislation and as we examine the future of a motor sports facility in the ACT.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

ADJOURNMENT

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

That the Assembly do now adjourn.

Assembly adjourned at 4.26 pm until Tuesday, 1 March 1994, at 2.30 pm

ANSWERS TO QUESTIONS
ATTORNEY GENERAL OF THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY

QUESTION NO 1096

Consumer Product Safety Orders

Mr Cornwell - Asked the Attorney General upon notice on 8 December 1993:

(1)Are Product Safety Orders (PSO) issued under section 15FC(1) of the Consumer Affairs Act 1973 subject to disallowance by the Assembly, and; if not, why not.

(2)How do PSO's differ from Regulations, which can be disallowed by the Assembly.

(3)What is the purpose of a PSO and why should it be applied to firearms in legal possession under the Weapons Act 1991 such as selfloading centre fire rifles of the military type.

Mr Connolly - The answer to the member's question is as follows:

(1)No, Consumer Product Safety Orders made under section 15FC(1) of the Consumer Affairs Act 1973 are not subject to disallowance by the Assembly because they do not fall within the ambit of sections 6 or 10 of the Subordinate Laws Act 1989. Section 6 sets out the requirements with respect to disallowance.

A "subordinate law" is defined in subsection 6(12) of that Act to mean regulations, rules or by-laws, or a determination of fees and charges made by a Minister under a provision of an Act. Section 10 provides that an instrument made under an Act or subordinate law, which is expressed to be a disallowable instrument in that Act or subordinate law, is also subject to section 6. As a Consumer Product Safety Order made under the Consumer Affairs Act 1973 does not fall within the ambit of these provisions, it is not subject to disallowance.

(2)It is a convention of the Westminster system of government that instruments of a legislative character such as regulations (involving the making of rules usually of general application) should be subject to review and disallowance by the Parliament.

On the other hand, the scrutiny and review process of the Parliament has traditionally not applied to instruments which are administrative (specific decisions on particular facts) rather than legislative in character. In addition, in the ACT, such administrative decisions, although not disallowable by the Assembly, are usually subject to merits review by a body such as the Administrative Appeals Tribunal. A Consumer Product Safety Order, being administrative in character, is reviewable by the Administrative Appeals Tribunal

under section 15FK of the Consumer Affairs Act 1973 (or by the Courts under judicial review principles).

(3)The purpose of a Consumer Product Safety Order is to ensure that only safe goods are supplied to the public. While consumers should have as much freedom as possible to manage their own affairs, government should intervene as appropriate to control product hazards so that any product available for supply to the public is reasonably safe in normal use.

A Consumer Product Safety Order was made following the shooting incident at Strathfield, but prior to the commencement of the Weapons Act 1991, to immediately ensure that the availability of military style self-loading centre fire rifles to the ACT public was reduced. This Order has remained in force following the commencement of the Weapons Act 1991, and only affects the supply (ie, sale, transfer, loan, etc) of these weapons in the ACT. The Order does not prevent a person from possessing a weapon of this type in the ACT, provided it is in accordance with the requirements of the Weapons Act 1991.

Military style self-loading centre fire rifles can only be possessed in the ACT if the owner obtains a Dangerous Weapons licence, with the approved reason that he or she is a member of an approved club and participates in competitions in the use of such a weapon held by or in association with that club. Such weapons can be used for no other purpose. Through the implementation of a licensing scheme and restricting the circumstances in which weapons may be used, the Weapons Act 1991 also ensures that the general availability of potentially dangerous weapons to the public is reduced.

Following a resolution, which was supported by all jurisdictions, of the Australian Police Ministers' Council to ban the sale of weapons of the type used in the Strathfield shootings, I propose to introduce appropriate amendments to the Weapons Act 1991 into the Assembly in 1994. Once these amendments are in place, I intend to revoke the Consumer Product Safety Order.