DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

11 October 1994

Tuesday, 11 October 1994

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MADAM SPEAKER (Ms McRae) took the chair at 2.30 pm and read the prayer.

DEATH OF MR L. DANIELS, CB, OBE

MS FOLLETT (Chief Minister and Treasurer): Madam Speaker, I move:

That the Assembly expresses its deep regret at the death of Mr Laurie Daniels, who made a significant contribution to both the Australian Public Service and the Canberra community, and tenders its profound sympathy to his wife and children in their bereavement.

Members will be aware that Laurie Daniels died recently at the age of 78. Mr Daniels was an accomplished and professional public servant, and it is fitting that today we remember him and acknowledge his valuable contribution to the public service and to the Canberra community. Laurie Daniels was born in Adelaide in 1916. He left school at the age of 17 and went to Sydney, where, by examination, he won one of approximately 50 public service vacancies. He joined the taxation department; he studied accountancy, and later completed a degree in economics.

Mr Daniels and his wife, Joyce, moved to Canberra in 1946, where he joined the Health Department in 1953, after 19 years with the tax department. His specialty was health insurance; and he rose to become the first assistant director-general. Health insurance was merged with social services to form the first Department of Social Security under the Whitlam Government, and Laurie Daniels was appointed secretary. Mr Daniels was closely involved with the development of Medibank and the development of the family allowances program. During his time as Secretary to the Department of Social Security, there was a major increase in the size of the department, and he made conscious and visible efforts to give the department and its officers a human and consumer-friendly touch.

In 1977 Mr Daniels moved to the position of head of the Department of the Capital Territory, which was then responsible for the administration of the ACT. Members may recall that this was a rather difficult period in Canberra's administrative history, leading up to and following the outcome of the 1978 Ellicott referendum on self-government. It would be fair to say that relations between the Federal Ministers responsible for the ACT at that time and the Canberra community were, at times, strained. Throughout this period, as head of ACT administration, Mr Daniels stood out as a very fair and caring person who worked hard in the interests of the ACT community.

One of the initiatives with which Mr Daniels was heavily involved was the establishment of the Canberra Association for Regional Development, the forerunner of today's Canberra Business Council. He retired in 1981, after more than 47 years of dedicated public service. After his retirement, Mr Daniels continued his close involvement with Canberra community organisations, including Marymead, various sporting groups, such as the Manuka football team, and, of course, the Catholic Church.

I am sure that all members will join with me in extending our sympathy to Laurie Daniels's family and friends and in acknowledging the valuable contribution he made, both to the Australian Public Service and to the Canberra community.

MR HUMPHRIES: Madam Speaker, on behalf of the Opposition, I am delighted to join with the Chief Minister in supporting this motion. I had a passing acquaintance with Laurie Daniels, although my acquaintance with him postdated his distinguished career as a Federal public servant - 47 years in all, as the Chief Minister indicated. I must say, though, that when one spoke to him one did not get the impression that he had been a man who, for a very long period of time, was close to the heart of important decision making in this country. He was an unprepossessing person whose achievements spoke very much on his behalf.

Like many retired senior public servants, he devoted his life after retirement to public service, this time with a small "p" and a small "s". My contact with him during that period was in his role as a person involved in the board of management at Calvary Hospital, where he was deputy chairman until 1991, and through his involvement with the foundation of the Australian Catholic University, which was formed at about that time as well. In those activities, as in others, including involvement in sporting activities, he exhibited great energy, and his experience was put to great use.

As the Chief Minister indicated, he headed the Department of the Capital Territory from 1977, under three different Ministers. His obituary in the *Canberra Times* noted that he was, reportedly, no great enthusiast for self-government - this would endear him to Mr Stevenson, no doubt - but I must say that, in my dealings with him, I had the impression that he was a man who would do his job, whatever that job was, to the very best of his ability. Clearly, he worked very hard, during his period with the Department of the Capital Territory, to further the aims of the Government at the time to progress these issues to a certain point. I think, Madam Speaker, that, in working very hard towards achieving the goals of the governments of the particular persuasions that he served, he demonstrated that he was a consummate public servant, professional and dedicated. It was, therefore, a privilege to have some passing acquaintance with him. I commend this motion to the house.

Question resolved in the affirmative, members standing in their places.

PETITION

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

By Mr Lamont, from 831 residents, requesting that the Assembly stop the closure of the Narrabundah Motorbike Track until a permanent relocation has been opened.

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

Narrabundah Motorbike Track

The petition read as follows:

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

The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly: that the ACT Government has planned to close the Narrabundah Motorbike Track on the 17th of June 1994.

Your petitioners therefore request the Assembly to: stop the closure of the Narrabundah Motorbike Track until a permanent re-location has been opened.

Petition received.

QUESTIONS WITHOUT NOTICE

Woden Valley Hospital - Bed Numbers

MRS CARNELL: Madam Speaker, my question without notice is directed to the Minister for Health. On 16 June this year the Minister told the Assembly, in answer to my question about the numbers of available beds at Woden Valley Hospital:

... as we speak moves are afoot to open 24 additional beds ... These include three in surgical neurology, which will clearly have an impact on waiting lists; 11 in paediatrics; four in the high-dependency unit, an area which is very important for elective surgery waiting lists; four in oncology; and two dedicated to the bone marrow transplantation service ... That is 24.

The Minister went on to say:

The move to reopen those 24 beds will immediately bring us up to some 600 beds in Woden Valley Hospital.

Finally, the Minister stated:

As I say, 24 are coming on stream immediately.

I ask the Minister: Did these beds come on stream, as promised?

MR CONNOLLY: Madam Speaker, I will get a full breakdown from the department and provide it to Mrs Carnell later in the day. My recollection, from the last look I had, was that the number as of yesterday, or a couple of days ago, was of the order of 587 to 585; we have about 16 to go to get to our 600. We have had some difficulties in recruiting staff. The money is there, as any doctors would tell you. We have been putting the money out there. We have been seeking to recruit nursing staff, and we have been having difficulty getting them.

Mrs Carnell, in a rather breathless press release on the weekend, put out a statement saying that there were a thousand beds under the Liberals and that there are only 700 now under Labor. In fact, there are something like 780-odd operating now. She keeps halving Calvary, for some reason. I do not know why she does not realise that there are public beds at Calvary - considerably more. It is true, though, that there were more beds when the Liberals were in government, until this bloke shut a hospital down. That is the fact. For four years the disruption and the chaos of that process and the rebuilding of Woden Valley Hospital have been at the forefront of our efforts. It has been a difficult four years for ACT Health. We are coming to the end of that rebuilding process at Woden Valley, when it will cease to be a building site. We do expect to have the numbers of beds at 600. As I say, it is some 15 or 16 off that now, as at the last information that I had. I will get a breakdown of where chops and changes that have occurred are, and I will give you documentation showing where we have sought to advertise to get the additional nursing staff for those positions.

One thing I can say, Madam Speaker, is that, if any future Assembly were to adopt the absurd tactics of Mrs Carnell's counterbudget and slash $30m off the ACT health system - - -

Ms Follett: Thirty-one million.

MR CONNOLLY: It is $31m; the Chief Minister corrects me. If we were to slash over $30m off the ACT hospital system, which is what Mrs Carnell is on the public record as wanting to do, we certainly would not have our 600 beds at Woden Valley Hospital; we would have chaos.

MRS CARNELL: I have a supplementary question, Madam Speaker. I draw the Minister's attention to the 1993-94 annual management report of Health, the annual report which shows - - -

Mr Berry: That is not a supplementary question, Madam Speaker.

MRS CARNELL: It is totally a supplementary question, Mr Berry. It shows that on 30 June this year Woden Valley Hospital had 560 beds. Remember that the question that you answered was asked on 16 June.

Mr Berry: Madam Speaker, I have a point of order. Supplementary questions have long been accepted, even when they are borderline. I think this one has gone a little over the border and really is not a supplementary question.

MRS CARNELL: It has not. It is exactly the same question.

Mr Berry: Mrs Carnell admits that it is not a supplementary question.

MRS CARNELL: I do not, and if you listen you will see that it is a supplementary question.

MADAM SPEAKER: Mrs Carnell, if you had started with the direct inference from the previous material, it would have been more direct in making sense; but continue.

MRS CARNELL: At the end of June, as I have already said, there were 560 beds; yet official figures, Mr Connolly, provided by Woden Valley Hospital, to 31 August this year show that there are 562 beds. That is two beds, Mr Connolly. I ask the Minister: Did he mislead the Assembly in his answer to my question on 16 June and probably again now?

MR CONNOLLY: That, of course, is a grubby, sly little innuendo, for which Mrs Carnell is famous. If she wants to say that I am misleading the Assembly, she should use the proper forms. Mrs Carnell, in my answer to your first question, I said, "My last recollection of the number was that it was of the order of 580-odd". I said, "I will get you that information". As I say, that is what I was told as of a couple of days ago. I will get you that information and give it to you. If you want to persist with these grubby little tactics, move a substantive motion.

Mrs Carnell: I seek leave to table the document which backs up my 562 figure.

Leave granted.

National Museum of Australia

MR BERRY: My question is to the Chief Minister. Noting the Government's commitment to the National Museum of Australia, could the Chief Minister advise the house of the Government's intention to maintain the offer to fund the infrastructure work for the National Museum of Australia?

MS FOLLETT: I thank Mr Berry for the question. I am sure that members would have been concerned, as I was, at the press report this morning that seemed to indicate that the Aboriginal collection of the National Museum of Australia was about to be broken up and sent interstate. I can advise that the best advice that I have been able to obtain is that that report was not accurate; and that is something of a relief. On the broader question of the National Museum - - -

Mr Kaine: On a point of order, Madam Speaker: The Chief Minister, in what she said, so far has clearly indicated that the subject matter of this question is beyond her knowledge. It is not within her area of responsibility, and I ask you to rule on whether she should be attempting to answer a question that is outside her jurisdiction.

MADAM SPEAKER: Order! The Chief Minister is clearly coming to the substance of her answer. What she said was by way of preamble, which is entirely in order.

MS FOLLETT: Thank you, Madam Speaker. That point of order by Mr Kaine does not surprise me in the least, coming as it does from a member whose Federal colleagues had undertaken to turn the ACT into a ghost town. That is their agenda for Canberra - turn it into a ghost town.

Madam Speaker, as the Government, we have been very strong and very enthusiastic supporters of the National Museum of Australia; and we remain so. Members will know that I gave a commitment to fund the infrastructure for the National Museum. That commitment was substantial. In fact, it would have involved up to about $13m spread over some years. It is not a commitment that was given lightly. Nevertheless, in order for us to deliver on that commitment, we do need the Federal Government to deliver on the National Museum. The National Museum, as a national institution, is quite rightly in the province of the Federal Government.

Madam Speaker, it is my view - and I believe that it is a view that would be shared by the majority of Australians - that the national cultural institutions belong in the national capital; and the National Museum is no exception to that. Until we actually see what is in the Commonwealth's cultural statement, I cannot comment on the future of the museum. There is no doubt whatever that the commitment that has been given by my Government is genuine and does involve a substantial financial commitment towards what is a very important national project. It is a project which, naturally enough, has a great deal to offer the ACT community as well. Of course, it was with that in mind that I was able to offer support for the project. I do want to stress that it is part of the mosaic of national institutions in the national capital. I will certainly be doing everything that I can, in the time that remains before the cultural statement is delivered by the Federal Government, to ensure that the National Museum in the national capital does become a reality.

Woden Valley Hospital - Bed Numbers

MR DE DOMENICO: Madam Speaker, my question without notice is directed to the Minister for Health. On 20 September, Minister, you told the Assembly in answer to a question:

... I did say that we wanted to get those beds reopened, and we provided the funding to have them reopened by 1 July. That was to get us to 600. We are currently at 584 ...

Minister, official figures from Woden Valley Hospital show that, at the end of August, 562 beds were available; not 584. I ask the Minister: Did he mislead the Assembly, given that the August figures are the last officially available; or does he know something that the staff at Woden Valley Hospital do not know?

MR CONNOLLY: Madam Speaker, throughout my period as Health Minister, as throughout all my period as a Minister, I have been full and frank and have given this Assembly the advice that is given to me by officials. Any figure that I have given to this Assembly is the figure that I have been advised. My clear directions to health officials from day one were to move to get beds reopened. We have been moving in that direction. I have not seen this particular piece of paper. You are just grubby little individuals, you lot. Mrs Carnell laughs and chuckles, as she does about all these matters; it is all a great lark for Mrs Carnell. You are out there saying to the public, "More beds, more money, more helicopters, more doctors, more nurses", and you are promising to slash $30m off health. You would destroy the system.

I did not mislead the Assembly, Mr De Domenico. I have never misled this Assembly. As I said in my answer to Mrs Carnell earlier, the last figure that I had available, from my recollection, was of the order of some 580, which is consistent with what I said then. I will give Mrs Carnell, as I promised in my answer to the first question, the latest available breakdown, the advice that officials give to me. The advice that officials give to me, I will give to this Assembly.

MADAM SPEAKER: I ask members to have a good look at standing order 117(d) relating to question time.

MR DE DOMENICO: I have a supplementary question, Madam Speaker. At the end of August 1993, Minister, under the former Minister, Mr Berry, there were 622 public beds available at Woden Valley Hospital. Exactly one year later, and with you, Mr Connolly, as Minister, there are 562 beds. How can the Minister explain the reduction of 9.65 per cent?

MR CONNOLLY: Any statement coming from Mr De Domenico needs to be treated with grave caution. As I said in response to Mrs Carnell's original question, I will get from my department a breakdown.

Mr De Domenico: Here they are.

MR CONNOLLY: Mr De Domenico, anything that you produce needs to be looked at very carefully. If I wanted to be a cheap and grubby politician, I would produce a stunt and say, "Here are 50 beds". We have about 100 of them in storage. They are sitting there; they are mattresses on wheels. What we have to talk about in a hospital system is effective available beds that are staffed - beds that have the nursing staff, the doctors and the ancillary staff to go with them.

We need to look at the number of occupied bed days; we need to look at the service in the hospital. That continues to rise, despite the fact that we do have some fewer beds than we had some time ago. As I said, we once had 1,000. The Liberals then closed a hospital. We still treat the same number of people in the system.

Mr Humphries: Where are they now?

MR CONNOLLY: A lot of them are in storage. Where they used to sit, Mr Humphries, is in that big building on Acton Peninsula that used to be a hospital. We get left with the wreckage, which we try to fix. You lot want to come again, and slash and burn. I have here the press release of Mr Humphries announcing the closure of the hospital. The great historical revisionist says that it was not the Alliance Government that closed the hospital. Mr Humphries, you might think the public of Canberra are stupid, but I tell you that they are not; they know who made the decision to close the hospital.

We are seeking to improve hospital services in the ACT. We spend more. As a government, we make the largest contribution on health in terms of per capita expenditure. We are working to get efficiencies in the system, to get more people through and to get more beds in place. I will give Mrs Carnell the information that I had a day or so ago, which was the latest breakdown on bed numbers.

Toxic Sites

MS SZUTY: Madam Speaker, my question without notice is to the Minister for the Environment, Land and Planning, Mr Wood. Recently publicity has been given to the identification of potentially toxic former sheep dip sites in Isabella Plains, Holder, Ngunnawal, Theodore and Chapman. My understanding is that these sites, which are all in newer suburbs, have been identified from aerial photographs. My question to the Minister is: Can he inform the Assembly what action is being taken to identify other potentially toxic sheep dip sites in the older areas of Canberra?

MR WOOD: Madam Speaker, quite a deal is happening. It does seem strange that, after 80 years of Canberra as the national capital, it was only recently that attention was turned to the incidence of sheep dips. I think it was an early Federal politician who said that this was a good sheep station ruined.

Ms Follett: Sheep-run.

MR WOOD: Sheep-run - was that the precise word? I do not know who that was, Chief Minister. With that in mind, it seems strange that the inevitable occurrence of sheep dip sites in one form or another had not been attended to until most recently. We have paid urgent attention to a number of sites in residential areas, as indicated by Ms Szuty. Among other matters, we are in discussion with the occupants of houses on those sites. In one case, the preliminary testing, which we did as a matter of urgency, has indicated levels that are above any recommendations in scientific documents. We are at present discussing with occupants what the best outcome should be.

At the same time, we are pursuing a search for other sites around Canberra - not just sheep dip sites. It is the case that since self-government my colleagues in Urban Services have discovered no record of where ordinary old garbage dumps have been. We are not sure where toxic substances may have been buried at some time in the past. We are engaged in a search for all toxic sites in Canberra. That search has included examination of old maps, talking to people who have properties and talking in neighbourhoods where people may have recollected there were sites. We maintain a plea to the community that, if any person knows the site of a dump or of any point of concern, he should let us know, because we are anxious to conclude as quickly as possible an accurate map of such sites.

Woden Valley Hospital - Patient Numbers

MR STEFANIAK: My question is also directed to the Minister for Health.. On 20 September this year the Minister told the Assembly:

The turnover of patients in Woden is high and, in fact, is higher this year than last year.

The Minister also said:

We are putting people through the hospital at the rate of some 3,600 a month - more than last year - so while you say, "Things have got worse since last year", in fact, we are putting people through the hospital at a more rapid pace.

I ask the Minister: Is he aware that official figures from Woden Valley Hospital to the end of August show a decrease in the number of admissions of 347 patients, or 4.34 per cent? If so, why did he make these statements on 20 September? I seek leave to table a document in relation to those figures, Madam Speaker.

Leave granted.

MR CONNOLLY: Madam Speaker, I give information to this house on the basis of information that is given to me. I can see that the Liberals are moving up to something here. What I have to say is that the amount of raw data that gets gathered in different areas of ACT Health on a given day can say many different things. Trying to actually find out what is going on cannot necessarily be that easy. The information, however, that I have given in relation to throughput remains my view, on the information that I have been given. I was giving it, I think, in relation to some issues about waiting lists. I think the point that I was trying to make at the time was that, in fact, the waiting list, when you look at it against throughput, is such that a couple of months of throughput is the entire waiting list.

Mrs Carnell waxes lyrical about a waiting list of some 4,000. How she would fix that by slashing $30m from the system, she will not explain to anybody.

Mr De Domenico: You keep saying that.

MR CONNOLLY: I keep saying that because it is your policy; it is what you are pledging to do, to slash over $30m - - -

Mr De Domenico: What is your policy? Tell us what your policy is.

MR CONNOLLY: My policy - as has been shown for over six months; as has been the policy of this Government from the time Mr Berry came in and took over the mess that you left behind - was to try to rebuild a health system that had been belted for six by the closure of a major hospital; to try to continue to provide high-quality health services at a hospital that was a major building site; to work hard on quality so that Woden Valley Hospital received national accreditation for the full period of three years, better than a number of equivalent hospitals in New South Wales; and to continue to maintain 24-hour services in areas like accident and emergency. I see that Mr Phillips only last weekend in Sydney was announcing that at least two hospitals would shut their emergency departments at 11.00 pm and reopen them in the morning. That is how well things are going under a Liberal government.

Mr Stefaniak asked, "Did you mislead the Assembly?". No, I did not. I will get from my officials the advice on which I made that assertion. It remains my view, on the advice that I have from my officials, that we are continuing to do very well on monthly throughputs. It is, of course, important to realise that we had a major glitch in November/December of 1993 because we had - - -

Mr Humphries: We are not talking about that.

MR CONNOLLY: We are. If you are looking at over time periods, you have to bear in mind that basic comparison. The advice that I have had from my officials is that we are doing well on throughput. Our efficiencies measures are high. I will check the information that you have now tabled. I will check the advice that I previously received. I will report back to the Assembly in due course and reconcile it.

1997 Masters Games

MRS GRASSBY: My question is to the Deputy Chief Minister in his capacity as Minister for Sport, and I congratulate him on this. Can the Minister tell the Assembly what will be the benefit to the ACT from the Masters Games to be held in Canberra in 1997?

Mr Kaine: Tell us about the best Sports Minister in Australia.

MR LAMONT: Thank you, Mr Kaine, for finally recognising that point. Madam Speaker, I thank the member for her question. It is an important announcement that has been made by the Confederation of Australian Sport, and that is that the application, sponsored by the ACT Government on behalf of sport in the ACT, to have the Masters Games for 1997 awarded to Canberra has been successful.

The question of what benefit will be derived from the Masters Games is not just a matter of the economic benefit derived from visitation numbers and the numbers of people who will be participating. It is anticipated that between 6,000 and 8,000 athletes will register for the games in the ACT. That figure is taken from anticipated attendance numbers for Melbourne in 1995 and from examples of participation rates in Adelaide and at other venues in recent years. Madam Speaker, the additional impact upon the ACT will be from activities that will lead up to and go beyond these Masters Games, as far as mature-age sport is concerned. It is proposed to use the Masters Games as a catalyst to promote recreational sport, particularly amongst our older population. The Masters Games, as I have said, will provide an appropriate catalyst for that to happen.

The bid that was made by the ACT Government on behalf of sport had overwhelming support within the Canberra community. The ACT Sport and Recreation Council, ACTSport, the tourism industry and many individual sporting and business organisations, along with the Australian Institute of Sport, indicated their support for Canberra's bid for the 1997 games. Madam Speaker, we specifically chose the 1997 games as a preferred target date for Canberra to host such a prestigious event. We saw it as an opportunity, as I have said, not only to promote recreational and health and lifestyle issues for our older population, but also as part of a series of activities in the lead-up to and beyond the 2000 Olympic Games.

The Government will be in a position in the coming weeks to report to the house on the outcome of the meeting of the 2000 Committee that was established following the awarding of the Olympic Games to Sydney, and on what is proposed by the Government to replace that committee to allow for the strategy that they have developed to be carried forward. I am very pleased that it is acknowledged as part of that overall longer-term strategy that we should apply for events such as the Masters Games, and I am quite pleased, as far as that strategy is concerned, that we have already been able to secure a substantial plank in that strategy by being awarded these games.

Madam Speaker, in conclusion, may I just indicate that the games are proposed to be held at the end of Floriade, so that the last weekend of Floriade and the weekend following and the five days in between would be the nine days of the Masters Games in 1997. The reason for that is to provide an added attraction, if you like, for people who will be attending the Masters Games to come to Canberra earlier and take part in the very substantial occasion of Floriade.

Woden Valley Hospital - Bed Numbers

MR HUMPHRIES: My question is also to the Minister for Health. In answer to a question in the Assembly on 16 June about bed numbers, which has already been referred to, the Minister said:

The move to reopen those 24 beds will immediately bring us up to some 600 beds in Woden Valley Hospital. Calvary remains at 192.

I ask the Minister: Given that the annual report of his department - and I assume that he has read that - shows that at the end of June Calvary Hospital had available only 172 public beds, was he misleading the Assembly, or did he simply misunderstand that aspect of his portfolio?

MADAM SPEAKER: Members, I again direct your attention to standing order 117(d). You cannot ask questions which "reflect on or are critical of the character or conduct of those persons whose conduct may only be challenged in a substantive motion". You know as well as I do that you need a motion of no confidence or some other motion against the Minister if you want to call him a liar, which is essentially what is happening. The Minister may proceed to answer the question, but I am cautioning members to take heed of that standing order.

MR CONNOLLY: One expects this sort of sly approach. I produce a document, which is part of a briefing note and which was the one that I was referring to in the answer to Mrs Carnell's question. According to my recollection, this document that I cited yesterday was the last document that I had seen on it. It tells me that, as at September 1994 - I do not have the precise date in September, but it tells me "September 1994"; I think all the Opposition's questions have been referring to September - at Woden Valley Hospital we had 584 beds.

Mrs Carnell: You did not, you know.

MR CONNOLLY: "You did not, you know", says Mrs Carnell. The advice I get from the Department of Health, over the signature of Dr Gregory, who is the head of the corporate and strategic development area, tells me that in September 1994 we had 584 beds at Woden Valley Hospital, 192 beds at Calvary Public Hospital, and 11 beds at Queen Elizabeth II; giving a total number of 787 beds in the public sector. At the same time, we had 170 beds at John James.

Mr Humphries: How many at Calvary?

MR CONNOLLY: And 50 private beds at Calvary; giving a total number of private beds of 220. The total number of beds, public and private, was 1,007. In June 1991 we had 1,078 beds, public and private, although in June 1991 we did have more public beds; we had some 909. In June 1991 we had 430 beds at Woden Valley Hospital; and there were 288 at Royal Canberra Hospital, most of which have been put into packing cases and sent to Vietnam. The hospital is no more.

Mr Stefaniak, in his equally sly approach, asked whether I had misled, because there was a reduction in activity levels. He has tabled a vast sheaf of papers to prove his case. I guess that it depends on which figure you look at. If you look at the first lot of figures, for the month of August 1994, we had an increase in admissions - 4,014 in August 1994, as opposed to 3,975 in August 1993. There is a significant increase. If you look at year-to-date figures for the same category, it is down. If you look at the number of emergency admissions, it is up. They are all over the place. There are ups; there are downs.

The allegation was that I had misled about throughput.

Mr Humphries: What is the bottom line, Terry?

MR CONNOLLY: The bottom line is that we are doing significantly more day theatre operations; we are doing significantly more minor operations. You can pick any figure you like. The allegation is that I lied when I said that we had a lower throughput, which was basically what was behind the sort of grubby innuendo that was made. The reality is that, on Mr Stefaniak's documents, for the month of August - which, I think, was when I was making this statement - we had admitted 4,014 patients. In the month of August in the previous year we had admitted 3,975. Again, the Liberals are trying to build up - - -

Ms Ellis: It depends on your maths.

MR CONNOLLY: Yes; that is right. It means that we have admitted more in August this year than we did in August the previous year, which is directly contrary to what Mr Stefaniak was trying to allege. The Liberals are trying to build up some sort of case here, but you are building on straw because you are just building on innuendo. As I said, from the advice that I had received, my recollection was that I had been told in the last couple of days that the operative number at the moment was of the order of 580. The last piece of paper that I saw indicated 584.

I will have all of these allegations that you are making today very carefully looked at. Mrs Carnell says that I have been told wrongly; so Mrs Carnell is saying that the Health Department is misadvising me and that what they tell me about the number of beds is not accurate. That is a very serious allegation that Mrs Carnell is making, because she is suggesting that the information that the department is giving me is other than the truth. I will take Mrs Carnell's allegation seriously, and I will have it investigated. I would hope that we will both stand by the outcome when I report back on that.

Motor Sports - Noise Pollution

MS ELLIS: Madam Speaker, my question is directed to the Minister for the Environment, Land and Planning. I ask the Minister: What is the Government doing about the continuing noise complaints arising from the motor racing at Fairbairn Park? It is a very relevant question.

MR WOOD: Madam Speaker, the Government is endeavouring most seriously to fix the problem; that is, to find a better site, a permanent site, for motor racing where they can have unlimited racing without affecting the neighbourhood. It seems to me, from something I saw on television last night, that the shadow Minister for the Environment in this Assembly is seeking actively to diminish the quality of the ACT environment by having no regard at all for the pollution caused by motor vehicles.

Mr De Domenico: Where have the complaints come from?

MR WOOD: The complaints, for Mr De Domenico's information, come predominantly from New South Wales; but they also come from ACT citizens. Mr De Domenico, I have a responsibility to see that we establish high standards. I accept that responsibility most willingly. If it happens to affect New South Wales residents, I believe that we have a responsibility to do so.

Mr De Domenico: Give them the same standard as New South Wales - - -

MADAM SPEAKER: Order!

MR WOOD: That is not exactly the case in every circumstance. Madam Speaker, some little time ago we established a number of sites for close examination. I think at that time we briefed the then shadow Minister for the Environment. We carried out acoustic studies of those sites. That threw up certain difficulties and led us to examine further what we might do in management of those four potential sites if further acoustic testing suggested that there was a possibility of any one of those sites being a racing site.

Since that time we have added a further site for examination. We are presently looking at five sites which might best be suited for motor racing and which, at the same time, will not impact by providing noise pollution for local residents. We do care about our local residents. Mr De Domenico, we will make a decision when we have thoroughly examined all the issues. We do not click the fingers and make a decision overnight; we give it careful scrutiny and assess all the issues.

We are working through that process. We have, at other times, involved the Opposition. We involve other people and keep them informed as to what is happening. The shadow Minister for the Environment might like to neglect the responsibilities that his leader gave him. Nevertheless, I take seriously the charge that I have been given as Environment Minister. The Government certainly wants motor sport to continue in the ACT. We acknowledge the role that it has and the wide following that it has. We believe that we can satisfy all interests in this respect.

Paediatric Services

MR KAINE: Madam Speaker, through you, I have a question of the Minister for Health. Minister, on 14 September, in answer to a dorothy dixer from Ms Ellis, you said:

... in a city of this size it would be very bad medicine to seek to duplicate paediatric services. Bear in mind, Ms Ellis, that in Sydney - a city which, on the last advice I received, is a little larger than Canberra, by a factor of about 20 - there are two units.

I draw your attention, Minister, to the fact that there are two paediatric hospitals in Sydney and that a total of 21 hospitals in the Sydney metropolitan area have, in fact, paediatric beds. The total number of paediatric beds there is 972. I will table the statistics which demonstrate this to be so, Madam Speaker. In light of that, Minister, I ask you: Did you deliberately attempt to mislead the Assembly and the people of Canberra by misrepresenting the real number of paediatric services in New South Wales; were you being one of those grubby politicians that you were talking about before; or is it the same as with all the other questions you have been asked - you just do not know?

MADAM SPEAKER: Mr Kaine, I have already drawn attention to standing order 117(d). Could members of the Opposition reword their questions, if that is the form of question that they want to ask. It is not beyond the realm of possibility to reword questions in terms of asking for confirmation or further comment. It is out of order.

MR CONNOLLY: No, Madam Speaker, I do not believe that I misled the Assembly. What I said was that there were two paediatric units in Sydney. I suppose that what I was meaning by "units" was full-on specialist paediatric services. I was responding to the absurd suggestion from Mrs Carnell, who runs around saying - - -

Mr Humphries: You said "units".

MR CONNOLLY: Yes. I did not say "wards" or "beds", which is what you were trying to say when you were running around drumming up suggestions in the media that I had misled the Assembly. You tried to hawk this one to the *Canberra Times* about four weeks ago, and nobody would touch the story because it is so damn silly.

The point I was making - and I think at that stage I tabled all the documents, but I am happy to do so again - was that the advice that I get from the Royal Australian College of Paediatrics and from specialist paediatricians in Canberra - - -

MADAM SPEAKER: I am sorry to interrupt you, Mr Connolly. Mr Kaine, you do not have leave to table that. You will have to wait.

MR CONNOLLY: The advice I get - as I have said before and as I think I have tabled in this place - from the Royal Australian College of Paediatrics and the advice from prominent paediatricians in Canberra is that it would be bad medicine to duplicate paediatric services at Calvary, to try to produce another paediatric speciality unit at Calvary; that you should concentrate paediatric services in specialist, high intensity hospitals; you should have specialist units. That is what we have at Woden Valley Hospital, which is servicing this region. It would be bad to duplicate that.

Mr Humphries made the clear decision not to do that when the hospital redevelopment process occurred, because the decision was made to take the single unit that was at Royal Canberra Hospital and put it as a single unit at Woden, not to split it into two. The advice of all the experts, the advice of the paediatricians, is not to do it. The Calvary management, when they were interviewed on this, said, "No, we do not want it. We do not want to do this". Mrs Carnell is running a populist line. No doubt she would get lots of people to sign petitions saying, "Yes, we would like a paediatric unit at Calvary Hospital".

Mrs Carnell: Who cares what the people think?

MR CONNOLLY: "Who cares what the people think?", says Mrs Carnell - again cheap and populist. It would be easy for me to go out and hawk about for votes by saying, "Yes, we will duplicate a service". But we act on the advice of the College of Paediatrics, who say, "Do not do it". We act on the advice of the prominent paediatricians in Canberra, who say, "Do not do it". I table all of that.

Did I mislead the Assembly? No, Mr Kaine, I did not. There are two specialist paediatric hospitals in Sydney; there is one specialist paediatric hospital in Canberra; there may be beds that call themselves paediatric beds in other hospitals, but they are very much holding beds as you move people across. I did not say that there are paediatric beds in only two hospitals in Sydney. I was referring to specialist units. The consistent advice to the Government from the doctors whom we tend to respect as experts in their profession is, "Do not do it. Do not duplicate".

MR KAINE: I have a supplementary question, Madam Speaker. In the same answer to the same dorothy dixer the Minister said:

What we have at Woden is excellent. The facility at Woden hospital has a capacity of 60 general medical, surgical and isolation beds.

Minister, the paediatrics unit at Woden has 49 available beds, not 60. Why did you seek to misrepresent the matter to the Assembly by implying that there were 60 beds available on a regular basis, when there were not?

MADAM SPEAKER: Mr Kaine, be seated. That question is out of order.

Mr Berry: Madam Speaker, on a point of order - - -

Mr Humphries: On a point of order, Madam Speaker - - -

MADAM SPEAKER: There is no point of order. I have ruled the question out of order.

Mr Humphries: I am raising a point of order, Madam Speaker.

MADAM SPEAKER: Yes, of course, Mr Humphries.

Mr Humphries: It has long been accepted that it is acceptable in this place to claim that members misrepresent things, but not that they mislead or lie. Mr Kaine said "misrepresent". Given the accepted practice in this place, he should be allowed to have his question answered.

MADAM SPEAKER: I asked Mr Kaine quite clearly to rephrase his question.

Mr Humphries: He did.

Mr Kaine: I did. Madam Speaker, I used the word "misrepresent". I did not talk about misleading.

MADAM SPEAKER: I will allow it.

MR CONNOLLY: I am sure that the reason I would have said that there were 60 beds in paediatrics at that time was that that was the information that I had in front of me from my advisers. As of last week, when I was in the hospital on Tuesday, going through paediatrics, one of the four wings in that unit, in fact, was empty. In September and August we had a very high level of paediatric admissions because of the quite severe outbreak of rotavirus.

Mr Kaine: How many beds are in it? How many beds are in there - 60 or 49?

MR CONNOLLY: That is a good question. As of Tuesday of last week, we in fact had no paediatric patients in that wing; there was no child there needing care; and we had tended to say to nurses, "If you want to take your day off, this is a good day to take your day off", or to send nurses somewhere else. Would we count those beds on Tuesday of last week, when there was no-one in them, and no demand for them, and the nursing staff was not there?

Mr Humphries: What does that have to do with it?

MR CONNOLLY: The nursing staff was available but was redeployed to other duties. It is fairly poor management, I would think, to have the staff standing by empty beds. Would we have counted that wing as beds or not as beds? It gets a little more complex.

No, Mr Kaine, when I said 60, I did not mislead the Assembly; I did not misrepresent the position, or whatever sort of innuendo you want to put on it. I would have given the advice that was given to me by my officials. Mrs Carnell again makes this very serious allegation that the advice that I was given as of yesterday - that there are 584 beds at Woden - is wrong. That is a serious allegation about the public service and I will, as I say, have that investigated. I would hope that we would both stand by the outcome of that.

Mr Kaine: Madam Speaker, I seek leave to table the document which I referred to earlier and which contains the statistics about the paediatrics units.

Leave granted.

Ovals - Reduced Watering

MR MOORE: My question is directed to Mr Wood as Minister for the Environment, Land and Planning. I believe that 25 ovals in the ACT have had their watering reduced to 25 per cent. Understanding, of course, that we are currently undergoing a drought and that this decision may indeed be temporary, can the Minister tell this Assembly which ovals have been selected for reduced watering and on what criteria their selection was based?

MR WOOD: We have a number here, Madam Speaker. I had better be careful about what I say. Mr Moore, I do not know how many ovals. I certainly know that a number of ovals have been so treated. Mr Lamont might have details of that, as the ovals are his responsibility. I do know that there is some attention that has been given to the ovals.

Mr Moore: I thought that was your responsibility. I am very happy for Mr Lamont to take the question.

MR WOOD: I think the obvious answer I should give, Madam Speaker - and I think Mr Lamont would be in the same position - is that we will get some advice; like Mr Connolly, we will stand up and provide Mr Moore with the advice that we are given.

MR LAMONT: I will take some of the detail of that question, if you like, Mr Moore. Over the last three years, the Government has had to examine carefully all areas of its operation, to determine opportunities for reduced expenditure. An annual reduction of 2 per cent in these areas has been the objective, which has been announced and outlined as part of the budget. Sportsground maintenance is one of the many areas, as you would appreciate, that have been the subject of that ongoing review.

We were able to identify usage of ovals from bookings, as well as from discussions with school communities. School communities, in using non-school ovals, do not necessarily book them. We needed to elicit a usage pattern from a range of sources, to look at where we could, in fact, reduce the ground maintenance; not adversely affect the organised sporting community; and reduce any impact on the recreational sporting community. We identified a number of grounds that would be able to have the level of maintenance and programmed watering reduced. About 20 or 21 were identified over that period. There has been a suggestion that we add another, I think it was, five to that program.

My concern about that was that we would use a fairly blunt instrument, if you like, to facilitate expenditure reduction in this total program. I requested a review of the usage and utilisation of those ovals and of the capacity for them to be returned, either wholly or partially, to some form of high standard maintenance and watering. In fact, we are currently negotiating for five of those ovals to be returned to a high maintenance standard. That has been done in cooperation with school and sporting organisations and by their being able to identify that they will, in fact, need a higher level of maintenance than they may have received, particularly over the last winter, and certainly over the last summer and the last winter.

Because of the current dry weather conditions, it is obvious that those grounds are receiving non-programmed water. In fact, the natural rainfall is providing water for them. In this dry season it has become far more apparent that that is the case than it has been in previous years. I have identified those ovals for return to higher level maintenance by, firstly, taking account of the weather situation over the last year, particularly during winter. I can identify the ovals, if you like. Campbell oval was certainly one. I am sure that you have received the same representations in the last week as I have. But decisions have been made over the last two months to return Campbell, in particular, to a higher level of maintenance and to afford the opportunity for cricket and other recreational sports to use that in an ongoing capacity.

There are four other ovals involved, and I undertake to provide you with the detail. In fact, I can do that now, because I am able to read my briefing note better, Mr Moore. They are Weston oval, Mill Creek oval in Narrabundah, Cook oval, Evatt oval and Flynn oval, in addition to the oval at Campbell. They are all to be returned to a high maintenance standard. That should ameliorate any possible congestion in relation to organised sporting activities and should provide for a bit of a greening within those suburbs because of the dry weather conditions.

State Bank of New South Wales

MR STEVENSON: My question is to Mr Connolly. As members know, the State Bank of New South Wales is a credit provider within the ACT and is the official bank of the ACT Government. I ask Mr Connolly, in his capacity as Minister for consumer affairs: Are investigations being undertaken by the ACT Credit Tribunal, the ACT Consumer Affairs Bureau or any other government body into irregularities in the offering of credit in the ACT by the State Bank of New South Wales?

MR CONNOLLY: I do not think "investigation" would be the correct word. I understand that there is a matter involving the State Bank before the Credit Tribunal. That is not uncommon. A lot of credit providers find themselves before the tribunal. There may be issues about technical matters in their loan contracts and whether correct figures or correct words were used. I will have an investigation done to find out what that matter before the Credit Tribunal involves, and report back to Mr Stevenson. It was not possible to do that in the half-hour or so since you indicated your interest in this matter.

Ovals - Reduced Watering

MR LAMONT: Madam Speaker, for Mr Moore's information, can I seek leave to add to that answer in relation to the watering of sportsgrounds?

Leave granted.

MR LAMONT: Those four ovals that I outlined, Mr Moore, are the ones that were proposed to be added to the list with Campbell. I will provide you with the names of the four others that are to be returned to high maintenance.

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

PAPER

MS FOLLETT: I seek leave to present a petition which does not conform with standing orders.

Leave granted.

MS FOLLETT: I present an out-of-order petition from 151 residents indicating their concern that the Corroboree Park precinct, as included in the interim Heritage Places Register, should be preserved in its current form, and that any development of the area should be confined to the refurbishment and extension of existing single residences in keeping with the character of the area.

SUBORDINATE LEGISLATION
Papers

MR BERRY (Manager of Government Business): Pursuant to section 6 of the Subordinate Laws Act 1989, I present subordinate legislation in accordance with the schedule of gazettal notices for an appointment of commissioner, determinations, and regulations. I also present a notice of commencement of an Act.

The schedule read as follows:

Business Franchise (Tobacco and Petroleum Products) Act 1984 - Determination of fees - No. 137 of 1994 (S212, dated 7 October 1994).

Electoral Act - Appointment of Commissioner - Determination No. 136 of 1994 (S203, dated 26 September 1994).

Physiotherapists Act 1977 - Determination of fees No. 139 of 1994 (S217, dated 6 October 1994).

Poisons and Drugs (Amendment) Act - Notice of commencement (15 September 1994) of sections 4 to 6 (S193, dated 15 September 1994).

Public Health Act - Public Health (Cervical Cytology) Regulations - No. 30 of 1994 - Explanatory Memorandum (S199, dated 23 September 1994).

Public Place Names Act - Determination No. 135 of 1994 (S201, dated 23 September 1994).

Taxation (Administration) Act 1987 - Determination No. 138 of 1994 (S212, dated 7 October 1994).

Unit Titles Act - Unit Titles Regulations - No. 29 of 1994 (S195, dated 15 September 1994).

CANBERRA NATURE PARK AND NAMADGI NATIONAL PARK
Discussion of Matter of Public Importance

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

The importance of Canberra Nature Park and Namadgi National Park for the concept of the Bush Capital.

MR BERRY (Manager of Government Business) (3.29): Madam Speaker, this is one of my favourite issues. It certainly is one that is overwhelmingly the favourite of the Labor Party in the Australian Capital Territory because it is about protecting a place which, for its residents, is very special. For those who are not its residents, for those outside this Territory, we have an obligation to preserve it as part of this great nation's capital.

Canberra's open space system is unique in Australia. I would say that it could be so in respect of the world. Canberra is aptly referred to by many as the bush capital because the city has been planned from the outset to reflect the character of the Australian landscape. Canberra Nature Park and Namadgi National Park are two parks within the ACT's reserves system that especially enhance the concept of the bush capital. Visitors to this great city often comment about the desirability of those areas of the bush which impinge upon parts of the city. Canberra Nature Park provides a quiet refuge from urban living within residential areas and wildlife corridors linking urban areas with other parts of the Territory's system of conservation reserves, including Namadgi.

Mr Humphries: You have cleared the house, Wayne.

MR BERRY: You are still here, Mr Humphries, so it shows that at least you, amongst the Liberals, have some taste - and, of course, Mr Stefaniak. You show some concern about those finer aspects of our city, which obviously have not such a high profile for other members of the Liberal Party. I am carrying the banner for Labor right now, and I am very proud to do so in respect of these fine assets.

Namadgi National Park provides a place for deeper contemplation, if you like, in a wilderness setting, and it secures the habitats of the Territory's wildlife population, including many species which move through Canberra Nature Park each year. I might add that the security of that wildlife and of the areas of Canberra Nature Park have been immeasurably increased by this Government. Woe betide any government which does not guarantee that security, because it is something that is well loved by the constituency that we represent. The 25 units of Canberra Nature Park are now protected as nature reserves in the Territory Plan. The security of these important hilltops had been in doubt from when the Canberra Nature Park concept was devised in 1974 until this Government acted in accordance with overwhelming community wishes to have them reserved as conservation areas.

I will now expand on some of these points and explain other aspects of the importance of these areas to the concept of the bush capital. Both Namadgi and Canberra Nature Park contribute to the conservation of rare or threatened species of plants and animals. Namadgi contains many endangered plants and animals as well as landscapes that are rare on our continent. Some species occur only within Namadgi National Park. These include mountain gentians, a kind of wildflower, a rare eucalypt species, and a tea-tree named Leptospermum Namadgiensis. Namadgi also protects threatened plants and animals. For example, the ACT populations of the brilliantly striped corroboree frog are some of the best in Australia and are vital to the national conservation of the species. This is but one example of many, which is due to the fact that the mountains of the ACT were less severely affected by early grazing, logging and mining practices than the alpine areas in, for example, New South Wales and Victoria, and they are known to include some of the best examples of certain plant and animal communities and landforms in Australia. Although smaller, Canberra Nature Park is similarly blessed. For example, the populations of endangered legless lizards and golden sun-moths in units of Canberra Nature Park are the only ones in reserved areas, or, in one case, almost the only ones. On accepted criteria, this would make those reserves significant on an international scale.

Namadgi National Park is part of the Australian Alps system which stretches from Victoria to the Australian Capital Territory. With a total length of 500 kilometres, the alps cover an area of roughly 25,000 square kilometres, or about 0.3 per cent of Australia. Half of this alpine area is reserved within national parks such as the Alpine National Park in Victoria, Kosciusko National Park in New South Wales - I am told that the original pronunciation of Kosciusko has been anglicised to suit our language - and the Namadgi National Park in the ACT. The alps' assemblages of plant and animal communities are among the richest on the mainland, and probably the richest with national park or equivalent protection. The Australian Alps also provide a spectacular mountain landscape which has a rich cultural history - one which reflects the bush character of this country.

It is for the above reasons that the alps have been recognised by the Federal Government, the New South Wales Government, the Victorian Government and the ACT Government for their important natural and cultural heritage by a memorandum of understanding for their future protection and management. Historically, conservative governments have not been recognised as being as committed to the environment as those of a progressive flavour; but now, because of the clear understanding and feeling of the community on these issues - as I said a little while ago - woe betide any government which does not protect these important parts of our natural and cultural heritage. This ACT Government, this Labor Government, is committed to the ongoing management of Namadgi National Park as an integral part of that alpine system - a commitment which not only ensures the protection of a semiwilderness area for Canberrans to enjoy but also preserves a special area for all Australians.

Much has been said about the requirement for the ACT to create jobs. I think that the opportunity for tourists to see these very important parts of Australia can be exploited even further in the creation of jobs, noting, of course, that we do not have the same opportunities in our employment base to develop jobs as do some other States.

I think there are many opportunities to encourage people who have not made the trip to Canberra to come here. This is a good place to which to bring people from overseas who want to see a special part of Australia, because we can present a quick picture of Australia in this Territory economically. It is in the interests of employment prospects for our young people in that very important part of our employment producing business area, tourism.

The high alpine wetland areas in Namadgi make an essential contribution to our water supply by filtering water and absorbing high flows which are released slowly to provide a continuous supply during dry times. At present, during one of the most prolonged and serious droughts on record in this country, Canberra enjoys a guaranteed supply of fresh, clean water coming from Namadgi. The western half of Namadgi fulfils a major role as a water catchment for the population of Canberra and Queanbeyan. This catchment has been protected from the earliest days of settlement of the region and now provides one of the cleanest and most reliable water supplies of any city in Australia. I think there would be many cities around the world which would be envious of the quality of water which is available to the citizens of the ACT and Queanbeyan. Water from the Cotter catchment requires only minimal treatment and consequently is supplied to consumers in a cost-effective manner.

I think sometimes that as Canberrans we lose sight of the treasures which surround us, and to me this presents an opportunity to put on the record the view of this Government about the valuable parts of Canberra which are to be protected, and will be protected by future Labor governments. I intend, as a representative of the community, to ensure that, wherever possible, every effort is put into the campaign to ensure that this treasure is retained in pristine condition for those who follow us. I think we will be applauded if our efforts ensure that that occurs. We would be condemned as politicians if we were not seen to ensure that the most resources available are poured into that important resource for this Territory. I mentioned earlier that it is an important employment creating resource which we can make use of while at the same time managing it in such a way that it retains its pristine form. That will continue to happen. It will be something that self-government will be remembered for as time passes. We might be criticised for a number of things, but I think in time we will be remembered for the efforts that we put into ensuring that Namadgi and our reserves system are maintained in a way which results in their being enjoyed by future generations.

As urban development in Canberra is restricted to below the 650-metre contour level, gravity reticulation of that water from Namadgi which I mentioned earlier is possible for the entire urban area. As the city grows, the role of Namadgi in providing water will become even more important. Both of the potential sites for a new dam for Canberra lie on the boundary of Namadgi and would depend on the reliable supply of clean water. The high alpine wetland areas in Namadgi make an essential contribution to our water supply. Specialised plants such as sphagnum moss filter the water from the melting snow and high mountain rainfall, while also acting as a sponge by absorbing high water flows which are released slowly to provide a continuous supply during dry times. At present, during one of our most serious droughts, we continue, as I have said earlier, to enjoy that wonderful fresh water.

Canberra Nature Park contains wetlands of a different nature. Jerrabomberra Wetlands, for example, on the eastern end of Lake Burley Griffin, provide a specialised habitat for a diversity of waterbird populations. A variety of birds, such as herons, ducks, pelicans, dotterels and plovers, seek refuge and food requirements in this man-engineered habitat. As a resident of Canberra from 1972, I remember that when I first moved in the birds were pretty thin on the ground where I lived, and so was the grass; but in the 20 or so years during which the suburb has developed there is much more activity in birdlife. Quite often you see birds which are associated with those wetlands flying overhead, and I am sure that they will be enjoyed by the generations of the future. The Jerrabomberra Wetlands are also an important nesting site for Latham's snipe, which is subject to an international treaty between the Australian and Chinese governments for the protection of migratory birds.

You can see from all of these aspects that both Canberra Nature Park and Namadgi National Park are integral parts of what makes Canberra the bush capital. My colleagues will speak in particular about the value of these areas to the ACT economy, and Mrs Grassby will point out the cultural heritage values in these areas.

MR STEFANIAK (3.43): Whilst this is very much a motherhood statement by Mr Berry, it certainly is important in terms of Canberra's image and tourism for Canberra. This is such a blatantly bipartisan matter that one can only reiterate that Canberra Nature Park and Namadgi are terribly important for the concept of Canberra as the bush capital. I will raise a few points about where I think the current Labor Government can make some improvements in terms of developing the concept of the bush capital - things which it seems to be having some difficulty in doing.

Before I do, Mr Berry made one comment about what a great job Labor governments had done, and what conservative governments had not done. Some of the greatest advancements in environment protection occurred under the Fraser Government. As Mr Humphries indicated, we saw such things as Fraser Island being saved, and Kakadu. The Fraser Government was a milestone government in terms of the protection of the environment in this country, and a number of things continue to flow from that. The good work of that government was taken up by its replacement, the Hawke Government. It had a very proud record in terms of the environment. Really, it is good to see the environment becoming more and more of a bipartisan issue. I think the Fraser Government had a lot to do with Namadgi National Park as well.

Mr Wood: No. It was Tom Uren, actually.

MR STEFANIAK: Did he? The Fraser Government did quite a bit there as well, I think you will find, Mr Wood.

Madam Speaker, there are a number of things which can be done, I think, to assist tourism in Namadgi and to encourage a greater appreciation of our natural resources in Canberra. This Government really does have a lot to learn because a number of things that it has done in recent times have made it very difficult to properly develop, in terms of tourism, the natural beauty of Canberra. There was a problem with MudMaps, run by

Mark Phillips, who wanted to take people to Namadgi. He had a four-wheel drive vehicle. Because of various hindrances put in his way, which I think he probably would not find in other States, which would be keen to develop their natural resources for tourists, it took some four months or so for him to get his vehicle registered to enable that to happen.

Only recently we saw a long fight which lasted many months, perhaps even longer, involving Canberra Wine Tours, who operate a seven-seat bus. Finally, as a result of pressure from the Opposition, they extracted a promise from the Chief Minister to bring the ACT into line with New South Wales in terms of registration fees for that type of bus. They were paying the same price for a seven-seat bus as for a 60-seat bus - some $600 or so extra per year. No wonder they and other small tour operators, if they had not already done so, were considering going to New South Wales to register their vehicles. That certainly is not good in terms of promoting tourism for Canberra; that certainly is a big obstacle in the path of promoting ecotourism, which Canberra is ideally situated to provide as it has some wonderful natural resources, as Mr Berry correctly identified.

There is one area that we do need to look at in terms of overseas tourists. Many tourists from Japan and the Pacific Rim come to Australia for a limited time. This applies, I think, to any overseas tourists. One of the typical tours for people who come to Australia for a short period, especially from the Asian market, is the 10-day or two-week lightning tour. They might arrive in Melbourne, go to Sydney, spend one day in Canberra, shoot off to the Gold Coast and then go back home. We need to keep people here longer. I think this point has been highlighted since this Assembly started. I have met quite a few people who have come to Australia as tourists, often for more than 10 days or two weeks. Quite often people might be here for four or five weeks and they will go through Australia without seeing a lot of our native flora and fauna.

We had some Welsh friends stay in 1987. I was amazed that they had gone from Perth to Melbourne and then up to Canberra and had not seen a kangaroo in its natural habitat. I put them in the car one afternoon and took them to the Cotter and around to the Tidbinbilla Nature Reserve. We did not have time to go in; but just near the turn-off to the tracking station, which is a bit past the turn-off to the reserve, there was a kangaroo and an emu, believe it or not, about 50 metres off the track, facing each other just like on the coat of arms of this country. I had never seen that, and they took a photo of that. As well as that, there was a mob of about 50 roos feeding in the Tidbinbilla area. It is not very difficult for people to see such things while going through the ACT. Foreign tourists especially will not be able to see some of our native animals on a trip through Australia unless they come here. It is an ideal way to assist in promoting Canberra. You will find that very many tourists will not see any kangaroos or such native animals, except perhaps at Taronga Park Zoo. That is just one aspect. Also, of course, they do not have a chance to see other natural beauties such as can be found in the Namadgi National Park. Mr Berry at least is correct in highlighting the immense tourist potential for Canberra of such things as the Namadgi National Park. I would commend to the Government my comments in relation to that.

I have here a document in relation to some points Mr Berry made in his snide comment about the coalition's record in government. I will read out a few of them. A coalition government, the Fraser Government, established the Great Barrier Reef Marine Park; Fraser Island was protected; Kakadu and Uluru parks were proclaimed; Christmas Island National Park; the marine nature reserves, Coral Sea proclamations in 1982; unleaded petrol was introduced; Environment Protection (Sea Dumping) Act of 1981; Protection of the Sea (Prevention of Pollution from Ships) Act; air quality monitoring; Environment Protection (Nuclear Codes) Act; Environment Protection (Alligators Rivers Region) Act; Murray River Commission; secured listing of the Great Barrier Reef in 1981 for world heritage, Kakadu in 1981, Willandra Lakes in 1981, and proposed listing of Lord Howe Islands group in 1982.

Mr Lamont: Madam Speaker, I rise to take a point of order. Madam Speaker, I hate to be encouraged to do so; but I would draw Mr Stefaniak's attention to the question that is before the house, and that is the importance of Canberra Nature Park and Namadgi National Park to the concept of the bush capital. I am not quite sure what the last seven minutes have been all about.

MR STEFANIAK: If Mr Lamont had been listening, five of the last seven minutes were specifically in relation to the ACT, and specifically to those regions and to how they can be developed as a tourist resource.

MADAM SPEAKER: Thank you, Mr Stefaniak. The point of order was in relation to relevance and I am sure that you know all about that. Please proceed.

MR STEFANIAK: Thank you, Madam Speaker.

Mr Humphries: Mr Berry raised the issue in the first place.

MR STEFANIAK: Mr Berry did raise the issue, and I was simply responding to that. At any rate, I think that what I read out would refute Mr Berry's comment in relation to the coalition.

No-one doubts, Madam Speaker, the importance of the Canberra Nature Park and the Namadgi National Park for the concept of the bush capital. There are a number of things that can be done to improve the awareness of people - especially those outside the country, but also our own Australian population outside Canberra - of what beautiful sites there are, especially in Namadgi, and what a great tourist attraction it is. That awareness can be developed a lot more than it is at present by encouraging international tourists to stay here an extra day and to take in some of the natural beauty of the ACT, specifically Namadgi and specifically some of the flora and fauna which they simply will not get a chance to see in the rest of Australia.

Finally, Madam Speaker, I would urge this Government, when it talks about ecotourism, to look at what can be done to encourage local tour operators, because it does not have a terribly good record in that regard. Mr Berry has raised an important matter which is worth commenting on.

MRS GRASSBY (3.53): Madam Speaker, I rise to speak on this important matter of public importance. As my colleague Mr Berry has explained, Canberra's open space system is really unique to Australia. It is only when people come to Canberra that they realise just how unique it is. Canberra is truly the bush capital because the open space areas are an integral part of the design and operation of the city as well as a vital part of its character. I think there is not a person here who would not agree with that. The natural places of the ACT are aspects which increasingly will become nationally and internationally known as a feature of this city.

Namadgi now extends over the entire southern half of the Australian Capital Territory. It does take up a very large area, but it is a very beautiful area. All of the snow-capped mountains which provide the western backdrop to the city are in either Namadgi National Park or the adjoining Tidbinbilla Nature Reserve, which is managed in sympathy with Namadgi. I am sure that any of us who have spent time in the Tidbinbilla area realise how lucky we are to have this. These places will become an important focus for ecotourism in the Territory and will make an important contribution to the ability of this Territory to market itself as a tourist destination. We all know how Japanese tourists just love wide open spaces. Anybody who has been to Japan realises just how little space there is. So, when they come to Canberra, that is one of the things they notice and love. As we seek to build upon this attraction of Canberra to international visitors, Namadgi will play a significant role. Unlike many of the national parks in Australia, Namadgi offers visitors a chance to experience the Australian bush relatively quickly and while still being able to take advantage of the services of a major city. The range of landscape and wildlife available in Namadgi will add to this attraction.

Namadgi is special to the people of Canberra because of its qualities of remoteness and undisturbed nature. Canberra Nature Park also provides close access for the people of urban Canberra to experience solitude and the opportunity to study wildlife. You have to go quite a distance in Sydney and battle with traffic to do all this. It is the same in Melbourne and most capital cities. We are just so lucky to have it virtually at our own back door, and all visitors who come here feel that. When snowfalls blanket the mountains of Namadgi, it provides a spectacular backdrop to our national capital. We all noticed that just two weeks ago when we woke up to see snow. Only the other day we woke up to see snow capping all the mountains. The inner hills of Canberra's Nature Park provide the natural landscape setting which gives Canberra its bush capital identity.

It is clear that the role identified for Namadgi from the earliest days of Canberra, as a breathing space for our community, is becoming more and more important. Canberrans are increasingly visiting Namadgi and taking advantage of the recreational opportunities it offers. Visitor numbers have increased by an average of 10 per cent each year since 1990. The growing interest in ecotourism and understanding of the environment will ensure that this increase continues. The concentrated flowering of wildflowers is amongst the most dramatic in the region, and this attracts many people. People travel to Western Australia to see the wildflowers when they are in bloom, and there are people who come to Canberra to see the wonderful wildflowers that we provide in the spring.

Walter Burley Griffin recognised the importance of the natural landscape in providing a basis for the design of Canberra, and envisaged the hills and the ridges rising out of the city to dominate the urban landscape. Today the hills within and adjacent to the city have retained their visual importance and become both natural limits to the urban edge and attractive backdrops to developed areas. Those who are lucky enough to have homes backing onto one of these areas very rarely want to sell their house. You hear them say that the most beautiful part about living in that area is the fact that you can walk out to the hills at the back.

The National Capital Plan states that hills, ridges and buffer spaces are to remain substantially undeveloped in order to protect the symbolic role and Australian landscape character of the hills and ridges as a scenic backdrop, to maintain the visual definition and physical containment of the surrounding towns, and to ensure that their landscape, environmental and recreation values become an integral part of the national capital. I remember that, when I first came to live in Aranda, from two houses up from us the kangaroos used to come down to be fed. My daughter used to think this was the most wonderful thing out - that she could have breakfast and then wander up to the end of the road and feed the kangaroos with what she did not eat herself; unbeknown to me, of course.

Mr De Domenico: Do kangaroos eat Weet-Bix?

MRS GRASSBY: Yes, they will eat anything you give them; I can tell you.

Mr De Domenico: They do? Coco Pops?

MRS GRASSBY: Anything you give them.

Ms Ellis: At the moment they will eat anything.

MRS GRASSBY: Yes. The undeveloped hills and ridges throughout urban Canberra provide high-quality habitat and corridors for wildlife, as well as opportunities for appreciation, recreation, education and research while protecting natural, cultural and landscape resources. The hills and ridges of Canberra have long had recognised value. People think of the hills as places that are different from the surrounding suburbs, as places of interest.

The cultural history of the Canberra region includes sites that date back at least 20,000 years. There is evidence that the Aboriginals utilised the plains and the mountainous areas of the ACT. We now know that Aboriginal tribes from surrounding lowlands visited the high peaks of Namadgi for corroborees, feasts and ceremonies. Namadgi includes sites of rock art that are the most striking and best preserved in the region. Together, these sites are of international significance as evidence of occupation over a long period. Namadgi National Park also contains examples of early European occupation in the Canberra area that reflects the rural character that is part of Australia's heritage. There are old homesteads associated with pastoral settlements, stockmen's huts

that were used for droving cattle and brumby running and the numerous other lifestyles and practices. In recognition of its natural and cultural values, Namadgi has been entered on the Register of the National Estate and it is currently nominated to be included on the interim ACT Heritage Places Register.

It is not only Namadgi. As Bill Stefaniak went on to say, there are many parts of Canberra. He, Wayne Berry and I are very much involved in wanting to get wetlands up and running in the area that we represent, which is Ginninderra. I know that the Speaker is very involved in this too. It is one lake we have that does not suffer from blue-green algae, and we want to protect that as well. I was amazed at how many people were so interested in it and came along to the meeting, and want to come along to the next meeting. The Minister and I went to the Jerrabomberra Wetlands. I was quite amazed, when the Minister brought down the report on that area, at how many people turned up at that and were interested. I even collected quite a few more people who live in the area of Ginninderra and who would like to be involved in the Ginninderra wetlands area. People in Canberra love what they have and want to keep it as the bush capital. All members should realise that one of the things that everybody in Australia and its visitors remember about Canberra is that it is the only bush capital, and we must keep it in that most beautiful way.

MS ELLIS (4.02): I want to join this debate and to make a few brief comments. From the urban point of view in relation to the Canberra Nature Park, we have a wonderful amenity around us; but we also have fantastic input from the community through the Park Care groups and so on. It gives the community a very hands-on appreciation and a very hands-on role in relation to the responsibility that we all have in caring for this bush capital and understanding what exactly it is that we have living around us and the sort of involvement that we as a community can have.

The other aspect of this MPI which I think is really worth reflecting on quite carefully is the Namadgi National Park. The reason I say that is that there are certain relevant statistics that I think are terribly important and really place the ACT and Namadgi separate from a lot of other areas which may believe that they are equal. For instance, Namadgi National Park is, I think I am correct in saying, just on or just over 50 per cent of this Territory. I know that in terms of size, in square mileage or square kilometre measurement, this Territory does not quite rank with a lot of other places; but there are not very many places in this world that can boast of 50 per cent of their territory or their area being enclosed in such a wonderful environment.

We also need to acknowledge the existence of the wilderness areas within Namadgi. There are some areas that have been included. I think that in the last review of the borders of Namadgi there were some very exclusive wilderness areas proclaimed and included for the first time, and wilderness of great importance in terms of the world environment. I think it is very relevant for our community to appreciate, when we talk about these wilderness areas, their proximity to urban living, and how important and valuable that is, how fortunate this community is to have that sort of area with those sorts of wilderness enclosures in such close proximity to urban areas, and how careful and how responsible we must be to those areas.

I do not think that the work that the rangers do in caring for Namadgi and the Canberra Nature Park, and educating the community, can be overstated. When we talk about the importance of the Canberra Nature Park and Namadgi National Park for the concept of the bush capital, we can take that a bit further and say that not only is it important now; those things remain very valuable and very important for our future. When we talk about our future, we talk about our young people; and when we talk about the young people, we must keep in mind the education process that they require - as does, I might add, a lot of our older community, as well - to understand what we do have on our hands; how we do value it, how we do regard it as part of our community, and how we can continue that valuation into the future. When I say that, we must remember the role that the ranger service plays in ensuring that all of our community, both young and old, are educated well and fairly in understanding and valuing that resource. The educational aspects, I believe, cannot be overstated.

Namadgi, of course, is a great resource for the people of Tuggeranong. I say that as a resident of the area, really valuing very much the fact that within a very short distance not only Canberra but the Tuggeranong Valley have a wonderful natural resource sitting at their doorstep. It is basically the Tuggeranong backyard. It provides for bushwalking; the possibility of camping in places such as the Orroral Valley area; the ability to go out and see, in that sort of setting, the Aboriginal sites that are there; and the possibility in the future of ecotourism. Tourism is something that all governments and all interested people in the world, let alone in Australia, are thinking about today. When we think about ecotourism we must seriously look at Namadgi and look at Canberra, and see how we can benefit - not use, rape and pillage our natural resources, but use them properly and use them respectfully.

Mr Stefaniak made a point earlier about the time it took for a four-wheel drive operator to gain a licence to enter Namadgi National Park. Whilst I understand that the man in question may have had an investment and wished very much to get his business off the ground, there is no way that I would like to see that process any faster than it needs to be, because if we allow too many of those sorts of vehicles into these areas there will be nothing left to look at. I say that very seriously. There is no way that I do not believe that ecotourism should allow that sort of access; it should. We should be able to access it, see it properly and use it carefully; but we have a responsibility when we do that. Seeing that we are basically surrounded by the Canberra Nature Park no matter where we stand in this Territory, and particularly, as I said earlier, when we go to Tuggeranong and see the Namadgi National Park sitting there, that responsibility brings with it a great deal of work and a great deal of consideration to everybody within the community, both inside and outside the Government. Nothing would make me happier than to see more people able to access and experience those sorts of valuable resources, but we must do it carefully and responsibly.

I think this is an excellent MPI. I agree with earlier speakers. We do need to remind ourselves occasionally that we have the sort of environment in which we exist here. It is unique. There is no doubt about that. That uniqueness brings with it all those other things that I have mentioned. I think that to stand up here today and to talk about it in general terms is a very good exercise. The work that is done by the ranger service - to repeat myself for a moment - cannot be overstated, and I believe that any action taken to enhance and continue to value these resources in the Territory must be applauded and must be supported by everybody in the Territory.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (4.09): Madam Speaker, I rise to speak on this most important MPI. I think it says a lot about the difference between the policies of the Follett Labor Government and the attitude of the Opposition when one considers that, until a few seconds ago, there was less than half of the Opposition in the chamber to hear or to participate in the debate. It is quite obvious that, in allowing Mr Stefaniak to continue as he did, they regard the matter outlined in the MPI as less than important to them or, indeed, to the people of the ACT.

Madam Speaker, on the tabling of the report of the Commissioner for the Environment I said that that report, of itself, would form the test by which we, as a community, will be judged by future generations. I suppose that I can use exactly the same analogy if I talk about the importance to our community of Canberra Nature Park and Namadgi National Park for the ongoing relationship between Canberrans and the natural environment. In fact, the way in which we deal with its preservation and with its management is the test by which future generations will judge not only the 17 members of this Assembly but all of the people residing in the Territory at this time. It is too easy to denigrate our natural heritage to an extent where, if we look at comparisons both nationally and internationally, the very fabric of the community within which we live can be irreparably damaged and irrevocably changed. Resources are provided, through the various agencies of government and through various non-government organisations, for the preservation of our wilderness, our old-growth areas of natural stands of timber. With the expansion of the urban form in Canberra we have seen a very positive view and feeling by government agencies and non-government organisations for the preservation of what remains.

When we look at the rationale behind preservation, and the extent of the preservation which applies to Mulligans Flat, in particular, we can see that it remains critically important for the Government and the community to be vigilant about preservation of appropriate areas within the geographic area of the Australian Capital Territory. Mulligans Flat, with one of the more substantial remnants of the natural grasslands, will over time, I am sure, with proper management techniques, be restored to a pristine state. We will see the gradual eradication of invasive plants that have been allowed to generate in that area. I suppose that "pristine" is a difficult word to use in the context of Mulligans Flat. It is an area that has been used as grazing land for a number of generations and, because of that, there has been substantial change to the natural bushland and the natural grasslands that were there. With the proper management techniques we will be able to recover Mulligans Flat and it will be an everlasting testimony to the types of ecosystems that existed here on this plateau, on the Limestone Plains, prior to white settlement.

I think it is important that at this point I make specific reference to the need to include Australia's indigenous people in the management of these areas - not just in the obvious areas such as Namadgi but also in the Canberra Nature Park, and particularly in areas like Mulligans Flat and other substantial areas that have been identified as part of a nature park. I believe that it is appropriate that our management strategies include participation by indigenous populations in the management of those assets - I suppose that that is one way to describe it - to ensure that the experience of their cultures is able to be used in proper management techniques.

I was very interested some time ago to visit Kakadu National Park on the basis of an assessment of its management strategy. The management strategy that has been adopted by the National Parks and Wildlife Service for Kakadu includes a quite specific and comprehensive provision for the Binning in that area to play an integral part in the management of Kakadu. I see that it is also appropriate that we acknowledge the Aboriginal presence that has existed within our region, and specifically in the preservation of these areas.

For a moment I would like to reflect on what the Territory Plan provides for. While the Territory Plan is often criticised for being too much of a generalist document, the principles that are outlined in that plan for areas covering Canberra Nature Park and Namadgi, I think, are appropriate for the types of strategies that I have outlined earlier, particularly the involvement of our indigenous peoples. But those requirements in the Territory Plan should be continually reviewed to ensure that we are appropriately changing our management techniques to reflect best practice in these activities. Again I reflect on the management plan for Kakadu, which also specifically refers to the need to continually review the management plan to ensure that we maintain the essential character and involvement of appropriate people in its management.

While we have an extremely fine ranger service in the ACT, I think even they would acknowledge that they are not the fountain of all knowledge in relation to the management of these areas. We should be continually providing them with the opportunity as well to review their management techniques and strategy. We should provide them with opportunities for nationally focused experience, study, travel and assessment. We also should provide them with the opportunity to experience international circumstances where great work is being done in the preservation of wilderness areas. We should be able to manage that in the context of allowing reasonable access without doing damage to that sensitive environment. That is specifically in relation to Namadgi. In the wider area of Canberra Nature Park, I believe that we can also not only provide for advice, because of the quite innovative ways and progressive management attitude which has been taken by our service to bodies outside the ACT, but also learn from the way other people are conducting their business.

If we wish to retain the concept of Canberra as the bush capital we need to firmly establish the principles by which we will preserve our wilderness areas and our nature park for future generations. That requires a cooperative effort by our people who are employed within our own administration to oversight that; it needs to be by deliberate effort of this chamber; it needs to be by deliberate effort to incorporate the wishes of our community into the management programs that we implement. So, Madam Speaker,

this is a quite important MPI. I hope that it gains recognition by those people who report this place, not necessarily for the individual people talking but for the concepts that have been discussed this afternoon. I suppose that it will fall on deaf ears to an extent. It will not be regarded by the media as a sexy issue in terms of the conflict, mayhem and consternation that at times they like to report from this place, or to build out of this place; but it is one of the essential elements, I believe, in why Canberrans call Canberra home.

MR WOOD (Minister for Education and Training, Minister for the Arts and Heritage and Minister for the Environment, Land and Planning) (4.19): Madam Speaker, I thank members for their contribution. I think the balance of that contribution reflects the very great importance that the Government gives to our environment, and to the maintenance and protection of it, and the relative lack of interest that the Opposition has in such a matter. Mr Lamont mentioned a minute ago that this was not a sexy issue. I believe that it is a very important issue in Canberra. Can you imagine the fuss if we went out there and said that we were going to build on top of a hill somewhere? The fact is that we have accommodated the wishes of Canberrans and seen that Canberra, under our jurisdiction, has been enhanced as the bush capital of Australia.

My last political activity in the city of Cairns in North Queensland before becoming a refugee to Canberra was to engage in a fight to stop the tops of hills being knocked off and used to fill up the swamps so that houses could be built on both the flattened hills and the filled swamps. I came to Canberra and it was a joy to see that respect was paid to our hills. However, it was only with the gazettal of the Territory Plan, not long ago now, that the hills were firmly given the protection of nature parks. That, I think, was a very important event and, perhaps like other environmental things, it was not particularly seized upon by the media. We do need this protection for our hills that we now have. The 25 separate parts that make up the totality of Canberra Nature Park are now fully protected. As with the Jerrabomberra Wetlands, we are increasingly developing management plans for these important areas.

A great deal of the focus today has been on ecotourism. Members obviously are indicating the importance that they attach to that. They have indicated in the debate that they support that concept. I am sure that they would all be saying that we support that concept of ecotourism, providing that our nature parks and Namadgi are protected in the process. So important is it that a month or two months ago I took myself off and had a very careful look at some aspects of ecotourism in the Northern Territory. I might not always agree with some of the political judgments of the Northern Territory Government; but I have to say that what they are doing with their national parks, and what the Commonwealth is also doing in the Northern Territory, is truly outstanding. I learnt up there that you can operate ecotourism, you can use your environment for tourism purposes, and still maintain that environment. I see Mrs Carnell nodding. I have to say that before I went there I was a sceptic. Before I went to the Northern Territory I did not think that I would want to see tourism facilities in Namadgi National Park. That was my attitude before I went. After a very careful examination up there, I came back with a considerably changed view. I came back saying that it can be done and, indeed, as part of that process, we can even add to what happens there. So, we can have tourism activity around our nature park. Obviously, all will agree that it has to be done very carefully, very sensitively, so as not to cause damage to what we regard as important areas.

One of the members - I forget which one it was now - made the point that you can see kangaroos quite readily in Canberra. You can see them, some people say, too readily. That is one thing we can offer in the ACT. I discovered that. While in the Northern Territory you can see magnificent vistas - you can see Ayers Rock, King's Canyon, and a whole range of places - one of the things the tourists find it harder to see is animals. It is the Northern Territory, after all, and it can be a fairly dry, large and arid place. But in the ACT we can show tourists animals - the Asian tourists in particular - without any difficulty. As we get into ecotourism, that is one of the things we can attend to. It is one of the advantages we have. We do not have King's Canyon, which I saw; but we have wonderful walks through Namadgi which we can develop sensitively. I think the concentration of effort that we are putting into the study of ecotourism at the moment will draw very much on the ready availability of animals for tourists.

I think the major point we want to make in this debate, however, is that Canberra is the bush capital, and it depends very largely on the bush for its image. People come here to see national institutions, to be true. They want to see Parliament House, the War Memorial and other places; but I think the abiding impression they take away with them is the bush nature of this city. That is wonderful. You can be sure that this Government will continue to see that that bush capital image and the respect for our nature parks and Namadgi are further enhanced as we continue with our administration.

MADAM SPEAKER: The discussion is concluded.

SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION - STANDING COMMITTEE
Report and Statement

MRS GRASSBY: I present report No. 15 of 1994 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. I ask for leave to make a brief statement on the report.

Leave granted.

MRS GRASSBY: Report No. 15 of 1994 contains the committee's comments on two Bills and one piece of subordinate legislation. I commend the report to the Assembly.

WORKERS' COMPENSATION (AMENDMENT) BILL 1994

Debate resumed from 25 August 1994, on motion by Mr Lamont:

That this Bill be agreed to in principle.

Debate (on motion by Mr Berry) adjourned.

TAXATION (ADMINISTRATION) (AMENDMENT) BILL 1994

Debate resumed from 15 September 1994, on motion by Ms Follett:

That this Bill be agreed to in principle.

MR KAINE (4.26): Madam Speaker, I think that I can safely say that only a Labor government could have introduced this Bill, because it provides a great deal for the Government and very few crumbs for the governed. The principal Act to which the Bill relates establishes machinery for collecting the funds that the Government needs to support the programs that it was elected to implement. That is fair enough. But the Taxation (Administration) (Amendment) Bill 1994 provides a gun to be held at the collective heads of the ACT taxpayers, especially those whose business activities earn the money that is being taxed. The purpose of the Bill is to plug gaps that the Government has perceived - not established as being real, but perceived - in the powers that the Assembly has given to the tax gatherers. No evidence has been presented to show that any of the problems that the Bill is aimed at preventing have, in fact, occurred.

The Bill says that the tax gatherers may breathe down the taxpayers' necks for as long as they like if they think that the taxpayers might have evaded any rightful obligations. It proposes to give the tax gatherers powers to come at taxpayers after the six years for which the Assembly, by law, requires taxpayers to keep their records. It proposes to give them the power to call taxpayers to account in such a way that the taxpayers have to prove the tax gatherers wrong, rather than the tax gatherers having to prove themselves right. I find it rather strange that these things are coming from a government that constantly talks about social justice. These amendments have the potential to turn honest business people into criminals. People can be fined or sent to gaol if they breach the principal Act. So, framing the Bill needs extreme care to achieve two objectives.

The Opposition has no problems with the objective of government, which is to ensure that the public purse receives all the revenue due to it. I emphasise the words "due to it". The objective of taxpayers, of course, is not the same. Their objective is to not be subjected to onerous compliance requirements or be treated like criminals until the Government has proved that the law has been broken. This Bill requires the taxpayer to prove that the law has not been broken. The Government justifies placing the onus of proof on the taxpayers on the ground that the taxpayers are best acquainted with their own affairs. Madam Speaker, that may be true; but it is still a cop-out, because it relieves the Government of any responsibility to first establish its case. The Opposition has difficulty with this course of action; but we note that it is consistent with Commonwealth and State tax law. One has to wonder, however, whether it is really required or justified. I suggest that, in the interests of social justice, the Chief Minister re-examine this matter.

Administrative discretions vested in officials can be a minefield, even when they are appealable to the Administrative Appeals Tribunal. Administrative discretions are the basis of clause 4 of the Bill. Proposed section 12B of the principal Act gives with one hand and takes back with the other. A taxpayer may apply for an extension of time in which to lodge a return; but the commissioner may refuse the application if he is not satisfied that it would be unduly onerous for the taxpayer to lodge a return by the due date under the relevant taxing law.

Mr Stevenson: I raise a point of order, Madam Speaker. It is a little difficult to hear Mr Kaine with the chats going on at the side of the chamber.

MADAM SPEAKER: Thank you, Mr Stevenson. I think that point of order has been noted.

MR KAINE: The Bill establishes no criteria by which to measure the commissioner's dissatisfaction or the burden impeding the taxpayer's compliance with normal deadlines. In other words, it is totally subjective. It makes a refusal or a revocation appealable; but it does not give the commissioner, the taxpayer or, for that matter, the tribunal a set of specific parameters by which the Government wishes the fairness or justification of the decision to be measured. The Bill delivers a rabbit punch to taxpayers who are not versed in the details of the law, who are not sure of their rights under it or their rights before the tribunal and who believe that "fair" means fair. Without decision making criteria, the Bill makes it too easy for the commissioner to express a decision in such a way that the tribunal has to find it "fair" even though the appellant argues otherwise. The Bill should recognise this by explaining what the Government expects of taxpayers who are seeking so simple a concession as an extension of time in which to tell the commissioner how much money they think they owe the Territory. I do not believe that that is draconian. The Chief Minister and Treasurer should have another look at that.

I do not say that the proposed subsections 12B(1) to (3) and 12B(5) cannot work; but I do say that they contain the seeds of conflict, unnecessary delay and expense to the taxpayer and the commissioner alike, with no assurance of increased revenue to the Territory at the end of the day. In fact, in the explanatory memorandum, the Treasurer makes the point that they do not expect to increase their revenues as a result of this Bill. But they are putting a lot of hurdles in the way of the taxpayer and, I believe, of the commissioner. The Government has shown no grounds on which to justify the kinds of incomplete and capricious provisions embodied in proposed subsection 12B(6). The Bill should clarify where the taxpayer stands, regardless of whether the period between revocation of an extension and the deadline for lodging the next return is greater or less than the Bill's provision of three weeks. That is another matter that, I believe, the Treasurer should review.

The matter which is of greatest concern is paragraph 5(a), which proposes to increase from three to six years the period in which the commissioner may amend an assessment. One of the few good things for taxpayers that the Bill could offer would be to apply this increase to the time in which the commissioner may amend an assessment to correct an overpayment of tax; but I gather that this will not be the case. The increase to six years in the period in which an assessment can be carried out will not apply equally to the cases where additional tax is owed to the Territory and to instances where refunds are due to taxpayers. At present, the commissioner is unable to provide a refund of tax where instances of excessive tax payments have occurred over three years. I have taken those words from information provided by the Minister's office. I think that the last bit means "more than three years ago".

The reasons stated for the time increase are that the commissioner has only two or three inspectors to do self-assessment checks on taxpayers, and in any case the Act already requires taxpayers to keep records for six years. The Government puts these two items together and decides to make taxpayers sweat it out for six years, wondering whether they are going to be confronted with an amended assessment. This thinking opens up some convoluted possibilities. Will the threat of an amended assessment at any time in the next six years strengthen taxpayers' resolve to submit complete and accurate returns? I doubt that it will make any difference. Will the longer time lull the commissioner into a sense of security and restrain him from getting more inspectors? The Minister said nothing about either of these matters in her presentation speech, and I would find her answers interesting.

Whatever those answers may be, paragraph 5(a) adds to the confusion in another direction. Earlier, I queried whether the Commonwealth having done something grossly at odds with a basic tenet of our justice system is sufficient justification for the Territory to do the same. In paragraph 5(a), however, the argument is a little different. This Bill proposes a six-year window for amending assessments. The Commonwealth Income Tax Assessment Act, at section 170, provides only four years for the same matter. If the Commonwealth needs more time, it has to apply to the Federal Court. Our Bill, however, contains no comparable provision, which seems to me to be a shortcoming, because it amends the law providing for proper collection of Territory revenue. The Government is asserting its independence, quite unconcerned for the confusion and potential for unintended breaches and even the injustices that will flow from the Territory having a different period from that which the Commonwealth provides. It will lead to confusion and it is unnecessary. If four years is a long enough period for the Commonwealth to determine whether it wants to issue an amended assessment, then it ought to be long enough for us.

Paragraph 5(b) gives the commissioner an open-ended power to follow up on suspected - not established, but suspected - cases of fraud, evasion or omission of material facts from a return. In her speech, the Minister did not even try to offer a justification for this. "Let us pursue those who try to deprive the Territory of its rightful dues until hell freezes over" is perhaps a worthy sentiment; but it says little about a piece of administrative machinery that takes until hell is decidedly cool to discover the need to set off on that pursuit. The system already requires taxpayers to keep records for six years after finalising the assessment based on them, in case the commissioner needs to examine them. Is it going to take the commissioner six years to discover that the taxpayer has been ripping off the Territory? I hope not. The solution to both of the matters that clause 5 seeks to address is simply to give the commissioner enough resources to find out, within four years, whether a taxpayer has been attempting a rip-off. Surely, this is far preferable to the imposition, by stealthy implication, of a requirement on all taxpayers to keep records for longer than the statutory six years, just in case the commissioner wants to put them to the torture after seven, eight or nine years.

Madam Speaker, the Taxation (Administration) (Amendment) Bill has a worthy purpose of ensuring that the Territory receives all the revenue due to it. The Opposition supports it in principle. But the mechanisms it proposes for achieving that purpose are not so worthy. This Bill should be amended. I foreshadow that I will bring up one such amendment in the detail stage. I suggest that the Treasurer review the Bill and propose others, as I have indicated, in the interests of justice.

Sitting suspended from 4.38 to 8.00 pm

MS FOLLETT (Chief Minister and Treasurer) (8.00), in reply: Madam Speaker, I would like to address the issues that have been raised by Mr Kaine in his comments on the Taxation (Administration) (Amendment) Bill. The first of those was, under this Bill, the placing of the onus of proof on the taxpayer. Mr Kaine has indicated that he is not entirely happy with that provision of the Bill. I would like to explain that, under the present legislation, where the taxpayer claims that an assessment is excessive, the onus falls on the commissioner to prove all of the facts necessary to establish that the duty claimed by the commissioner was properly assessed and is payable. Madam Speaker, I am sure that members would know that it is usually the taxpayer who is in the best position to make an assessment of their own affairs. It is the taxpayer who is claiming that the assessment is excessive. It seems to me only just and reasonable that it should, therefore, be the taxpayer who is required to prove their claim that that assessment is excessive.

As Mr Kaine himself has acknowledged, throughout the country, including at the Commonwealth level, this placing of the onus of proof on the taxpayer has been recognised in a wide variety of taxation legislation. That legislation exists in New South Wales, Victoria, the Northern Territory, Tasmania, South Australia, Queensland and the Commonwealth. So, this is not something new that we are doing. It is well recognised. In fact, that principle of the onus of proof resting with the taxpayer has been supported in quite a number of judicial decisions - in the Supreme Court of New South Wales, in the Federal Court and in the High Court of Australia - because it recognises the reality that, in the overwhelming majority of cases, the taxpayer is the person who is best apprised of their own circumstances. So, Madam Speaker, I would like to put that to members for consideration when they are looking at this Bill.

They should also bear in mind that placing the onus of proof on the taxpayer in no way extinguishes the requirement on the Commissioner for ACT Revenue, in the legal process, to furnish all of the particulars supporting an assessment. He still has upon him that requirement to make out the case for his own assessment and to provide all of the particulars relevant to that case. The commissioner also has the obligation to act fairly and reasonably in determining an assessment. So, this is not a diminution of the commissioner's assessment requirements. I think it is fair and reasonable to place the onus on the taxpayer when the taxpayer claims that an assessment is excessive. It seems entirely reasonable to me, and it is certainly a method that has been used throughout the country.

Mr Kaine also mentioned the extension of the assessment period to six years. I have a number of comments to make on that. The basic intention of this provision in the Bill is that taxpayers need to be audited only every six years, rather than every three years. So, far from placing an additional burden on taxpayers, it actually reduces the potential disruption to their business while an audit is conducted. I think it is a more reasonable regime than the existing regime, especially for businesses. Mr Kaine also mentioned that, in his view, the Bill meant that a refund of overpaid tax may be possible only within three years. I believe that this is a misunderstanding. Under the Bill, as I have presented it to the Assembly, a refund of any overpaid tax may be made during the six years proposed. So, again, it is an extension of that refund capacity for a taxpayer who has been overassessed, rather than a diminution of it or even a maintenance of the status quo. We have actually extended the period in which a refund may be made.

Mr Kaine's reference to the Commonwealth Income Tax Assessment Act allowing four years is not correct. My advice is that subsection 170(1) actually allows an unlimited time within which to amend assessments under that Act. The reference in the Act to the four-year period applies only to very specific circumstances. It is able to be used only when the taxpayer has made a statement to the commissioner which has caused the commissioner to reduce an assessment. So, again, I think there is a difference of view there. The reference to six years relates to the requirement to retain records for six years under section 96 of the principal Act.

Madam Speaker, Mr Kaine also made some comments about subsection (4) of section 12B being unduly onerous. I would like to advise the house that the purpose of this section is to provide assistance to taxpayers who are actually experiencing difficulty in meeting their obligations. The broadness of the provisions, I think, provides greater capacity for the commissioner to assist taxpayers than if there were very rigid guidelines. The fact that there is a capacity for review in the Administrative Appeals Tribunal of an adverse decision by the commissioner provides a further safeguard in the event of the taxpayer's application being rejected. So, the provision is actually designed to assist taxpayers, not to hinder them. It provides a mechanism which is not currently available to them. So, again, I think the intention of that clause of the Bill may have been misunderstood.

Mr Kaine also commented on the time limits for detection and action in the case of fraud or evasion. That is paragraph 5(b), which inserts proposed new subsection 22(2A). I believe that taxpayers who engage in fraud or tax evasion very often go to quite extraordinary lengths to conceal their liabilities. This often comes as a shock to the honest taxpayer - the taxpayer who pays up, like a lamb, as and when the bill is due. I am sorry to say that some taxpayers go to quite some length to evade their responsibilities. I do not believe that we should say to the commissioner that, if he has not discovered that evasion or fraud within six years, the taxpayer can consider that they have got away with it. I do not think that is fair. I do not believe that the rest of the community, who are being ripped off by these dishonest taxpayers, would think that was fair, either. I do not support fraudulent activity that causes the rest of the community to

have to pay more tax than they would otherwise have to pay, to make up for these tax evasions. I do not believe that we should offer any comfort to cheats by setting a period, after which they may go scot-free. So, I do not support the comments that Mr Kaine made there. I put it to the Assembly that the honest taxpayers, who have nothing to hide, will not be affected by this kind of provision and, indeed, they would have no reason to keep their records beyond the six years required by the Act.

Madam Speaker, I believe that the provisions of the Taxation (Administration) (Amendment) Bill are reasonable. They will affect the way in which unpaid taxes are recovered and returns are lodged for assessment and the period in which assessments can be amended; but the amendments to the Act are also made to recognise, just on a technical matter, the repeal of the Companies Act. This is basically a housekeeping Act. I believe that the concerns that Mr Kaine has raised can all be refuted. Having said that, I would like to add that, as I have said many times, our revenue legislation is pretty much under constant review. Where it is found to be adversely affecting taxpayers in a way that is not reasonable or in a way that was not intended by this Assembly, I am open to changing that legislation. Indeed, I have done so on many occasions. So, I commend this Bill to the Assembly. I will undertake to keep it under review. I regard it as a necessary compliance Bill, but also one which tidies up a few aspects of the tax Act and one which provides increased mechanisms for taxpayers which will make it easier and less onerous for them to comply with the ACT's legislation.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR KAINE (8.12): Madam Speaker, I move:

Page 3, line 8, clause 5, paragraph (a), omit "6", substitute "4".

I listened with interest to the Chief Minister's rebuttal of the points that I made in the in-principle debate. The only clause of the Bill to which I indicated an intention to move an amendment was the one dealing with this matter. The Chief Minister asserted that my interpretation of section 170 of the Commonwealth Income Tax Assessment Act was wrong. I can only quote the advice that was submitted to me jointly by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants. I think that they are more inclined to be correct, in terms of the interpretation of the tax Act, than the Chief Minister's public servants. Their advice states:

The Commonwealth Income Tax Assessment Act, as amended, section 170, permits the Commissioner to amend only within four years from the due date for payment of tax under the assessment. The four year period can be extended where an examination of the taxpayer's affairs has begun but has not yet been completed, and to obtain an extension the Commissioner must obtain either the written consent of the taxpayer or an order from the Federal Court.

So, it is not open to the Federal Commissioner of Taxation simply to arbitrarily extend the time beyond four years. The advice further states:

A Court Order (from the Federal Court) will only be obtainable if the examination was hindered by something that the taxpayer did or something that the taxpayer unreasonably failed to do.

The advice contains a couple of circumstances in which a court order would be obtainable. So, there is no question that the Federal tax Act prescribes a four-year period, and it is very difficult for the tax commissioner to go beyond four years in terms of amending an assessment.

The Chief Minister talked about fraud and evasion. I think that the Chief Minister needs to be reminded that tax assessments, where they are self-assessed, can very often be wrong, due to a lack of understanding of the law. The law in connection with tax is often quite complex, and not everybody who puts in an incorrect assessment is guilty of a criminal offence. My advice again from the accounting societies is that the existence of fraud can never be assumed. I would like the Chief Minister to note that. It must be proven by showing that false representation is made knowingly, or without belief in its truth, or recklessly, or without caring whether it is true or false. I submit that very few people submitting tax returns to which this Act will apply would be guilty of such offences. They would be very much in the minority. Yet there will be many cases where these taxpayers will wish to seek an amended assessment.

My criticism is that we are using a sledge-hammer to crack a walnut. We are assuming that everybody that puts in an incorrect tax return is a crook and, therefore, he or she should be susceptible to having the tax assessment changed and having a penalty levied at any time in the future, according to the Bill that the Chief Minister has put before us. The Commonwealth law does not permit that. The Chief Minister's argument that it can be extended beyond the four years is wrong. I would ask members of the Assembly, in voting on my amendment, to remember that the Chief Minister seems to have misinterpreted the situation at the Federal level or her advisers have wrongly advised her on it. It is almost invariably a four-year period during which the Commonwealth Taxation Commissioner must issue an amended assessment, if he intends to do so. He cannot do so five, six, seven or eight years downstream, except in very limited circumstances. As I pointed out, that is either with the written consent of the taxpayer himself, who presumably would have to concede that an error had been made, or as a result of an order from the Federal Court. These conditions are not easily met.

For the ACT Commissioner for Revenue to have the right, which the Chief Minister is proposing to give him, to reassess anybody virtually for as long as he cares to exercise his authority to do so, even beyond the six-year period during which the taxpayer is obliged to maintain his records under existing law, is an absurdity. I pointed out before that it was lacking in social justice, apart from anything else, and I think that the Chief Minister would be very concerned that that might be so.

I ask members to consider my amendment honestly and to have regard for the interests of the taxpayer. The Revenue Commissioner has at his command all the resources that he chooses to have. If he does not want to seek further inspectors and examiners to do the job, why should the taxpayer suffer the penalty? It is the responsibility of the Revenue Commissioner to determine whether an assessment is right or wrong. If he cannot do it in four years, I submit that he is not doing his job. He should not be given five, six, seven or eight years, depending on how long he might like to take to exercise the option that is available to him. I do not agree with it. I think that it is a reasonable thing to put a four-year limit on it. In any case, as I have explained, that is consistent with Commonwealth law. As I said during my speech in the in-principle debate, if the Commonwealth can satisfy its obligations in four years, in my view, there is no reason why the ACT Commissioner for Revenue cannot do the same. So, I ask members to consider this very carefully and not give the Revenue Commissioner and the Treasurer unlimited power to do whatever they consider to be right and proper at any time when they feel inclined to take the action. They should have a time limit on them. Four years is a reasonable time.

MS FOLLETT (Chief Minister and Treasurer) (8.19): Madam Speaker, I would like to repeat my opposition to Mr Kaine's amendment. I do not know whether Mr Kaine realises it; but, as I understand his amendment, it would actually reduce from six years to four years the period of time in which a refund of an overpaid assessment may be made to a taxpayer. I do not see how that in any way extends a favour to the taxpayers who may have been overassessed. For that reason alone, I believe that the Assembly ought to be satisfied with the Bill as it is currently drafted. It clearly gives the taxpayer that six-year period in which to get a refund, rather than the four years which Mr Kaine's amendment would envisage.

Madam Speaker, it might be helpful if I were to read out part of the Commonwealth's tax arrangements which Mr Kaine has quoted from. Section 170, headed "Amendment of assessments", reads:

(1) The Commissioner may, subject to this section, at any time amend any assessment by making such alterations therein or additions thereto as he thinks necessary, notwithstanding that tax may have been paid in respect of the assessment.

... ...

Madam Speaker, I think that the much narrower interpretation that Mr Kaine has been provided with is, as I said in my earlier remarks, not the entire picture. In fact, that four-year reference applies only to some specific circumstances, not to the general power of the Commonwealth in this tax Act. On the advice that I have, Mr Kaine, that four-year period applies and is able to be used only when the taxpayer has made a statement to the commissioner which has caused the commissioner to reduce an assessment. So, it is not a general provision.

Madam Speaker, I reiterate that the Government will be opposing Mr Kaine's amendment; but, as I have said, I am happy to keep this matter under review. I think it is a bit unfortunate that Mr Kaine has declined to talk to Treasury about this Bill. It is equally unfortunate that I do not have access to the comments from the Australian accounting societies that Mr Kaine has; so, we are not directly comparing each other's advice. Madam Speaker, I urge the Assembly to reject Mr Kaine's amendment.

MS SZUTY (8.22): Madam Speaker, I also have a copy of subsection 170(1) that the Chief Minister just quoted, which is the relevant section of the Commonwealth Act. On my reading of the provision, it is quite clear that it is open-ended. There is no four-year period specified in that provision. I am sure that that is the same advice that the Chief Minister has received. I would like to pick up a point that the Chief Minister made. She read from Part IV of the Commonwealth legislation, "Returns and Assessments", subsection 170(1), "Amendment of assessments". The Chief Minister also referred to the retention of records. At the moment, it is up to each taxpayer to retain their records for a period of six years. That seems to me to be a very sensible provision in the Bill. We are linking that six-year period in which the commissioner can amend assessments, if necessary, with the period for retention of records.

I would also like to mention fraud and evasion. I raised that matter when the Treasury officers briefed me on this Bill some weeks ago. The Commissioner for Revenue said to me that the commissioner would be able to detect fraud only in particular instances where the relevant documentation was retained by the taxpayer. So, the commissioner would have to have some basis on which to proceed if there were going to be amended assessments made in relation to some taxpayers' affairs. At this stage, on my assessment of the case presented by Mr Kaine in support of his amendment and of the Chief Minister's case in opposing the amendment, I indicate to the Assembly that I will be opposing the amendment moved by Mr Kaine.

Amendment negatived.

Bill, as a whole, agreed to.

Bill agreed to.

WORKERS' COMPENSATION (AMENDMENT) BILL 1994

Debate resumed.

MR DE DOMENICO (8.24): Madam Speaker, the Opposition will not be opposing the Bill. In fact, the Bill has been a long time coming. Mr Lamont would agree with that. It is nearly 10 years since he and I sat on a joint working party, at that stage convened by the then Minister, Tom Uren, to look at the anomalies in, and the ways in which we could improve, the ACT Workmen's Compensation Ordinance 1951, as it was then called. I can quite proudly say that the first thing that both Mr Lamont and I picked out was that the name was an anachronism and should be changed.

There are going to be interesting situations tonight because of the complicated way of dealing with amendments. The Government and the Opposition seem to be as one on most amendments that will be put forward, and I hope that we will work through those very quickly. The only area of disagreement relates to one particular clause. The rest of the amendments are consequential on other amendments. The particular amendment I refer to is my amendment No. 7, which relates to the termination proposal. In essence, what this Bill supposedly does is link occupational rehabilitation with the concept of termination. I say at the outset that the Liberal Party will not be opposing the legislation; we will be moving certain amendments. I will leave my further remarks to those amendments.

MS SZUTY: (8.26) Madam Speaker, I wish to note at the outset of my remarks on this Bill the very lengthy consultation and discussion process which has been going on now for some considerable time, as mentioned by Mr De Domenico. In his presentation speech, the Minister for Industrial Relations, Mr Lamont, described the process for the consideration of an occupational rehabilitation scheme undertaken by the Workers Compensation Monitoring Committee since 1991. At that time the Government encouraged all parties, including insurers, employers, unions and government representatives, to be involved in developing an appropriate scheme, which hopefully would have the support of all before it came into being. My understanding of the position now, some three years later, is that all parties have agreed on a rehabilitation protocol, but agreement has yet to be reached on the content of the Bill itself. It would be fair to say that agreement is not going to be reached at this stage. It is noted that the provisions outlined in the Bill are also interim provisions and may not necessarily reflect the provisions of the legislation in its final form.

Madam Speaker, I have no argument with the objectives of the Bill as proposed by the Government. The Bill aims to provide injured workers in the private sector with access to occupational rehabilitation. It contains provisions aimed at ensuring that employers more quickly commence weekly compensation payments to injured workers. It facilitates the termination of those payments to workers who are no longer entitled to receive them. It is simply commonsense that the early provision of occupational rehabilitation will assist workers, who are unfortunate enough to be injured, to recover more quickly from the trauma of an injury; thereby reducing the compensation costs payable because of the injury.

It is unfortunate that all parties have not been able to agree on the provisions of the legislation, given the very simple and straightforward objectives of the Bill. In early 1992 the Workers Compensation Monitoring Committee presented its scheme to the Minister for Industrial Relations. However, the scheme included a number of elements which were not supported by all parties. The proposal, as it stood, was released for public comment. Thirteen submissions were received, and all were critical of the proposed scheme; neither was any common direction articulated in the submissions which would have enabled an acceptable, revised proposal to be developed.

Towards the end of 1993 it was suggested that an interim scheme be decided on by the members of the Workers Compensation Monitoring Committee, pending the development of a final scheme at a later date. Unfortunately, as I mentioned earlier, agreement has yet to be reached on the provisions, although I understand that total agreement has been reached on the operation of the rehabilitation protocol. I am sure that the lack of agreement is, and has been, of the utmost frustration to the Government, which has been urging reform in this area for some time. It has even resulted in the Government taking an arbitrary approach to the resolution of the major issue in relation to the Bill. The Minister's presentation speech actually outlines the situation very clearly. I would like to quote this short section from the Minister's presentation speech:

Both insurers and unions agreed that a worker should be given eight weeks' notice before weekly compensation payments are terminated; but they disagreed about how the termination should take place. Insurers asked for the right to give a worker eight weeks' notice of termination of the weekly compensation payments. Unions asked that court approval always be required where the termination of weekly compensation payments was contested.

The Government has decided on a compromise position. The Bill provides that, for the first 12 months, insurers can unilaterally terminate weekly compensation payments by giving eight weeks' notice. After 12 months, court approval will be needed. Thus the Bill provides a 12-month window in which employers can readily terminate benefits in the way that they would envisage. This 12-month period enables the insurer to collect evidence and information and to determine whether they are, in fact, liable. At the end of 12 months the insurer can still terminate benefits but must seek court approval. This provides a measure of protection to the long-term, more seriously injured workers.

This is an arbitrary decision, and it satisfies not very many of the players in the process. It has been the major focus of much discussion and debate since the Bill was tabled in the Assembly on 25 August.

As agreement had not been reached by all parties regarding this issue and other provisions in the Bill at that time, I wanted further time to speak to all of the parties and seek their views about this legislation. I have done that. Over the last few weeks I have met with representatives of the Insurance Council of Australia, employer organisations, the Trades and Labour Council and government representatives, all of whom have been, or are, members of the Workers Compensation Monitoring Committee or have had a close association with its members. Each of these parties has been further developing and articulating their positions regarding the provisions of the Bill. As recently as this morning, I believe, the Government has been preparing amendments to the Bill based on the various positions of the parties. The Insurance Council, the employers and the Trades and Labour Council have proposed amendments to the Bill. As a final stage in the consultation and discussion process, at the end of last week I proposed that all parties get together, for a final time prior to the passage of the legislation, to talk through the final positions reached by each of the parties and to enable each of the parties to understand the final positions of the others. As I mentioned, Madam Speaker, this meeting took place this morning. Apart from an amendment which the Government proposed for consideration on deemed incapacity, the discussions, I believe, were largely fruitful.

Madam Speaker, if, by delaying the passage of this legislation for several weeks, I have facilitated the process whereby all the major parties affected by this legislation understand each other's position clearly and share an agreed understanding of most, if not all, of the provisions of the legislation, and completely disagree with each other about few, if any, of the provisions of the legislation, then the process has been worth while and the outcome perhaps a happier outcome than it otherwise may have been. I am pleased that agreement has been reached on the rehabilitation protocol. It has been reached only in the last few weeks. This augurs well for the future discussions on what the final scheme should look like.

It is also worth noting at this time that the Commonwealth Government, together with the States, intends to go through a process in relation to workers compensation issues which will seek to achieve greater uniformity among the States with respect to workers compensation legislation. This process has been decided on as a result of the recently published Industry Commission findings in relation to the issue. This issue, like the classification of materials issue which this Assembly debated during the September sittings, will be occupying the close attention of State and Territory jurisdictions and the Commonwealth Government for some years to come. I am pleased, however, that at this time some reforms with regard to workers compensation matters can proceed, for the benefit of workers unfortunate enough to be injured at their workplaces.

I finish my remarks on the Workers' Compensation (Amendment) Bill by pointing out that it has been put to me that the changes may involve a necessary education process to make sure that all the players in the field are actually aware of the changes which will be made to the legislation. If the Government is considering such an education program, I would urge them to do so at the earliest opportunity and to allay the fears that some representatives of the parties have about the level of understanding of and acceptance by the various players in the industry of these very important and complex matters.

MR BERRY (Manager of Government Business) (8.34): Madam Speaker, I am pleased to have the opportunity to speak on this important piece of legislation. The most important feature that we need to focus on is the rehabilitation issue. Whilst other issues concerning termination and so on have been the subject of debate for as long as I can remember, the occupational rehabilitation arrangements that will flow from these amendments are, in effect, more important for working people in the community, because they form part of that overall commitment by Labor that, in the first place, every effort is made to ensure - if I can use this term - that workers come home from work in the same condition as they left to go to work; and, in the event of a mishap, there is an obligation on employers and workers to be involved in a rehabilitation process which, in the end, makes sure, as far as possible, that workers are rehabilitated and able to live a normal life, irrespective of the extent of their injuries.

Perfection will be difficult, but it has to be considered against the background of the earlier legislation on workplace safety which was introduced into this Assembly. I think it was the first Bill that was introduced into this Assembly. That was the workplace safety legislation, which was introduced by Labor. We struggled to strengthen that through 1989. Eventually it was strengthened in 1991, when Labor came back into office. It is this longstanding commitment to workplace safety and better conditions for workers which I think will stand out in this first six years of self-government in the Australian Capital Territory. I said on radio this morning that it ought to be remembered as one of the gems, because, as a package, it will mean a lot to workers in the immediate future and in the long-term future. I trust that self-government will be thanked for this, among many other issues. This one stands out in terms of issues that relate to working-class people in the community.

The few words that I would like to say on this matter go to that fundamental issue of workplace safety and rehabilitation where all other efforts have failed to guarantee the safety of injured workers. It clearly demonstrates that this Government has a longstanding and everlasting commitment to improve the conditions which workers experience in the workplace. You can be assured that Labor will continue with that commitment while it is involved in politics, and I can assure members that that will be for a very long time. We expect that we will be in government for a very long time and will be able to move very quickly to ensure that, where changes are necessary, they occur very quickly.

I expect that this Bill will pass through this Assembly in a condition which will assist workers in the workplace. I congratulate those members who support those very important features of it. I congratulate the Minister for ensuring that it came before the chamber. All the effort that he has put into it has resulted in legislation which will, at last, comprise almost all of the package which forms that safety net, if you like, for workers in the workplace.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (8.39), in reply: I do thank members who have spoken during the in-principle stage of this debate this evening. Madam Speaker, it is somewhat propitious that Mr De Domenico and I stand this evening as the Minister and the Opposition spokesperson on this matter. Mr De Domenico and I were part of a team that in 1983 undertook a tripartite assessment of workers compensation in the ACT, and that committee bespoke great change that was necessary to the Workmen's Compensation Act. If my memory serves me correctly, there were some 32 amendments that we specifically proposed in 1983. It is appropriate, Mr De Domenico, that this evening you and I are involved in possibly the final act in the reformation of the Workmen's Compensation Act, as it then was, which is the final raft of amendments being debated in this house; for that is where we are at.

The great dissension between employee organisations and employers and their insurers over the years has been on the continuing relevance of the Barbaro decision as far as termination provisions under the Workers' Compensation Act, as we have come to know it, are concerned. Those Barbaro principles basically required that an insurer - or the employer, through their insurer - proceed to court to seek the termination of workers compensation payments to an injured worker. The amendments that are proposed tonight are groundbreaking, in as much as it is accepted that there is a unilateral right, given sufficient evidence, for an insurer to cease workers compensation payments upon eight weeks' notice to the injured worker. The quid pro quo, or the counterbalancing trade-off, if you like, in this legislation is that an occupational rehabilitation scheme will be introduced. The protocol that is outlined within the amendments that are proposed to be moved this evening will put in place an occupational rehabilitation scheme that will provide an impetus, if you like, for employers and their insurers to provide occupational rehabilitation; to rehabilitate injured workers; to ensure that they return to work as soon as practicable, and possible, within the limitations of their injury or within the limitations of their rehabilitation.

In assessing where the Workers Compensation Monitoring Committee had progressed these matters to, I was aware that an impasse existed between the Insurance Council, the employers and the trade unions - the members of that committee - and I took a decision that that impasse needed to be broken. I took that decision on the basis of trying to establish a reasonable, controllable, recognisable and verifiable regime that will exist over the next year for the termination provisions allowed under the Act. I established a year as the appropriate period after which this legislation would be reviewed, for two reasons. First of all, I proposed that there be an amendment that the payments of workers compensation to an employee cannot be terminated where that employee has been in receipt of workers compensation for longer than a year. That was the first principle. The second principle was that the legislation would be reviewed in a year's time. In trying to come to a compromise between the conflicting positions, I believed that giving a guarantee that the legislation would be reviewed, in terms of how it has been working, would satisfy the insurance industry and the employers that they had nothing to fear from the provision that I have outlined; that is, they would have nothing to fear from a provision that any employee in receipt of workers compensation for in excess of a year

could not have those payments terminated because the legislation will apply from the day that it is enacted and will apply to injuries sustained from that date. It will protect those employees who are in receipt of workers compensation payments under the existing provisions of the Act. It will ensure that their interests and their understanding of their entitlements are protected. It is for that reason that I have put the one-year qualifying period in the provisions that are before us this evening.

I understand that that has not necessarily enamoured these amendments to the Insurance Council or the employers, but I can assure both the Insurance Council and the employers that the change to the Barbaro principles has not necessarily enamoured me to the trade union movement. In fact, what I have had to say to them is, "Here is a reasonable compromise". The trade unions were saying, unilaterally, "No change to the Barbaro principles; no termination provision other than court action". The employers were saying that it should be open slather in relation to the length of time that an employee had been subject to workers compensation. I believe that what we have achieved, Mr De Domenico - if I look back upon our debates, discussions and decisions in 1983 - here in 1994 is a reasonable outcome to finalise that process.

This evening I will be opposing the two provisions outlined by Mr De Domenico. We will discuss those in specific terms as we reach the respective amendments. Let me say, however, Madam Speaker, that I value the contribution of Mr De Domenico, as I do the contribution of members of the Workers Compensation Monitoring Committee - specifically, the two officers from my administration who are assisting me this evening. I do so because a number of the amendments proposed by the Opposition and the Government are exactly the same. That is a product of the fact that we are talking to the same people. I acknowledge, Mr De Domenico, that I have accepted a number of the amendments that you have drafted. I will, in fact, be moving them as Government amendments to the Bill.

Mr Kaine: You obviously got it wrong the first time.

MR LAMONT: No. Mr Kaine, because of comments that you have made in this house in previous weeks I have had occasion to review legislation that you introduced when you were, unfortunately, foisted on the people of the ACT as Chief Minister. I have looked at the legislation and the amendments to that legislation that were necessary. I would suggest that you not say too much more; I would suggest that you not make too many more comments, or I will need to table your record in terms of the amendments required to legislation that you introduced.

I will not say too much more this evening, because these amendments reflect, I believe, a genuine consultation process. I hope that, after this evening's debate is concluded and these amendments are either accepted or rejected by this house, we can then look forward to reviewing the Act again to ensure that it remains relevant - relevant to not only the employees who are covered by the Act but also the employers and insurers who are required to carry out their obligations under the Act. In this in-principle stage I give one undertaking to those people who are listening, particularly the representatives of the Insurance Council and the insurers. I will not allow the Workers' Compensation Act in the ACT to fall into the disrepair that it was allowed to fall into in the period leading up

to 1983, and from 1983 to 1989, in terms of inactivity in relation to changes that occurred in that period. I find it absolutely outrageous that an Act that affects of the order of 54 per cent of the total number of employees in the ACT has been left, during an extensive period, to idle in a state of disrepair as far as entitlements or obligations are concerned.

I intend to ensure that the Workers Compensation Monitoring Committee and officers of my department - in fact, they support the administration of that committee - continually review the Act and interact with employers and insurance providers in the ACT and the trade unions to maintain a vibrant workers compensation arrangement in the Territory. I commend not only the specific provisions that will be debated further this evening but also the general concept of change that has been agreed to by all members of the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clauses 1 to 4, by leave, taken together, and agreed to.

Clause 5

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (8.56): Madam Speaker, I ask for leave to move amendments Nos 1 and 2, circulated in my name on the sheet marked "Supplementary A", together.

Leave granted.

MR LAMONT: I move:

Page 2, line 24, proposed section 15A, after the proposed definition of "occupational rehabilitation", insert the following definition:

""protocol" means a protocol approved under section 15E.".

Page 2, line 24, after proposed section 15A, insert the following section:

Appropriate, adequate and timely

"15AB. For the purposes of paragraph (b) of the definition of "occupational rehabilitation" in section 15A, services shall be taken to be appropriate, adequate and timely if they are in accordance with any relevant protocol.".

I present the explanatory memorandum marked "Supplementary A". These changes insert a definition of "protocol" in proposed section 15A and provide that, where an employer provides occupational rehabilitation services in accordance with the protocol, then those services are taken to be appropriate, adequate and timely, within the meaning of "occupational rehabilitation" in new section 15A. In effect, employers may discharge their obligation to provide occupational rehabilitation by showing that they have met the requirements of the protocol. Employers can choose not to follow the protocol, in which case they must discharge their obligation to provide occupational rehabilitation. That, quite frankly, is supported by all members of the Assembly - the Opposition, Ms Szuty and the Independent, Mr Moore.

Amendments agreed to.

MR DE DOMENICO (8.52): Madam Speaker, I move:

Page 2, line 28, proposed subsection 15B(1), omit "employer", substitute "employer's insurer or, in the case of an exempt employer, the employer".

Under this amendment, insurers are likely to have, on a day-to-day basis, more involvement with rehabilitation than employers per se. Consequently, the employer may not have the necessary basis upon which to form the required opinion. The section also lacks any input in terms of the employer's insurers. My amendment simply states that the employer's insurers should have more input than this Bill allows them to have. I am pleased to move that amendment, Madam Speaker.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (8.52): The Government opposes Mr De Domenico's amendment. Principally, the general thrust of the amendments as set out in the Bill is to place all obligations on the employer. The insurer then uses their right to step into the employer's shoes - and that is called subrogation - to take over the actual management of the claim. From our perspective, this is a neat and tidy process which avoids prosecution difficulties when providing evidence of the insurer's opinion when prosecuting an employer. The amendment would make the provision very difficult to enforce, as we will not know what the opinion of the employer's insurer is. The present wording does not present such a difficulty because it is technically the opinion of the employer that matters, and that opinion is required to be reasonably held. Of course, employers would need to consult insurers to determine whether they are liable, but that is not a difficulty facing the prosecution per se. From the insurer's perspective, I would have thought that this change was desirable. It avoids their difficulty of making sure that employers do not make payments without their agreement. However, such an inclusion would mean that the Bill was tending to regulate the arrangements between the employer and the insurer rather than between the employer and the employee, as intended.

Mr De Domenico's amendment is trying, in essence, to regulate the arrangement between the employer and the employer's insurer. That is not a provision that we see as being appropriate in an amendment to a workers compensation Bill. We say that what we should be regulating is the arrangement and the relationship between the employee and the employer; that, through subrogation, there is an obligation on the employer to make his arrangement with his insurer on a basis that the insurer is comfortable with; but that that should not necessarily be a matter provided for in the legislation, as proposed by the amendment moved by Mr De Domenico. On that basis, we will be opposing this amendment proposed by the Opposition.

MS SZUTY (8.55): I, too, will be opposing this amendment proposed by Mr De Domenico. I can understand where Mr De Domenico is coming from in terms of the insurers possibly having more information at their disposal than the employers under the particular circumstances; but, for me, it is interesting that this provision comes under the heading "Occupational Rehabilitation". I would have thought that it was the employers' primary responsibility in this area of occupational rehabilitation, rather than the insurers'. It is for that reason that I will be opposing Mr De Domenico's amendment in this instance.

Amendment negatived.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (8.56): I ask for leave to move amendments Nos 3 and 4, circulated in my name on the sheet marked "Supplementary A", together.

Leave granted.

MR LAMONT: Madam Speaker, I move:

Page 3, line 2, proposed subsection 15C(1), after "(4)", insert "and any relevant protocol".

Page 4, line 5, after proposed section 15D, insert the following sections:

Approval of protocol

"15E. (1) The Minister may, after consultation with representatives of employers, unions and insurers, by instrument, approve a protocol or an amendment of a protocol relating to occupational rehabilitation.

"(2) A protocol may make provision in respect of the following matters:

(a) the requirements for an occupational rehabilitation policy;

(b) when occupational rehabilitation is appropriate, adequate and timely;

(c) the settlement of disputes;

(d) the fulfilment of parties' responsibilities under this Part;

(e) any other matter that is necessary or convenient to be so dealt with for the carrying out of or giving effect to this Part.

Disallowance

"15F. An instrument under section 15E is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Publication

"15G. (1) The Minister shall cause to be published in a newspaper published and circulating in the Territory, as soon as practicable after making an instrument under section 15E, notice of that approval -

(a) specifying a place or places at which copies of the protocol to which the approval relates may be purchased; and

(b) specifying a place or places at which a copy of the protocol may, at any reasonable time, being inspected.

"(2) The Minister shall ensure that -

(a) copies of the protocol to which an approval under section 15E relates are made available for purchase at each place specified for that purpose in the relevant notice under subsection (1); and

(b) a copy of that protocol is, at any reasonable time, available for inspection at each place specified for that purpose in the relevant notice under subsection (1).".

These proposals insert a requirement that employers' occupational rehabilitation policies which are required under the Bill must be in accordance with the protocol approved by the Minister. New sections are inserted providing for the approval of the protocol, which is new section 15E; making it a disallowable instrument, under new section 15F; and requiring it to be published and available for inspection, under new section 15G. This protocol and the changes to it will be subject to Assembly scrutiny. In approving the protocol, obviously, as Minister, I will undertake my obligations - and ensure that they are implemented - to consult with the employers, their insurers, employees and unions in the ACT.

MS SZUTY (8.57): I think it is commendable, on the part of all the players who have been working hard at improving the Workers' Compensation (Amendment) Bill, that we in the Assembly today are considering these amendments which establish the rehabilitation protocol as part of the Workers' Compensation (Amendment) Bill. As I said in my remarks during the in-principle debate on the Bill, it is a credit to the players involved in the process. I am very pleased that the Assembly is able to consider these amendments during the debate today.

Amendments agreed to.

Clause, as amended, agreed to.

Clause 6

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (8.58): Madam Speaker, I would indicate that Mr De Domenico and I have tabled identical amendments to this clause. First of all, I thank Mr De Domenico for his amendments. I indicate that, after discussions with him and between officers of my department and the relative bodies, we have arrived at the same position. Therefore, I acknowledge the amendments proposed by Mr De Domenico. I present the explanatory memorandum to the amendments and move:

Page 4, line 11, proposed section 26A, after "employer", insert "(not being an exempt employer)".

These changes basically make provision for self-insurers who do not have an employer's insurer. I again wish publicly to acknowledge the fact that the issue was originally raised by Mr De Domenico and the Opposition in an attempt to seek clarification of this provision. The Insurance Council and Mr De Domenico are correct. The Bill was deficient in regard to these provisions. I am happy that I have received the same advice through the same areas. That is why I have moved the amendment today. I think it is sufficient to say that the position of self-insurers was fundamentally overlooked when the Bill was prepared.

Amendment agreed to.

MR DE DOMENICO (9.00): Madam Speaker, I thank the Minister for his kind acknowledgments. I now move:

Page 4, lines 17 and 18, proposed section 26B, omit "within 28 days after the day on which the worker lodges the claim with the employer", substitute "within the prescribed period".

Once again, the Government has given an indication that they will be supporting this amendment; so, I need not waste the time of the Assembly, except to say that I thank the Minister for his intention to support this amendment. I leave it at that.

Amendment agreed to.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (9.01): Once again, we have arrived at a position where there are a range of proposed amendments by the Opposition and the Government that are consistent. Again, I acknowledge the assistance of the Opposition and the Workers Compensation Monitoring Committee in their work on these amendments that are before us this evening. I seek leave to move two amendments together.

Leave granted.

MR LAMONT: I move:

Page 4, line 19, proposed section 26B, after "insurer", insert "(if any)".

Page 4, line 20, proposed paragraph 26B(a), omit the paragraph, substitute the following paragraph:

"(a) commence making weekly compensation payments in accordance with Schedule 1; or".

My amendments and Mr De Domenico's amendments are identical. It is a technical drafting change, which makes the Bill more correct, Madam Speaker.

Amendments agreed to.

MR DE DOMENICO (9.02): I move:

Page 4, line 22, proposed section 26B, add the following subsections:

"(2) The making of weekly compensation payments to a worker in accordance with paragraph (1)(a) shall not be taken to be an admission of liability in relation to the worker's claim for compensation.

"(3) In subsection (1) -

"prescribed period" means -

(a) in relation to a claim lodged by a worker with an exempt employer - the period ending at the expiration of 28 days after the day on which the worker lodges the claim with the employer; or

(b) in relation to a claim lodged with any other employer - the period ending 21 days after the day on which the employer lodges the claim with the employer's insurer.".

If the employer, in the circumstances, does not forward to the insurer the claim form as required by section 26A, so that the insurer is not aware of the claim - he has a minimum of 21 days to investigate and, in some cases, he may not be aware of the claim until more than 28 days have elapsed since the claim was lodged with the employer - the insurer will not be in a position to make the decision necessary under section 26B. The clause, as drafted, requires written notice to reject the claim and gives rise to an interpretation that, if written notice is not given, the claim is therefore accepted. Further, paragraph (a) refers to "payments claimed". This may not be the same as the worker's entitlement. This should be amended to refer to the basis upon which compensation is paid. My amendment will solve that sort of situation. I believe that in relation to this amendment the Government intends to oppose subsection (2) but support subsection (3).

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (9.04): Mr De Domenico has identified the Government's position correctly. When I looked at the proposed provisions in this amendment I found difficulty in accepting subsection (2). I have already accepted the thrust of subsection (3) in an earlier amendment. It proposes that, if an insurer accepts liability and makes payment, it is not an admission of liability under the Act. That, in essence, is what subsection (2) in this amendment would provide. I find that unacceptable, as far as the construction of subsection (2) is concerned, because it basically says, "Yes, the employer and the insurer, inter alia, accept an obligation to pay but do not accept that there is a liability". On that basis, I am proposing that the Assembly oppose subsection (2) in Mr De Domenico's amendment and support, as I have said, subsection (3) in his amendment, which is the "prescribed period" definition. It has already been accepted by the Government in a previous amendment.

MADAM SPEAKER: In effect, are you moving an amendment to Mr De Domenico's amendment, Mr Lamont?

MR LAMONT: Technically, yes. However, in dealing with the matter now before the Assembly, it is felt that it would be better to split Mr De Domenico's amendment. There is a provision which would allow us to vote separately on each of the subsections - in other words, subsection (2) and subsection (3) - in his amendment. The standing orders do allow for that.

MADAM SPEAKER: Yes, they do. You either divide the question or move an amendment.

MR LAMONT: Madam Speaker, I propose that the question on subsection (2) and subsection (3) in Mr De Domenico's amendment be divided and be voted on in that order.

Ordered that the question be divided.

MS SZUTY (9.07): I have been following this debate rather intently. I think Mr De Domenico's amendment is somewhat unnecessary. However, when I look at new section 15B, which is about occupational rehabilitation, it contains subsection (2), which states:

The provision of occupational rehabilitation to a worker shall not be taken to be an admission of liability in relation to the worker's claim for compensation.

It could be argued that all Mr De Domenico is doing is reiterating that particular provision in the termination provision of section 26C. However, on balance, I believe that it is not necessary to have it there; so, I will oppose the amendment.

MADAM SPEAKER: The question is: That the addition of proposed subsection 26B(2) in Mr De Domenico's amendment be agreed to.

Question resolved in the negative.

MADAM SPEAKER: The question is: That the addition of proposed subsection 26B(3) in Mr De Domenico's amendment be agreed to.

Question resolved in the affirmative.

MR DE DOMENICO (9.08): Madam Speaker, I move:

Page 4, lines 24 to 29, proposed subsection 26C(1), omit the proposed subsection, substitute the following subsection:

"(1) An employer may, subject to arbitration in accordance with Schedule 4, terminate or vary weekly compensation payments to a worker by notice to the worker in accordance with subsection (2) if, in the opinion of the employer's insurer or, in the case of an exempt employer, the employer, based on reasonable grounds, the worker is no longer entitled to receive the payments.".

Madam Speaker, as Mr Lamont said before, I am delighted to have this opportunity to participate in the debate on this Bill, especially this clause, particularly as some of the issues have been under discussion without resolution for over 12 years. Since the 1951 ordinance there have been only limited changes to the legislation, as Mr Lamont said before. Other States and Territories have undertaken reviews of their legislation which, in some instances, have been quite radical.

Despite the comparatively small size of the premium pool in the ACT, the benefits under the ACT scheme have been maintained. No common-law restrictions have been imposed; no gates or barriers to benefits have been created. Consequently, in dealing with this Bill and the amendments - especially this one - it should be recognised that they do not strike at workers' basic rights but attempt to bring some balance to what many would consider an anomalous situation. As a consequence of the decision in the Barbaro case mentioned by Mr Lamont - the Barbaro case was in 1980 - there has been an ongoing impediment to the delivery of benefits in the compensation process. The effects of this case are that, once compensation payments commence, they cannot be terminated without the order of the court, unless a worker has returned to work or accepts that he or she is fit for work. Consequently, an employer or insurer will be cautious in making that initial payment as, once the benefits commence, there is no capacity for reconsideration, other than through the court process. We know that in the ACT that could be a long and arduous process.

Madam Speaker, this must lead to delays and, in the absence of quick access to courts, fast-tracking facilities to sort out issues. Pending a full hearing of these issues in court, the initial decision making process must be tempered by a high degree of risk. In the main, disputes about compensation entitlements flow from matters that relate to causation or to the nature and degree of incapacity. There are issues that go to the facts of causation; professional opinion on the medical condition, as to both its nature and its continuation; or lay evidence that the worker is, in fact, functioning in a way otherwise than claimed. When the court finally comes to decide the disputes and issues, there is no order for restitution of benefits received to which there was no entitlement. Apart from bringing proceedings for fraud that carry the criminal onus of proof, there is little prospect of recoupment of benefits paid. The termination clause in this Bill recognises this inequity. However, its provisions do not address the problem adequately. An eight-week notice period before cessation of benefits would, by comparison with all other legislation, be considered very liberal.

Madam Speaker, at this stage, it is worth while noting the provisions in the other States and Territories. Keep in mind that in the ACT, under this provision, there is eight weeks' notification. In Queensland, payments are reviewed by the Workers Compensation Board and payments can be terminated, decreased or increased at their discretion. In South Australia, in general, the corporation can terminate a worker's payments 21 days after the issuing of notification; the worker has the right to appeal and, if done within one month, payments continue or are back-paid until the matter is heard by the review officer. In Western Australia employers and workers can apply to the directorate to review payments - discontinue, reduce or increase them. If the employer satisfies the directorate, then the directorate can reduce or terminate payments by that employer giving 21 days' notice, at which time the payments alter. The worker can dispute within 21 days that payments should continue until reviewed by the directorate and the outcome is determined.

In Tasmania, employers can terminate payments after notification of 10 days; notice and certificate must be served on the worker before termination or reduction takes effect. In the Northern Territory, 14 days' notice of reduction or cessation of payments is required. In New South Wales, which I think we should be really reflecting on, the employer can terminate payments on a three-tiered format. On payments for less than

12 weeks, there is immediate termination; on payments between 12 weeks and 12 months, two weeks' notification; and on payments in excess of 12 months, six weeks' notification. A worker can dispute this process through the review of weekly payments at the Compensation Court. That is the situation in New South Wales. In Victoria the employer can terminate the worker's payments after 14 days' notice if incapacitated for less than 12 months, or 28 days' notice if incapacitated for more than 12 months. Once again, the worker can appeal the decision through the higher courts. Madam Speaker, my amendment brings the ACT into some sort of mutual recognition with the States. Ms Szuty stood up in this place not 15 minutes ago and quite correctly said that currently the Commonwealth, through the study by the Industry Commission, is looking at uniformity in workers compensation provisions. I suggest to the Assembly that this amendment of mine will give a true termination provision per se. The provision in the Act, as it stands, is, in my opinion and the opinion of the Opposition, really a Clayton's termination, because it is saying that, on the one hand, it is okay to terminate within 12 months but, on the other, it is not okay to terminate after 12 months.

I accept the fact that the Minister has given his assurance that this legislation is going to be reviewed, but what I am suggesting that the Assembly should consider is: If we are really fair dinkum about getting mutual recognition processes through the Australian parliaments, especially here in the ACT, let us now look very carefully at making sure that we are in line with what is happening in other States and Territories. I would be very anxious to see what is happening in Comcare under the Commonwealth scheme, too, because I feel sure - in fact, I am very confident - that there is no such provision of limiting termination to 12 months in the Comcare scheme. Therefore, what that reflects is that in relation to 46 per cent of workers in the ACT the employer, the Commonwealth, is able to terminate without the restriction of the 12 months period; yet, as Mr Lamont quite correctly said, 54 per cent of workers are not subject to a true termination provision.

The amendment removing the 12 months requirement will give the Bill some meaning and will be consistent with those other provisions and amendments proposed regarding the lodging of claims and actions and decisions to be made by exempt employers and insurers. The vast majority of claims are paid relatively promptly, notwithstanding the possible complications explained. It should be appreciated that the smallness of the premium pool means that there is not the capacity to sustain the unnecessary haemorrhage of funds. Where these costs are borne by exempt employers, they must be reflected in prices, as must any adverse effect on premiums for insured employers.

The amendments in the Bill in relation to termination do not impact on the vast majority of claimants. They do, however, bring back balance to the substantive legislation affected by the Barbaro case. There has been a long process of discussion between a range of parties that proved inconclusive, as the Minister said; and there was no concurrence to the requirement of the 12 months benefit provision. However, it is understood that the eight weeks notice period did ultimately receive some support. I am not suggesting that that support was unanimous. This was based on the proposition that it allowed a worker to take all the steps necessary to return to work, find alternative work, or obtain social security benefits for either unemployment or sickness. Furthermore, such a generous period - as I have outlined, it is more generous than that in any other jurisdiction in the country - would allow adequate time for consultation with the worker's union or solicitor.

In relation to those provisions for rehabilitation, I would like to comment that early rehabilitation and return to employment has a number of advantages. It gives economic benefits both to employers and to workers, as well as maintaining the self-esteem of those who have had the misfortune to have had a work-related injury. It is also pleasing that the provisions do not promote an excessive bureaucratic approach; and the Minister is to be congratulated for that. I am confident that full support will be given to these measures. I recommend this particular amendment to the house, Madam Speaker, because, as I said, it brings the ACT into some sort of line with other jurisdictions.

Mr Berry: You have fallen into the trap of just picking bits out of other jurisdictions.

MR DE DOMENICO: Mr Berry, I will not take that interjection from you. At least one thing I can say, Mr Berry, is that this Minister did take some action and did something about bringing these amendments to this house, whereas you had them for three years and did nothing, as usual.

Mr Berry: I think the record shows that that is not true.

MR DE DOMENICO: I am suggesting, Mr Berry, that you butt out of the debate at this stage, because it was going along very well until you decided to make that interjection. Whilst I know that the Government is not prepared to support my amendment at this stage, I want to put on the record that I am very anxious to make sure that we try to do the right thing by bringing the ACT into line not just with the other State and Territory jurisdictions but also with Comcare, to make sure that private sector employers in the ACT are placed at no disadvantage in comparison to their peers either interstate or in the Commonwealth. I commend my amendment to the house.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (9.18): Madam Speaker, the Government opposes Mr De Domenico's amendment. Let me speak very frankly. The reason why insurers are involved in the provision of workers compensation cover is to make a quid. They are a business; they need to ensure that the odds that they include within the liabilities under the workers compensation policies - the margins that they include, the cost structures - allow them, quite properly, to make a dollar. I do not in any way denigrate them for operating commercially within a particular market providing this type of service, for without them where would we be?

Mr Stevenson: In real trouble.

MR LAMONT: We certainly would, and I acknowledge that. But I also acknowledge that, historically, workers compensation and what it means to employees goes beyond that concept. We have seen, within all jurisdictions in this country, an acknowledgment that workers compensation management arrangements need to be put into place on a social justice basis to provide straight-out social justice to injured workers. That is what a workers compensation Act does. It provides a reasonable basis upon which a worker, injured at the place of work of their employer, can legitimately expect to be covered for that injury; to be able to keep body and soul together; to be able to provide for their family. These are basic principles that I do not believe need rearguing. What does need

to be reargued, and what I as Minister have accepted, is the question of how, within an Act, we provide that the relationship between the employee and the employer ensures that we can continue to provide the insurance cover for those workers to attain those social justice outcomes, and to attempt to ensure that the employer, in terms of bearing the cost at the end of the day - it is not the insurance company that bears the cost; it is the employer that pays to cover these contingencies - is not adversely or, beyond reasonable cost, required to expend their resources.

When you look at what the Barbaro provisions provided in the ACT, there is an argument by the employers and the insurers that the Barbaro principle, under the existing Act, creates an impost upon the employer and, inter alia, the insurance industry, which they should not be required to bear. An extremely cumbersome process was required to be undertaken by an insurer, if, after admitting liability by payment of weekly compensation, they were reasonably of the opinion that there was no continuing liability. What happened? They went to the courts; it cost them an arm and a leg; and half the time they got thrown out, for one reason or another. That was basically the argument, Mr De Domenico. It was an economic argument about what the cost of that arrangement was for insurance premiums in the ACT.

In taking that on board, we asked, "What is a reasonable way in which to develop a more enlightened approach?". We said, "There are probably two things that are necessary. First of all, an injured worker should have a reasonable expectation of workers compensation; he should be able to receive that workers compensation in a timely fashion". We said to the employer in these amendments, "Mr Employer, Mrs Employer, Ms Employer, you must, within seven days of receipt of a claim for workers compensation, forward that to your insurer. Insurance company, you must, within 21 days of receipt of that, either admit or deny liability". That then allows other processes to take place.

We then have a proposition which says, "What happens if the insurer admits liability in the 21 days, but six months later, through evidence provided to them, decides that they should not have liability continuing? What should they do about it?". On one hand, I suppose that I could take the view that the insurer says, "Bugger off; no more payments; no notice; just cut; finished; over and done with; unilaterally; a business decision; bang, not entitled to continuing payment". That is regarded as being unreasonable. It is regarded as unreasonable by the employer; it is regarded as unreasonable by the insurance industry; and it is regarded as unreasonable by the employee organisations. Therefore, I said, "Okay, the eight-week proposition is reasonable". An insurer, in a reasonable position of confidence, says, "I have reasonable grounds to terminate your continuing compensation; here is your notice, and in eight weeks' time it is finished". Eight weeks allows the employee to go to their trade union or to their solicitor for advice to test, if you like, whether or not the decision of the insurer is an appropriate decision. If they wish, that then gives them time to go to court to seek a stay in the termination provision.

Until now, I think everybody was with me. I then said to the trade unions, "What happens when a person is in receipt of compensation for 12 months, and the insurance company and the employer have done nothing, they have done sweet bugger-all, in assessing whether or not there is a continuing liability?". I use that term because that was precisely the term that was used by one of the trade unions in trying to reinforce to me the position about the 12-month requirement and why an employee in receipt of workers compensation, with an expectation of that continuing, after a year, should be the subject of a notice. After a year, when the insurance company and the employer have done nothing to really assess the appropriateness of the continuing arrangements, why should the employer then decide, "Oh, it is starting to cost me a bit much. I will have a look at it now."? Who wears the cost of that arrangement? Mr De Domenico, every employer in Canberra wears that cost where an insurance company is not prepared to review its case arrangements and case load in a timely and appropriate fashion.

What happens when, as we all know, insurance premiums go up? That cost across the industry is borne by, and there are some lateral consequences upon, employers who say, "We have this great cost impost upon us". The insurance companies themselves say, "Look, we are not going to work like that. What we want to do is get in, assess individual claims, and deal with them in a timely and professional manner". That is fine. They should do so in the year that is provided for in this legislation. If you cannot do that within a year, "Look to thyself, physician" is the answer that I would give to those insurance companies.

But I have also suggested that a year is an appropriate compromise, to convince the unions to accept the termination provision. The underlying position of most of the unions was, "Why should we change and give up, on behalf of workers in the ACT, an existing provision which says that on all occasions you should proceed to court; and there is no termination?". That was the position. It was a good old-fashioned horse-trade on my part, which attempted to break the deadlock that existed between members of the Workers Compensation Monitoring Committee. On the one hand, there was the attitude that I cited and the words that I uttered before, which was the perception of the unions. On the other hand, there was a perception by the employers and their insurers that the unions were not prepared to reasonably compromise. In putting these amendments to the Act, I have had to try to steer the middle course; to bring them both to a position which allows us in a year's time to review the way in which the new provisions operate.

Mr De Domenico, the new provisions will apply to claims that are accepted on day one of the operation of the new Act. They will not apply to admissions of workers compensation liability that applied under the old Act. Do you understand that difference? What we are saying here is, "Firstly, we are going to review the operation of the termination provisions at the expiration of 12 months; secondly, if somebody is in receipt of workers compensation for in excess of 12 months, you cannot terminate their payments without going to court". The reality is that, notwithstanding the trade-off that I have outlined, it will be at the review process that we assess what has happened with terminations before an insurer is prevented from terminating the payments to an employee. I would have thought that that would have provided a measure of comfort. It provides a measure of comfort for the unions, which says, "If it is 14 or 15 months before the actual review is conducted, anybody over 12 months is still covered". It says to the insurers that at the end of 12 months this will be reviewed.

Another provision in relation to the administrative arrangements is that every time an employee receives a termination notice the nominal insurer will also receive a notice. In a year's time there will not be anecdotal evidence. Prejudice will not be used as the basis of argument about where we should be going. It will be factual. There will be a factual, realistic assessment of what has happened in the previous 12 months We will know the number of terminations that have occurred. We will know the circumstances in which they have occurred. We will then be able to assess the effectiveness of these provisions and where we should go to. It also means, at the same time - this is the quid pro quo, Mr De Domenico - that we can assess the effectiveness of the occupational rehabilitation program.

ADJOURNMENT

MADAM SPEAKER: Order! It being 9.30 pm, I propose the question:

That the Assembly do now adjourn.

Mr Berry: Madam Speaker, I require that the question be put forthwith without debate.

Question resolved in the negative.

WORKERS' COMPENSATION (AMENDMENT) BILL 1994
Detail Stage

Clause 6

Debate resumed.

MR LAMONT: For all these reasons, Mr De Domenico, I reject your amendment. I do so because of the history that I have outlined. I also do so because of the prejudice that exists in relation to the relative positions about workers compensation in the ACT. I publicly acknowledge that there have been positions that have been arrived at through particular history and, dare I say, as I have, prejudice. I hope that, at the end of this 12-month period of these new provisions, we can sit down and, without rancour and without some of the emotiveness that has been the hallmark of discussions over the last 13 years, finally get to a base workers compensation arrangement that suits all parties in the ACT.

MS SZUTY (9.32): I will be brief because I think both Mr De Domenico and Mr Lamont have covered very well the arguments in relation to this matter. In fact, I think it is appropriate that the substantive debate in relation to the Bill is actually occurring at this point of time, and that is around the eight-week termination clause, which is linked to the provision about court approval being needed to terminate payments after 12 months.

The other issue that is proposed in Mr De Domenico's amendment refers to the variation of weekly compensation payments. Certainly, I think it is the first instance in Mr De Domenico's amendments where that matter has come up. For all the reasons that Mr Lamont has gone into, I do not support a proposal which would indicate that variations to weekly compensation payments could be made based on the opinion of the employer's insurer; or, in the case of an exempt employer, based on reasonable grounds that the worker is no longer entitled to receive the payments.

In terms of the eight weeks period, I do take Mr De Domenico's point that all of the other States and Territories have a shorter period for those terminations to take place. However, it has certainly been put to me that the eight weeks provision is based on the length of time that it can take to receive benefits from other sources, including the unemployment benefit. For me, the issue goes back to the heart of what we are really talking about - the facilitation of the occupational rehabilitation of workers. It seems to me that, if workers understand that they have consistent levels of payment coming in to support themselves and their families when they are injured, that is a very sensible provision. It seems to me that, if workers compensation payments are terminated at an earlier stage, the employee then has to wait until payments from other sources come on line. That would be an extremely stressful period for the worker in that particular family and would be a position that I certainly would not want to see supported.

While I take Mr De Domenico's point that the termination period is longer in the ACT than is allowed for in other jurisdictions, I would certainly hope that, when the States and the Commonwealth come to discuss the uniformity of workers compensation provisions, they will look very carefully at what we have established in the ACT and perhaps accept, both at the Commonwealth level and at the States level, that eight weeks is an appropriate period for those workers compensation payments to continue.

MR DE DOMENICO (9.35): Madam Speaker, I need to comment briefly in turn on what Mr Lamont and Ms Szuty had to say. Mr Lamont quite rightly said that most companies in the private sector do operate to make a quid; and it was heartening to hear that he did not find anything wrong with people making profits. Mr Lamont also talked about social justice; and once again it sounded very good. We in the Opposition - and, I am sure, Ms Szuty and others - would say that, yes, it is perhaps socially more just in the ACT, where the provision of the eight weeks notification is in existence; and there is nothing against that.

Mr Lamont also talked about keeping body and soul together. No-one would deny workers, or anybody else, the right to keep body and soul together; there is no argument about that as well. Mr Lamont also mentioned the plight of the employers; and it is interesting to note that the employers are also very much in favour of the removal of the 12 months provision that Mr Lamont has alluded to. But he will not support my amendment. Mr Lamont went on to say that after a one-year review it would be, in his opinion, easier to see what has been going on in terms of occupational rehabilitation

and in terms of termination. That assumes, of course, that all insurance companies fail to review their claims at appropriate times. I am suggesting that that is not the case and that, in fact, one out of a hundred claims would be in that sort of situation, Mr Lamont. I think the real issue is: What if an employer, an insurer or somebody else finds out after the 12 months period that someone has been receiving payments that they should not have been receiving?

Mr Lamont: Go straight to court.

MR DE DOMENICO: It is after 12 months. The insurance company and the employer have continued to give the employee the benefit of the doubt. I am glad that Mr Lamont interjected, "Go straight to court", because now we come to the true centre of this debate. There are two points. One is logic, and the other is politics. Both come into it. If we are going to accept logic, what we are saying is that termination is all about the Barbaro provisions, as they currently stand, not being good enough. What the Government's legislation is saying is that Barbaro is no good up to 12 months; but after 12 months Barbaro is okay. To me, that just does not make sense.

If we are trying to remove the Barbaro provisions by allowing a termination clause - surely, as in every other jurisdiction - if we agree that we are going to have a termination clause, let us have a real termination clause, not a Clayton's one. Now the politics come into it, because, as Mr Lamont would be aware, at one stage everybody, including the unions, agreed to a termination provision without the 12-month proviso. However, on the return to the committee of a particular unionist, the unions changed their mind. That is the reality of the situation. Until that time there was agreement, as I understand it, between all parties that termination should be linked with rehabilitation and that termination should not have the 12-month proviso. On the return of a particular representative to that workers compensation committee, the view of the unions changed. That is fine. Mr Lamont, in his wisdom, decided to try to steer the middle course, and came up with the 12 months provision. My logic and commonsense say this: Why is it that the ACT, and only the ACT, has a termination provision with the 12-month restriction, if we are all talking about, and nodding our heads about, mutual recognition, uniform legislation and making sure that employers and employees in the ACT are no worse off and perhaps no better off - slightly better off, because they are better off under this legislation; but certainly no worse off - - -

Mr Lamont: Substantially better off.

MR DE DOMENICO: Okay, I agree; substantially better off. But let us look at the realities of New South Wales, particularly Queanbeyan, which is just over the border. Reality tells me and logic tells me - if you think Barbaro is no good and, therefore, you say, "Let us remove the Barbaro provisions by having a termination provision." - to ask, "Why is it that Barbaro is no good up to 12 months but seems to be okay after a 12-month period?". That, to me, makes no logic and makes no sense. I suggest that Ms Szuty should think very seriously about that argument, in particular, before we take a vote on the clause.

MR BERRY (Manager of Government Business) (9.40): I think Mr De Domenico's comments highlight the gulf between the Liberals and their philosophy on these matters and the Labor Party and how it has dealt with employers and unions on this issue. The consultation phase went for a long period. In the early stages one group was saying that Barbaro was here forever, for everybody. On the other side, people said that it should go and that the payments should be able to be terminated by the employer or the insurance company at a moment's notice. Over a long period of time - and Mr De Domenico, I think, would be the first to agree - there were differences between the parties which seemed, at first, to be beyond reconciliation; there just did not seem to be a chance of sorting the issue out.

As time passed, with the efforts of various players, an accommodation was reached on all those issues. Part of it, as has been mentioned, was that very important issue of occupational rehabilitation. That had to form part of it. That was fair enough. At the end of the day we have ended up with a package of amendments which keep all the players reasonably happy. You would receive acknowledgment from all of them that the consultation phase surrounding these changes was a successful one, because it led to a change which all the players will be able to live with. I think recognition has to be given to the completeness of consultation and how it was able to deliver a change which is reasonable in all the circumstances.

I think that to try to strike out, say, the Barbaro issue altogether is a little naive, given the track record on this issue. The Barbaro decision assists after 12 months in that, if an employer wants to terminate, he or she can go through the channels which he or she has been going through over the years. I do not think it will affect outcomes much. Mr De Domenico raised the issue: Where an employer or an insurance company discovered that an employee was not entitled to workers compensation, what would they do after 12 months? They would go off to the courts. If the employer or the insurance company made out a good case, then the courts would rule in their favour. What is wrong with that? Not a thing. I think this has been a very successful consultation phase on an issue that was very difficult, where people were polarised at the outset. Maybe they were worn down by time; but at the end of the day people came to the conclusion that there was another range of options which would suit them and bring about change, which would assist in putting together a better package for everybody. In the case of occupational rehabilitation, it was a much better package for workers in the workplace. I think it ought to be supported wholeheartedly.

MR STEVENSON (9.44): There is one point that has not been specifically talked about, although it may have been referred to in another way, and that is that, if someone is falsely claiming compensation, there is the question of recovery of the money that has been paid by the insurance company. After all, when we get down to it, we do agree that insurance companies are in business. If they do not make profits, they do not run the business. If they do not run the business, the people that are being insured do not get the benefits. Every time there is a false claim on the insurance company, premiums rise, and there are fewer people that can afford those premiums. If you look at the number of people that do not insure their motor vehicle - something as basic as that - you understand that clearly.

Mr Lamont: Or do not register them.

MR STEVENSON: Some are not registered because people have had their registration cancelled through an injustice.. A similar situation applies to drivers licences. There are unlicensed drivers all over the ACT because of the non-payment of fines. There are some highly indignant people because of an injustice in that area. That is something that should never have happened. When that legislation was debated, I mentioned that there were a number of scenarios that we could look at that would result in people having their licence and registration cancelled through an injustice. That was not looked at. Then it happened. Then we made some changes. It should never have been done in the first place.

Mr Lamont mentioned earlier that one person in a hundred would be enough. You are right. But how many are falsely making claims? Is it one in a hundred, or is it more than that? On your principle, one in a hundred would be enough.

Mr Lamont: There is a procedure to take that into account.

MR STEVENSON: Okay; but it has not been mentioned, and it is vital. Did you mention recovery?

Mr Lamont: The issue was covered in the issues that - - -

MR STEVENSON: No; I did not say that. I said that it may have been covered in another way. But recovery is not mentioned. You talk about justice. The point you miss is that Mr De Domenico's amendment covers that more fairly than what you have.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (9.47): Madam Speaker, very briefly, I reject Mr Stevenson's argument in relation to that issue. The questions of fraud and fraudulent claims are dealt with under a range of provisions in our legislative armoury in the ACT. The question that Mr De Domenico raises is: Is there a principle that applies for 12 months which is different from the principle that applies after 12 months? The answer is simply, "Yes". I have not resiled from that position. The reason why it is the position is that I have needed to maintain the provision beyond the year, and to give up the provision, if you like, up to the year. On the one hand, all I am saying is that the Barbaro principle, as you wish to put it, will apply for claims that are over a year old. In essence, yes. But I needed to maintain that in order to gain reasonable agreement to scrub it in the period up to 12 months, Mr De Domenico.

I have also said that, in one year from the implementation of the legislation, we will review how the termination arrangements have acted. Not only will we do that; we will also look at the continuing obligations that have accrued under the old Act, to see how it is operating in regard to claims that are over 12 months old and that have extended for a period of longer than a year. Quite frankly, if it is one person that we are talking about, then so be it. I would have presumed, if I use Mr De Domenico's logic, that, if we are talking about only one claim that has exceeded the period of 12 months, then the amount

of inconvenience, disruption or dislocation is absolutely minimal. That is the logic of your argument, Mr De Domenico. If what you are saying to me is that 99 per cent of cases will be dealt with by insurers in the first 12 months, that is great. Why do you have a problem with what we are proposing? If it is one per cent of cases that go beyond 12 months, so be it. If that, unfortunately, is the horse-trade, to arrive at a general agreement - as much as I can get - in relation to these changes, then so be it.

MR DE DOMENICO (9.49): Madam Speaker - - -

MADAM SPEAKER: You will need leave to speak this time, Mr De Domenico. Is leave granted?

Leave granted.

MR DE DOMENICO: Very quickly, Madam Speaker - - -

Mr Lamont: I think I have the nine votes, Tony.

MR DE DOMENICO: Mr Lamont, you may have nine votes.

Mr Connolly: You said, "Very quickly". Be very quick.

MADAM SPEAKER: Order! Mr De Domenico has leave to speak.

MR DE DOMENICO: Thank you, Madam Speaker.

Mr Lamont: Smile, Tony.

MR DE DOMENICO: I will smile, Mr Lamont. I will not take into account Mr Connolly's interjection, because he has not been here for the main part of the debate. Can I just say this, Mr Lamont: If the Assembly votes for the 12 months restriction, what is going to happen, in reality, is that after 11 months insurance companies will very quickly and very thoroughly commence to re-examine all claims that reach that 11-month period, which will mean higher administration costs.

Mr Lamont: Aaah!

MR DE DOMENICO: Mr Lamont, you go, "Aaah". The reality of business, Mr Lamont, is that the more time and money you spend on doing something the more you have to fund it either from your own pocket or from someone else's. What this piece of legislation, if the Assembly does not accept the Opposition amendment, will do, in my view, is ultimately increase the cost of workers compensation in the ACT. If people want that to happen, so be it.

Mr Lamont talked about logic; but the reality is: If we all agree that the Barbaro case is something that was idiosyncratic to the ACT in terms of workers compensation - and it was - and if we then agree that we need to correct that situation, and I believe that we all do, why is it okay to correct Barbaro up to 12 months?

Mr Lamont: We do not all agree.

MR DE DOMENICO: We all agree, Mr Lamont. Once again, I am glad to have that interjection, because what Mr Lamont is saying is that every other State and Federal jurisdiction agrees that Barbaro is no good. The only members of the working party that do not agree that Barbaro is no good are the trade union members. Therefore, Mr Lamont says that, in order to appease only the trade union movement, he must make a decision which, in his view, is something which is going to be acceptable to all parties. To me, a Minister has a look at what happens in other jurisdictions, listens to the views of all parties concerned and ultimately makes a decision - hopefully, a correct decision - notwithstanding who agrees and who does not agree.

In my view, the logical decision to be made in the circumstances is: Let us bring the ACT into line with every other State and Territory jurisdiction and with the Commonwealth, by not imposing any restrictive period on termination. That is what it is all about. If we agree that there ought to be a termination clause, then let us put in one similar to the ones that are in other jurisdictions. Let us not try to reinvent the wheel in order to appease one particular body. If we do, let it be on our own heads if we get it wrong.

Question put:

That the amendment (Mr De Domenico's) be agreed to.

The Assembly voted -

AYES, 6	NOES, 9
Mrs Carnell	Mr Berry
Mr De Domenico	Mr Connolly
Mr Humphries	Ms Ellis
Mr Kaine	Ms Follett
Mr Stefaniak	Mr Lamont
Mr Stevenson	Ms McRae
	Mr Moore
	Ms Szuty
	Mr Wood

Question so resolved in the negative.

Mr Lamont: Madam Speaker, I indicate that a pair is in operation this evening between Mr Cornwell and Mrs Grassby.

MADAM SPEAKER: The question now is: That clause 6, as amended, be agreed to.

MR LAMONT (Minister for Urban Services, Minister for Housing and Community Services, Minister for Industrial Relations and Minister for Sport) (9.56): Madam Speaker, I ask for leave to move amendment No. 4 circulated in my name.

Leave granted.

MR LAMONT: I move:

Page 4, line 27, proposed subsection 26C(1), after "insurer", insert "or, in the case of an exempt employer, the employer,".

Madam Speaker, this change is a consequential change to the previous amendment that covers the position of self-insurers. I understand that it is agreed to by members of the Assembly.

Amendment agreed to.

MR LAMONT (9.57): Madam Speaker, I move:

Page 5, line 1, proposed subparagraph 26C(2)(b)(ii), after "insurer's", insert "or employer's".

Madam Speaker, this is also consistent with Mr De Domenico's amendment No. 9. It is a consequential change, once again to cover the position of self-insurers.

Amendment agreed to.

Clause, as amended, agreed to.

Remainder of Bill, by leave, taken as a whole, and agreed to.

Bill, as amended, agreed to.

SUBSTITUTE PARENT AGREEMENTS BILL 1994

[COGNATE BILL AND PAPER:

SUBSTITUTE PARENT AGREEMENTS
(CONSEQUENTIAL AMENDMENTS) BILL 1994

SURROGACY AGREEMENTS - DISCUSSION PAPER]

Debate resumed from 19 May 1994, on motion by Mr Connolly:

That this Bill be agreed to in principle.

MADAM SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Substitute Parent Agreements (Consequential Amendments) Bill 1994 and the discussion paper on surrogacy agreements? There being no objection, that course will be followed. I remind members that, in debating order of the day No. 3, they may also address their remarks to orders of the day Nos 4 and 5.

MRS CARNELL (Leader of the Opposition) (10.00): Madam Speaker, the effect of these Bills as they now stand is to make all forms of surrogacy either illegal or impossible. Commercial surrogacy is banned outright, and I think everybody would support that. I do not think anyone would accept under any circumstances a situation in which babies could be bought and sold.

Mr Connolly: There are some in the community who differ, but none of us here does.

MRS CARNELL: Nobody here does. I was suggesting that nobody here would accept that, Mr Connolly. Also, though, this Bill makes non-commercial surrogacy virtually impossible. It cannot take place because it cannot be facilitated by people with the necessary skills or experience. Clause 8 of the Bill makes it an offence for a medical practitioner to provide any professional or technical services for non-commercial surrogacy. This effective banning of all surrogacy arrangements reflects the fact that the Bill may be a bit out of touch with current, and certainly emerging, medical technology.

Until recently most couples who were infertile and wanted children could adopt them; but the rapid decrease in the number of children available for adoption over the past 10 years has made that means of having a family very difficult, and in many cases impossible. At the same time, there have been successful developments in reproductive technology which mean that at least some couples are able to achieve alternative methods of having children. It is now technically possible for a couple to arrange for a third person to bear a child for them, the advantage over adoption being that the child is the genetic offspring of the couple and more factors, such as knowing the condition of the pregnancy, et cetera, are controllable. Like most technology, surrogacy is neither inherently good nor inherently bad. What matters is the way the technology is used. A knife, for example, can be used for good or evil. Pharmaceutical products can be used to save lives or to kill.

It is the human factor, the motivation and the outcome, which matters, not the technology itself. So, the key question we should be asking is not whether surrogacy should be banned; instead, we should be asking: Under what circumstances - this is the important part - will surrogacy be allowed, if any? Again I make the point that I do not think anybody here would ever accept commercial surrogacy under any circumstances.

Unfortunately, in the minds of some people, the concept of surrogacy has gained a bad name because of the commercialisation which has dominated surrogacy arrangements in the USA. This does not mean, as I said, that surrogacy itself as a technique is always undesirable. Rather, it shows that, without adequate regulation, it can be used more as a means of making money than of helping infertile couples to have a baby. There should be no question that commercial surrogacy should be prohibited, and the Bill makes that quite clear. There is no way that society will, or should, tolerate any suggestion of baby farming.

However, not all surrogacy, I believe, should be banned, and, of course, the Bill does not do that. There are some people for whom surrogacy on an altruistic basis could be entirely appropriate. Consider, for example, a healthy young couple whose own eggs and sperm are normal, and the sole reason for their infertility is that the woman had the misfortune to be born either without a uterus or with a uterus that is distorted, or, for that matter, has some other problem, and therefore is incapable of carrying a pregnancy. In this situation there should be no moral, medical or legal reason, in my view, why a surrogacy arrangement should not be entered into to allow the couple to have their baby with the assistance of another woman, potentially a sister, who wants to help because of her care and concern for the couple and the baby they hope for, as long as absolutely no payment is made.

Provided that arrangements for non-commercial surrogacy are between people who know each other well, people who have a longstanding relationship - that is often sisters, cousins, et cetera - who trust each other and who have a clear commitment to each other's well-being, people who have the support of their families, who are informed about the procedures and the consequences and who are willing to participate - in other words, give their consent - such altruistic surrogacy should be allowed to proceed. Moreover, medical practitioners who facilitate these arrangements with professional support - such as information, counselling and technical expertise - in my view, should be free from any suggestion of professional misconduct. The Bill before us is deficient because it simply does not allow this sort of surrogacy.

I think it is important to make the point that one of the other good things about this Bill is that it means that even any altruistic surrogacy of this nature that is entered into, any contract that the two parties may sign, is null and void. I think that is an appropriate approach. I believe that if the sister, the cousin or the good friend, determines that after the baby is born they cannot give it up, that they do not feel able to adopt the child, that is a quite fine situation and it should be backed up by legislation. But if the arrangement can go ahead and normal adoption procedures are followed - in other words, if the interests of the child are paramount - I believe very strongly that that should be allowed.

Clause 8 makes it an offence for a medical practitioner to provide any professional or technical services for non-commercial surrogacy. The effect of that prohibition is to rule out all surrogacy, because nothing can happen without the assistance of skilled medical practitioners, unless we are using very natural approaches which I think many of us, when we consider the ramifications, would tend to suggest are not terribly appropriate. Accordingly, I foreshadow an amendment to clause 8 of the Substitute Parent Agreements Bill which would not prohibit assistance with the sort of altruistic surrogacy arrangements which I outlined above, but would clearly outlaw all commercial arrangements.

Similarly, I foreshadow amendments to clause 4 of the Substitute Parent Agreements (Consequential Amendments) Bill which would allow private hospitals to facilitate strictly non-commercial arrangements. My other amendment is also to clause 4 of the Substitute Parent Agreements (Consequential Amendments) Bill. The existing wording, I believe, is too vague and general. My amendment tidies up the wording of subclause 11(2) as to the Minister's power under the regulations to make it clear that cancellation of registration must be on the same grounds as the suspension for assisting with commercial surrogacy. That is simply a tidying up amendment, Madam Speaker.

I suggest that this Bill as it stands could prove very soon to be out of touch with community values, as I believe that the demand for non-commercial altruistic surrogacy is likely to increase as access to adoption becomes more and more difficult. I believe that it would be far preferable to get this legislation right and allow these sorts of surrogacy arrangements which involve the participation of the close relative - for all the right reasons which I have spoken about earlier - and the intervention of a skilled medical practitioner. I understand that the Government is willing to support these amendments tonight. I am very pleased with that. I am also very pleased to support this very important piece of legislation. Legislation of this nature has gone through most other parliaments in Australia, and I am very pleased that the ACT will be part of that approach.

MS SZUTY (10.09): Madam Speaker, earlier this year the Assembly debated the Domestic Relationships Bill 1994 - a Bill which makes provisions with respect to certain domestic relationships not covered by legislation. I believe that the Substitute Parent Agreements Bill 1994 is legislation of a similar nature. It seeks to establish a proper environment in which non-commercial surrogacy arrangements can take place, where everyone involved is happy with the process and the outcome to the maximum extent possible; and, of course, it outlaws commercial substitute parent agreements. Madam Speaker, the issue of substitute parent agreements or surrogacy has been discussed for some time now. As indicated in the Minister's presentation speech, a discussion paper was released for comment in December of 1993, with responses being due on 28 February this year. Included in the discussion paper was an exposure draft of the proposed Bill. I understand that about a dozen submissions were received - perhaps not a high number - from a range of people vitally concerned and interested in the issue.

One very sensible change which has now been made and which is reflected in the Bill in its current form is the new name for the Bill. This Bill is quite rightly now referred to as the Substitute Parent Agreements Bill rather than the Surrogacy Agreements Bill, as it was formerly known. The Minister explains in his presentation speech two reasons for the change. Firstly, the term "surrogacy" was based on the concept of the birth mother being a surrogate mother, which, of course, is not appropriate, as the woman giving birth is

legally as well as gestationally the mother of the child. Secondly, we are talking about agreements to substitute one set of parents for another set of parents, thus bringing into focus the issues of the legal parenthood of the child concerned, the welfare of the child, and the use that is made of the very real physical and emotional relationship that a woman has with a child to whom she gives birth.

In further addressing the issue, the Government has outlined the set of beliefs that it is adhering to in consideration of substitute parent agreements. Quite rightly, the Government believes that substitute parent agreements should not be enforceable at law. This means that in the case of a non-commercial substitute parent agreement, where perhaps a sister agrees to bear a child for another sister, if that first sister ultimately decides that after giving birth she wishes to keep the child, she will keep the child, and a court of law will not uphold the original agreement. In another situation, if the sister who wanted the child as her own declines to accept the child as her own, she cannot be legally forced to take and care for the child. It is fit and proper that the court must ultimately uphold the welfare of the child born in each of these circumstances in deciding who eventually has custody and care of the child.

This is another of the Government's stated beliefs with regard to the Substitute Parent Agreements Bill. In any action relating to the Bill the law would give paramount consideration to the welfare of the child involved. Again I have no difficulty with this belief as it has been outlined by the Government. Under substitute parent agreements the relinquishing process, once it is agreed that it will occur, must take place according to the laws of adoption, which this Assembly fully debated some 18 months ago before the passage of that Bill. I am entirely comfortable with that process and have known of no difficulties arising from those provisions of the Adoption Act which relate to the relinquishment process.

I also agree that commercial substitute parent agreements should be illegal. This means that no payment of money can be given to the mother bearing the child for her services on the condition that she relinquishes the child at birth. As indicated in the presentation speech, such an arrangement described above is similar to commercial transactions and agreements in relation to goods or products. Under these arrangements the child would be considered to be a good or product that is exchanged for a price. I believe that these agreements would not be supported by the community and should be banned.

The Government belief that I have taken issue with at this stage is the stated belief that it should be illegal to advertise in relation to substitute parent agreements to procure a person to enter into an agreement with a third person and to facilitate pregnancy for the purposes of an agreement. Mrs Carnell's proposed amendments to the Attorney-General's Bill address my concerns here. These sentiments are, of course, easy to understand if they are referring to an infertile couple who are seeking substitute parent agreements with people outside their own families; but I think they are less easy to understand in relation to medical professionals who have some experience in facilitating non-commercial substitute parent agreements where close family members or friends are involved.

I think that in these instances the Government's original fears of professionals marketing themselves to facilitate substitute parent agreements are misplaced. I believe that the decision of a woman to bear a child for a close family member or friend is a decision which will require a great deal of thought, counselling and support both from her family and friends and from appropriate professionals. If she has been encouraged to receive that support from the beginning, she will be encouraged to follow through with that support and will have someone to debrief with and support her if she begins to feel that she would like to keep the child she is currently bearing.

In his speech the Minister, Mr Connolly, said that the sisters would not be able to seek the services of a doctor to facilitate pregnancy. The question which should be asked from that point is: How else will the pregnancy be facilitated, and is this fair to the couples involved? Mrs Carnell's amendments address this matter adequately. Although clause 8 of the Bill now makes it clear that, contrary to the fears expressed by some people, the Bill does not intend to prohibit professionals such as doctors and lawyers from giving general information and advice on substitute parent agreements, I wonder whether this is truly sufficient. Again, Mrs Carnell's amendments address this particular matter.

Madam Speaker, I was briefed by Ms Meg Wallace of the Attorney-General's Department on the provisions of the Bill some weeks ago. It was with regret that I heard at the time that not all of the people who had made submissions in relation to the discussion paper and exposure draft of the legislation had received final copies of the Bill to peruse. I trust that that has now occurred and that all of the people who expressed an interest in this issue are now substantially comfortable with the existing provisions of the Bill. My understanding is that this has occurred, and certainly Mrs Carnell's proposed amendments will improve the Bill considerably from its present form.

I am happy that members of this Assembly have had useful discussions about the provisions of the Bill and that Mrs Carnell's amendments will receive their support. Mrs Carnell's amendments also resolve a potential difficulty that I had with the Bill about the penalty provisions. The penalty provision for a person entering into a commercial substitute parent agreement is $10,000 or imprisonment for 12 months, or both. The penalty for a person knowingly providing any professional or technical services to another person who is, or intends to be, a party to a substitute parent agreement, commercial or non-commercial, to become pregnant for the purposes of the agreement was also $10,000 or imprisonment for 12 months, or both. Mrs Carnell's amendments address this anomaly by placing the appropriate weight on the banning of commercial substitute parent agreements, while presenting the Assembly's view - I believe that it is the Assembly's view - that non-commercial substitute parent agreements should be tolerated and facilitated as far as is possible in the circumstances.

MR HUMPHRIES (10.17): The Assembly has had quite a spate of issues which might be described as moral issues or issues with a moral dimension in the last six months of its life. I do not know why this has happened; but it should mean that we should be considering very carefully the steps we take, especially if one argues that we need to consider the sort of mandate the Assembly might have to pass legislation which has far-reaching consequences for, in a sense, ethical considerations like euthanasia, abortion, and, in this case, surrogacy.

There is obviously a huge challenge faced by many people in our community, legislators included, from the fact that technology is profoundly altering the lives of all of us. A few weeks ago, for example, we considered the question of how to deal with the problems mounted by computer technology in respect of the control of violent or pornographic images. We acknowledged that the old laws dealing with the classification of films or videos were no longer adequate to deal with a world in which it is possible for a person to network with a computer on the other side of the world and to exchange messages with people all over the world, let alone all over a community, through those computers. The passing of images or messages between people is much less easy to regulate.

The same could be said in many ways about surrogacy. It is now possible, clearly, in one sense, for a person to have two mothers - a woman from whom one inherits genetic characteristics and a woman who actually carries and gives birth to that person. It is obviously a situation fraught which moral and ethical dilemmas which we need to consider very carefully. The ideal position, I suppose, similar perhaps to our position in respect of computer games, is to try to outlaw or ban those sorts of activities which we might consider to be undesirable. I think, Madam Speaker, that the general thrust of this legislation today is to attempt at least to discourage arrangements whereby people might engage in the process of bearing children for other people, particularly where that involves a commercial remuneration. Perhaps it is going too far to stigmatise or punish those involved in that process, particularly where no commercial element is involved; but it is certainly desirable, I believe, to discourage - and I welcome the legislation's emphasis on discouraging strongly - the bearing of children for other people on the basis of a commercial payment.

I think, however, Madam Speaker, it is in some ways wrong to focus excessively on the question of whether a commercial payment is a component of a surrogacy arrangement. In my view, that commercial/non-commercial dichotomy is perhaps the less important issue in this debate. The issue of perhaps as much importance is the attitude that we as a community and as an Assembly have towards a woman's childbearing potential. It is certainly repugnant to suggest that people should be able freely to bear other people's children for money, but I am not sure that it is really that much more palatable to say that that sort of thing should or could take place for love. Obviously, there are problems. Such arrangements, even in the case of doing so for love, involve a corruption of the simple traditional relationship between a mother and a child. It clearly cannot be what it was before.

I think it is also clear that such arrangements pose problems for a child's development. A child who has been adopted, regrettably, often faces difficult issues in his or her life. A child who has been the product of a surrogacy arrangement may face similar, different or greater problems. This may be only my view, but it seems to be faintly obscene that a woman's reproductive organs should be opened up for the use of others. This is an arrangement which, I think, is one which we as a community should attempt to avoid, if we can, without imposing restrictions or limitations which would be widely disregarded or rejected by those in the community who are intent on these sorts of arrangements.

I concede, however, Madam Speaker, that it is probably going too far to attempt to outlaw involvement in these arrangements where money is not involved, and perhaps equally unfortunate to attempt to stigmatise those who, for quite genuine personal reasons, believe that it is appropriate to assist people to take part in this process. That is why I believe, after much thought, that Mrs Carnell's amendments before the house tonight are appropriate. There are a number of doctors involved in in-vitro fertilisation programs and other infertility programs in this city and elsewhere. They feel very strongly that their involvement should continue, and they should not suffer the danger of being struck off for professional misconduct by virtue of their continuing involvement in those sorts of arrangements.

I do not want to say any more about this legislation, except that I believe, as is the case with much that we pass and do in this Assembly, that we should monitor its operation when it has an impact on the lives of ordinary people. It may be that we can see these sorts of arrangements continue - I assume, in small numbers. I do not imagine that many people will be rushing out to bear their sister's children, or a relation's children or a friend's children; but it is important for us to ensure that the consequence of this sort of legislation is not beyond the intention or the foreseeing of this Assembly tonight, and that we will be vigilant to ensure that this arrangement that we put in place, this liberty to engage in these activities in certain limited circumstances, will not be abused to the detriment of the children who are the primary focus of so much of our law - our children's services legislation, our Family Law Act and so on. It is the children who are the primary focus of those sorts of pieces of legislation. They should also be the primary focus of legislation such as that before the Assembly tonight, and I hope that we achieve that through the arrangements which are put in place through this Bill, as amended.

MR MOORE (10.25): Madam Speaker, on an overseas trip that my wife and I undertook some years ago we had a discussion with some distant relatives about some of the backgrounds of our own families. In those discussions there came to light a relationship that we would think of in terms of surrogacy, but it came from people who are over 80 years old. They were talking about things that had happened but which had been basically buried in their family closet for quite a number of years. It strikes me that this form of love, where somebody bears a child for somebody else, is not new at all. It has been going on for a long time.

I think what is new about the notion of surrogacy is that some sharp people decided that it was an appropriate way to set up a commercial business to take advantage of women. As Mr Humphries pointed out, that is the whole motivation behind such forms of surrogacy changes, and people who are vulnerable are taken advantage of. That is why legislation like this - legislation that assists us in protecting the weak or the vulnerable from such sharp operators - has a very important role to play. Commercial arrangements that deal with surrogacy are appropriately dealt with by this legislation. It seems to me that this legislation also ensures consistency on the part of the Territory in regard to other legislation in terms of the family - things like the Family Law Act and the other Acts that Mr Humphries referred to. The most important thing that comes through in this legislation is priority for the welfare of the child. I think that that, in itself, is significant.

Madam Speaker, I have been provided with the amendments that Mrs Carnell will move. I must say that I think that they, in turn, will improve the nature of the Bill and will ensure that, where such arrangements do go on other than on a commercial basis, they will be able to continue without embarrassment or illegality. I think that that is going to be in the best interests of the child, because those sorts of arrangements will continue, and to try to make them illegal is pointless. That is a very different situation from putting a commercial aspect on them. Madam Speaker, I believe that this is an appropriate piece of legislation. I think it is appropriate to congratulate the Government not only on the method that it went through to get to this stage but also on the legislation itself.

MR CONNOLLY (Attorney-General and Minister for Health) (10.28), in reply: I thank members for their generally supportive comments. Mr Humphries wondered why, in the last six months of the Assembly, we were dealing with a whole range of these matters. Actually, this matter goes back a long time. I first publicly floated the need for action on surrogacy laws in the ACT well over 18 months ago. Then, some considerable time after that, we produced a major discussion paper, which was circulated about a year ago and which contained an exposure draft of the current Bill. The current Bill, as a result of feedback from that round of negotiations and consultations, was brought into the Assembly in May of this year. It has been a very long process; it is not saving up the controversial stuff until the last few months.

It is pleasing that there seems to be unanimity in the Assembly that commercial surrogacy should be made unlawful. That is pleasing because there was not always a unanimous public position outside. I am not saying this of Assembly members; but there were some fairly strong lobby groups saying that, because this is technically feasible and it will meet the need of a couple who want a child, it is something the state or the government should allow. I am pleased that there is a view against that.

This goes back to a ministerial council meeting in about 1991 and 1992 where, around Australia, governments agreed that commercial surrogacy agreements should be outlawed; they should be clearly discouraged and made criminal. We see reports from the United States where sharp doctors and sharp lawyers seem to get together and often prey on very vulnerable women with what appears to be a very attractive contract for a quite large sum of money to go through a pregnancy and pass a child over to usually a more affluent couple. This has caused a lot of distress and a lot of trauma to a lot of innocent people in the United States. That, clearly, was something we did not want to see happen in Australia. It is clear that medical technology in Australia is at a point where it could well happen. It is a matter of public record, I think, that an ad was placed in the *Canberra Times* in the ACT about 18 months ago seeking somebody who, for a fee, would bear another's child. So, there have been moves in Australia to go into this field of commercial surrogacy.

The discussion paper and the Government's Bill acknowledge that you can never really make illegal the non-commercial surrogacy. You can seek to actively discourage it - Mr Humphries acknowledges the need for that - but outlawing it and making it criminal is probably not viable. The aid and abet style of provision in this Bill did go a little further.

In effect, we made commercial surrogacy an offence; we made non-commercial surrogacy not an offence but something we discouraged; and we made the aid and abet provision an offence for both commercial and non-commercial surrogacy. Mrs Carnell put to me in some discussions earlier on that that should not be the case; that, as a matter of principle, if conduct itself is not an offence, aiding and abetting it should not be an offence. I can see a legitimate point on that.

The objection was on the basis that, at the moment, that aid and abet provision makes impossible the proper, safe carrying out of the type of agreement that we do not outlaw but discourage. That is not my reason for accepting her amendment. I believe that we made it clear in the introductory speech and in the explanatory memorandum that that aid and abet provision was not designed to prevent access to information necessary for the safe carrying out of a non-commercial surrogacy agreement, but it was designed to prevent people exploiting.

There is a potential difficulty with the form of the Bill as proposed to be amended by Mrs Carnell. There is the possibility that, if people are sharp and are trying to get around this, they will seek to disguise a commercial surrogacy arrangement as a non-commercial surrogacy arrangement. Unless the couple were silly enough to say to the doctor, "This is indeed a commercial arrangement and here are our bank records showing that we are paying the surrogate mother a sum of money", and the surrogate mother was silly enough to say in the doctor's rooms, "Yes, I am receiving a sum of money and here are the bank records to provide it", you could have the possibility of doctors doing this and then, if charged, going into court and saying, "You are unable to prove that this is a commercial agreement" or "You are unable to prove that I knew that it was a commercial agreement when I was facilitating it". I did put in some discussions earlier this evening that if it came to that, if we did see attempts to evade this legislation by that sort of ruse, the Government may well come back at a future time and say that we should return to the original form of the Bill.

One would hope that it will not come to that and that lawyers and doctors will not seek to evade this legislation. I think that the fact that the principle of making commercial surrogacy agreements unlawful is likely to go through this Assembly unanimously, or nearly unanimously, will send a very strong signal and people will be on notice that attempting to avoid this, attempting to disguise commercial agreements as non-commercial agreements, will be looked at very sceptically. While we as an Assembly have agreed that we will not extend the aid and abet offence to the non-commercial agreement, if people seek to exploit that the Government may well come back with further amendments. From discussions this evening it may well be that if members are convinced that such abuses are occurring they will be inclined to return to the original form of the Bill.

The Government will not be opposing Mrs Carnell's amendments - not because we thought that we were making it impossible for a person to get access to sound professional advice in the case of a non-commercial agreement, because we sought to structure the Bill and to structure the explanatory memorandum to say that that is not the intent of the aid and abet provision, but on acceptance of the principle that if, as a matter

of policy, we have made the decision that we will make the commercial activity criminal and the non-commercial activity non-criminal, it can be seen to be wrong in principle to make the aid and abet criminal in all cases. The doctor, the lawyer or whoever is facilitating or assisting or giving advice is guilty of a criminal offence, whereas the people who are engaging in the conduct that we are seeking to avoid are not guilty of a criminal offence. We can see the illogicality of that, so we are prepared to accept those amendments.

We will not take issue with the other amendment to be moved by Mrs Carnell. The Bill provides for the cancelling of a private hospital's registration if we find that they are rorting on surrogacy, if they are actually running commercial surrogacy operations. Mrs Carnell proposes to amend it to say that we need to give them notice before we cancel the registration. As a matter of administrative law we would have to do that anyway, so I do not think that adds anything; but nor does it detract from the legislation, so we will not take issue with that. We will not be opposing that amendment.

I thank members for their support for the legislation. I am very pleased that an issue which, when it was first floated, was the subject of some quite vigorous and controversial debate has now got to a point where there seems to be near unanimous support for the Government's basic proposition that commercial surrogacy agreements are something that, as a matter of public policy, we should outlaw; that they are a potential source of great evil, of exploitation of vulnerable women in our community, and the source of great damage and trauma for children who can become very much the innocent victims of very complex legal manoeuvring if and when a commercial surrogacy agreement goes wrong. The sort of litigation and trauma that we have seen in the United States is something that we do not want to see here. I am pleased that the consultative process has taken us to a point where we do have that unanimous agreement to the Bill.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MRS CARNELL (Leader of the Opposition) (10.36): I move:

Page 3, line 17, clause 8, before "substitute", insert "commercial".

Madam Speaker, I addressed this issue in my previous speech. This amendment seeks to change the Bill to make it not illegal for a person - a doctor or a lawyer - to give advice on or to facilitate a non-commercial surrogacy agreement. I believe strongly, as I said earlier, that it would be very unwise to have that provision in the Bill, for all of the reasons that the Minister has given. I do not think there is any point in my

reiterating that. One thing that does need to be said is that one of the greatest tragedies for women or for a couple who really want to have a child is not to be able to have one. It is one of the things that are most soul-destroying for any couple, and it is good that the Assembly tonight will not take that chance away from couples who can do it.

Amendment agreed to.

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

Bill, as amended, agreed to.

SUBSTITUTE PARENT AGREEMENTS (CONSEQUENTIAL AMENDMENTS) BILL 1994

Debate resumed from 19 May 1994, on motion by Mr Connolly:

That this Bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

Amendments (by Mrs Carnell), by leave, agreed to:

Page 3, line 10, clause 4, proposed regulation 11, proposed subparagraph 11(1)(b)(i), before "substitute", insert "commercial".

Page 3, line 14, clause 4, proposed regulation 11, proposed new subparagraph 11(1)(b)(iii), before "substitute", insert "commercial".

Page 3, lines 17 and 18, clause 4, proposed new subregulation 11(2), omit the proposed new subregulation, substitute the following subregulation:

"(2) Where the Minister suspends the registration of a private hospital on a ground referred to in subregulation (1), the Minister may, after giving written notice to the proprietor, cancel the registration on that ground.".

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

Bill, as amended, agreed to.

SURROGACY AGREEMENTS
Discussion Paper

Debate resumed from 16 December 1993, on motion by Mr Connolly:

That the Assembly takes note of the paper.

Question resolved in the affirmative.

NATIVE TITLE BILL 1994

Debate resumed from 21 April 1994, on motion by Ms Follett:

That this Bill be agreed to in principle.

MR KAINE (10.40): Madam Speaker, I think it is appropriate to note that this legislation is no ordinary legislation. The preamble to the Bill, in itself, is different from the ordinary run of legislation that comes before this place. You will know that I have been associated with this body and its precedent bodies for 20 years now, and Greg Cornwell goes back the same period of time. Others go back 10 or 12 years. I believe that none of us, in all of that time, have seen a piece of legislation that has a preamble to it. The explanation for that is given in the explanatory memorandum. In order to have such a preamble it is customary that the legislation shall be historically significant. Of course, this legislation is historically significant, and I think that in passing it we should note that there remain many uncertainties about the future ramifications of this legislation. It cannot be said that we know what all of the ramifications way into the future might be.

For example, again referring to the explanatory memorandum, even in connection with the Australian Capital Territory, it is noted that "not all Crown uses extinguish native title, for example, the declaration and use of an area as a national park would not necessarily extinguish it". A considerable part of the ACT is national park and I believe that the words "not necessarily" leave it open to question. Even, in other respects, in what is now the Namadgi National Park, that part of the park which is the Cotter River catchment may have some question marks about whether native title still remains. So, I think that within the ACT there are questions that will be answered only when people who claim to be indigenous people associated with this region eventually make a claim and have that claim heard; and we do not know yet who is likely to make such a claim or to what those claims might relate.

The necessity for the legislation flows from the native title decision of 1992 made in the High Court and in consequence of which the Commonwealth has made legislation. The preamble indicates that the ACT Legislative Assembly intends that the Australian Capital Territory participate in the national scheme enacted by the Commonwealth Parliament. This totally changes the relationship of the European settlers and their descendants with the indigenous people who existed in 1788 and their descendants. The decision of the High Court identifies the fact that native title must satisfy two tests. First of all, the Crown must not have extinguished the title, and, secondly, the indigenous people must have maintained their links with the land. I think it is that latter part where there is much yet to be determined. The Commonwealth has set up the machinery to hear any claim that may arise, and we are indicating in this Bill that we are prepared to allow the Commonwealth machinery to be used to make determinations about any claim in the Australian Capital Territory. I think that is quite appropriate.

In her speech when tabling this Bill, the Chief Minister said:

That decision has asked us as a nation to reassess fundamentally our relationships with Aboriginal peoples and Torres Strait Islanders.

I believe, Madam Speaker, that it goes way beyond asking us to do so; I think it has compelled us to do so. The fact that the High Court, after 200 years, felt it necessary to restate that the indigenous people of Australia potentially still had land rights is something that changes our relationship entirely. I believe that it is a very fundamental thing. This legislation will set into law, so far as the Australian Capital Territory is concerned, that from here on into the future no Australian can look at an indigenous Australian and say, as has been said for 200 years by many, "You do not count". It gives the Aboriginals and the Torres Strait Islanders a status that they have never enjoyed before. As I say, I think that there is much that is likely to emerge from this decision by the High Court and the legislation that we are putting into place today which we today cannot begin to comprehend, and it will not be decided tomorrow, or next week, or next year. There will be enormous ramifications that flow from this legislation well into the future. The Opposition endorses this legislation without qualification, as I would expect this Assembly to do.

There is just one other point that I wanted to raise in connection with the Chief Minister's tabling speech. She noted there that there were some indigenous people who would derive no benefit from the High Court decision or from the legislation that the Commonwealth and the Territories and States are enacting. She said:

With these considerations in mind, the Government is developing a social justice agenda for Aboriginal peoples and Torres Strait Islanders.

She went on to say that the Government intends to unveil this agenda in the very near future. That speech was delivered in April; it is now October. I would have thought that the matter was one that would be of such importance that not too much time would go by before the Government tabled that agenda so that the Assembly and the community could consider it. Madam Speaker, the Liberal Party in opposition supports this Bill.

MS SZUTY (10.47): Madam Speaker, the Native Title Bill 1994 is another important step in the process of reconciliation between indigenous Australians and the wider Australian community. The Bill is another initiative which demonstrates the commitment to addressing the social, economic and political disadvantages Aboriginal people experience in living in the ACT. In speaking at the in-principle stage of the debate on the Native Title Bill, I believe that it is appropriate to briefly review some of the key points of recent Australian history which have a bearing on this debate.

Mr Kaine mentioned that in 1982 Eddie Mabo, David Passi and James Rice - Meriam people from the Murray Islands - brought their land rights claim to the HighCourt which, of course, precipitated the 1992 High Court decision on the Mabo case. Following the election of the Federal Labor Government in 1983, numerous changes have been made in the area of Aboriginal affairs, including the introduction of self-determination for Aboriginal communities and the restructuring of administrative functions. While it could be argued that not all of these changes have been totally successful, on balance there has been substantial, albeit incremental, positive change. In 1991 the Council for Aboriginal Reconciliation was created by Federal Government legislation. More recently the Aboriginal and Torres Strait Islander Commission has also been created. Madam Speaker, I have highlighted these selected events to demonstrate the growing momentum for change to a more fair and equitable treatment of Aboriginal and Torres Strait Islander people.

Having covered this background, I shall now turn to what must be seen as one of the most critical points in this process of change. I refer, of course, to the 1992 decision of the High Court in the native title or Mabo case. This decision effectively overruled the doctrine of terra nullius and, in a judgment of over 200 pages, identified four key principles on which native title claims would need to be based to be successful. These principles are the need, firstly, for native ownership to exist and not to have been extinguished; secondly, for the Aboriginals or Torres Strait Islanders making the claim to show a close connection with the land being claimed; thirdly, for the Aboriginals or Torres Strait Islanders making the claim to show a continued observance and acknowledgment of their own laws and customs, and, fourthly, for the Aboriginals or Torres Strait Islanders to be survived by at least one member of their clan or group.

This watershed decision was the cause of substantive debate throughout the Australian community. It was clear that government action was needed to establish a balance between the native title rights of our indigenous people and the rights granted since settlement to landholders of all kinds. In recognition of the need to clarify this situation, the Federal Government undertook a process of extensive discussion and consultation with the broad Australian community before introducing the Commonwealth's Native Title Bill in 1993.

Madam Speaker, the Commonwealth Native Title Act has four key aspects in dealing with the issues raised by the decision of the High Court on the native title case in 1992. These are the recognition and protection of native title; the validation of past acts, including grants and laws, if they have been invalidated because of the existence of native title; a regime governing future grants and acts affecting native title; and tribunal and court processes for determining claims to native title and for negotiation and decisions on

proposed grants over native title land. The Commonwealth's Native Title Act also enables State and Territory governments to validate their past grants with certainty, provided they adhere to the standards set out in the Act. However, the Act goes further than this. As the Prime Minister, Mr Keating, said in his second reading speech on the Bill:

... the Mabo decision gives little more than a sense of justice to those Aboriginal communities whose native title has been extinguished or lost without consultation, negotiation or compensation. Their dispossession has been total, their loss has been complete.

That was also a point that Mr Kaine made in his remarks to the Assembly this evening. The Prime Minister continued:

The Government shares the view of ATSIC, Aboriginal organisations and the Council for Aboriginal Reconciliation, that justice, equality and fairness demand that the social and economic needs of these communities must be addressed as an essential step towards reconciliation.

While these communities remain dispossessed of land, their economic marginalisation and their sense of injury continues. As a first step, we are establishing a land fund. It will enable indigenous people to acquire land and to manage and maintain it in a sustainable way in order to provide economic, social and cultural benefits for future generations.

Madam Speaker, I understand that the size and disposition of this land fund is currently the subject of negotiation among the various parties in the Senate.

Over the last few years the Commonwealth has introduced a package of measures to address the range of issues affecting Aboriginal and Torres Strait Islander people. While each can be considered in isolation, in many ways the whole is more than the sum of the parts. The Native Title Act is a clear example of this, with the measures it introduces being critical to the process of reconciliation and also having their part to play in addressing the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The interrelatedness of these issues should be of no surprise, given the central role that the land plays in Aboriginal culture. In the report of the 1974 commission on land rights Justice Woodward said that possession of land alone made possible "the preservation of a spiritual link which gives each Aboriginal his sense of identity and lies at the heart of his spiritual beliefs".

Madam Speaker, I elected to dwell on the Commonwealth Act and its background at some length because the ACT Government's Native Title Bill of 1994 effectively makes the ACT a part of the national scheme that is established by the Commonwealth Act. The Chief Minister said in her presentation speech:

... the Government believes that the national scheme now enshrined in the Native Title Act has struck a careful balance between certainty of land administration and justice for Aboriginal peoples and Torres Strait islanders. This balance reflects in part the extensive consultations that took place with all interested parties during the development of the Commonwealth's policy position and as the Bill progressed through the Commonwealth Parliament. Accordingly, the ACT Native Title Bill provides an appropriate basis on which the Territory will participate in the national scheme.

I echo these sentiments and agree that it is sensible for the ACT to use the Commonwealth tribunal rather than set up its own separate body.

Madam Speaker, I note that the Government did not adopt this approach without consulting the ACT Aboriginal and Torres Strait Islander Advisory Council and accepting its comments where possible. I also note that, since the Bill was introduced by the Chief Minister, the Government has consulted further with Aboriginal peoples and Torres Strait Islanders in relation to the legislation and that this consultation process has contributed to the delay in the Assembly resuming the debate on the Bill. It is appropriate that this delay has occurred to enable full discussions to take place with the Aboriginal and Torres Strait Islander people of the ACT.

I believe that it is also worth noting that, as is the case with the Commonwealth, this Bill should not be considered in isolation. It is an important part of the reconciliation process and should be considered together with the activities that are being undertaken in the ACT in cooperation with the Council for Aboriginal Reconciliation, the ACT Government's draft social justice agenda for ACT Aboriginal Peoples and Torres Strait Islanders which was announced by the Chief Minister on 20 June of this year, and the fact that the Bill addresses at an ACT level recommendations 334 to 337 of the Royal Commission into Aboriginal Deaths in Custody.

Madam Speaker, the Native Title Bill will have little practical application in the ACT, due to the Territory's comparatively small size and its history of land tenure, both as a part of New South Wales and as the Australian Capital Territory. It is, however, an important signal to the indigenous people of the Territory of the commitment of the Assembly to the reconciliation process. The Council for Aboriginal Reconciliation noted in its May 1994 publication *Walking Together* that, during a sitting in April, the ACT Assembly had become the first State or Territory to endorse the council's vision. By passing the Native Title Bill the Assembly will be placing another of the many necessary planks in the bridge to reconciliation.

MR HUMPHRIES (10.56): Madam Speaker, I want to make a couple of comments about the Bill. I think it is particularly important to put on the record what the Liberal Party's position has been in respect of this native title legislation. When the Mabo decision or Mabo 2 was such an issue of high contention and debate in our community, not just here in Canberra but around the country, there was a great deal of political discussion and debate about where exactly we should be heading with native title legislation. At the time of that decision by the High Court I, as spokesman at that time

for my party on Aboriginal affairs, made it clear that the Liberal Party in the ACT supported the process which Mabo had initiated and indicated on behalf of the party that we felt strongly that there ought to be appropriate steps taken to guarantee the rights which the Mabo decision by the High Court had opened up.

Mr Berry: You also tried to put the wind up everybody about it.

MR HUMPHRIES: No. I think it is important to bear in mind exactly what the Liberal Party said. The Liberal Party's only qualificational statement in respect of the question of native title was that there should be legislation to validate existing leases.

Mr Berry: Disgraceful!

MR HUMPHRIES: Mr Berry says that that is disgraceful.

Mr Berry: No; you were disgraceful. Your behaviour was disgraceful, but you are up to par.

MR HUMPHRIES: That is what this legislation is doing tonight.

Ms Follett: That is not all you said.

MR HUMPHRIES: I invite the Chief Minister to tell the Assembly what it was that we said, apart from that.

Ms Follett: Not "we"; you.

MR HUMPHRIES: What I said, apart from that. I invite her to indicate to the Assembly what that was. We indicated at the time that we were concerned about the effect of not validating existing title, and we said that we supported the process but that it should be clear from the outset that existing title in the ACT was protected. Both the Chief Minister and Mr Connolly - I am not quite sure what he brought to the argument - indicated that the suggestion that there needed to be a validation of existing title was scaremongering; that there was no need for this to take place because there was no possibility of any successful native title claim being made against residential or commercial property in the ACT. I say to the Government: If that was so, why is this Bill before the Assembly tonight, and why does it make clear that existing title - past acts, as it is put in the Bill - is in fact valid, and has always been valid in this process? The answer, of course, is that the call that we made, at that time, was a valid call. It was a call for that protection to be put in place.

Mr Berry: You cannot justify what you did, Gary. You just cannot justify what you did, try as you might.

MR HUMPHRIES: Again, Mr Berry, I invite you to get up in this debate and say what it is in this process, in this debate about Mabo and its aftermath, that we have said that you would disagree with. Tell us what it is we have actually said - not the general innuendo, as Mr Connolly was referring to earlier today. I do not want to know about the innuendo. I heard the comments Mr Berry made this morning on radio about

conservatives not being happy with this process. You heard the remarks of Mr Kaine in unequivocal support for the concept. You also heard my remarks along the same lines at the time of the Mabo decision. You heard those things. I challenge you to tell me what it is that we said that is not now borne out by the events; that you, yourselves, have not picked up and done by this legislation before the Assembly tonight.

I repeat, Madam Speaker, that this Opposition - this may be different from the position of other Liberals in other parts of Australia; I do not comment or apologise for them - this Liberal Party, in this Territory, has maintained that the Mabo process needed to be followed through with legislation ensuring that native title, where it was appropriate within the Mabo principles, was honoured. We have stood by that position and we believe that that process is advanced successfully by validating existing title - that is, existing leaseholds granted in the ACT. That is the position to which, apparently, now, all in the Assembly converge; but it is worth acknowledging that there was never any serious difference about that matter in the first place.

MS FOLLETT (Chief Minister and Treasurer) (11.01), in reply: Madam Speaker, I thank members for their comments. I will substantially ignore Mr Humphries's attempt at ex post facto rationalisation of what was a very dubious position on this legislation, and he knows it, Madam Speaker. Nevertheless, Mr Kaine and Ms Szuty have addressed the issue comprehensively and have clearly understood the nature of it. I am very pleased indeed to be making concluding comments on the Bill, which, as members know, arises from that decision of the High Court of Australia. That decision challenged Australian society to reassess its relationship with Aboriginal peoples and Torres Strait Islanders. As Mr Kaine has said, the High Court's decision not only has required us to address the complex legal and land management issues; it has also further focused attention on the broader social justice issues. These include reconciliation with Aboriginal and Torres Strait Islander peoples and redressing the disadvantage that they so frequently face.

The legal origins of the Bill before us stem from the rejection of the doctrine that Australia was terra nullius - land belonging to no-one - at the time of European settlement. Rather, it is now accepted that the common law of Australia recognises an entitlement by the indigenous inhabitants of Australia to their traditional lands. This entitlement, according to the court, can be exercised within the framework of the laws and customs of the people involved. However, Madam Speaker, the High Court also held that native title rights may be extinguished by valid government acts, such as the grant of freehold or leasehold estates.

The Commonwealth Native Title Act 1993 was developed by the Commonwealth Government in response to that High Court decision. That Act provides the framework within which the Bill that is now before us is designed to operate. In particular, the Commonwealth's Act allows the recognition and protection of native title, establishes ways in which future dealings affecting native title may proceed, and sets standards for those dealings. The Commonwealth Act establishes the Native Title Tribunal for determining claims to native title. The Commonwealth law also validates past acts which are invalid because of the existence of native title, and it allows jurisdictions such as the ACT to validate any such acts attributable to it.

Madam Speaker, as I have indicated previously, I believe that the national scheme balances carefully the objectives of certainty of land administration and justice for Aboriginal peoples and Torres Strait Islanders. The ACT Government has decided that we wish to rely upon the Commonwealth Native Title Tribunal for determining native title in the Territory, rather than creating our own machinery. I believe that that approach is in keeping with our relatively modest means, and I welcome other members' support for it. Accordingly, Madam Speaker, the ACT legislation makes no provision for a tribunal or for related processes. The procedures in the Commonwealth Act for applications and determinations will also apply in the ACT.

The Commonwealth Act validates past acts by the Commonwealth in relation to land in the Territory up to self-government day, and any land management activity that it has undertaken since then. The ACT Native Title Bill, when enacted, will similarly validate any acts of the Territory Government. On this point I would like to add, Madam Speaker, that the Government is not aware of any acts that have occurred in the past in the Territory that would be invalid because of the existence of native title. However, if this understanding turns out to be incorrect, it is the Commonwealth legislation, rather than the Bill which is now before us, which would provide for payment of compensation on just terms.

The Government has been mindful of the need to consult the ACT Aboriginal and Torres Strait Islander Advisory Council on this legislation, and suggestions from the council were incorporated into the Bill prior to its introduction into the Assembly. Since then the council has held a public meeting to discuss the legislation and related issues. No further proposals for amendment to the Bill have been provided. In addition, consultation with representatives of Aboriginal people who wished to be consulted directly have also occurred. I believe that the ACT Native Title Bill, in concert with the Commonwealth's national framework, will provide a system to deal justly with native title in the Territory.

Madam Speaker, important as it is that we participate in the national native title scheme, we all realise, I am sure, that many Aboriginal peoples and Torres Strait Islanders will not benefit directly from the existence of native title. These are the peoples for whom dispossession is complete through acts that have extinguished native title. Nor will the native title legislation directly address the high level of disadvantage commonly faced by Aboriginal peoples and Torres Strait Islanders because of their historical dispossession of their land. With these considerations in mind, and as part of the national reconciliation process, the Government has prepared "A Draft Social Justice Agenda for ACT Aboriginal Peoples and Torres Strait Islanders". That agenda seeks to redress disadvantage and empower these peoples. It sets out initiatives to promote reconciliation between Aboriginal and non-Aboriginal Australians and to address the broader issues raised by the High Court's native title decision.

The objectives of the agenda are, firstly, to redress the disadvantage that is faced by Aboriginal peoples and Torres Strait Islanders in the ACT; to enhance empowerment and participation in decisions that affect Aboriginal peoples and Torres Strait Islanders; to support the maintenance and development of Aboriginal and Torres Strait Islander cultures; and to recognise the particular concerns of Aboriginal peoples and Torres Strait Islanders in relation to land, encompassing traditional affiliations as well as the role of secure access to land. Madam Speaker, that draft agenda has been before the community for comment since 20 June and it is now being refined in close consultation with the ACT Aboriginal and Torres Strait Islander Advisory Council.

In conclusion, I believe that this Native Title Bill is just one of a number of steps that are needed for our community to deal in a comprehensive fashion with the many issues facing the indigenous peoples of our nation. An ongoing process of dialogue, of policy development to redress disadvantage, and of positive measures to encourage reconciliation is required to fully achieve justice and empowerment for ACT Aboriginal peoples and Torres Strait Islanders. Again, Madam Speaker, I welcome the support for the Bill and I certainly look forward to making progress on the other steps that I have outlined as well.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR HUMPHRIES (11.09): Madam Speaker, I want to refer to page 9 of the explanatory memorandum, where the ACT's position is summarised. It says there in bold type:

It is very unlikely a Native Title Decision style claim for the ACT's residential, commercial and rural lands will succeed.

I assume that that means "... all rural lands will succeed". It seems to me that that is a slight variation on what was originally said about the position. It was put that there was no possibility of a native title-style claim for any of those areas succeeding. I welcome the fact that there is an acknowledgment of that slight uncertainty, because that is precisely why legislation like this is necessary. The Chief Minister says that she chooses to ignore the comments I have made. I invite her, however, to justify what she said to the Assembly and to cite anything which I have said in the past in respect of native title in this debate with which she now disagrees. The challenge is on the Government to show that that has occurred; and, of course, it has not occurred.

MS FOLLETT (Chief Minister and Treasurer) (11.10): Madam Speaker, from the very beginning of this debate, when the issue of native title first arose in the public domain, my position was exactly as it is put here - that it was very unlikely that a native title claim over residential or commercial or rural lands in the Territory would succeed. My position was based on the advice that I had of the long history of the granting of land in this region. Members might be aware that land grants in the ACT region go back well into the last century; that many of those grants were freehold grants - some of them were leasehold, but the majority were freehold; and the pattern of white settlement that has occurred has largely been over those areas which had previously been subject to grants of land. That was always my position - that it was most unlikely. Quite obviously, I was not more certain than that because this entire machinery is being set up, as Mr Kaine quite rightly put, to test whether native title may apply.

Mr Humphries is being very simplistic in his approach to this. The reason he is doing that is that it is quite clear to every member of this Assembly, possibly with the exception of Mr Humphries, that at the commencement of the debate on the existence of native title Mr Humphries was saying that people's backyards in Canberra were under threat.

Mr Humphries: I said that it was a possibility and it should be excluded with validation legislation, which is what you have now done.

MS FOLLETT: Madam Speaker, it is out of his own mouth right now that he said that it was a possibility. I think that giving public utterance to those sorts of words at that time could only be regarded as somewhat inflammatory. Indeed, that was the way it was received in the public arena. Madam Speaker, I welcome Mr Humphries's support for this legislation, as I do all members' support for the legislation; but I think there can be no doubt that he made, at the start of this debate, whether knowingly or unknowingly, some fairly unwise statements.

Bill, as a whole, agreed to.

Bill agreed to.

ADJOURNMENT

Motion (by Mr Berry) proposed:

That the Assembly do now adjourn.

Suicides

MR HUMPHRIES (11.14): Madam Speaker, today the Australian Bureau of Statistics launched a publication called "Suicides in Australia, 1982 to 1992". It is one of those issues to which I think many in the community do not pay the attention they deserve. I realise, as I look through these figures, that over the 10 years from 1982 to 1992, which is the period of this study, some 338 suicides were recorded in the ACT.

It is interesting that over that same period only 318 road accident fatalities occurred in the ACT. What is significant, therefore, is that, in fact, suicide is arguably a larger problem in our community than, in some senses, road accident fatalities. The entire community is aware of the tragedy of road fatalities, but perhaps many of us are not aware of the tragically high number of suicides that this report brings to light.

I am pleased that this report shows that our number of suicides per head of population in the ACT, averaged over the last 10 years, is just under the national average; but I do not really think this gives us, as a community, a great deal of room for comfort. We are all aware, I am sure, of cases of severe desperation which have led to suicides, or attempted suicides, particularly among our younger population. The figures on a national scale show some horrific facts. Among Australia's population aged between 15 and 24, suicide is responsible for one in every four deaths. This is perhaps the greatest tragedy - that so many young people do not have the opportunity to make so much of their lives. Suicide also affects males in far greater numbers than females. There are 355 male suicides for every 100 female suicides. In the 15 to 24 age bracket that figure rises to an astonishing 519 male suicides to every 100 female suicides. In Canberra a quick calculation tells me that the proportion of females committing suicide is higher than the national average. For every 100 females there are 314 male suicides. The staggering cost of suicide in social and family terms is something I do not think we have come to terms with. Over the last 10 years 22,372 Australians have committed suicide. That, I think, is a national tragedy. Our rate compares with that of the United States and Canada, and outranks many European countries. We also recorded in 1991 a significantly higher suicide rate than Japan. We owe it to a generation of Australians coming to terms with the grief caused by the loss of a loved one, especially when that loss is self-inflicted, to take a look at what measures we can adopt which might help those who are in need of our help.

There are those in our community who work very hard to prevent people from committing suicide, who strive to prevent it occurring. Organisations like Lifeline spring immediately to mind. Those people are often the silent and unsung heroes of this struggle. The most recent report of Lifeline Canberra indicates that during 1993-94 that organisation took nearly 2,000 calls which had a component of suicide in them. When suicide is costing our community more lives than motor vehicle accidents, in distinction from other jurisdictions, I think we have to pay more attention to one of Canberra's most severe and most secret social problems. Today's report by the Australian Bureau of Statistics identifies a severe social problem, not just for Canberra, of course, but also for the rest of Australia. We owe it to our community to identify some of the causes of that high suicide rate, and also to make a concerted effort to attempt to address the social consequences - the silently perceived but received social consequences of that high rate.

This is an issue which I think, Madam Speaker, may need to be dealt with by the Third Assembly, maybe even by way of a committee inquiry at that time. The problem is that one person taking his or her own life is a wasted opportunity which, with the right approach, we might just be able to prevent. While our suicide rate stands above zero, in my view it is too high. Canberra has lost more people to suicide than to road accidents in the last 10 years. While we have made our community aware of the dangers of driving badly and recklessly, I do not think we understand enough about the causes of suicide and how to handle the social problems that flow from it. I hope, Madam Speaker, that the Assembly will take up that challenge of finding out what those causes are and what those problems are in the future.

Question resolved in the affirmative.

Assembly adjourned at 11.18 pm

ANSWERS TO QUESTIONS

MINISTER FOR URBAN SERVICES
LEGISLATIVE ASSEMBLY QUESTION

QUESTION NO. 1385

Disposable Nappies - Disposal

Mr Stefaniak - asked the Minister for Urban Services - In relation to your answer to question on notice No. 1259 of 11 April 1994 regarding disposable nappies -

(1) As sewage/waste is prohibited from being placed in garbage bins, what action is being taken with regard to households with babies/toddlers, hospitals, aged care/nursing homes and child care facilities which dispose of disposable nappies in the garbage bin.

(2) What facilities are provided to households with babies/toddlers, hospitals, aged care/nursing homes and child care centres for the disposal of disposable nappies.

(3) Would not seepage occur after disposable nappies are compacted.

(4) What precautions are taken to prevent health problems from seeping disposable nappies to (a) general public; (b) waste workers; and (c) areas surrounding the compacted area, ie, in the case of the Belconnen tip, the Molonglo River.

(5) What precautions are taken to prevent seepage from disposable nappy waste (a) before compaction; and (b) after compaction.

(6) How long before a disposable nappy biodegrades after being compacted, buried and covered with soil.

(7) Is the incineration facility at Totalcare in Mitchell available to the general public. If not, why not.

(8) Do the manufacturers of disposable nappies pay a levy for the disposal of disposable nappies. If not, why not.

Mr Lamont - the answer to the Members question is as follows:

(1) In the absence of any other method of disposal, householders wishing to dispose of disposable nappies are asked to shake, or rinse, any solid, faecal matter into the toilet and seal the nappy in a plastic bag before putting it in with the household garbage.
(2) No facilities are provided specifically for the disposal of disposable nappies.

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(3) Seepage from disposable nappies after compaction would be insignificant as landfilled wastes have the capacity to absorb moisture before any seepage occurs.

(4) The general public and waste workers do not come into direct contact with household garbage placed at the landfills. Household garbage deposited at the landfills by the garbage vehicles is compacted and covered on a daily basis.

All "seepage" through the compacted waste is collected by a specially designed leachate drainage system and contained on-site. The only water discharged from landfills in the ACT is stormwater which is collected separately and treated to reduce the sediment load before release. All such releases are only undertaken with the prior approval of the Office of the Environment.

(5) There is no need to take special precautions for seepage from disposable nappies, before or after compaction, as the volumes are comparatively small in the context of landfilled waste. Any seepage from disposable nappies is collected in leachate at the landfill.

(6) In common with many other materials disposed of at landfill, the synthetic fabric of a disposable nappy will take a considerable time to degrade within the fill. The organic contents will degrade considerably faster due to the action of naturally occurring bacteria within the landfill. The rate at which the products break down will vary with soil types and adjacent wastes.

(7) The incinerator facility at Mitchell is available to the public for disposal on a fee for service basis.

(8) The manufacturers of disposable nappies do not pay a levy for the disposal of disposable nappies. The operation of such a levy in the ACT alone would be unenforceable and it is not clear how such a levy would benefit the disposal of nappies.

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CHIEF MINISTER FOR THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY QUESTION

Question No. 1388

Wastewatch Hotline

MRS CARNELL - Asked the Chief Minister upon notice on 13 September 1994:

(1) What is the number of calls received on the Wastewatch Hotline since its inception in March 1992.

(2) What is the cost of (a) operating the facility, including telephone charges, advertising etc; and (b) staff time involved in following up calls.

(3) What has been the identified value of savings made as a result of calls made on the Wastewatch Hotline.

MS FOLLETT - The answer to the Leader of the Oppositions questions is as follows:

(1) The Wastewatch Hotline received 974 calls (as at 1.9.94) since its inception.

(2) The cost of operating the facility since its inception (as at 1.9.94) including telephone charges, advertising etc was $36,011. The cost of staff time in the Department of Public Administration in operating the facility during this time was $33,713. Accurate figures on the staff time involved in agencies in following up calls is not available.

(3) While information on actual savings as a result of calls on the Wastewatch Hotline is not available, the benefits to result from calls relating to changed practices can be summarised in terms of the major type of improvements identified:

- improvements to the management and use of Government vehicles in regards to security, appropriate use, and maintenance. The improvements are also supported by raising awareness of ACTGS officers responsibilities whilst driving a Government vehicle. These procedures are expected to provide fuel and maintenance savings, and a reduction in accidents and damage to Government vehicles;
- improvements to the management of buildings and other assets through the more timely identification of faults. This action enables more timely response to faults; improves usage and may minimise the cost of repair;
- improvements in the pattern of usage of electricity in public buildings and in public places, reduces the long term cost of operation, assists in achieving energy conservation goals and serves as an example to the community;
- improved response rate to flooding taps, sprinkler systems, and leaking public toilets through prompt advice to the relevant agencies. This action enables an immediate response to faults therefore reducing the potential for water damage and reduces the demand on the ACT water supply and drainage;

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• improvements in the range and nature of the services delivered by the ACT Government Service shop fronts which leads to increased usage of the shop fronts, and potentially to improved awareness of and accessibility to these Services.

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QUESTION ON NOTICE NO. 1388
MRS CARNELL

Number of Calls

March 92 - June 93 702
1993-1994 223
July 1994 27
August 1994 22
TOTAL as at 31.8.94 974

Telephone Costs

Costs to 20 April 1993 $ 1100
Costs from 21 April 1993 to 30 June 1993 $ 119
Costs for 1993-94 $ 367
Costs for 1 July - 30 August 1994 18
TOTAL as at 31.8.94 $ 1604

Advertising Costs

March 1992 - 31 May 1993 $20267
June 1993 $ 1315
1993-94 $12045
1 July - 30 August 1994 780
TOTAL as at 31.8.94 $34407
Total costs for telephone and advertising $36011

Source information and documents:

Government Service Board Wastewatch Quarterly reports; financial information from Corporate Management section.

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11 October 1994

WASTEWATCH SALARY AND ONCOSTS

Total $13,468.96 (ASO 4 salary)

March 92 - June 92 $4485
July 92 - June 93 $13469
July 93 - June 94 $13469
July 94 and August 94 2290
TOTAL $33713

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ATTORNEY GENERAL Of THE AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY

QUESTION NO 1392

Attorney-General Portfolio -
Market or Political Research

MRS CARNELL - Asked the Attorney General upon notice on 13 September 1994

For each and every department or agency for which you have ministerial responsibility -

1) What market or political research has been conducted (a) in the year 1992-93; (b) in the year 1993-94 and (c) since 1 July 1994.

2) What was/is the purpose of that research.

3) What were/are the questions asked.

4) What was, or is expected to be the cost of that research.

5) What were the results of that research. (Can copies of the results, including reports, of any research conducted during the specified periods be provided.)

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

1) For every department and agency for which I have responsibility, no political research was conducted during the periods in question. However, during 1992/93 and again during 1993/94 social and community research on ACT community policing was conducted by Frank Small and Associates.

2) The purpose of the research was to assist the Australian Federal Police in the development of community policing strategies which are responsive to the demands and expectations of the ACT Community.

3) A copy of the Social and Community Research Report has been forwarded to the Member.

4) The cost of the research was $49,700.00 for 1992/93 and $50,000.00 for 1993/94.

5) The results of the research are set out in the report.

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